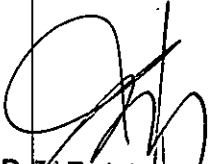


Civil Misc. Appeal No. 24/13 of 2023

Date of institution: 12.07.2023

Umar Hayat etc. Vs Riyat Khan etc

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order-09	06/10/2023	<p>Both the parties along with their counsel are in attendance. Special power of attorney on behalf of respondents executed in favor of Riyat Khan as well as Wakalat Nama in favor of Abid Ali Advocate have been placed on file. The case file is fixed for attendance and arguments. Learned counsel representing respondent stated at the bar that he has no objection over the restoration of Civil Misc Appeal dismissed in default of appearance subject to heavy cost.</p> <p>2. Miscellaneous Civil Appeal bearing No. 24/13 of 2023 called in question the validity and propriety of the Order dated 16.06.2023, passed by learned Civil Judge-II, Kalaya, Orakzai, in Misc Application bearing No. 18/6 of 2022 titled "Umar Hayat etc. vs Riyat Khan etc." whereby, the learned Trial Court has dismissed petition for restoration of suit vide Order No. 18 dated 16-06-2023. Petitioners feeling aggrieved presented instant Civil Appeal which is under consideration.</p> <p>3. Mr. Abid Ali Advocate representing respondents stated at the bar that he has no objection over the acceptance of appeal but it may be subjected to heavy cost.</p> <p>4. The reason mentioned in application for restoration of suit is falling within the ambit of sufficient cause for the provisions of Order-IX Rule-9 of Code of Civil Procedure, 1908 being enabling in nature require to be construed liberally. The respondent is not objecting restoration as well. Moreso, though petition for restoration is beyond the span prescribed by the Limitation Act, 1908; however, condonation of delay has separately been asked by the petitioner. It has been ruled in a case reported as 2013 YLR 375 that sufficient cause for delay will have to be separately examined and established. The reason assigned for condonation of such delay was the illness followed by death of his close relative residing in joint family is considerable; especially, when the opposite party is not objecting.</p>

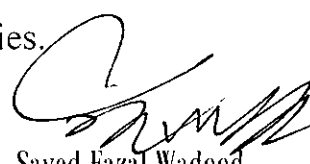

SAYED FAZAL WADOOD
Add. District & Sessions Judge
Orakzai at Hangu

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5. In the light of above discussed facts and circumstances of the case followed by mutual consent of the parties' penned in black and white, appeal in hand is allowed and impugned order is set aside. Consequently, the suit dismissed in default of appearance be restored and registered on its old number Neem subject to payment of cost of PKR 10,000/- so as to compensate the opposite party or litigation being protracted. Copy of this Order be placed on file restored while file of this Court be consigned to the District Record Room Orakzai after completion and compilation, within the span allowed for.

6. Parties are directed to appear before the learned Trial Judge on 14/10/2023 so as to avoid the expected delay in procurement of attendance of the parties.

Announced in open Court


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