

IN THE COURT OF SYED OBAIDULLAH SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

FAMILY COURT APPEAL NO. : 3/FCA OF 2023
DATE OF INSTITUTION : 26.10.2023
DATE OF DECISION : 06.12.2023

NAILA W/O AZEEM ALI, R/O CASTE BAR MUHAMMAD KHEL,
LOWER, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

AZEEM ALI S/O NAZIR HUSSAIN, R/O CASTE MANI KHLE,
LOWER, DISTRICT KOHAT

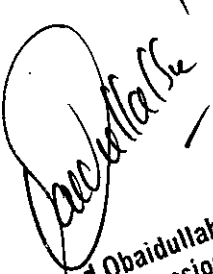
.....(RESPONDENT)

Present: Mr. Sana Ullah Khan Advocate for appellant.
Mr. Abid Ali Advocate for respondent.

JUDGEMENT
06.12.2023

Impugned herein is the order dated 26.09.2023 of learned Civil Judge-II, Tehsil Kalaya vide which the application of the appellant/plaintiff for withdrawal of the suit to file a fresh one, has been dismissed.

- (2). The appellant/plaintiff before the court of learned Civil Judge-II/Judge Family court, Tehsil Kalaya brought a suit for rescission of their marriage contract and restitution of conjugal rights against the respondent/defendant (the husband of appellant/plaintiff) contending therein that the marriage of the parties was solemnized on 03.03.2019 in lieu of a dower in the shape of gold ornaments weighing 04 tola and Rs. 10,000/- besides claiming Rs. 15,000/- from January 2021, Rs. 80,000/- of medical expenses and articles worth of Rs. 02 lacs liable to be paid by the respondent/defendant to the appellant/plaintiff. Initially, the


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matrimonial life of the parties was going well; however, later on respondent/defendant turned violent and disobedient, forcefully evicting her from her house and keeping the household articles belonging to the appellant/plaintiff. The respondent/defendant was summoned who appeared before the trial court and submitted written reply. The case was fixed for plaintiff's evidence; however, the appellant/plaintiff submitted application for withdrawal of the suit to file a fresh one. The learned Civil Judge-II/Judge Family Court, after having heard the arguments, dismissed the application.

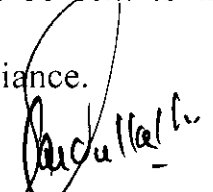
The appellant/plaintiff, being aggrieved of the impugned order, filed the present appeal.

- (3). Arguments heard and record perused.
- (4). Perusal of the case file reveals that the appellant/plaintiff expressed the intention to withdraw the suit for the reasons, that the date of marriage between the parties was erroneously stated as March 3, 2019, that essential documents needed to be appended to the plaint and that these omitted details raised concerns about the potential failure of the suit. The date of marriage is a material aspect that does not necessarily require the initiation of a fresh suit; however, when the counsels for the parties were confronted with the situation, that the case is in its initial stage and a fundamental legal principle dictates that a legal dispute

before the court must be adjudicated based on the merits, involving the recording of both supporting and opposing evidence, in addition to presenting documentary evidence, they acquiesced to this standpoint.

- (5). In these circumstances, the instant appeal is accepted and the impugned order of the learned Civil Judge-II, Tehsil Kalaya, District Orakzai is set aside and the application of appellant/plaintiff for withdrawal of the suit is allowed; however, appellant/plaintiff is burdened of with a cost of Rs. 3,000/- to be deposited at the time of presentation of plaint in a fresh suit payable to the present respondent/defendant.

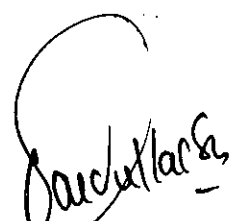
Judgment announced. File of this court be consigned to record room and copy of this judgment be sent to the learned trial court for information and compliance.


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CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 06.12.2023


(SYED OBAIDULLAH SHAH)
District Judge, Orakzai
at Baber Mela

