

IN THE COURT OF BAKHT ZADA,
ADDL: DISTRICT JUDGE-I, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 09/13 OF 2024.
DATE OF ORIGINAL INSTITUTION : 12.06.2024
DATE OF TRANSFER IN : 28.11.2024
DATE OF DECISION : 09.12.2024

1. SHAH HUSSAIN S/O SYED GUL MUHAMMAD
2. SYED AJMAL HUSSAIN S/O SYED SAJJAD HUSSAIN
3. SYED SHAH MUHAMAMD S/O NOOR AHAMD SHAH ALL
RESIDENCE OF CASTE GARAMAT KHEL, TAPA BABA
NAWASI, P/O TAZI KHEL ZERA, TEHSIL LOWER DISTRICT
ORAKZAI.

.....(Appellants/Plaintiffs)

-VERSUS-

1. SYED HAMID HUSSAIN S/O SYED HUSSAIN SHAH
R/O MARAI BALA DISTRICT KOHAT
2. SAJID ALI S/O MEER SARWAR
3. ZARWALI KHAN S/O GHULAM INJAF
R/O CASTS SEPOYEE, LAKHKARI KHEL DISTRICT ORAKZAI
4. ASHFAQ HUSSAIN S/O SYED MEHDI HUSSAIN
R/O CASTE BOKHARI SYADAN
5. TAZA GUL S/O FATIH ALI
6. LUQMAN S/O ALI MUHAMMAD
7. MERWAR S/O GULFAM HUSSAIN
8. HAMID ASKAR S/O KHADIM ASKAR
9. MUHAMMAD ASIF S/O AWAL FAQIR
R/O TEERI CASTE MANI KHEL DISTRICT ORAKZAI
10. GUL MEER S/O SHER MUHAMMAD
11. HAIDER SHAH S/O SULTAN SHAH
R/O CASTS SEPOYE, DISTRICT ORAKZAI
12. INAM TEKADAR
13. REGIONAL DIRECTOR JAZZ, PESHAWAR

..... (RESPONDENTS)

JUDGEMENT
09.12.2024

Impugned herein is the judgement and order dated

14.05.2024 of learned Civil Judge-II, Tehsil Kalaya, District

Bakht Zada
09.12.24
BAKHT ZADA

Adl. District & Sessions Judge-1, Orakzai vide which suit of the appellants/plaintiffs has been

Orakzai at Hangu

dismissed under order IX, rule 6 of the civil procedure court.

- (2). Facts of the case are that the appellants/plaintiffs
through a civil suit before the learned trial court sought

SHAH HUSSAIN ETC VS SYED HAMID HUSSAIN ETC
Case No. 09/13 of 28.11.2024

declaration-cum- perpetual and mandatory injunctions to the effect that appellants/plaintiffs are shareholders/owners in possession in the suit property/Shamilaat, along with the respondents, situated at Sepoye Zerha, since their forefather and that the respondents be restrained from interference, by installation of mobile tower, in the suit property.

(3). The learned trial court summoned the respondents/defendants who submitted written statement, whereafter the case was fixed for case management, discovery management and scheduling conference as well as for arguments on the maintainability of the case, but on two consecutive dates i.e., vide order sheet no. 10 dated 15.04.2024 the case was adjourned at the joint request of both the counsel for the parties and vide order sheet no. 11 at the request of appellants/plaintiffs due to non-availability of their counsel and on the subsequent date i.e. vide order sheet no. 12 dated 14.05.2024 once again both the parties made joint request for adjournment, but instead of adjournment the suit of the appellants/plaintiffs was dismissed under rule 6 of order IX A CPC and hence the instant appeal is preferred before this court.

(4). Arguments heard and available record perused which shows that after submission of written statement, the suit of the appellants/plaintiffs was fixed for scheduling conference as well as for arguments on the maintainability of the case on 15.04.2024, but the case was adjourned at the joint request of the appellants/plaintiffs and counsel for the respondents/defendants.

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09-12-24
BAKHT ZADA
Addl: District & Sessions Judge
Orakzai at Hargu

Similarly, on the subsequent date i.e., 29.04.2024 the case was adjourned due to non-availability of counsel for appellants/plaintiff. On 14.05.2024 the learned trial court dismissed the suit of the appellants/plaintiffs under order IX-A, rule 6 of the civil procedure court, 1908. It is evident from order sheets no. 9,10 and 11 that the case was fixed for scheduling conference as well as for arguments on maintainability of the case, but despite of presence of the parties, the suit of the appellants/plaintiff was dismissed under order IX-A, rule 6 of the CPC 1908. Order IX-A rule 6 of the civil procedure code, 1908 is reproduced below for ready reference;

Order IX-A, Rule 6: Penalty for default in case management-if a party or his counsel fails to appear in 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 in case management and scheduling order, the court in addition to any other penalty under this court shall order the party to pay reasonable expenses, unless such non-compliance was substantially justified or other circumstances made in award of expenses unjust or imposed a fine. All orders under this rule shall be made justify and fairly, notwithstanding anything contained in any rule or order for the time being in force. When the non-attendance of party or his counsel is justified, the

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09-12-24
BAKHT ZADA
Addl: District & Sessions Judge-1,
Orakzai at Harigu

court may adjourn the matter and fix a final date for that matter.

In the present case, the matter was adjourned on two date of hearings due to non-availability of counsel for the parties and on subsequent date, both the parties forwarded joint request for adjournment of the case, but the court without bringing the justification for adjournment on the order sheet and instead of giving final date for the matter straight away dismissed the case of the plaintiff and also imposed cost of Rs. 10,000/- upon the defendants, which is against the soul of order IX-A, rule 6 CPC, furthermore, no written warning or notice for final date in the matter has been issued to the parties in the previous order sheets. The order sheet further shows that delay is not only on the party of appellant/plaintiff, but on the last date both the parties have jointly requested for time, but instead of giving adjournment with notice for final date in the matter only the appellant/plaintiff is non suited by imposing penalty of dismissing his suit which is much harsh than imposing cost of Rs. 10,000/- on the defendants/respondents in the same order sheet and thus the balance of imposing penalty on both the parties is also not similar and the plaintiff is deprived of his alleged right involved in the suit valuable rights of the parties are involved in the instant case and as reported in plethora of judgements of the superior courts that law favours decision of the cases on merits instead of technicalities.

Bakht Zada

09.12.24

BAKHT ZADA
District & Sessions Judge-1,
Orakzai at Harigu

Add:

- (5). In view of the above, the order and Judgments dated 14.05.2024 of learned Civil Judge-II, Tehsil Kalaya, District Orakzai is hereby set aside and the case is remanded back to the trial court with directions to proceed with the case in accordance with law. No order as to cost. Requisitioned record be returned.
- (6). Copy of this judgement be sent to learned trial court while file of this court be consigned to Record Room after its necessary completion and compilation.

Pronounced:
09.12.2024

Bakht Zada
09-12-24
(BAKHT ZADA)
Addl: District Judge-I, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of five (05) pages.
Each page has been read, corrected wherever necessary and signed by me.

Dated: 09.12.2024

Bakht Zada
09-12-24
(BAKHT ZADA)
Addl: District Judge-I, Orakzai
at Baber Mela