

IN THE COURT MUHAMMAD JUNAID ALAM CIVIL JUDGE-II, TEHSIL COURT  
KALAYA.

Petition No ..... 24/6 of 2024.

Date of Institution ..... 08.08.2024.

Dated of Decision ..... 30.06.2025.

Saleem Khan S/O Qadar Khan resident of Qoum Bezot, Tehsil Lower,  
District Orakzai.....Petitioner.

**Versus**

Rameen Gul S/O Deedan resident of Qoum Sheikhan, Tehsil Central,  
District Orakzai..... Respondent.

PETITION FOR SETTING ASIDE EX-PARTE DECREE DATED 27.03.2023 PASSED  
IN SUIT NO. 06/1 OF 2021.


ORDER 14  
30.06.2025

Special attorney for petitioner along with counsel present. Respondent in person present.

Brief facts of the case are that petitioner has filed the instant application for setting aside ex-parte decree dated 27.03.2023 passed in suit No. 06/1 of 2021.

Petitioner has contended that suit No. 06/1 of 2021 was filed against him and two others by present respondent and the same was ex-parte decreed vide ex-parte order dated: 27.03.2023. Further contended that the petitioner was not served upon in accordance with law, as the petitioner was at United Arab Emirates at that time. Copy of Passport and Visa also produced. Therefore, the petitioner be given an opportunity to defend his valuable rights. That when petitioner got knowledge of ex-parte decree there and then he approached the court for setting aside ex-parte decree passed against him.


Respondent/decreed holder contested the application by filing reply. He denied the version of petitioner and contended that petitioner was duly served

  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

with him under one roof. There is nothing in the report of serving officer which could show that any effort whatsoever was made by him to find out petitioner/defendant. Similarly, during the execution proceedings, summon/notice was not served on petitioner/JD.

As far as limitation is concerned, where defendant is duly served, application for setting aside ex-parte decree would be governed by Article 164, of Limitation Act 1908. The time for setting aside ex-parte decree in such a case is 30 days from the date of decree but when notice for appearance is not duly served, such application would be governed by Article 181, of Limitation Act. As mentioned above, summon/notice was not personally served on the petitioner. If the ex-parte order was void and against the mandatory provisions of law, limitation would not stand in the way of court in deciding the same. Resultantly, petition in hand is hereby accepted and ex-parte decree dated: 27.03.2023. Suit No. 06/1 of 2021 is set aside to the extent of present petitioner only. The suit is restored also only to the extent of present petitioner. Muharrir is directed to do the needful. The instant file along with requisitioned record be consigned to record room. Copy of this order be placed on main file of suit No. 06/1 of 2021.

Announced  
30.06.2025

  
Muhammad Junaid Alam,  
Civil Judge -II,  
Tehsil Courts Kalaya, Orakzai