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In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

Civil Appeal No. CA-21/13 of 2023

Date of institution: 16.06.2023

Date of decision: 03.11.2023

Muhammad Shair and Muhammad Shafiq both sons of Syed Akbar,
residents of Qaum Buland Khel, District Orakzai.

..... **(Appellants/plaintiffs)**

...Versus...

Rehamt Khan and 03 others all residents of Qaum Buland Khel, District
Orakzai

..... **(Respondents/defendants)**

**Appeal against Judgement, Decree and Order dated 14-04-2023, passed
in Civil Suit No. 14/1 of 2021.**

JUDGMENT

Instant Civil Appeal has been preferred by the appellants/plaintiffs against the Judgment, Decree & Order dated 14.04.2023, passed by learned Civil Judge, District Headquarter, Orakzai in Civil Suit bearing No. 14/1 2021; whereby, the suit of the appellants/plaintiffs with the title of "Malak Muhammad Shair etc. vs Rehmat Khan etc". was dismissed under Order-17 Rule-3 of Code of Civil Procedure 1908.

2. Suit for declaration and injunction regarding landed property measuring 23 kanals 14 Marlas, located at Buland Khel, Orakzai was pending adjudication at the stage of evidence. Notice under Order-17 Rule-3 of Code of Civil Procedure, 1908 was issued and on failure, the suit was dismissed which has been clutched in the contents of instant appeal.

3. Learned counsel representing appellants argued that examination of witnesses have been postponed on different reason including reluctance of


SAYED FAZAL WADOOD
An Additional District & Sessions Judge
Orakzai at Hangu

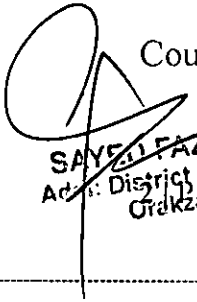
witnesses from examination in the Holy month of Ramzan. The plaintiffs are not the sole responsible for such delay and therefore the Order impugned is passed in haste without taking into consideration the reasons. The disposal has been made on technical ground and merits of the case has been ignored.

4. Learned counsel representing respondents/defendants is of the stance that plaintiffs failed to produce evidence despite considerable length of time provided. The Trial Court has rightly dismissed the suit on the score of noncompliance which is within the four corners of law.

5. The point for determination of this Court is that whether sufficient opportunities have been provided and that whether the technical ground can be converted into disposal on merits?

6. Order-17 Rule-3 of Code of Civil Procedure, 1908 empowers Court to decide case promptly if party directed by him fails to adduce evidence or bring any material on record. But the provisions being enabling in nature on one hand and discretionary on other hand requires under the law to be interpreted liberally so that the disposal on merits rather technicality shall be ensured. On this given criteria, the reasons mentioned for such non-production are considered sufficient cause and thus allowed in the best interest of justice. The foremost point to be addressed is that of prolongation of case for no justifiable reason but there is remedy of imposition of cost available to compensate the opposite party.

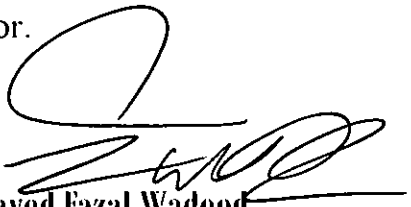
7. For what has been discussed above, appeal is allowed; consequently, the impugned Order dated 14/04/2023 is set aside with cost of Rupees 10,000/-; to be paid in two equal installments; one on 11/11/2023 and the next on succeeding date of hearing. The case is remanded back to the learned Trial Court for recording of evidence and further proceedings of the case. The


SAYED FAZAL WADOOD
Ad. District & Sessions Judge
Gadkwa & Hangu

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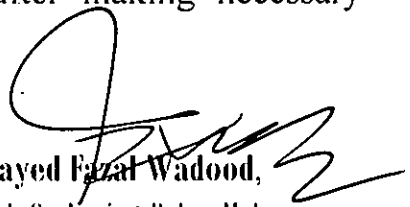
appellants/plaintiffs shall appear before the learned Trial Judge on 11/11/2023 with complete evidence in hand along with the counsel to ensure recording of evidence without further delay. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

Announced in the open Court
03.11.2023


Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment is consisting upon three (03) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.


Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

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DECREE SHEET
IN THE COURT OF SYED FAZAL WADOOD
ADDITIONAL DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

Civil Appeal No. CA-21/13 of 2023

Date of institution: 16.06.2023

Date of decision: 03.11.2023

Muhammad Shair and Muhammad Shafiq both sons of Syed Akbar, residents of Qaum Buland Khel, District Orakzai.

..... (**Appellants/plaintiffs**)

...Versus...

Rehamt Khan and 03 others all residents of Qaum Buland Khel, District Orakzai

..... (**Respondents/defendants**)

CLAIM OF THE APPELLANT

Instant Civil Appeal has been preferred by the appellants/plaintiffs against the Judgment, Decree & Order dated 14.04.2023, passed by learned Civil Judge, District Headquarter, Orakzai in Civil Suit bearing No. 14/1 2021; whereby, the suit of the appellants/plaintiffs with the title of "Malak Muhammad Shair etc. vs Rehmat Khan etc". was dismissed under Order-17 Rule-3 of Code of Civil Procedure 1908. After hearing arguments, the below mentioned Judgement is passed on the appeal of the appellants.

Order NO.
03-11-2023

Vide my detailed Judgment of today consisting of 03 pages, separately placed on file; consequently, the impugned Order dated 14/04/2023 is set aside with cost of Rupees 10,000/-; to be paid in two equal installments; one on 11/11/2023 and the next on succeeding date of hearing. The case is remanded back to the learned Trial Court for recording of evidence and further proceedings of the case. The appellants/plaintiffs shall appear before the learned Trial Judge on 11/11/2023 with complete evidence in hand along with the counsel to ensure recording of evidence without further delay. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

COST OF APPEAL

Appellants	Contents	Respondents
	Cost	
	Stamp on Appeal	
	Pre-emption amount	
	Commission fee	
	Stamp of power	
	Proclamation fee	
	Witness expenses	
	Court fees	
	Total	

Note: Given under my hand signature and seal stamp of this court on 03rd day, of November 2023.



[Handwritten Signature]

AD&SJ, Orakzai at Baber Mela