

IN THE COURT OF JUDICIAL MAGISTRATE/CIVIL JUDGE-V QUETTA

Civil suit No.16/2022.

Atta ur Rehman Kakar S/o Khan Muhammad,
Caste Kakar, resident of Muhallah Syed Abad,
Nechari Road Quetta.

Plaintiff.

VERSUS

The Chaiman,
Balochistan Board of Intermediate & Secondary Education,
Quetta.

Defendant.

SUIT FOR DECLARATION AND MANDATORY
INJUNCTION.

// ORDER UNDER ORDER XVII RULE (3) CPC FOR
DISIMISSAL OF SUIT.

Mr. Muhammad Saddam Davi Advocate for plaintiff.
Miss. Aester Mehak Advocate for defendant.

ORDER
11-02-2025.

Through this order I shall dispose off the afore titled suit filed by the plaintiff against the defendant.

2. Brief facts which gave rise to the institution of afore titled suit are that the plaintiff filed the instant suit against the defendant for Declaration & Mandatory Injunction.

3. Instant suit was registered /instituted on 09.09.2023, notices were issued to the defendant. Defendant contested the suit of the plaintiff by way of submitting his written statement. Issues were framed on 09.10.2023, subsequently plaintiff was directed to produce evidence, in this regard plaintiff produced Pw-I & Pw-II and the matter was further fixed for evidence, since then case /matter had been adjourning, neither the plaintiff nor his counsel used to appear before the court for proceeding his case, as such the matter has being adjourned on 05.09.2024,

16.09.2024, 28.09.2024, 11.10.2024, 21.10.2024, 05.11.2024, 18.11.2024, 29.11.2024, 11.12.2024, 23.12.2024 & 11.02.2025. The counsel as well as plaintiff were strictly directed to lead the evidence. Ample of opportunities alongwith warnings have been awarded / given to the plaintiff to lead evidence but all in vain. The plaintiff has badly been failed to proceed with the instant suit despite extending several opportunities with warnings. Further the perusal of record reflects that the plaintiff is not proceeding with the case from very long time, he availed numbers of opportunities but failed to lead evidence which, reflects his none interest towards his suit.

4. The court can dismiss the suit if the plaintiff fails to lead evidence and proceed with the case in had despite of being notified by court, the court must enforce its order and execute it consistently when party is given final opportunity to lead evidence, pursue the matter but plaintiff fails to do the needful, then court shall not grant further adjournments for lame excuses and frivolous reasons. According to order XVII Rule 3 Code of Civil Procedure 1908, the court can decide the suit at any stage whereas, the party fails to comply with the direction of court.



Having closely scrutinized, the case dairies record the applicability of provision of order XVII Rule 3 CPC, the matter was adjourned to produce evidence for several hearings. Out of these hearings, the plaintiff remained absent and the matter was adjourned in the interest of justice. As per the record, on last hearing final opportunity was provided to plaintiff to appear before the court and final opportunity afforded to plaintiff to lead evidence. For proper understanding it would be relevant to reproduce Order XVII Rule 3 CPC as Under:

“Court may proceed notwithstanding either party fails to produce its evidence etc, where any party of suit to whom time has been granted fails to produce his evidence , or to cause the attendance of its witness, or to perform any other act necessary to further progress of the suit which time has been allowed, the court may notwithstanding such default, proceeding to decide the suit forthwith.”

6. The above provision of law, being final in nature is to be strictly construed and action should be taken if the party/ plaintiff acts contumaciously and despite of repeated opportunity, commits any of the defaults enumerated in the said rule.

In the instant matter, the matter / case was adjourned on the request of the plaintiff on his oral request to lead evidence and proceed with the case accordingly.

7. The record further reveals that the plaintiff remained absent from last several hearings while the counsel for the plaintiff mostly remained absent. Accordingly in such circumstances, the court is left with no other option but to decide the matter / case/ suit, the procedure available to the court is to dismiss the suit in non interest of plaintiff as stipulated in order XVII Rule 3 CPC, despite of providing the multiple opportunities to plaintiff to lead evidence but the plaintiff remained reluctant to appear before the court. The court must enforce its order and execute it consistently when party is given final opportunity to appear before the court and pursue the case but the plaintiff fails to do the needful then court shall not grant further adjournments for frivolous reasons.

