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**IN THE COURT OF ABDUL BASIT,
ADDITIONAL DISTRICT JUDGE-II, ORAKZAI**

Civil Misc. Appeal No. 07/14 of 2024

Date of institution: 06.07.2024

Date of decision: 22.07.2024

Date of consignment:

Project Director, Project Management Unit (PMU), Fata Secretariat,
Peshawar and one other (appellants/defendants)

Versus

Adam Khan son of Yad Shah resident of Malai, Dabori, District Orakzai
and one other (respondents)

JUDGMENT

This civil miscellaneous appeal is preferred against judgment and order dated 07.05.2024 of the court of learned Civil Judge-I, Orakzai, whereby, he has allowed the application of respondent no. 1/plaintiff and granted temporary injunction.

Concise facts of the case are that respondent no. 1/plaintiff is the owner in possession of a house bounded from north his own house, south his own house and field, east his own houses and lands and west under construction road from Ghiljo to Dabori, situated at Mulla Malaiy Dabori, District Orakzai, the suit house; that the district administration and the committee have visited his house and issued a detailed letter to department to save the suit house from demolishing, to which appellants/defendants had agreed and prepared site plan suggesting the protection walls; that suit house was constructed some 80-90 years ago and the under construction road has also been passed through his lands for which no compensation has been paid to him but now defendant no. 3, not party in this appeal, is not ready to build construction walls and bent upon to demolish his house; that

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project of leading the road from this area was initiated by non-governmental organization, a project not approved by government, and intended to cause damage to the public; therefore, respondent no. 1/plaintiff has prayed for declaration that he is owner in possession of the suit house and decree for permanent and mandatory injunctions may be granted in his favour so as to restrain the appellants/defendants and defendant no. 3 from demolishing the suit house, making any sort of interference in it and to direct them to widen the road by constructing the approved protection walls on western side of the suit house as proposed/suggested earlier; that he has also prayed for recovery of compensation amount for construction of the road by them over his lands without his prior permission, hence, the suit.

With plaint, respondents have also filed an application for temporary injunction so as to refrain appellants/defendants and defendant no. 3 from demolishing the suit house and making any sort of interference in it till disposal of case.

Appellants/defendants and defendant no. 3 were summoned by the learned trial court, where they have filed joint written statement and written reply, wherein, they have raised various legal and factual objections. The learned trial court heard the parties and on allowing the application, granted temporary injunctions for a period of six months or till disposal of the case, whichever period may accrue earlier. The appellants/defendants being dissatisfied with the decision of learned trial court has impugned herein the judgment and order dated 07.05.2024.

They have also filed application for condonation of delay on ground that since they represent a government department and they could not have filed the application without fulfilling the required procedure i.e. approval of site plan, preparing and issuance of notification under section 4 of The

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Land Acquisition Act, which took a bit longer period and thus limitation period expired; therefore, they have prayed that on acceptance of the instant application and appeal, the impugned judgment and order of the learned trial court may be set-aside and application of temporary injunction may be dismissed.

Arguments heard and record perused.

Without dilating upon the merits of the case, it is held that Article 152 of The Limitation Act, 1908 provides 30 days period for preferring an appeal to the Court of a District Judge from the date of the decree or order appealed from. This is important to note that Section 12 of the Act *ibid* provides exclusion of time in legal proceedings, according to which in computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. This is also important to note that Section 5 of the Act *ibid* provides the extension of period in certain cases, according to which any appeal or application for a revision or a review or judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

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Perusal of record shows that the learned trial court passed impugned order on 07.05.2024; therefore, 30 days period of limitation provided for preferring an appeal against the impugned order shall start computing from 08.05.2024, day following the order was passed, which lasts on 06.06.2024, however, appellants/defendants applied for attested copies on 03.07.2024, much later than the day period for preferring the appeal has lasted, whereas, obtained copies on 03.07.2024 and filed the instant appeal on 06.07.2024. Although, appellants/defendants have filed an application for condonation

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of delay with the main appeal, however, the reasons mentioned therein are not just and sound because they could have preferred the appeal within the allotted time and thereafter could have obtained the desired approvals from the concerned department; therefore, it is held that suit of the appellants/defendants is badly time barred, due to which appeal cannot be admitted for regular hearing, hence, dismissed.

Before parting with my judgment, I would like to add that learned counsel for appellants have stated at the bar that they had got the formal approval from government about acquiring the suit property under section 4 of The Land Acquisition Act, 1894 and in this respect had also filed an application for the return of case before the learned trial court; therefore, it is held that it is the learned trial court, who has to decide the fate of application in accordance with law after hearing both the parties.

File of this court consigned to the record room after its completion.



Announced
22.07.2024

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CERTIFICATE

Certified that this judgment consists of four (04) pages, those are signed by me after necessary corrections.



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Addl. District Judge-II, Orakzai