

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-4/13 of 2021

Date of institution: 16.12.2021

Date of decision: 08.02.2022

Board of Intermediate and Secondary Education, Kohat through Chairman

..... **(Appellant/defendant)**

...Versus...

Saif Ullah son of Mir Hassan Jan residents of Qaum Qutab Khel Ghiljo, District

Orakzai..... **(Respondent/Plaintiff)**

Appeal against Judgement, Decree and Order dated 26-11-2021, passed in Civil Suit No. 13/1 of 2019.

JUDGMENT

Instant Civil Appeal has been preferred by the appellant/defendant against the Judgment, Decree & Order dated 26.11.2021, passed by learned Civil Judge, Orakzai in Civil Suit bearing No.13/1 of 2019 followed by petition for restoration of suit bearing No. 22/6 of 2021; whereby, the petition of appellant for restoration of application with the prayer of setting aside ex-parte decree was dismissed in default.

2. Briefly stated facts of the case are such that the plaintiff Saif Ullah has filed suit against the defendants for declaration with consequential relief of mandatory injunction to the effect that plaintiff's father name is Mir Hassan Jan with correct date of birth as 13-02-2021. Correction of father name was prayer against the BISE Kohat and Education Department; whereas, correction of date of birth was prayer against the NADRA Authorities. The suit was decreed by the then learned Trial Judge vide Judgement and Decree dated 27-02-2020. On 17th of September, 2020, an application for cancellation of ex-parte decree was presented by one of the judgement debtor i.e Chairman BISE Kohat, registered as 24/6 of 2020. This application was dismissed in default vide order No. 5 dated 21-11-2020.

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Restoration of petition dismissed in default was registered on presentation as 3/6 with date of institution as 28-01-2020. This was dismissed in default vide order No. 04 dated 07-04-2021. Another petition for restoration was presented on 19-04-2021 which was registered as 15/6 of 2021. This was also dismissed for none appearance vide order No. 04 dated 25-08-2021. Restoration application was once again presented on 28-09-2021; registered as 22/6 of 2021 which was dismissed by attracting Law of Limitation vide order No. 05 dated 26-11-2021. Consequently, instant civil appeal has been presented which is under consideration.

3. On previous date of hearing, Mr. Shaheen Muhammad Orakzai Advocate for appellant and Mr. Saeed Marwat Advocate for respondent jointly stated at the bar that the matter under adjudication is of technical nature and the respondent has got no objection if the plea of the appellant has been considered.

4. Record is before the Court. The original suit bearing No. 13/1 with the title of "Saif Ullah vs Chairman Board" has been decreed after contested trial but was obviously ex-parte to the extent of defendant No. 1 (Chairman BISE Kohat). He presented application for setting aside ex-parte decree but was dismissed in default vide Order No. 5 dated 21-11-2020. For its restoration another application bearing No. 3/6 was submitted and culminated into dismissal in default vide Order No. 4 dated 07-04-2021. For its restoration, another petition has filed which was registered as 15/6 of 2021 and met with similar fate of dismissal in default vide Order No. 04 dated 25-08-2021. For the last time, petition for restoration of the restoration application was filed on 28-09-2021 which was dismissed by the learned Trial Judge vide Order No. 5 dated 26-11-2021 by attracting Law of Limitation and is subject of instant appeal. Mentioning and referring all the petitions as content of this determination is aimed to reflect the conduct of the representative pursuing the matter on behalf of public institution (BISE Kohat) on

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one hand and to reflect the conduct of the Chairman BISE Kohat as party to the suit. At present, the respondent has got no objection over the restoration of petition for cancellation of ex-parte decree registered as 24/6 with date of institution as 17-09-2020 and the ground for such dismissal as period of limitation containing four days, is also a meager one. Learned the Trial Judge has referred Article 163 of the Limitation Act, 1908 which prescribes 30 days' time for an order to set aside or dismissal in default for appearance; whereas, the appellant had approached the Court with delay of 04 days. It is within the scope of Law of Limitation that vested right would be created in favour of opposite party after expiry of limitation and that vested right has already been waived by respondent on no objection at the bar. Similarly, noting of wrong date of hearing has been assigned by the appellant for delay of four days that has been considered sufficient explanation of delay.

5. For what has been above, appeal stands allowed. Consequently, Order No.5 dated 26-11-2021, passed in Civil Misc Application bearing No. 22/6 of 2021 is reversed and Petition bearing No. 24/6 with the title Saif ullah vs Chairman BISE Kohat for setting aside ex-parte decree is restored for disposal of the learned Trial Judge. Costs shall follow the events. 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


08.02.2021



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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