

317

IN THE COURT OF FARMAN ULLAH,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No. 282/1 of 2020
Date of Institution: 02/06/2020
Date of Decision: 11/09/2021

1. Kamran Khan S/o Ghous Ullah Khan

(Plaintiff)

Versus

- 1) Chairman Program Manager FATA Secretariat Special Program Islamabad
- 2) ADO FATA Secretariat Special Program Orakzai
- 3) DC Orakzai
- 4) Director General FATA Projects Peshawar.

(Defendant)

SUIT FOR RECOVERY OF RS. 8591818/-

Ex-Parte Judgement

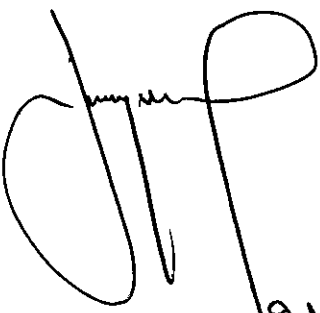
11.09.2021

Brief facts of case in hand are that the plaintiff, **Kamran Khan** filed the instant suit for recovery of Rs. 85,91,818/- (Eighty Five Lacs, Ninety one thousand, Eight Hundred and Eighteen) to the effect that 06 (six) contracts, the detail of which has been mentioned in the head note of the plaint, were awarded to the plaintiff in open bidding but later on defendants changed the location of the works and promise to pay additional charges after the completion of work but now defendants are reluctant to pay the bill amount RS. 85,91818/- to the plaintiff as per their promises and escalations.

11.09.2021
FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela

It was averred in the plaint that defendants invited bids for various works at Orakzai, plaintiff participated in the same and was declared as successful bidder for the following works:

- 1) Fxoi-25-Construction of Irrigation Channel with protection wall.
- 2) Fxoi-14 -Construction of water supply scheme.
- 3) Fxoi-24-Construction of Irrigation Channel.
- 4) Fxoi-039-Construction of Kalaya Nursery Farm.
- 5) Fxoi-028-Construction of Tube Well and Channel.
- 6) Fxoi-18-Construction of Irrigation Channel.


11.09.2021
That Work Order in respect of Fxoi-25-Construction of Irrigation Channel with protection wall at Sepoy Orakzai with contract price of Rs. 60,17,243/- was issued on 17.07.2017 but later on defendants changed the location to Ghosi Orakzai. On which, plaintiff refused to accept the contract, however, defendants promised to make the payment as per new location and also to pay the escalation amount. That plaintiff completed the said work with cost of Rs.1,11,04,465/- but defendant paid only Rs. 81,22,897/-to the plaintiff and refused to pay the remaining amount Rs. 29,81,586/-.

That Work Order in respect of Fxoi-14-Construction of Water Supply Scheme, water tanks and pipelines at Darah Mani

Khel Orakzai with contract price of Rs. 35,34,046/- was issued on 18.10.2017 but later on defendants changed the location. On which, plaintiff refused to accept the contract, however, defendants promised plaintiff to make the payment as per new location and also to pay the escalation amount. That plaintiff completed the said work and also prepared BOQ with cost of Rs.73,17,476/- but defendant paid only Rs. 57,54,627/-to the plaintiff and refused to pay the remaining amount Rs. 15,62,349/- and also refused to pay the escalation amount.

That Work Order in respect of Fxoi-24-Construction of Irrigation Channel at Andkhel Orakzai with contract price of Rs. 31,79,059/- was issued on 17.07.2017 but later on defendants changed the location and shifted the same to hard area with promise to make the payment as per new location and also to pay the escalation amount. That plaintiff completed the said work and prepared BOQ with cost of Rs.75,10,343/- but defendant paid only Rs. 58,36,522/-to the plaintiff and refused to pay the remaining amount Rs. 16,73,821/- as well as the escalation amount.