8. The case was adjourned and multiple /opportunities were provided to plaintiff on the request of plaintiff's counsel for submission of evidence, but the plaintiff after obtaining multiple opportunities miserably failed to comply with the direction of this court, hence, this court has left with no option but to decide the matter as per order XVII Rule 3 Civil Procedure Code 1908.

9. In this regard, the reliance is placed on (2009 YLR 343) Wherein it is held



“ Penal action can be taken against a party for non-production of evidences when last time was sought by him on previous date for such purpose and then fail to do so on next date of hearing.”

10. Thus for the above mentioned discussion, and from the conduct on the part of plaintiff apparently appears that the plaintiff is not interested and willing to proceed with this matter, he remained failed to perform his duty towards further proceedings of the suit and therefore, the provisions of order XVII Rule 3 CPC are attracted against the case of plaintiff, hence, suit for Declaration and Mandatory Injunction filed by the plaintiff is hereby dismissed on account of non-interest Under Order XVII Rule 3 CPC. File/ case after completion and compilation be consigned to record.

Given under my hand and seal of Court on this day of 11th of February, 2025.

ANNOUNCED IN OPEN COURT

(Signature)
(MUHAMMAD REHMAN)
Judicial Magistrate-V / Civil
Judge Quetta.

Compared By
Section Writer
(Signature)
22/2/25

(Signature)
Certified to be True Copy
SUPPT:
District & Session Judge Quetta.
Article 87 of the Qanun-e-Shahadat Order / 1984

IN THE COURT OF JUDICIAL MAGISTRATE/CIVIL JUDGE-V QUETTA

Civil suit No.16/2022.

Atta ur Rehman Kakar S/o Khan Muhammad,

Plaintiff.

VERSUS

The Chaiman,
Balochistan Board of Intermediate & Secondary Education,
Quetta.

Defendant.

SUIT FOR DECLARATION AND MANDATORY INJUNCTION.

ORDER UNDER ORDER XVII RULE (3) CPC FOR DISMISSAL OF SUIT.

Mr. Muhammad Saddam Davi Advocate for plaintiff.
Miss. Aester Mehak Advocate for defendant.

This suit coming for hearing on this 11th day of February 2025, before me
MUHAMMAD REHMAN Judicial Magistrate-V/Civil Judge. Quetta, in presence of Counsel:-

It is ordered that:-

“Suit for Declaration & Mandatory Injunction filed by the plaintiff is hereby dismissed on
account of non interest Under Order XVII Rule 3 CPC.”

(MUHAMMAD REHMAN)
JUDICIAL MAGISTRATE-V/CIVIL JUDGE QUETTA.

SUIT OF COST.

Cost of suit					
Plaintiff			Defendants		
1.	Stamp for application	Rs 7-40	1.	Stamp for power	Rs. 00/-
2.	Do for power.	Rs. 05/-	2.	Do for exhibits	Rs. 00/-
3.	do for exhibits	Rs. 00/-	3.	Pleader fee.	Rs. 00/-
4.	Pleading's fee	Rs. 00/-	4.	Subsistence for W	Rs. 00/-
5.	Subsistence for W	Rs. 00/-	5.	Services of process	Rs. 00/-
6.	Service of process	Rs. 05/-	6.	Miscellaneous	Rs.00/-
7.	Miscellaneous	Rs. 10/-			
	Total	Rs. 60/-	Total		Rs. 00/-

Given under my hand and seal of the court on this 11th day of February, 2025.

Compared By
Section Writer

22/2/25

Certified to be True Copy
SUPDT.
District & Session Judge Quetta

(MUHAMMAD REHMAN)
JUDICIAL MAGISTRATE-V
CIVIL JUDGE QUETTA.