

In the name of Almighty Allah who has got unlimited Jurisdiction over each and every subject of the universe and beyond.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, ORAKZAI.

Review Petition No: 01/12 of 2023
Date of Institution: 21.08.2023
Date of Decision: 28.09.2023

Muhammad Yousaf etc.

..... (Petitioner/Defendant)

VERSUS

Syed Raziq etc

..... (Respondent/plaintiff)

Review Petition against Order dated 09-08-2023, passed by this Court; whereby, Civil Revision against the Order dated 24.07.2023 learned Civil Judge-1 Kalaya was dismissed.


JUDGMENT

28th September, 2023

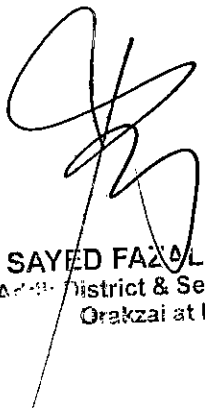
Muhammad Rehman Zaib Khan advocate assisted by Jamshid Alam advocate for Petitioner and Mr. Abid Ali advocate for respondents are in attendance. preliminary arguments heard; whereas, this is the disposal of above cited Review Petition.

2. Through instant petition, the petitioner has sought for review of the Order dated 09.08.2023, passed by this Court.

3. Brief facts are such that Civil Revision No.03/12 of 2023 has been dismissed by this Court vide Order under review; the operating part of which is reproduced herein below for ease of reference: "8. In the light of above discussed facts and circumstances of the case followed by professional assistance rendered by way of arguments of the counsel representing parties, the form of pending proceedings before this Court is being determined in following terms.


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Additional District & Sessions Judge
Orakzai at Hangu

9. Order-39 of the Code of Civil Procedure, 1908, is dealing the subject of granting or withholding of temporary injunction. The prima facie existence of a right and its infringement, the irreparable damage and balance of inconvenience are prime prerequisites to be considered while determining the question of temporary injunction. The Order-39 Rule-2 Sub Rule-3 of Code of Civil Procedure, 1908 is dealing the subject of disobedience of injunction. The impugned order has been passed by attracting such provisions against which, appeal is lying. The petitioner has moved the Court with Civil Revision which is not maintainable for being the Order appealable. The Court has got power to convert revision into appeal in certain circumstances which is not attracted to the facts of present case. A Judgement reported as 2018 CLC 615 is very much relevant for drawing inference and wisdom which is reproduced herein below: "*Temporary injunction was granted in favor of plaintiff but defendants continued their construction. Order passed while entertaining an application under O. XXXIX, R.2(3), C.P.C was an appealable order. Defendants filed revision petition against the order passed by the Trial Court which was not competent. No revision would lie where an appeal lay. Revision could only be converted into appeal when there was a specific application moved for the purpose. No such application was moved by the defendants in the present case. Revisional Court could not convert said revision into appeal as no notice under O. XXXIX, R.3 C.P.C was given by the defendants which was a mandatory requirement. Revisional Court had wrongly entertained the revision in circumstances. Demarcation through local commission was yet to be finalized and report was to be considered by the Trial Court. Trial Court*


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District & Sessions Judge
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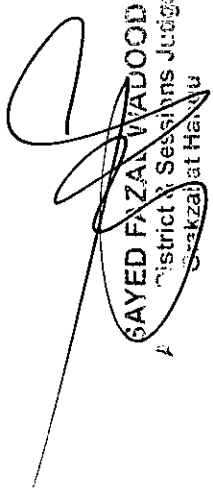
was perfect court to pass an appropriate order after examining the local commission report and of any objections if so filed by the parties".

04. Review Petition in hand is grounded that there is procedural infirmity in judgment under review. The case law referred in the Judgment is about the disobedience of attachment order while the case of petitioner was against the alleged disobedience of carrying on construction work and thus was not applicable to the facts of the case. The case once admitted for hearing can not be dismissed on technical ground at later stage.

5. Learned counsel for petitioner while arguing instant petition was of the view that besides the grounds taken in petition, all the pre-requisites are being fulfilled for attracting jurisdiction of the Court to review the order.

6. Learned counsel for respondent put appearance in the court but could not have argued the case on the score that he has some issue of payment of fee with his client.

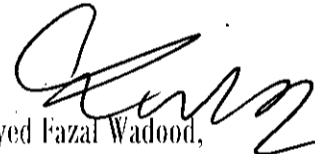
7. Perusal of case file reflects that the questioned order is required to be examined under the provisions of Section 114 read with Order 47 of Civil Procedure Code 1908 which is limited and the court can not go beyond such scope. Review can only be attracted when there is discovery of new important fact, or to rectify clerical mistake and to correct a mistake appearing on the face of it. Petitioner is of the stance that Judgement reported as 2018 CLC 615 speaks about violation of Court Order passed in respect of attachment of property; whereas, that of the petitioner was against the alleged violation of Court Order by way raising construction. Construction and attachment of property are pool


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Sakzabul Haq

apart and thus cannot be made applicable to his case. To the comprehension of this Court, the principle of law settled in the referred reported Judgement is governing the breach of injunctive order which was similar and same set of fact and the wisdom has rightly been drawn from such Judgement. It is also settled law that every order or judgement pronounced by the Court is presumed to be a considered, solemn and final decision on all points arising out of the case. This Court has taken a conscious and deliberate decision on a point of law and thus review petitioner does not lie.

8. For what has been discussed, the petition for review stands dismissed in limine for being devoid of merits. Costs shall follow the event. File of this Court be consigned to District Record Room, Orakzai after necessary completion and compilation within span allowed for.

Announced



Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment is consisting of (04) pages. Each page has been read, corrected and signed by me wherever, necessary.



Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela