

**IN THE COURT OF ZAHIR KHAN CIVIL JUDGE-I, KALAYA, ORAKZAI.**

Petition No.....6/6 of 2023

Date of Institution..... 10.07.2023

Dated of Decision.....30.08.2023

Abdul Wali S/O Sabeel Khan R/O Qaum Mishti, tehsil Lower, Orakzai  
..... Petitioner.

**Versus**

Muhammad Alam S/O Muhammad Ghulam R/O Qaum Mishti, tehsil Lower,  
Orakzai. .... Respondent.

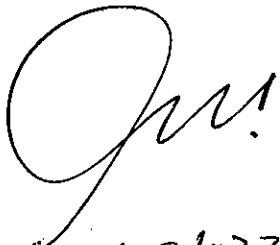
**PETITION FOR SETTING ASIDE EX-PARTE DECREE DATED 02.03.2023  
PASSED IN SUIT NO. 71/1 OF 2022.**

**ORDER**  
**30.08.2023**

Parties present. Arguments already heard and record perused.

Petitioner Abdul Wali has filed the instant application for setting aside ex-parte decree dated 02.03.2023 passed in suit no. 71/1 of 2022.

Petitioner has contended that suit No. 71/1 of 2022 was filed against him by present respondent and the same was ex-parte decreed vide ex-parte order dated: 02.03.2023. That petitioner was not served upon in accordance with law and that petition in hand is filed within time. That petitioner be given an opportunity to defend his valuable rights. That petitioner got knowledge of ex-parte decree when execution petition was filed against him and he approached this court for setting aside ex-parte decree passed against him.



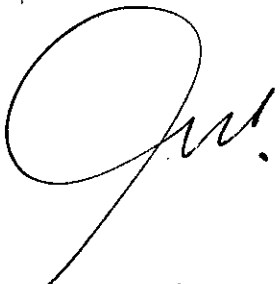
30/08/2023  
**ZAHIR KHAN**  
**Civil Judge JM**  
**Kalaya Orakzai**

Respondent/decreed holder contested the application by filing reply. He has denied the version of petitioner and contended that petitioner was duly served through publication in newspaper "Daily Mashriq" and that petitioner had the knowledge of the suit pending against him.

Brief facts of suit No. 71/1 of 2022 are that plaintiff filed a civil suit for recovery of Rs. 700,000/- and return of vehicle as alternate to the effect that plaintiff sold his Vego Pick-up, bearing registration No. RU 336, Islamabad, Model 2007 on 28.10.2013 in lieu of Rs. 3,000,000/-. That out of sale consideration, Rs. 1,500,000/- was paid by defendant (petitioner) and the remaining amount Rs. 1,500,000/- was promised to be paid on 15.04.2014, out of which Rs. 800,000/- was paid and the amount of Rs. 700,000/- is still outstanding. Plaintiff (respondent) demanded the remaining amount (Rs.700,000/-) or return of the vehicle but in vain, hence, the present suit.

Petitioner/defendant was summoned through publication in newspaper "Daily Mashriq" but he failed to appear before the court, resultantly, he was placed and proceeded against ex-parte and ex-parte decree dated: 02.03.2023 was passed to the extent of recovery/claim of Rs.700,000/- after recording ex-parte evidence of respondent/plaintiff.

Execution petition No. 2/10 dated 13.03.2023 was filed by respondent/decreed holder and later on, warrant of arrest was issued against petitioner/JD, resultantly, he appeared before the court and



30/08/2023

**ZAHIR KHAN**  
Civil Judge/JM  
Kalaya Orakzai

thereafter, the petition in hand was filed which was contested by petitioner/JD by filing written reply.

Law favours adjudication on merits and this principle is to be followed unless there are practical difficulties which cannot be surmounted. In plethora of judgments of the superior courts, it is held that full opportunity be given to the parties and technicalities should be avoided for doing full and substantial justice. Resultantly, petition in hand is hereby accepted subject to cost of Rs.10,000/- and ex-parte decree dated: 02.03.2023 is set aside. Suit No. 71/1 of 2022 is restored. Muharrir is directed to do the needful. The instant file be consigned to record room. Copy of this order be placed on main file of suit No. 71/1 of 2022.

**Announced**  
30.08.2023



**ZAHIR KHAN**  
Civil Judge-I, Kalaya, Orakzai