

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

Civil suit No.09 /2024

Waseem Ahmed S/o Din Muhammad,
Resident of Jail Road Quetta.

Plaintiff.

VERSUS

- 1. The Chairman,**
C/o Balochistan Board of Intermediate & Secondary Education,
(BBISE), Samunli Road Quetta.
- 2. The Registrar,**
University of Balochistan , Sariab Road Quetta.

Defendants.

**SUIT FOR DECLARATION/ CORRECTION OF DATE OF BIRTH
& MANDATORY INJUNCTION.**

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

Mr. Farooq Ahmed Advocate counsel for the plaintiff.
For Defendants BBISE Mr. Dilawar Khan,
& Miss Ester Mehak Advocates,

ORDER
23-10-2024.

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

2. Brief facts which gave rise to the institution of afore titled suit are that the
plaintiff filed the instant suit against the defendants seeking, declaration / correction of
date of birth & Mandatory Injunction.

3. Instant suit was registered /instituted on 08.05.2024 and notice was issued to
defendants, whereaafter, the defendant No. 01 contested the suit of plaintiff by way of
filing written statement, subsequently issues were also framed on 19.07.2024 and
plaintiff was directed to produce its evidence. Meanwhile an application Under Order
1 Rule 10 CPC for arraying of necessary party, the application so filed by the plaintiff
U/O 1 Rule 10 CPC was allowed and the plaintiff was directed to submit the amended
title before the court. The instant case /matter had been adjourning since 22.08.2024



05.11.2024
[Handwritten signature]

due to non-submission amended title, subsequently, in this regard number of opportunities have been afforded to the plaintiff on 05.09.2024, 16.09.2024, 30.09.2024, whereas on 09.10.2024 the plaintiff was awarded ample of opportunities along with conditional cost of Rs. 1000/- & 2000/- have been awarded / given to the plaintiff to submit the amended title 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 submitting the amended title on direction of court from very long time, he availed numbers of opportunities but failed to do needful which, reflects his none interest towards his suit.

4. The court can dismiss the suit if the plaintiff fails to submit the amended title despite of being notified by court, the court must enforce its order and execute it consistently when party is given final opportunity to produce amended title and the 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 suit at any stage whereas, the party fails to comply with the direction of court.

5. Having closely scrutinized, the case dairies record the applicability of provision of order XVII Rule 3 CPC, I have observed that after framing of issues by this court in the aforementioned suit. Thereafter, the matter was adjourned for submission of amended title on behalf of plaintiff 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 the counsel for plaintiff orally made request for the adjournment which was accepted by this court and final opportunity afforded to plaintiff to produce 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 submit the amended title but all in vain.

09-11-2024
Section of the Court
District & Session Court
Dudhgaon
[Signature]

7. The record further reveals that the plaintiff remained absent from last several hearings while the counsel for the plaintiff is present. 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^t to file amended title and produce evidence but the plaintiff remained reluctant. The court must enforce its order and execute it consistently when party is given final opportunity to submit amended title and produce evidence and the plaintiff fails to do the needful then court shall not grant further adjournments for frivolous reasons.


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

“ 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.”

9. 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, / correction of Date of birth & 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 23rd of October, 2024.

ANNOUNCED IN OPEN COURT


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

Compared By
Section Writer

05/11/24


Certified to be True Copy
SUPDT:
District & Session Judge, Quetta.
Article 87 of the Qanun-e-Shahadat Order / 1984

05.11.2024

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Civil suit No.09 /2024

Waseem Ahmed S/o Din Muhammad,
Resident of Jail Road Quetta.

Plaintiff.

VERSUS

The Chairman,
C/o Balochistan Board of Intermediate & Secondary Education,
(BBISE), Samungli Road Quetta & another.

Defendants.

**SUIT FOR DECLARATION/ CORRECTION OF DATE OF BIRTH
& MANDATORY INJUNCTION.**

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

Mr. Farooq Ahmed Advocate counsel for the plaintiff.
For Defendants BBISE Mr. Dilawar Khan,
& Miss Ester Mehak Advocates,

This suit coming for hearing on this 23rd day of October 2024, before me
MUHAMMAD REHMAN Judicial Magistrate-V/Civil Judge, Quetta, in presence of
Counsel:-

It is ordered that:-

"Suit for Declaration, / correction of Date of birth & Mandatory injunction filed by the
plaintiff is hereby dismissed on account of non interest Under Order XVII Rule 3 CPC."



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

SUIT OF COST.

Cost of suit					
Plaintiff			Defendants		
1.	Stamp for application	Rs. 40/-	1.	Stamp for power	Rs. 00/-
2.	Do for power.	Rs. 03/-	2.	Do for exhibits	Rs. 00/-
3.	do for exhibits	Rs. 00/-	3.	Pleader fee.	Rs. 00/-

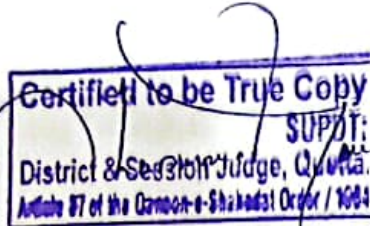
4.	Pleading's fee	Rs. 00/-	4.	Subsistence for W	Rs. 00/-
5.	Subsistence for W	Rs. 00/-	5.	Services of process	Rs. 00/-
6.	Service of process	Rs. 06/-	6.	Miscellaneous	Rs. 00/-
7.	Miscellaneous	Rs. 03/-			
Total		Rs.52/-	Total		Rs. 00/-

Given under my hand and seal of the court on this 23rd day of October, 2024.


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

Compared By
Section Writer

05/11/2024


Certified to be True Copy
SUPPT:
District & Sessions Judge, Quetta.
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05.11.2024