

IN THE COURT OF DISTRICT JUDGE, QUETTA

Civil Appeal No.02 of 2024

Bais Khan son of Abdul Rauf,
Resident of Kasi Road, Quetta.

Appellant

VERSUS

1. Chairman Balochistan Board of Intermediate & Secondary Education, Main Samungli Road, Quetta.
2. Principal/ Headmaster
Cambridge Secondary School,
Quarry Road, Quetta.
3. Principal/ Headmaster
Government Boys Middle School,
Killi Popalzai, Tehsil & District,
Killa Abdullah.
4. Director General National Database
& Registration Authority, Main
Zarghoon Road, Quetta.
5. Deputy Commissioner,
Killa Abdullah at Chaman,
6. Judicial Magistrate-II/MTMC-VII,
Quetta

Respondents

APPEAL U/S 96 C.P.C. AGAINST THE ORDER/ DECREE
DATED 28.11.2023, PASSED BY JUDICIAL MAGISTRATE-II/
MTMC-VII, QUETTA.

Syed Saleem Akhtar, Advocate for Appellant,
Miss Aster Mahak, Advocate for respondent No.1
Mir Jamil Ahmad, representative for the respondent No.4
Respondents No.3, 5 & 6 are proceeded Ex-parte.



JUDGMENT
28.08.2024

By means of this judgment I intend to dispose of the above titled appeal filed against the order/ decree dated 28.11.2023, passed by learned Judicial Magistrate-II/ MTMC-VII, Quetta, whereby Suit filed by the appellant/ plaintiff has been dismissed under order 17 rule 3 CPC.

2. Succinctly facts of the case as gleaned from the memo of appeal are that appellant/plaintiff filed a Suit for Declaration, Mandatory injunction and consequential relief against the respondents in the Court of Judicial Magistrate-II/ MTMC-VII, Quetta, , seeking correction/ rectification of dates of birth in his educational testimonials, CNIC and local certificate as 02.03.2002 instead of 09.02.1997 and 22.02.2000 on account of unnatural difference between his date of birth with that of his brother namely Sado Khan.

3. The after service of notices, the respondents/ defendants No.1 and 4 contested the suit by filing their written statements, while respondents No.2 & 3 admitted his claim/ version and after filing written statements, out of the pleadings of the parties, following issues were framed by the trial court.

ISSUES:

1. *Whether the suit of plaintiff is hit by the doctrine of estoppels?*
2. *Whether the correct date of birth of the plaintiff is 02.03.2002, which has wrongly been mentioned in his educational certificates, CNIC and local Certificate as 09.02.1997 and 22.02.2000 by the defendant liable to be corrected?*
3. *Whether the plaintiff is entitled the Relief claimed?*
4. *Relief?*



4. Thereafter, the appellant/ plaintiff got examined as two witnesses, then the appellant/ plaintiff and his counsel remained absent for seven consecutive dates of hearing, and failed to produce his further evidence, as such the trial court vide order/ decree dated 28.11.2023, dismissed the suit so filed by the appellant/ plaintiff under order 17 rule 3 CPC against which this appeal has been preferred.

6. I have heard learned counsels for the parties present and perused the available record with their able assistance.

7. It has been observed from the face of record that the impugned order/ decree has been passed by the trial court on 28.11.2023, while the appeal in hand has been preferred on 14.03.2024, which is barred by time, however, an application under sections 5 & 12 of the limitation Act, has also been filed seeking condonation of delay in filing of appeal. From the face of the application for condonation of delay it also appears that the appellant/ plaintiff had also filed an application for recalling of the impugned order before the trial court, but record of the trial court was thrashed out, while, no such application was found nor any order thereupon was available on record, and such act of the appellant/ plaintiff amounts to misleading the court. However, the appellants seeking condonation of delay was under obligation to have establish sufficient cause and time spent by him prior to filing of the instant appeal. Furthermore, it is also apparent from available record that the appellant/ plaintiff had filed the main suit by his own, while the instant appeal has been filed through his attorney, which further makes the stance so taken by the appellant/ plaintiff for condonation of delay as highly doubtful. From the face of record it is clearly evident that during pendency of the main suit, the appellant/ plaintiff had not prosecuted his case with diligence, while the time so consumed for filing of an appeal barred by law and time cannot be condoned u/s 5 of the Limitation Act, 1908, as the appellant has failed to explain to show that he prosecuted his suit in good faith. Admittedly delay in the present case was on account of the appellant's own negligence and not due to the act of the trial court. Therefore, I am not inclined to allow the application u/s 5 and 12 of the Limitation Act, 1908 filed along with the appeal for condonation of delay is accordingly rejected and thus the appeal in hand being barred by time is also dismissed. Resultantly the impugned order and decree dated 28.11.2023, passed by Judicial Magistrate-II/ MTMC-VII, Quetta, is maintained with no orders as to cost. Decree sheet be drawn.



Original record along with copy of judgment be sent to learned trial Court for information.

Appeal file be consigned to record after its completion and compilation.

Given under my hand and the seal of the court this 28th day of August, 2024.

Sadda
(Allair Dad Roshan)
DISTRICT JUDGE, QUETTA

ANNOUNCED:

Prepared by
Section Writer
[Signature]
05-09-2024

Certified to be True Copy
SUPDT:
District Judge, Quetta.
Article 174-B of the Constitution of Pakistan 1973
[Signature]
05/09/2024

DECREE IN APPEAL
(ORDER XLI RULES 35 OF CODE OF CIVIL PROCEDURE)
IN THE COURT OF DISTRICT JUDGE, QUETTA

Civil Appeal No 02/2024

Bais Khan

.....Appellant

VERSUS

Chairman,
Balochistan Board of Intermediate
And Secondary Education, Samungli
Road, Quetta & others

.....Respondents

APPEAL U/S 96 C.P.C.

This appeal coming on this 31st day of August, 2024 for disposal before me Allah Dad Roshan, District Judge, Quetta in the presence of Syed Saleem Akhtar, Advocate for Appellant, Miss Aster Mahak, Advocate for respondent No.1 and Mir Jamil Ahmad, representative for the respondent No.4. It is ordered; Therefore, I am not inclined to allow the application u/s 5 and 12 of the Limitation Act, 1908 filed along with the appeal for condonation of delay is accordingly rejected and thus the appeal in hand being barred by time is also dismissed. Resultantly the impugned order and decree dated 28.11.2023, passed by Judicial Magistrate-II/ MTMC-VII, Quetta, is maintained with no orders as to cost.

COST OF APPEAL

S#	Appellant	Amount	Respondents	Amount
1	Stamp for memo of appeal	Rs.15/-	Stamp for power	Nil
2	Stamp for power	Rs.05	Service of process	Nil
3	Service of process	Rs.05/-	Miscellaneous	Nil
4	Miscellaneous	Rs.00/-		
	Total	Rs.20/-		Nil

Given under my hand and seal of the court this 28th day of August, 2024.

SEAL

Compared by
Section Writer
4
05-09-2024

Sdd
(Allah Dad Roshan)
DISTRICT JUDGE, QUETTA

Certified to be True Copy
SUPDT:
District & Session Judge, Quetta.
Article 104 of the Constitution of Balochistan Order 1984

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