

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL REVISION NO. : 5/12 OF 2021
DATE OF INSTITUTION : 13.11.2021
DATE OF DECISION : 30.11.2021

DOST MUHAMMAD S/O ZAHIR SHAH, R/O KRAPPA DISTRICT
ORAKZAI AND TWO OTHERS
.....(PETITIONERS)

-VERSUS-

QADIR SHAH S/O LALMAN SHAH, R/O CASTE DARADAR
MAMAZAI, DRE PLARE DISTRICT ORAKZAI
.....(RESPONDENT)

Present: Shaheen Muhammad Advocate for petitioners
: Noor Karim Advocate for respondent

JUDGEMENT
30.11.2021

Impugned herein is the order dated 06.11.2021 of the learned Civil Judge-I, Orakzai vide which right of the petitioners/defendants of cross examining the plaintiffs' witnesses was struck off u/o 17-R-03 CPC.

2. In a suit before the learned trial court respondents/plaintiff seeks recovery of Rs. 400000, 70000, 278300 and 350000 on different counts with eviction of petitioners/defendants from a suit house detailed in the headnote of the plaint. The suit petitioners/defendants contest the same on various legal and factual grounds. After framing of issues, respondent/plaintiff produced 04 witnesses on 06.11.2021 whose examinations in chief were recorded while


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
30/11/21

the right of cross examination of the petitioners/defendants was struck of under order 17 rule 3 CPC on account of non-availability of the counsel for petitioners/defendants.

Being aggrieved of the order, the petitioners/defendants filed the instant revision petition.


Notice was issued to the respondent/plaintiff. Arguments heard and record perused.

3. Perusal of case file shows that vide order sheet no. 20 dated 22.10.2021, the witnesses of the respondent/plaintiff were present but they could not have been examined due to non-availability of counsel for the petitioners/defendants and the case has been adjourned for 28.10.2021. Again, on 28.10.2021, the witnesses of the respondent/plaintiff could not have been examined due to non-availability of the petitioners/defendants and the case has been adjourned for 06.11.2021 with notice of order 17 rule 3 CPC. On 06.11.2021 the witnesses of the respondent/plaintiff have been examined with striking of the right of cross examination of the petitioners/defendants. However, counsel for the petitioners/defendants has annexed original PP with revision petition vide which case was fixed for 20.11.2021 instead of 06.11.2021 which provides a genuine reason for the absence of counsel for petitioners/defendants. Moreover, it is a settled principle of law that a lis before the court must be decided on the basis of merits avoiding technicalities.

Shaukat Ahmad Khan
 District & Sessions Judge
 Orakzai at Baber Mela
 20/11/21

4. Hence, in the light of what is discussed above, the instant revision petition is accepted and the impugned order dated 06.11.2021 of learned trial court is set aside subject to cost of Rs. 3000/- to be paid by the petitioners/defendants to the respondent/plaintiff before the trial court with provision of single opportunity to the petitioners/defendants to cross examine the witnesses of respondent/plaintiff on date fixed. Respondent/plaintiff is directed to produce his witnesses on date fixed before the trial court for cross examination. Parties are directed to appear before the learned trial court on date fixed i.e., 02.12.2021. The record with copy of this order be sent to the learned trial court. File of this court be consigned to record room after its necessary completion and compilation.


Pronounced
30.11.2021


(SHAUKAT AHMAD KHAN)
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: 30.11.2021


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela