

13 H

**IN THE COURT OF ZAHIR KHAN CIVIL JUDGE-I, KALAYA, ORAKZAI**

Case No. = 42/1 of 2023.  
Date of Institution = 05.09.2023.  
Date of Decision = 12.03.2024.

1. Ilyas Khan
2. Mawez Khan both sons of Lal Bat Khan R/O Qaum Mishit, Tappa Haider Khel, Behramzona PO Mishti Mela, Tehsil Central, District Orakzai.

.....*Plaintiffs*

**Versus**

Peer Badshah S/O Lal Badshah R/O Qaum Mishit, Tappa Haider Khel, Behramzona PO Mishti Mela, Tehsil Central, District Orakzai.  
.....*Defendant*

**SUIT FOR RECOVERY OF:**

- i. Rs. 11,000/- court appearance in suit proceedings
  - ii. Rs. 6000/- court appearance in execution proceedings
  - iii. Rs. 25,000/- counsel fee in civil suit
  - iv. Rs. 20,000/- counsel fee in execution proceedings
  - v. Rs. 100,000/- for mental stress
  - vi. Rs. 20,000/- as labor loss
- (Total: Rs.182,000/- )**



**ZAHIR KHAN  
Civil Judge/JM  
Kalaya Orakzai**

12/03/2024

**Order No. 16  
12.03.2024**

Plaintiffs present through counsel. Defendant has already been placed and proceeded against ex-parte. Further ex-parte arguments heard and record perused.

Through this ex-parte order, I am going to decide the suit in hand filed by plaintiffs namely Ilyas Khan and Mawez Khan against the


defendant Peer Badshah for recovery of Rs. 182,000/- as explained above.

Brief facts of the case in hand are that plaintiffs have filed the instant suit against the defendant for recovery of Rs. 182,000/- alleging that they had filed a civil suit titled " Ilyas Khan etc vs Peer Badshah " for recovery of an amount of Rs. 300,000/- given as loan to defendant and an additional amount of Rs. 200,000/- for mental torture suffered by them because of the conduct of defendant. That the above cited suit was decreed in favor of plaintiffs against the defendant on 29.10.2022 by the court of learned CJ-II, Kalaya, Orakzai. Defendant refused to pay the said amount to the plaintiffs despite of court decree in their favor, resultantly, plaintiffs filed execution petition which also resulted into agony, mental stress and financial loss, hence, the present suit.

Defendant was summoned. He appeared before the court on 16.09.2023 but later on, he absented himself, resultantly, he was placed and proceeded against ex-parte vide order dated 29.09.2023. Thereafter, plaintiffs were allowed to produce their ex-parte evidence. List of witnesses was submitted accordingly.

Thereafter, Plaintiffs produced three witnesses in support of their claim and contention.

Son of plaintiff No. 1 namely Zubair Khan appeared and deposed as PW-01. Copy of his CNIC is Ex-PW-1/1. Payo Khel, relative of plaintiffs deposed as PW-02. Both the PWs supported the stance of plaintiffs. Plaintiff No. 1, Ilyas Khan who is also special

  
**ZAHIR KHAN**  
Civil Judge/JM  
Kalaya Orakzai

12/03/024

attorney for plaintiff No. 2 Mawez Khan, deposed as PW-03. He reiterated the averments of plaint. Special power of attorney is Ex.PW-3/1, copy of his CNIC is Ex.PW-3/2 and attested record/order sheets consisting 05 sheets are Ex.PW-3/3. He lastly requested for decree of suit in their favour against the defendant as prayed for.

Thereafter, ex-parte evidence of plaintiffs was closed and ex-parte arguments were heard.

Record shows that previous suit of plaintiffs (Ilyas Khan etc vs Peer Badshah) for recovery of Rs. 500,000/- was decreed to the extent of Rs. 300,000/- in favor of plaintiffs by the court of learned CJ-II, Kalaya, Orakzai vide order dated 29.10.2022 on the basis of oath on Holy Quran taken by plaintiffs as offered by defendant. Execution petition was filed for the execution of decree dated: 29.10.2022. Judgement Debtor (present defendant) paid Rs. 50,000/- on 22.12.2022, Rs. 50,000/- on 09.02.2023 and remaining amount of Rs. 200,000/- (two lacs) was paid to DHs (present plaintiffs) on 06.03.2023, resultantly, execution petition was consigned to Record Room being fully satisfied. As mentioned above, plaintiffs in their previous suit had claimed Rs.500,000/- (three lacs as return of loan and two lacs for mental stress). During course of court proceedings, defendant offered disposal of suit on the basis of oath which was accepted by plaintiffs and on the basis of oath on the Holy Quran, suit No. 104/1 of 2022 titled Ilyas etc vs Peer Badshah was decreed to the extent of Rs. 300,000/- in their favor. No order as to costs was passed



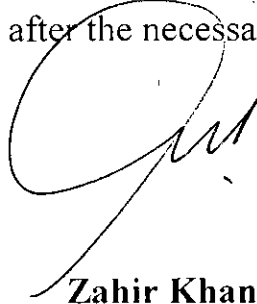
**ZAHIR KHAN**  
Civil Judge/JM  
Kalaya Orakzai

12/03/2024

by the court. Each party was left to bear its cost. No certificate of fee for counsel is placed on record. Plaintiffs failed to produce cogent, convincing, reliable and documentary evidence in support of their claim. Even otherwise, suit of plaintiffs is not covered by sections 35 and 35-A of CPC. Resultantly, plaintiffs are not held entitled to recovery of the amount of Rs. 182,000/- , hence, suit of plaintiffs stands dismissed. No order as to cost.

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

**ANNOUNCED**  
**12.03.2024**

  
**Zahir Khan**  
Civil Judge-I, Kalaya, Orakzai