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KHIAL ZAMAN VS ASKAR ALI ETC
CASE NO. 01/14, DATED 03.06.2024

IN THE COURT OF BAKHT ZADA
DISTRICT JUDGE-I, ORAKZAI (AT BABER MELA)

MISC. CIVIL APPEAL NO. : 01/14 OF 2024
DATE OF ORIGINAL INSTITUTION : 03.07.2024
DATE OF TRANSFER IN : 09.10.2024
DATE OF DECISION : 22.11.2024

1. KHIAL ZAMAN S/O SAR BAZ, R/O CASTE BAR MUHAMMAD KHEL,
TAPA ALAT KHEL, DISTRICT ORAKZAI
.....(APPELLANT)

-VERSUS-

1. ASKAR ALI S/O HADI KHAN
2. WARIS ALI S/O ASKAR ALI
3. HASHMAT ALI S/O DAFTAR ALI
4. SAHAR ALI S/O BAIDAR ALI
5. FARHAD ALI S/O UNKNOWN

ALL RESIDENCE OF CASTE BAR MUHAMMAD KHEL, TAPA
ALAT KHEL, VILLAGE CHAMANDO MELA, TEHSIL LOWER,
DISTRICT ORAKZAI.

.....(RESPONDENTS)

Present: Mr. Insaf Ali Advocate for appellant
: Mr. Abid Ali Advocate for respondents

JUDGEMENT
22.11.2024

Impugned herein is the order dated 31.05.2024 of the learned Civil Judge-I, Tehsil Courts Kalaya, District Orakzai vide which the application of the appellant for grant of temporary injunctions was dismissed. The appellant has also submitted an application for condonation of delay with his appeal.

- (2). Brief facts of the case of the appellant are that he has instituted suit under the easement Act for enforcement of his easement right in respect of a disputed pathway, against the respondents. He also prayed for declaration, permanent and mandatory injunctions to the effect that the said pathway be restored by demolishing the wall constructed by the respondents/defendants.

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- (3). Accordingly, to appellant the learned trial court has dismissed his application for grant of temporary injunctions which is wrong against law and facts. It is averred that his application for grant of temporary injunction was dismissed on the ground that prayer for permanent injunction is not made in the plaint, which is technicality and against the norms of justice. That there is no alternative way for access to his house and the pathway in question was closed by the respondents in the year of 2023. He prayed for setting aside order dated 31.05.2024 of learned Civil Judge-I, Kalaya, Orakzai.
- (4). Arguments of the learned counsel for the parties were heard and available record perused.
- (5). The issuance of a temporary injunction is regulated under order XXXIX rule 1 CPC, for the grant of which the co-existence of three conditions i.e., (i) Prima facie case, (ii). Balance of inconvenience and (iii) Irreparable damage or injury, are necessary. The present appellant has filed the instant appeal against dismissal of his application for grant of temporary injunctions filed by him in case for enforcement of his easement rights under the Easement Act 1882, wherein he has alleged that the disputed pathway was under his use for the last 20 years and now the same has been closed by the respondents in the year 2023 by constructing a wall. There is nothing on record to prove that the disputed pathway has remained under his use for so many years, except his oral assertion in the plaint. The case of appellant/plaintiff is standing in need of evidence. It is reported in various judgements of the superior courts that cases standing in need of evidence required to be established was not a "prima facie case" for the purpose of the grant of temporary injunctions. In the present case the

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respondents/defendants are admittedly owners in possession of the disputed property and allegedly the disputed pathway has been closed by them by constructing wall in the same in the year 2023, but in this connection, he has neither annexed any documentary evidence in shape of affidavit nor his any other neighbour has filed suit against the closing of pathway. This fact also deny the existence of prima facie case in his favour. As reported in Judgment of Hon'ble Lahore High Court, **1987 CLC 2416** that where a prima facie case is not made out there no occasion arise for attending the two other considerations viz, irreparable loss and balance of inconvenience, which belongs to one in the same category. It is obligatory upon the plaintiff/appellant desirous of having temporary injunctions issued in his favour is to make out a prima facie case, in absence whereof no court has any power to issue temporary injunctions. The case of the appellant is standing in need of evidence for establishing prima facie case for the purpose of grant of temporary injunctions. As reported in the Judgment of Hon'ble Peshawar High Court, Peshawar **2022 CLC 502** case standing in need of evidence required to be established was not a "prima facie case" for the grant of temporary injunction. No prima facie case exists in favour of the present appellant/plaintiff, meaning thereby that all the three conditions necessary for grant of temporary injections does not co-exist in the instant case, furthermore the instant appeal has been filed on 03.07.2024 against the impugned order dated 31.05.2024 which is time-barred under the limitation act, and the application filed for condonation of delay also lacks any tangible reason for such delay in filing appeal, therefore I hereby dismissed the application for condonation of delay as well as the

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instant Miscellaneous appeal being devoid of merits. No order as to cost. Requisitioned record be returned.

- (6). Copy of this order be sent to the learned trial court while file of this court be consigned to record room within stipulated period under the rule.

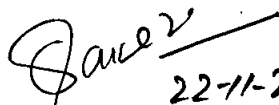
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CERTIFICATE

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

Dated: 22.11.2024


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