

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

Civil Suit No. 281/1 of 2020
Date of Institution: 02/06/2020
Date of Decision: 11/09/2021

Abdul Raziq Khan S/o Wali Ayaz Khan

(Plaintiff)

Versus

- 1) **Chairman Program Manager FATA Secretariat Special Program Plot No. 3B-1 G-5 Diplomatic Avenue, Maitreyan Plaza Islamabad**
- 2) **ADO FATA Secretariat Special Program Orakzai**
- 3) **DC Orakzai**
- 4) **Director General FATA Projects, Warsak Road, Peshawar.**

(Defendants)

SUIT FOR RECOVERY OF RS. 21,05017/-

Ex-Parte Judgement

11.09.2021

Brief facts of case in hand are that plaintiff, **Abdul Raziq** filed instant suit for recovery of Rs. 21,05017/- (Twenty one Lacs, five thousand, and Seventeen) to the effect that 03 (three) 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 enhanced the scope of the works with promise to pay the market after the completion of work but later on defendants refused to pay the bill as per their promises and escalation rather direction was made in the bill of plaintiff.

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:


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- 1) Fxoi-037-Civil Veterinary Dispensary at Darra Mani Khel Orakzai.
- 2) Fxoi-035-Civil Veterinary Dispensary at Tagha Sam Orakzai
- 3) Fxoi-034-Civil Veterinary Dispensary Sarobi Ghari Orakzai.

That Work Order in respect of Fxoi-037- Construction of Civil Veterinary Dispensary at Darra Mani Khel Orakzai with contract price of Rs. 18,60,385/- was issued on 03.08.2017 but later on defendants enhanced the scope of work, on which, plaintiff refused to accept the contract, however, defendants promised to make the payment as per enhancement and also to pay the escalation amount. That plaintiff completed the said work with cost of Rs.36,08,995/- but defendants paid only Rs. 29,48,995/-to the plaintiff and refused to pay the remaining amount Rs. 6,60,000/- as well as the escalation amount.

That Work Order in respect of Fxoi-035- Construction of Civil Veterinary Dispensary at Tagha Sam Orakzai with contract price of Rs. 20,55,664/- was issued on 03.08.2017 but as per promises of defendants the project was completed with the cost of Rs.39,44,880 however, plaintiff was paid Rs.27,92,994/- and rates were reduced and deducted against the BOQ, hence RS. 11,51,886/- of plaintiff are outstanding against defendants but defendants refused to pay the same.

That Work Order in respect of Fxoi-034- Construction of Civil Veterinary Dispensary at Sarobi Ghari Orakzai with contract price of Rs. 14,21,759/- was issued on 03.08.2017 but as per directions of defendants the same project was completed with the cost of Rs. 20,62,524/-. However, plaintiff was paid Rs. 17,69,493/- and defendants illegally reduced the rates as mentuioned in the BOQ and refused to pay the remaining amount Rs.2,93,131/-.

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 representative of 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 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 them appeared before the court and thus proceeded ex-parte on 22.11.2019.

Ex-parte evidence of plaintiff recorded as PW-01 to PW-13.

Ex-parte arguments heard and record gone through.

From the perusal of the record, it is evident that plaintiff is claiming an amount Rs. 21,05017/- from defendants on the ground that 03 contracts namely Fxoi-37, Fxoi-34 and Fxoi-35

were awarded to the plaintiff by defendants but later on the scope of work was enhanced and plaintiff was promised to pay for enhanced work but refused to pay the same after completion of work. Similarly, deduction was made at the time of payment of bill contrary to the BOQ of agreement and moreover, the completed work was wrongly measured by the defendants.

Plaintiff in support of his contention produced his witnesses as PW-01 to PW-12 while attorney for the plaintiff appeared as PW-13. PW-13 in his statement repeated the contents of plaint and produced the power of attorney as Ex.PW-13/1, his CNIC as Ex.PW-13/2 while notices issued to the defendants and its reply as Ex.PW-13/3 to Ex.PW-13/15. PW-01 to PW-12 in their respective statements have deposed to this extent that they have worked in the construction of projects Fxoi-37, Fxoi-34 and Fxoi-35 and the same were completed by the plaintiff. There is nothing in their statement about the scope of work, its measurement, rates and any oral agreement between plaintiff and defendants regarding the construction of projects Fxoi-37, Fxoi-34 and Fxoi-35. Similarly, the plaint as well as the statement of attorney for the plaintiff (PW-13) is also completely silent about the detail of enhanced work agreed between plaintiff and defendants, deduction made in the final bill paid to the plaintiff. Plaintiff though has placed on file the BOQ annexed with the agreement, final BOQ for the payment of bill to the plaintiff by defendants and the BOQ prepared by the plaintiff, on

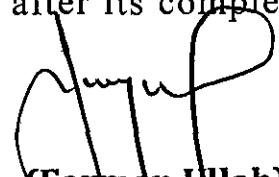

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the bases of which plaintiff is claiming the disputed money yet plaintiff failed to exhibit the same documents. He also failed to produce the person who has measured the completed work and who has prepared the BOQ of plaintiff. Record shows that the entire claim of plaintiff is based on his BOQ but no witness was produced by the plaintiff to prove that the same BOQ is based on facts and is genuine. Similarly, it is the contention of plaintiff that the scope of work was enhanced by the defendants with the promise to pay for the enhanced work according to the market value but at the time of payment of bill they refused to fulfill their promises however, in this respect neither any oral or documentary evidence was produced by the plaintiff, so the available record does not support the claim of plaintiff.

To conclude it is held that plaintiff failed to produce any cogent and confidence inspiring evidence to prove his stance, hence the suit of plaintiff is dismissed. No order as to costs.

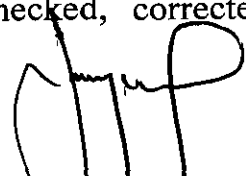
1. File be consigned to the record room after its completion and compilation.

Announced
11/09/2021


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

CERTIFICATE

Certified that this judgment of mine including this page consisting of 05 (five) pages, each page has been checked, corrected where necessary and signed by me.


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