

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

Civil Appeal No. 19/13 of 2024

Date of institution: 05.07.2024

Date of decision: 11.10.2024

Date of consignment:

Taj Muhammad son of Mujib Khan resident of Quom Feroz Khel Tappa Ghairat Khel Dak-khana Feroz Khel (Daud Khel), Tehsil Lower, District Orakzai (appellant/plaintiff)

Versus

Abdul Manan son of Gulistan resident of Quom Feroz Khel Tappa Ghairat Khel Dak-khana Feroz Khel (Daud Khel), Tehsil Lower, District Orakzai and one other (respondents/defendants)

**APPEAL UNDER SECTION 96 OF CPC AGAINST
THE JUDGEMENT AND DECREE OF THE LEARNED CIVIL
JUDGE-II, KALAYA ORAKZAI**

JUDGMENT

Through this judgment I shall decide an appeal filed by appellant against the respondents challenging the judgment, decree and order dated 01.07.2024 of the Court of learned Civil Judge-II, Kalaya, Orakzai whereby he has dismissed the suit of appellant with costs of Rs. 10,000/- by invoking the provision of Order IX-A Rule 6 of CPC in civil suit no. 70/1 of 2023.

Concise facts of the case are that appellant is owner in possession of landed property situated adjacent to his house at Feroz Khel, Kalaya Orakzai; that respondents have no concern with said property and in this respect a jirga decision dated 23.12.2017 was also passed in his favour in absence of parties; that later on respondents in collusion with government officials had executed ex-parte agreements dated 30.01.2019 & 15.11.2020, the suit agreements, wherein, neither the appellant had authorized anyone nor he was present nor had signed those agreements, which were illegal,

abdul basit
District & Sessions Judge-II
Orakzai at Baber Mela
11/10/2024
Hangu

against the law and fact; therefore, he has prayed for cancellation of the suit agreements coupled with decree for possession provided same is not proved with him; that he has also prayed for decree for permanent and mandatory injunctions so as to refrain respondents from making any sort of interference in the landed property situated adjacent to his house, hence, the suit.


Respondents were summoned. Only attendance of respondent no. 1 was marked, who filed written statement; however, on 01.07.2024, learned trial court dismissed the suit of appellant with costs of Rs. 10,000/- for non-submission of proforma "E" by invoking the provision of Order IX-A Rule 6 CPC.

Appellant being not contended with the verdict, preferred instant appeal. Learned counsel for appellant while arguing narrated above facts of case with assertion that order of the learned trial court is illegal, against the law and facts; that the learned trial court has decided the case in haste on ground that a suit cannot be dismissed for want of submission of proforma "E"; he added that the impugned order of the learned trial court is also wrong because the application for rejection of plaint was also pending await for decision; that the impugned order is result of misreading & non-reading of material on file and passed merely on the basis of technicalities; thus, prayed that on accepting the appeal in hands, judgment, decree and order of the learned trial court may be set aside and case may be remanded with direction to decide the same on merits.

Learned counsel for respondent refuted the arguments and argued that the learned trial court has properly appreciated the record on file and committed no illegality or irregularity in passing the impugned order; therefore, prayed for dismissal of appeal with heavy costs.

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11/07/2024
Addl. District & Sessions Judge
Orakzai at Baber Mela,
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Viewing the arguments of learned counsel for parties and record before the court, it is observed that by introduction of Order IX-A and XV-A through amendments in the Civil Procedure Code, 1908 vide notification no. 15-J/2018, dated: 29th January 2018 of Peshawar High Court, it has become mandate of law that when any case is received, the court shall start case management and scheduling conference for the expeditious disposal of case, formulation & simplification of issues, wherever necessary, including elimination of frivolous claims & defences, determining the appropriateness and timing of summary judgment under Order XV etc. Careful study of Order IX-A CPC provides that case management & scheduling conference consists of four parts/stages i.e. management and disposal of miscellaneous applications, discovery management & scheduling orders, trial management and scheduling orders and settlement conference and scheduling order. The clause 3 of Rule 1 of the Order provides that court shall serve the agenda items of the conference to the parties or their counsel through proforma 'A', 'B', 'C' and 'D' of the fifth schedule with seven days prior notice to the parties or their counsel before starting any case management & scheduling conference, which presupposes that the agenda items of each category/stage on prescribed proforma is to be served separately and each with seven days prior notice to the parties or their counsel before the conference. On serving the parties with agenda item on proforma 'A', the court, at first stage, has to take up the agenda item coupled with requirement to discover the chances and mode of settlement between the parties, if any. If there are no chances of settlement between the parties and any party to the suit files application (s), the court is bound to receive written reply (ies) from the other party, shall hear those applications and decide the applications collectively, if possible, and thus the first stage and pleadings shall be completed.


