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IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I,
ORAKZAI (AT BABER MELA).

Civil suit No 47/1 of 2023
Date of institution 18.09.2023
Date of decision 19.12.2023

Muhammad Usman S/O Afsar Khan

Resident of Yaqoobi Killa, PO Jahangiri, Tehsil Takhat Nasrati, District Karak.

..... (Plaintiff)

Versus

1. **Muhammad Haroon S/O Hassan Badshah R/O Zarin Killa Tehsil Takhat Nasrati, District Karak.**
2. **Muhammad Ismial S/O Unknown.**
3. **District Education Officer, District Orakzai through representative.**

.....(Defendants)

**SUIT FOR SPECIFIC PERFORMANCE AND RECOVERY OF
RUPEES 78,33,597 AND RECOVERY OF CONSTRUCTION
MATERIAL.**

EX-PARTE JUDGMENT:

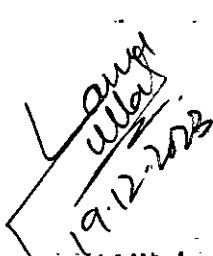
1. The leading facts of the case are that the plaintiff is seeking specific performance of the contract dated 24.07.2021 whereby the plaintiff and defendant No.1 entered into agreement regarding construction of building for Government High School, Swaro kot. The plaintiff also sought recovery of Rs. 78,33,597/- due to the expenses incurred and remuneration of the plaintiff as a subsidiary contractor. The plaintiff further sought recovery of construction material/ equipment which he has purchased for the construction work and which is laying on the construction site. That defendants were

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asked time and again to admit the legal claim of plaintiff and pay the aforementioned amount but in vain and finally refused to pay the said amount, hence, the present suit.

2. Defendants in the instant case were placed and proceeded against ex-parte after proper service of summons. Thereafter, plaintiff was allowed to produce his ex-parte evidence after submission of list of witnesses.
3. Detail of plaintiff's witnesses and exhibited documents are as under:-

	WITNESSES	EXHIBITIONS
PW-1	Muhammad Wali S/O Afsar Khan R/O Qoam Khatak, Yaqoobi killa District Karak.	Agreement deed dated 24.07.2021 is Ex.PW-1/1. Copy of CNIC is Ex.PW-1/2.
PW-2	Muhammad Usman S/O Afsar Khan R/O, Yaqoobi killa District Karak.	Copy of CNIC is Ex.PW-2/1.
PW-3	Zamar Ullah Khan S/O Ihsan Ullah Khan presently residing Kashmiri Banda Tehsil Takhat Nasrati District Karak.	Attendance sheet consisting 06 pages is Ex.PW-3/1 Copy of CNIC is Ex.PW-3/2.
PW-4	Muhammad Shahzad S/O Shafi Ullah Khan presently residing in Riasan Tehsil and District Hangu.	Copy of CNIC is Ex.PW-4/1.


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PW-5	Arshad Ur Rehman S/O Fida Muhammad R/O Khuda Banda Takhat Nasrati District Karak.	Copy of CNIC is Ex.PW-5/1.
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4. Ex-parte arguments heard and record perused.
5. Learned counsel for the plaintiff, Mr. Khurshed Alam Advocate, argued that the plaintiff is entitled to the specific performance of the contract and recovery of the aforementioned amount and equipment. That the PWs admitted the claim of the plaintiff in their statements. He further argued that the defendants are willfully avoiding court proceedings in the instant case despite proper service of summons. Further stated that the plaintiff has proved his stance by producing cogent and confidence inspiring oral evidence in support of stance of the plaintiff while there is nothing in rebuttal hence, prayed for decree of the suit.
6. The plaintiff produced five witnesses in their ex-parte evidence in support of their claim. They supported the claim of plaintiff. The essence of the ex-parte evidence of plaintiff is as under.
7. Muhammad Wali appeared as PW-01 and recorded in his statement that he is the marginal witness of the agreement dated 24.07.2021 according to which the parties to the instant suit entered into an agreement. He reproduced the stance of the plaintiff and contents of the plaint in his statement.
8. Muhammad Usman (plaintiff) appeared as PW-02 and recorded his statement according to the contents of the plaint. He stated that he

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has purchased various necessary material/ items worth of Rs. 420,000 and has paid remuneration and other expenses of the labor. Further stated that the total amount as agreed upon at the rate of 450 SFT and 70 SFT is still out standing to defendant No.1 and 2.

9. Zamar Ullah Khan appeared as PW-03 and recorded in his statement that he has worked as a mason on the construction site along with various laborers. He also produced attendance sheets of the laborers which is Ex. PW 3/2.
10. Muhammad Shahzad and Arshad Ur Rehman Khan appeared before the court as PW-04 and PW-05 and recorded their statements in favour of plaintiff. The said PWs worked as laborers on the construction site and stated that all their expenses and remuneration were paid by the plaintiff.
11. Thereafter, ex-parte evidence of plaintiff was closed.
12. After hearing of ex-parte arguments and perusal of the record, this court is of the opinion that although there is nothing in rebuttal due to ex-parte proceedings and evidence but even then, plaintiff was required to produce cogent, convincing and reliable evidence to establish that an agreement has taken place between the plaintiff and defendant No.1. The plaintiff has produced a document scribed on plain paper which is EX. PW 1/1, on the basis of which he seeks specific performance. The plaintiff has produced only one marginal witness of the said agreement deed. The agreement itself is not clear in its intent. Neither it is clarified in the pleadings that under which capacity the defendant No.1 have entered into agreement

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with the plaintiff and whether he was competent to do so, nor it is established in evidence that the defendant No.1 was the right person to entrust some of the construction work to the plaintiff. Further, more no documents were produced which have shown that the defendant No.1 was authorized and competent to enter into agreement with the plaintiff.


13. As for as the recovery of the amount sought is concerned, the plaintiff has failed to prove that the said amount was agreed upon. The documents alleged to be the agreement deed is silent about the dimensions of the construction work and is also silent about total amount to be paid to the plaintiff. The said document only mentions the rate of the construction which is evaluated per feet. Moreover, plaintiff ha failed to produced any document by which he has ever received any amount in lieu of his services and expenses from the said project. Furthermore, as for as the recovery of the necessary material/ items worth of Rs. 420,000 is concerned, it has not been proved that the same has been purchased by the defendant and is still laying on the site of construction.

14. For what is discussed above, plaintiff has failed to prove his case through cogent, convincing and reliable documentary and oral evidence, therefore, suit of plaintiffs is hereby **Dismissed**.

15. Costs to follow the events.


16. File of the Court be consigned to record room after its completion and compilation.

Announced:
19-12-2023


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CERTIFICATE: -

Certified that this judgment consists of Five (05) pages. Each and every page has been read over, corrected and signed by me where ever necessary.


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