

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

23

1. **Civil Appeal No. 14/20 of 2020**

Date of institution 06-02-2020  
Date of Decision 09-06-2020

- (1) **Fayaz Ali** s/o Ali Marjan and  
(2) **Tajmeen Ali** s/o Safdar Ali, both belonging to Mani Khel caste, r/o District Orakzai (**Fayaz/Ittefaq Coal Company**)  
(Appellants)

Vs

- (1) **Ali Qambar**  
(2) **Haji Khadim** s/o Ghulam Nabi, both belonging to Bar Muhammad Khel caste, r/o District Orakzai and  
(3) **Haq Meer** s/o Ghulam Khan (belonging to Mani Khel caste, r/o District Orakzai) (**Uqab Coal Company**)  
(Respondents)

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Mr. Altaf Hussain and Sana Ullah Khan (Advocates), for Appellants

Mr. Javid Muhammad, Jabir Hussain and Abid Ali (Advocates) for respondents

**APPEAL** against order/judgment/decree of learned CJ-I, Orakzai dated 01-02-2020, in case No 12/1 of 2019. (**Impugned Order/Judgment**)

**Judgment in Appeal:**

- Through the impugned judgment, the learned lower court dismissed the execution petition filed by the present appellants. The execution petition was filed in respect of order, dated 27-01-2016, of the then Assistant Political Agent/ADM of Lower Orakzai.
- In the instant appeal the appellants have prayed for setting aside of impugned judgment and for payment of Rs. 52,000,000 (five crore and twenty lacs) by respondents to them, on strength of

decision of jirga of Sheikhan caste and the decree/order (dated 27-01-2016). In alternative, they have prayed for permission to file amended plaint or for summoning of jirga of Sheikhan caste and payment of decretal amount.

3. The contentions raised by the counsel for appellants in memo of appeal, inter alia, are; that the appellants were condemned unheard; that the lower court, when it did not agree with the execution petition, should have directed the present appellants to file amended plaint; that non-existence of a decree, in favour of present appellants, was not a valid ground for dismissal of their execution petition. In respect of non-existence of a decree the counsel for appellants argued that the Assistant Political Agent (APA) had decided the case in the capacity of Executive Magistrate, under jirga procedure – and that these jirga laws were not controlled by any civil law, and that thus, a formal decree was not required.

4. The brief facts of the case and the proceedings which have culminated in the present appeal are scattered over 04 files: The proceedings in 03 of these files were carried out and concluded in the court of APA Lower Orakzai, while the 4<sup>th</sup> file originated in the office of DC/AC, Orakzai (through petition dated 10-12-2018) and was finally disposed of by CJ-I, Orakzai through impugned judgement. The parties to the dispute claim to be persons/firms associated with the business of coal mines. The names/description of the parties have been mentioned variously in the record as natural persons and also as firms (Ittefaq/Fayaz Company and Uqab Company).

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5. The petition, dated 10-12-2018, which has culminated in instant appeal was filed by appellants, Fayaz Khan and Tajmeen Ali (Fayaz/Ittefaq Coal Company), before the Deputy Commissioner (DC), Orakzai. From endorsements made on this petition it seems that it was referred by the DC to AC Lower Orakzai for discussion – who, in turn, directed his Reader for an update on the issue. Only a single order sheet, dated 11-02-2019, is available on record, in respect of proceedings conducted before transfer of case to Civil Court. The case file was transferred to SCJ, Orakzai on 20-04-2019 (after merger of FATA into KP Province) and later to CJ-I, Orakzai.

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6. In this petition, dated 10-12-2018, the present appellants claimed that Uqab Coal Company and Fayaz Coal Company had a long-standing boundary dispute; that the AC Lower Orakzai had constituted 08 members jirga of elder of Sheikhan tribe; that this jirga had unanimously decided the boundary of Dowali lease, but that Uqab Coal Company had refused to accept this jirga; that later Uqab Coal Company demolished/damaged 1800 feet of mine belonging to Fayaz Company and set the mine on fire, while also damaging 02 vehicles – which resulted an injuries to 10 laborers. That the Uqab Company repeatedly refused to accept jirgas constituted by AC Lower Orakzai. They accused Uqab Company of disregarding official orders (of AC Lower Orakzai) and claimed damages Rs. 53,000,000 (five crore and thirty lacs). On 24-12-2018, the present appellants filed another petition, with similar claims, before AC Lower Orakzai. On this second petition the

