

**IN THE COURT OF HAQ NAWAZ,**  
**DISTRICT JUDGE, ORAKZAI (AT BABER MELA)**

CIVIL APPEAL NO. : 32/13 OF 2025  
DATE OF INSTITUTION : 07.04.2025  
DATE OF TRANSFER-IN : 29.05.2025  
DATE OF DECISION : 19.06.2025

MATI ULLAH S/O KHANA DIN, SECTION BULAND KHEL,  
SUB-SECTION MASTI KHEL, JAM GARHI, TEHSIL UPPER,  
DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

MR. ASIF SHAH (DECEASED) THROUGH

1. MST. ZUBAIDA
2. MST. AJWA
3. MST. MEHREEN
4. MST. HAIMA DAUGHTERS OF MR. ASIF SHAH
5. MUHAMMAD AYAZ
6. MR. IJAZ
7. MR. DIL FARAZ ALL SONS OF MUQADAM JAN, SECTION  
BULAND KHEL, SUB-SECTION MASTI KHEL, JAM GARHI,  
TEHSIL UPPER, DISTRICT ORAKZAI

..... (RESPONDENTS)

**Present** : Mr. Noor Karim Advocate for appellant.  
: Abid Ali Advocate for respondents.

JUDGEMENT  
19.06.2025

This civil appeal was preferred by the appellant against the  
Order dated 08.03.2025 passed by the Court of learned Senior  
Civil Judge, Orakzai, in Misc. Application No. 8/6 of 2025.

2. Initially, the suit was brought by the respondents/plaintiffs for  
declaration and permanent as well as mandatory injunction and  
possession to the effect that they are owners of the suit property  
situated at Jam Garhi, District Orakzai, described with four  
boundaries in headnote of the plaint, on the basis of a written  
deed of 1997. The appellant/defendant has got no concern with  
the suit property and his claim of ownership is against the facts  
and law. However, he has constructed a wall in the suit land.  
The appellants also sought demolition of the said wall.

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3. The defendant was summoned but he failed to appear before the trial Court and was proceeded against ex-parte. Ex-parte evidence was produced and the suit was decreed in favour of the plaintiffs vide judgment dated 04.08.2021. The said ex-parte judgment and decree was set aside on 24.02.2024 on the acceptance of application under Section 12 (2) CPC and the case was fixed for submission of written statement when it was dismissed in default on 13.06.2024. Later on, the respondents submitted application for restoration of the suit on 16.01.2025 which was allowed on 08.03.2025 by the learned trial Court through his impugned Order subject to payment of cost of Rs. 15,000/-. Hence, this appeal was preferred by the appellants/plaintiffs.

4. The learned counsel for the appellant submitted that the application for restoration of civil suit was hopelessly time barred. He, therefore, requested for acceptance of the appeal.

5. On the other hand, the learned counsel for the respondents submitted that the case was not fixed for hearing when it was dismissed in default; therefore, the respondents could not be penalised for their absence on the relevant date.

6. After hearing both the parties and perusal of the record, it was found that the Hon'ble Baluchistan High Court in its judgment reported in 2023 CLC 557 while elaborating the scope of Order IX Rule 8 for procedure where defendant only appears, held that *the date of hearing is a date on which court examines*

Handwritten signature of the District Sessions Judge, District of Baluchistan, Quetta.

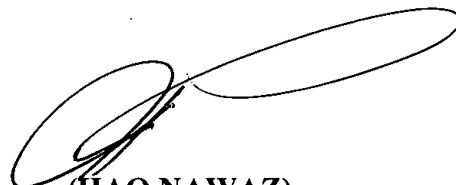
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*pleadings in order to comprehend pleadings of the parties or in a suit in which issues are to be framed. Such is not a date fixed merely for appearance of parties, or for filing written statement or scrutiny of process. If there is date fixed in a suit which is not "hearing" the plaintiff cannot be penalised for his appearance on that date. Since, the suit in question was fixed for submission of amended plaint; therefore, it cannot be termed to be a date of "hearing" and the respondent was not obliged to be penalised for his non-appearance on the relevant date, as elaborated by the Hon'ble Baluchistan High Court in the above-mentioned judgment.*

7. In view of the above, the trial Court has rightly accepted application for restoration of the civil suit; however, the cost imposed is enhanced to Rs. 20,000/-. The appeal is dismissed. Copy of this judgment be sent to the trial Court for information and compliance. File of this Court be consigned to record room after its necessary completion and compilation.


**Announced:**  
19.06.2025

  
(HAQ NAWAZ)  
District Judge, Orakzai  
at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 19.06.2025

  
(HAQ NAWAZ)  
District Judge, Orakzai  
at Baber Mela