That Work Order in respect of Fxoi-039-Construction of Nursery farm at Kalaya Orakzai with contract price of Rs. 52,95,914/- was issued on 17.07.2017. That plaintiff completed the said work with cost of Rs.76,00,631/- but defendants paid him Rs.7,291,019/- by making mistake in the measurement and

326

refused to pay the remaining amount Rs. 3,09,612/- as well as the escalation amount.

That Work Order in respect of Fxoi-028-Construction of tube well and channel at Kadda Bazar Orakzai with contract price Rs. 19,78,097/- was issued on 17.07.2017. That during the digging of tube well, plaintiff sustained huge loss due to land sliding and completed the said work with cost of Rs.66,62,131/- but defendants paid only Rs. 47,13,378/-to the plaintiff and refused to pay the remaining amount Rs. 19,48,753/- as well as escalation amount.

That Work Order in respect of Fxoi-18-Construction of Irrigation Channel GL Apron at Behram Zai Orakzai with contract price of Rs. 15,68,144/- was issued on 27.09.2018. That plaintiff completed the said work with cost of Rs.38,75,411/- but defendants paid him Rs.3,760,222/-to him due to mistake in measurement and refused to pay the remaining amount Rs. 1,15,189/- as well as escalation amount.

That defendants were repeatedly asked to pay the outstanding amount of the plaintiff and to this effect legal notice was also issued but defendants refused to pay the amount, hence instant suit.

Defendants were summoned, on which defendant No. 3 appeared before the court and was repeatedly directed to submit written statement but failed to do so and finally the right of

11.09.2021
FARHANULLAH
Senior Civil Judge
Orakzai at Baber Bela

321

defense of defendant No.3 was struck off vide order dated: 31.01.2020. Remaining defendants were summoned through publication in the newspaper but none of the said defendants appeared before the court and thus proceeded ex-parte on 22.11.2019.

Ex-parte evidence of plaintiff recorded as PW-01 to PW-12.

Ex-parte arguments heard and record gone through.

From the perusal of the record, it is evident that plaintiff is claiming an excess amount Rs. 85,91,818/-from defendants on the ground that location of 03 (three) sites were changed by the defendants and promised to pay the bill as per new location along with the escalation amount while to the extent of 02 contracts, it is the contention of plaintiff that defendants have wrongly measured the completed work and also failed to pay the escalation amount while to the extent of one contract/project, it is the contention defendants that he sustained huge loss due to land sliding and natural calamity while completing the work, hence defendants are bound to make the loss and pay the bill as per the cost of work mentioned in the BOQ. Plaintiff in support of his contention has produced his witnesses as PW-01 to PW-12 while in documentary evidence he has annexed copies of work orders, agreements, BOQ etc. As far as the statements of PWs are concerned, all the witnesses have testified to this extent that they have worked in the various sites completed by the plaintiff

322

but none of the witness has uttered a single word that defendants promised in their presence to pay extra amount to the plaintiff due to change of locations of the sites. Similarly, none of the witness has uttered a single word regarding the measurement of completed work on the spot or any loss caused by the sliding and natural calamity. Plaintiff also failed to produce any agreement in writing executed between the plaintiff and defendants regarding the promise by the defendants to enhance the cost of the project due to change in the locations of the site or to pay any escalation amount to the plaintiff. So, the ex-parte evidence produced by the plaintiff does not support the claim of plaintiff and in other words plaintiff failed to prove his claim through cogent and confidence inspiring evidence, hence the suit of plaintiff is dismissed. No order as to costs.

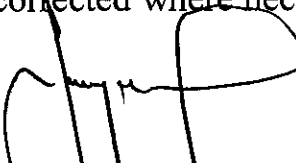
1. File be consigned to the record room after its completion and compilation.

Announced
11/09/2021


(Farman Ullah)
Senior Civil Judge,
Orakzai (at Baber Mela).
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine including this page consisting of 06 (six) pages, each page has been checked, corrected where necessary and signed by me.


(Farman Ullah)
Senior Civil Judge,
Orakzai (at Baber Mela).