AC Lower Orakzai put an endorsement/direction, for his Reader, for starting a jirga of Sheikhan tribe on issue of claim of damages. In this second petition it was also noted that the claim of damages was sought against Ali Qambar, Khadim Haji and Haqmeer (present respondents). However, no further proceedings, other than attendance of parties, could be conducted by the Political Administration and the case was transferred to newly established Civil Courts.

7. On transfer of case to Civil Court the parties were summoned, who engaged counsels. Before any proceedings could be conducted, the counsel for petitioners/appellants filed an execution petition, on 22-07-2019, before the Lower Court of CJ-I Orakzai. In this petition the appellants sought execution of order/judgement, dated 27-01-2016, of APA Lower Orakzai. The petitioners/appellants claimed that the dispute between Ittefaq Company and Uqab Company had been settled through decision dated 06-02-2015; that, subsequently, the petitioners/appellants had filed a damage claim of Rs. 52,000,000 against respondents; that a jirga was constituted, and in light of decision of this jirga the APA of Lower Orakzai decided the case in favour of petitioners/appellants (Ittefaq/Fayaz Coal Company), vide order dated 27-01-2016. The petitioner prayed to the court that the order of payment of Rs. 52,000,000 may be executed; or that, in alternative, the property of respondents may be attached. The respondents filed reply to this execution petition, the previous record of dispute was requisitioned, and after hearing the parties the execution

  
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petition was dismissed through the impugned judgment, mainly on the ground of non-availability <sup>or</sup> any formal decree in favour of petitioners/appellants (Ittefaq/Fayaz Coal Company).

8. Being aggrieved of the impugned judgment, the petitioners have filed the instant appeal. The respondents were summoned; both the parties engaged counsels and presented arguments on their respective cases, personally and through their counsels. The entire record of the dispute requisitioned from the Court erstwhile APA/AC of Lower Orakzai was perused. My findings on conclusion of arguments and perusal of record are as under.


9. The points of determination in an instant appeal are; that whether any order, judgement or decree is available in favour of present appellants. That whether the appellants can be allowed to blow hot and cold in the same breath (i.e. whether they can claim execution of an order, supposedly in their favour, and, in alternative, also seek permission to file amended plaint at the same time). That whether there were directions of Peshawar High Court for filing of amended plaints in cases transferred from courts of erstwhile FATA to civil courts after merger. And that whether the dispute between the present parties was finally settled by the judicial process of erstwhile Political Administration working under Frontier Crime Regulation, 1901.

10. The first order on strength of which the present appellants have based their claim is order of Court of APA/ADM Lower Orakzai, dated 06-02-2015. This order is available at page 98 of file "B" titled "Uqab Coal Company vs Fayaz Coal Company".

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Perusal of this order will reveal that the present respondents (Uqab Coal Company) had complained that the present appellants (Fayaz Coal Company) had started digging coal mines in their (Uqab Coal Company) leased area. That jirga (council of elders) was constituted, which ultimately involved sub tribe Rail Khel to find whether any area was given to Ittefaq Coal Company. The jirga agreed with a statement of sub tribe Rail Khel and the matter was disposed of on oath of the three parties involved. It was decided by the APA that disputed area belonged to Uqab Group (present respondents) and that Ittefaq/Fayaz Group (present appellants) had no right to dig coal mine in the disputed area.

