

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

Petition No 17/6 of 2025.

Date of Institution 12.05.2025.

Dated of Decision 02.08.2025.

Muhammad Umar S/O Gul Hassan, R/O Shakar Dara, Tehsil, Tehsil District,
Kohat, Frontier Core One Wing, Ghiljo District Orakzai..... **Petitioner.**

Versus


Farmeen Bibi W/O Muhammad Umar D/O Younas Khan R/O, Qoum Mishti,
Tappa Darvi, Tehsil Lower, District Orakzai..... **Respondent.**

PETITION FOR SETTING ASIDE EX-PARTE DECREE DATED 22.04.2025 PASSED
IN FAMILY SUIT NO. 1/3 FC OF 2025.

ORDER 02
02.08.2025

Petitioner through counsel present. Father of respondent alongwith
counsel present. Arguments of counsel for the parties heard and record gone
through.

Brief facts of the case are that petitioner has filed the instant application
for setting aside ex-parte decree dated 22.04.2025 passed in family suit No. 1/3
FC of 2025.


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

Petitioner has contended that family suit No. 1/3 FC of 2025 was filed
against him by present respondent and the same was ex-parte decreed vide ex-
parte order dated: 22.04.2025. Further contended that the petitioner was not
served upon in accordance with law, as the petitioner is a sepoy in the Frontier
Core One Wing Orakzai and was busy in the military operations. 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 upon where as he had also attended the court and that petition is badly time barred and therefore, is liable to be dismissed.

Brief facts of the instant suit are that plaintiff filed the instant suit for dissolution of marriage on the ground of cruelty and recovery of dower, recovery of maintenance allowance, diet money, medical allowance and dowry articles against the defendant contending that marriage of plaintiff was solemnized with defendant in the year 2021 according to Sharia Muhammadi and 06 tola gold ornaments was fixed to be the dower which has not been paid to plaintiff. That after the Nikah, relationship between the parties remained cordial but thereafter, behavior, conduct and attitude of defendant towards the plaintiff changed and the defendant started beating and abusing her. She was physically and mentally tortured. That lastly, defendant ousted plaintiff from house after 06 months of Nikkah only in her wearing clothes and since then, she has been living with her poor parents. That efforts for reconciliation on behalf of plaintiff were made but in vain, hence the present suit.


MUHAMMAD JUNAID ALAM
Civil Judge / JM
Orakzai at Kalaya


Upon institution of the suit in hand, defendant (present petitioner) was summoned, who remained absent despite service through personal mobile phone, he attended the court, but thereafter absent himself, hence, placed and proceeded against ex-parte and thereafter, plaintiff was allowed to produce her ex-parte evidence. Petitioner/defendant was proceeded ex-parte and ex-parte decree dated: 22.04.2025 was passed after recording ex-parte evidence of respondent/plaintiff.

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 personally served on the petitioner, however, there is sufficient reason that the petition is serving in FC and was busy in the military operations. 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 to the extent of Para No. II to VI, except Para No. I i.e. the decree of **dissolution of marriage** shall be intact and ex-parte decree dated: 22.04.2025. Suit No. 1/3 FC of 2025 is set aside subject to cost of Rs.9000/- (Nine thousands). The family suit is restored. 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 family suit No. 1/3 FC of 2025.

Announced:
02.08.2025


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