 Addl. District & Sessions Judge-II
 Orakzai at Baber Mandi
 2024
 Hangu

The clause 2 of Rule 2 of the Order explicitly provides that after completion of the pleadings, the court has to fix a time not exceeding thirty days for discovery management and scheduling orders, which is stage two of the case management. It is here, when the court is required to proceed to next stage setting therein the purpose of conference stating the agenda items as prescribed in proforma 'B' including the agenda item requiring both the parties to submit their proposed exhibits along with duly filled proforma 'E' for the scrutiny of those exhibits within the mandate of Order XIII CPC.

On completion of stage two, court shall conduct trial management and scheduling order as envisaged by clause 4 of Rule 2 of the Order and if possible, before or after framing of the issues, decide the case summarily, otherwise, shall fix the case for trial and in consultation with the parties or their counsel, and within seven days, shall issue notice to parties or their counsel establishing the schedule of agenda items on prescribed proforma 'C'. This would be at the cost of repetition that court, at any stage of the proceedings, shall endeavor its best to discover the chances of settlement of dispute between the parties with the consent of the parties and may employ any of the modes of settlement of dispute for expeditious disposal of the case by issuing notice to parties or their counsel on prescribed proforma 'D' as envisaged from clause 5 of Rule 2 of the Order.

In the instant case, the learned trial court on receipt of the written statement served the parties with the notices on prescribed proforma 'A' and 'B' of the fifth schedule and fixed the case for discovery management and scheduling conference, which, in above discussed scenario seems to be against the law because the court has to first issue the notice on prescribed proforma 'A', shall receive all applications, if any, to which the written replies shall be submitted and after hearing the parties, those applications

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 Addl. District & Sessions Judge-II
 Orakzai at Baher Mar
 Hangu

are to be decided first and then the court has to jump to second stage. In this case, respondent no. 1 had also filed an application for rejection of plaint under Order VII Rule 11 CPC, to which appellant submitted written reply; however, the learned trial court instead of deciding the application, straight away dismissed the suit due to non-submission of proforma 'B', which in view of above discussed scenario is against the spirit of law.

Admittedly, clause 6 of Rule 2 of the Order empowers the court, in addition to any other penalty under the Code, to order the party pay to reasonable expenses, where party or his counsel fails to appear at a case management and scheduling conference, or is substantially unprepared to participate, or does not participate in good faith in the conference, or fails to obey a case management and scheduling order; however, the contention of learned counsel for appellant that the learned trial court was bound to decide the application filed by respondent no. 1 under Order 7 Rule 11 first, to which the appellant had also filed the written reply, seems to be genuine reason and for the reasons noted above coupled with the discussed facts, the learned trial court had no reason to dismiss the suit for non-submission of proforma 'E' by appellant at this stage.

Besides above, clause 3 of Rule 2 of the Order *ibid* though provide a penalty for non-compliance of court order; however, it nowhere suggests the dismissal of suit in vivid terms unless prior notice had been given for that purpose. More so, the learned trial court has though dismissed the suit but no decree sheet is prepared in it because dismissal of suit is followed by a decree. Likewise, attendance of respondent no. 2 has not been procured nor he had been placed *ex-parte*, which amounts to condemn the respondent no. 2 unheard. Furthermore, though the learned trial court had mentioned that it had granted five adjournments to appellant for filing the proforma

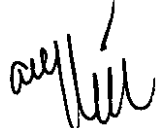
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 Abdul Basit
 Addl. District & Sessions Judge-II
 Orakzai at Baber Mela,
 Hangu

'E'; however, record provides that only two adjournments were granted as one of the date was changed due engagement of learned judge in judicial officers' meeting, one date was changed due to strike of bar, and the other date was changed due to announcement of public holiday.

In view of my above findings this is held that the learned trial court has fallen in error dismissing the suit of appellant without making recourse to legal procedure; therefore, the appeal in hands is allowed, the impugned judgment, decree and order dated 01.07.2024 of the learned trial court is set-aside and case in hands is remanded to the learned trial court with direction to first procure the attendance of respondent/defendant no. 2, follow the procedure interpreted above and proceed as per law. Parties are directed to appear before the learned trial court on 21.10.2024. Parties have to bear costs of their proceedings as none of them have specifically proved the same.

The requisitioned record along with copy of this order sent to the learned trial court and file of this court consigned to record room after necessary completion and compilation.

Announced
11.10.2024


Abdul Basit
Addl. District Judge-II,
Orakzai

CERTIFICATE

Certified that this judgment consists of six (06) pages, those are signed by me after necessary corrections, if any found.

Announced
11.10.2024


Abdul Basit
Addl. District Judge-II,
Orakzai