

IN THE COURT OF ADDITIONAL DISTRICT JUDGE-I, QUETTA

Civil Appeal No. 28/2024

Salman s/o Abdul Salam
Resident of Spinney Road, Quetta

... Appellant/Plaintiff

Versus

1. The Chairman,
Balochistan Board of Intermediate
& Secondary Education,
Samungli Road, Quetta.
2. Director General,
National Database & Registration Authority (NADRA)
Zarghoon Road, Quetta

... Respondents/Defendants

**CIVIL APPEAL UNDER SECTION 96 CPC AGAINST
THE ORDER DATED 26.02.2024 PASSED BY THE
LEARNED JUDICIAL MAGISTRATE-II/CIVIL JUDGE,
QUETTA WHEREBY SUIT FILED BY APPELLANT
WAS DISMISSED UNDER ORDER 17 RULE 3 CPC,
CONTRARY TO LAW FACTS & NATURAL JUSTICE**

Mr. Syed Dost Muhammad Advocate for the appellant.

Miss. Aster Mehak Advocate for respondent No. 1.

Mr. Jameel Gishkori, representative for respondent No. 2.

JUDGMENT

13th August, 2024

1. Through this judgment, I propose to dispose of the above the captioned Civil Appeal which has been filed by the appellant/plaintiff on 01.06.2024 against the order/decreed dated 26.02.2024 (impugned order/decreed), rendered by the learned Judicial Magistrate-II/Civil Judge, Quetta (the learned trial Court). The appellant/plaintiff being dissatisfied from the impugned order/decreed and preferred instant appeal on the following grounds:



- *That the learned trial Court failed to provide ample opportunity of hearing to the appellant to file list of witness, while the appellant was busy in treatment of his ailing father, who was taken to Karachi and appellant was accompanying him, as such, impugned order is liable to be set aside.*
- *That the suit of appellant is not decided on merits rather on technicalities without providing ample opportunity of hearing to the appellant or on merits, as such, impugned orders is liable to be set aside..*

Lastly it has prayed that impugned order & decree be set aside and suit be remand back to the learned trial Court with direction to provide opportunity of hearing to the appellant and decide the matter on merits.

2. Duly notices issued to respondents. Original record was called from learned trial Court and I have heard the learned counsels for both the parties and representative for respondent No. 2 at length. Record pondered upon with utmost muse and care.

3. For deciding instant appeal, I have formulated the following points for determination as:

1. Whether the valuable rights of appellant are involved in the matter, which can be determined through evidence?

4. In the light of pleadings, adduced evidence, documents and lengthy arguments put forth by the learned counsels of both parties, the points for determination is being decided as:-

Reasons on Point No. 1:-



Whether the valuable rights of appellant are involved in the matter, which can be determined through evidence?

5. Record depicts that a Civil Suit bearing No.85/2023 was instituted by the present appellant before the learned trial Court on 12.08.2023 for the purpose of seeking remedies, declaration, correction of name and date of birth of appellant and mandatory injunction.

6. By means of filing civil suit, the appellant/plaintiff sought a decree in his favour to the following effects:-

a. *To declare that the correct name of plaintiff is Salman instead of Salman Salam and correct date of birth is 15.07.2001 instead of 07.01.2005*

b. *To direct the defendant No.1 to correct the name of plaintiff as Salman instead of Salman Salam and correct date of birth of plaintiff as 15.07.2001 instead of 07.01.2005 and to issue new SSC Certificate to plaintiff.*

7. On the part of present respondents/defendants, claim of appellant was resisted through separate written statements.

8. Out of the divergent pleadings of the parties, the learned trial Court has framed following issues as per Order XIV Rule 1 CPC on 17.10.2023 as:

1. *Whether the suit of plaintiff is time barred?*



2. *Whether the correct name of plaintiff is Salman which has wrongly been mentioned in his CNIC as Abdul Salam and his correct date of birth is 15.07.2001 which has wrongly been mentioned in his CNIC as 07.01.2005 by NADRA liable to be corrected?*

3. *Whether the plaintiff is entitled for the relief claimed?*

4. *Relief?*

9. Record further manifests that after framing of issues, the learned trial Court directed appellant to file list of witnesses, however, he continuously failed to submit list of witnesses as per Order XVI Rule 1 CPC, subsequently the suit of appellant was dismissed as envisaged by Order XVII Rule 3 CPC.

