

IN THE COURT OF ASGHAR SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

MISC. CIVIL APPEAL NO. : 11/14 OF 2021
DATE OF INSTITUTION : 24.03.2021
DATE OF DECISION : 06.04.2021

ZARMAT KHAN S/O ABDUL SAEED, TRIBE BEZOTE, SUB-TRIBE
QAMBAR KHEL, STAR BEZOTE, TEHSIL LOWER, DISTRICT
ORAKZAI

.....(APPELLANT)

-VERSUS-


CHAIRMAN NADRA ISLAMABAD AND TWO OTHERS

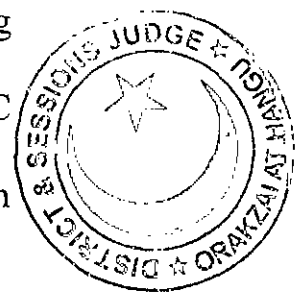
..... (RESPONDENTS)

Present: Sana Ullah Khan Advocate for appellant.
: Syed Farhat Abbas, representative of respondents

JUDGEMENT
06.04.2021

In the suit before the trial court, appellant/plaintiff claimed the correction of his date of birth from 01.01.1990 to 03.05.1999 in the record of the respondents. The case was fixed for evidence but upon failure of the appellant/plaintiff to produce evidence, the learned trial court resorted to the penal provisions of the CPC and thereby struck down his right of producing evidence within the meanings of Order 17 Rule 3 of the CPC through impugned order dated 22.02.2021, hence the appeal in hand.


(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela



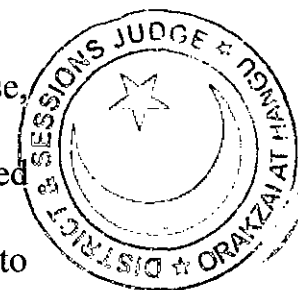
2. Arguments heard and record perused.
3. From the arguments and record available on file, it reveals that after submission of list of witnesses, the learned trial court fixed the case on 26.02.2020 for evidence to be recorded

(11)

on 04.04.2020 but however even after availing opportunities of about 10 months, the appellant/plaintiff only recorded the statement of one witness. The learned trial court during the period of said 10 months several times passed strict orders directing the appellant/plaintiff besides issued notice of Order 17 Rule 3 of CPC on 11.02.2021 to produce evidence but of no use. Hence, the impugned order was passed against the appellant/plaintiff and resultantly his right of producing evidence was struck down. The learned counsel for the appellant/plaintiff submitted that the appellant/plaintiff is working as labour at Lahore in the province of Punjab due to which he could not attend the court for evidence and requested for provision of single opportunity. There is nothing wrong in the impugned order on the legal side, however on humanitarian grounds let the appellant/plaintiff be provided a single chance as requested in order to dispose of the matter on merits.

A. Qadir
District & Sessions Judge,
Orakzai at Mangu

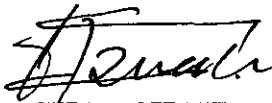
4. Therefore, without touching the other merits of the case, appeal in hand is accepted but at the cost of Rs 5000/-, impugned order of the trial court is set aside and case is remanded back to the trial court where the case is pending for 08.04.2021 with the directions to the trial court to provide a single opportunity for evidence to the appellant/plaintiff and the single date be fixed with consent of both the parties/counsel or their representatives. On the date so fixed by the trial court, appellant/plaintiff will be bound to pay cost of Rs 5000/- to the representative of the



respondents as well as to produce his entire evidence failing which the trial court is at liberty to resort to the penal provisions of the CPC.

- 5. File of the trial court be returned while file of this court be consigned to Record Room after its completion and compilation.

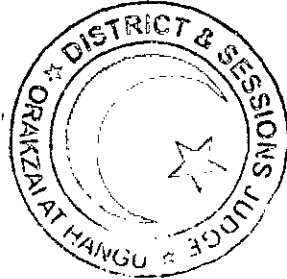
Announced
06.04.2021

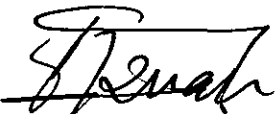

(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 06.04.2021




(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela