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Case Title: Fayaz Ali etc VS Ali Qamber etc

Order No.18

01-02-2020

Petitioners in person present while respondents through counsel present.

Through my this single order I intend to dispose off an execution petition filed by the petitioners for the execution of the order of the then Assistant Political Agent Lower Orakzai dated 27-01-2016, against the respondents.

It is pertinent to mention here that on 08/07/2019, the court of the undersigned received the case file from the court of the Learned Senior Civil Judge, Orakzai, which is accordingly registered. That on 22-07-2019, the counsel for the petitioners stated at the bar that the instant case file is not a civil suit rather the same be treated as an execution petition because the instant controversy has already been decided by the then Assistant Political Agent, Lower Orakzai on 27-01-2016 in favour of the petitioners but he was asked to file an execution petition in this respect, who accordingly filed the execution petition on the same date.

The respondents resisted the same by filing replication and forwarding arguments thereto.

The counsel for the petitioners present and argued that on 06-02-2015, a dispute between the coal companies of the petitioners and respondents was decided by the then APA, Lower Orakzai. That later on the petitioners filed another petition against the respondents before that forum for recovery of damages worth Rs: 520,000,00/- which was accordingly decided in favour of petitioners vide order dated 27-01-2016 and the same is still intact. That the same decision be executed against the respondents.

The counsel for the respondents present and argued that the petition of the petitioners is against the law and facts. That the issues between the parties have been decided once for all vide order dated 06-02-2015 by the then APA, Lower

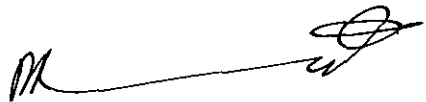
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Orakzai, whereby the respondents took special oath. That there is no decree in favour of the petitioners. At the end requested for the dismissal of the application.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that according to Section 33 of the CPC, 1908, upon hearing the case, judgment should be pronounced and on such judgment a decree shall follow. It is the duty of the court to draw up a decree in accordance with the judgment. Party in whose favour decree is passed is "Decree holder". Order XX Rule 606, CPC, 1908 specify the contents of the decree. It is the decree that is to be executed. Decree should specify the relief granted. It should be self contained and capable of execution. Even where decree is not drawn up, an appeal is not competent U/O XLI Rule 01 CPC, 1908. The original file bearing Title as "Tajmaeen Ali etc VS Almas Khan etc" which contains the order dated 27-01-2016 whereby the aforesaid amount was decreed in favour of the petitioners against the respondents, was requisitioned vide order No. 12 dated 19-12-2019, through special messenger from the court of the learned AC, Lower Orakzai, upon the application of the petitioners but the same when perused would reveal that there is no decree in favour of the petitioners. Thus, there is no decree before the court in favour of the petitioners for execution. Hence, petition in hand stands dismissed being non-maintainable in the eyes of the law. No order as to costs.

File be consigned to the Record Room after its completion and compilation.

  
**(Rehmat Ullah Wazir)**  
Civil Judge-I,  
Orakzai (at Baber Mela)