10. Although suit of appellant was decided/dismissed owing to his irresponsible behaviour, negligence and lack of interest but the suit was not decided on merits, admittedly the valuable rights of appellant are involved in his case, even otherwise the Hon'ble Apex Courts have directed and settled that case be decided on its merits not technicalities. The learned trial Court did not struck of his right of evidence rather dismissed the suit, in this regard the first point for determination is decided in the favour of appellant. Appeal in hand is allowed subject to cost of Rs.20,000/- (Twenty Thousand) which would be paid to the both respondents on 1st hearing. Impugned order dated 26.02.2024 is set aside and suit is remanded back to the learned trial Court with the direction to obtain the list of witnesses from the appellant, if again he failed to submit his list of witnesses, then his



right of evidence be struck off, thereafter be recorded the statement of appellant. Parties are left to bear their own cost. Decree sheet be drawn and memo of cost be prepared. Original record of the learned trial court be returned alongwith certified copy of this judgment.

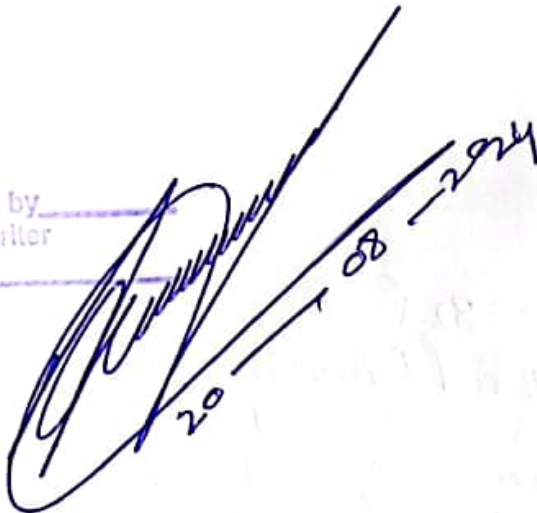
Appeal file after completion and compilation be consigned to record.


Announced in the open court

On this 13th day of August, 2024.


S.G. Qadir Shah Bukhari)
Additional District Judge-I, Quetta

Compared by
Section Writer
M. Ali


20/08/2024


20/08/2024

Certified to be true
S.G. Qadir Shah Bukhari
Additional District Judge-I, Quetta

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DECREE IN APPEAL

**(ORDER XLI RULE 35 OF CODE OF CIVIL PROCEDURE)
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WAS DISMISSED UNDER ORDER 17 RULE 3 CPC,
CONTRARY TO LAW FACTS & NATURAL JUSTICE**

This appeal coming on this 13th day of August, 2024 for disposal before me S.G. Qadir Shah Bukhari, Additional District Judge-I, Quetta.

It is ordered; that appeal in hand is allowed subject to cost of Rs.20,000/- (Twenty Thousand) which would be paid to the both respondents on 1st hearing. Impugned order dated 26.02.2024 is set aside and suit is remanded back to the learned trial Court with the direction to obtain the list of witnesses from the appellant, if again he failed to submit his list of witnesses, then his right of evidence be struck off, thereafter be recorded the statement of appellant.

COSTS OF APPEAL

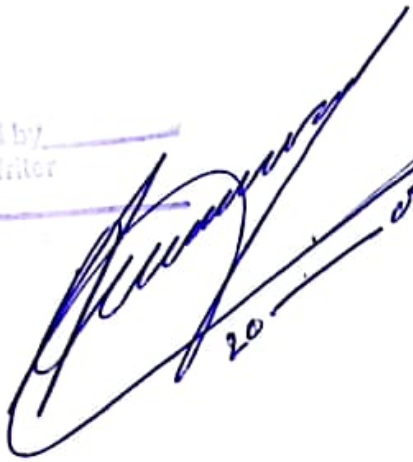
S#	Appellant	Amount	Respondents	Amount
1	Court fees	Rs.00/-		
2	Stamp for memo of appeal	Rs.40/-	Stamp for power	Rs.00/-
3	Stamp for power	Rs.05/-	Service of process	Nil
4	Service of process	Rs.05/-	Miscellaneous	Nil
5	Miscellaneous	Rs.05/-		
	Total	Rs.55/-	Total	Rs.00/-

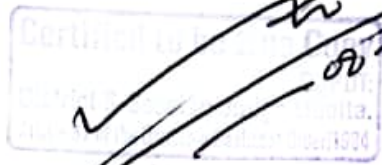


Given under my hand and seal of the court on this 13th day of August, 2024.


(S.G. Qadir Shah Bukhari)
Additional District Judge-I, Quetta

Compared by
Section Writer
M. Ali


20-08-2024


Certified by
20-08-2024


20-08-2024