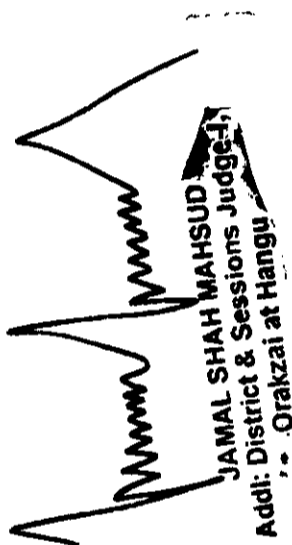
1. The second order on which the appellants have based their claims is order of Court of APA/ADM Lower Orakzai, dated 27-01-2016, which is available on page 89 of file titled as "Tajmeen Ali Mani Khel vs Almas Khan Bar Muhammad Khel". The perusal of this order reveals that the present appellants filed an application in before court of APA Lower Orakzai and claimed that they had paid Rs. 2,300,000 (twenty-three lacs) cash and Rs. 25,000,000 (two crore and fifty lacs) as commission to the defendants; that the parties were summoned and several jirgas were conducted; that the jirga members ultimately decided that all the outstanding issues between the parties have been resolved through earlier decision of court (of APA) dated 06-02-2015. The jirga in this case also held that 03 members of Fayaz Company (present appellants) would take oath to the effect that there is was no outstanding amount left

  
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behind after the earlier judgment and that in case of failure of oath the claim of opposite party shall be justified.

12. Thus, it is evident that there is no clear order or judgment or decree in favour of present appellants/petitioners. Both the orders on which the appellants claim their right are, in fact, in favour of the opposite party. These 02 orders of APA Lower Orakzai also reveal that dispute between the present parties was finally settled by the Political Administration of erstwhile FATA. The petition of present appellants before DC/AC Orakzai, dated 10-12-2018, which was transferred to this court and which culminated in the present appeal, was therefore groundless, as the case was a past and closed transaction. The act of counsel for appellants, of filing the execution petition (in respect of order/judgement dated 27-01-2016) reinforces the stance that the dispute between the parties was settled. However, it seems that the appellants have misinterpreted the orders, dated 27-01-2016 and dated 06-02-2015, in their favour.

13. As far as the prayer of appellants for permission to file amended plaint is concerned, the same also seems to be devoid of any strength. The Civil Court was not bound to mechanically call for amended plaint in every case transferred from the courts of erstwhile FATA. Each case was required to be dealt with according to its own facts and circumstances. The present dispute was a past and closed transaction. The execution petition filed by counsel for appellants also lends support to the fact that the case was already resolved. However, the case was decided in favour of present respondents and not in favour of

  
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appellants. Moreover, the contradictory stance of present petitioners, who are seeking execution of order/judgement OR permission to file an amended plaint, is also self-defeating and they are barred from claiming contradictory stances at the same time.

14. The contention of counsel for appellants that the courts of erstwhile FATA were not controlled by any civil law is also without force and misleading. Section 8 of Frontier Crime Regulation, 1901 provided the procedure for settling of civil disputes through a reference to Council of Elders. According to section 8 (4)(a) the court of PA/APA could pass a decree in accordance with finding of majority of Council of Elders. And according to section 9 of FCR, such decree was considered as final settlement of the dispute. However, the requirements of decree sheet as provided in CPC were not applicable to proceedings under FCR, 1901.

15. The outcome of above discussion is that no order favorable to present appellants is available on record; that the present dispute was finally settled by the court of APA/ADM Lower Orakzai vide orders dated 06-01-2015 and 27-01-2016 – which orders are in favour of present respondents and not in favour of appellants/petitioners; that the learned Civil Court was not bound to ask for submission of amended plaint, in the circumstances of present case.

16. Resultantly, the instant appeal is **dismissed**, being without any merit. The counsels for appellants could not point out any order, judgement or decree in their favour. The present dispute

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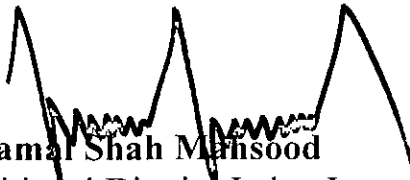
between the parties was finally resolved by the legal process of erstwhile administration of Orakzai Agency; and the appellants cannot be allowed to reagitate the same before civil court through amended plaint. No order as to costs.

17. Let a copy of this judgment in appeal be placed on the record.

Let the record of the case be returned to the quarters concerned and this file be consigned to record room after its necessary completion and compilation.


**Announced**

09-06-2020

  
Jamal Shah Mahsood  
Additional District Judge-I,  
Orakzai

**CERTIFICATE**

Certified this judgment consists of 09 pages. Each page has been signed by me, and corrected wherever necessary.

  
ADJ-I, Orakzai