

(13)

**IN THE COURT OF JAMAL SHAH MAHSOOD, ADDITIONAL  
DISTRICT JUDGE-I, ORAKZAI**

**1. Civil Appeal No.13/20 Of 2020**

Date of institution 31-01-2020  
Date of Decision 25-06-2020

**Syed Muhammad Yousaf (Appellant)**

**Vs**

- (1) **Chairman NADRA** Office Islamabad
- (2) Director Provincial Headquarter, Hayatabad, Peshawar NADRA
- (3) Assistant Manager, NADRA Office, Orakzai
- (4) Assistant Director, NADRA Office, Orakzai

**(Respondents)**

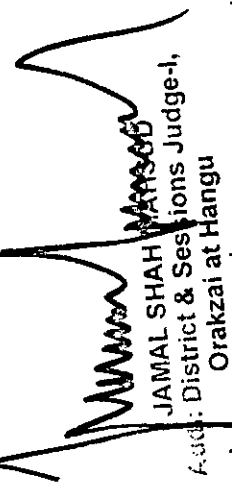
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- Mr. Altaf Hussain Advocate, for Appellant
  - Syed Farhat Abbas, Junior Executive, Regional Head Office, NADRA for Respondents
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**APPEAL** against order/judgment of learned CJ-II, dated 16-12-2019, in case No 20/1 of 2019. (**Impugned Order/Judgment**)

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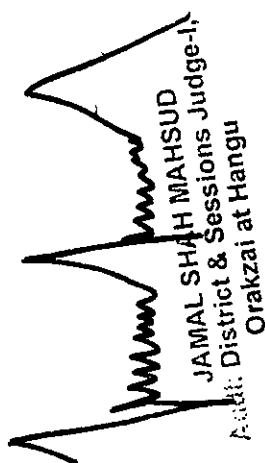
**Judgment in Appeal:**

1. Through the impugned order, the learned lower court dismissed the suit of the present appellant under Order 17, Rule 3 of CPC.
2. The present appellant filed his suit, against respondents, before civil court for the purpose of correction of the name of his father and correction of his permanent address in the record of the defendants/respondents. Written statement was submitted; issues were framed and the case was fixed for evidence. However, according to final order sheets of learned trial court, the plaintiff and his witnesses remained absent. The learned lower court gave notice under Order 17 Rule 3 of CPC to the

  
JAMAL SHAH MAHSOOD  
Judge-I, District & Sessions Judge-I,  
Orakzai at Hangu

counsel of plaintiff for production of evidence. On the final date of hearing the appellant/plaintiff remained absent again and the suit was dismissed through the impugned order/judgment.

3. Being aggrieved of the impugned order/judgement, the appellant has filed the instant appeal. The main grounds taken in the memorandum of appeal are; that the appellant was incarcerated in jail of district Rawalpindi during the days when the impugned judgement was passed; that the appellant was condemned unheard that the case was not decided on merits. The main point of determination in instant appeal is that whether the suit of the appellant was properly dismissed under law.

  
JAMAL SHAH MAHSUD  
Addl. District & Sessions Judge-II  
Orakzai at Hangu

4. Notice was issued to the respondents. The respondents appeared through Farhat Abbas, Junior Executive, NADRA office Orakzai. Arguments of the parties were heard and the record has been perused.

5. The suit of the appellant was dismissed by learned trial court under Order 17 Rule 3. The said Rule states that:

*"3. Court may proceed notwithstanding either party fails to produce evidence, etc. – Where any a party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith."*

6. A bare reading of Order 17 Rule 3 of CPC would show that when a party, to whom time has been given for producing

evidence, defaults in producing the same, the court may proceed to decide the suit forthwith.

7. In the present case the learned trial court did not decide the case; but dismissed the suit of the appellant/plaintiff in his absence.

8. The counsel for appellant has annexed a copy of Prisoner's Ticket of Central Jail Rawalpindi which shows that the appellant was incarcerated in Central Jail Rawalpindi on 01-12-2019; while the suit of the appellant was dismissed on 16-12-2019. Thus, it is clear that the appellant was unable to appear before the learned trial court, on account of circumstances beyond his control, at the time when the impugned judgment was passed.

9. Moreover, the law prefers disposal of case on merits rather than technicalities.


10. Resultantly, the instant appeal is **accepted** and the impugned judgment is hereby set aside. The case is remanded back to the learned trial court with directions to proceed further with case in accordance with applicable law. The court of CJ-II is vacant at present, therefore, the case be sent to the court of learned SCJ, Orakzai for disposal or entrustment to another civil court.

ADDITIONAL JUDGE  
JUDICIAL DISTRICT & SESSIONS Judge-4  
Orakzai




11. No order as to costs. Let a copy of this judgment in appeal be placed on the file of lower forum and the same be returned accordingly. The parties are directed to appear before the court of learned SCJ, Orakzai on 30-06-2020. Let this file be consigned to record room after its necessary completion and compilation.

**Announced**  
**25-06-2020**

  
**Jamal Shah Mahsood**  
Additional District Judge-I,  
Orakzai

**CERTIFICATE**

Certified this judgment consists of 04 pages. Each page has been signed by me, and corrected wherever necessary.

  
ADJ-I, Orakzai