

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

CIVIL SUIT NO.	1/1 OF 2025
DATE OF INSTITUTION	02.12.2023
DATE OF TRANSFER-IN	29.05.2025
DATE OF DECISION	11.12.2025

MOHTASIM KHAN S/O NASEEM KHAN, CASTE ZARGHON KHEL, QASIM KHEL, PO DARA BAZAR, DARA ADAM KHEL, KOHAT

.....(PLAINTIFF)
-VERSUS-

NOOR SHER KHAN S/O KHAN BADSHAH, R/O TANDI MUHAMMAD KHEL, ZARGHON KHEL, DARA ADAM KHEL, KOHAT

.....(DEFENDANT)

Present: Mr. Abid Ali Advocate for plaintiff.
: Mr. Insaf Ali Advocate for defendant.

JUDGEMENT

11.12.2025

This civil suit was instituted for the recovery of Rs. 05 crore by the plaintiff against the defendant on account of losses to the tune of Rs. 03 crore incurred by the plaintiff on account of uncalled for interference in coal mining of the plaintiff by the defendant and thereby sealing it on the basis of a baseless application to the relevant quarters and Rs. 02 crore on account of defamation and mental torture.

2. According to the averments of plaint, the plaintiff was granted lease for coal mining at Dana Khula, Oblan District Orakzai. The plaintiff is a well reputed businessman and have respect in this regard in his own area of Dara Adam Khel as well as in District Orakzai. The defendant also belongs to Dara Adam Khel and he is bent upon to interfere everywhere in the business activities of the plaintiff at the behest of some notable persons.

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He also forcefully blocked the pathway to the mines, and resorted to firing upon the labourers and contractors; as a result of which, FIR was registered against him. The illegal interference of the defendant caused huge losses to the plaintiff in his business and defamed him in both Dara Adam Khel as well as in District Orakzai. He submitted an application to Deputy Commissioner, Orakzai on 26.03.2023 and got all the four coal mines of the plaintiff sealed in spite of the inquiry of Mining Department in which the application by the defendant was found baseless. The illegal acts of the defendant resulted into mental torture of the plaintiff. He was asked to refrain from his illegal acts, but he refused; therefore, the suit was filed.

3. The defendant contested the suit by submitting his written statement. Pleadings of the parties were reduced to the following issues;

- I. *Whether the plaintiff has got a cause of action?*
- II. *Whether the plaintiff is estopped to sue?*
- III. *Whether the suit of the plaintiff is within time?*
- IV. *Whether the suit of the plaintiff is maintainable in its present form and this court has got jurisdiction to entertain the instant suit?*
- V. *Whether proper court fee has been affixed?*
- VI. *Whether the instant suit is filed only to tease and blackmail the defendant?*

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VII. Whether the defendant used to interfere in the mining lease of the plaintiff by submitting frivolous applications to different departments in order to stop the mining work of the plaintiff which has damaged the respect and good will of the plaintiff and due which he suffered mental torture and depression for which the plaintiff is entitled for recovery of Rs. 3 crores?

VIII. Whether due to the baseless application of the defendant submitted to Deputy Commissioner, Orakzai on 26.09.2023, the plaintiff suffered mental torture etc. for which he is entitled to receive damages worth Rs. 02 crores from the defendant?

IX. Whether the plaintiff is entitled to the decree for recovery of Rs. 05 crores from defendant as prayed for?

X. Relief.

4. The parties adduced pro and contra evidence. I have heard learned counsel for the parties and perused the record. My issue wise findings are as under;

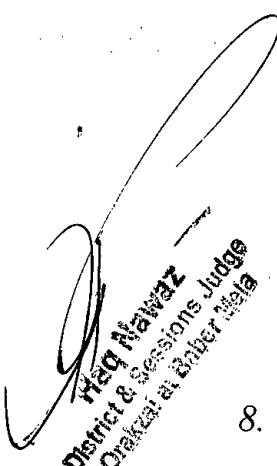
5. **Issue No. 3:** The application by the defendant to the Deputy Commissioner, Orakzai was submitted on 26.09.2023 which fact was admitted in the written statement and the suit for recovery on account of damages caused due to business losses, defamation and mental torture was instituted on 25.11.2023;

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hence, the suit was well within time. The issue is, therefore, decided in positive.

6. **Issue No. 5:** The plaintiff has affixed the requisite Court fee along with the plaint. The issue is, therefore, decided in positive.
7. **Issues No. 7 and 8:** The plaintiff has alleged in the plaint that he was granted lease at Dana Khula, Oblan District Orakzai for mining at four sites and he has business reputation in his area of Dara Adam Khel as well as in District Orakzai. The defendant was causing illegal interference in his business activities and he submitted an application to Deputy Commissioner, Orakzai and thereby got four of the coal mines of the plaintiff sealed illegally, resulting into huge financial and mental losses with defamation of the plaintiff in the business community as well as in the official circle.
8. In his written statement, the defendant submitted that the application was submitted by him in respect of overlapping in the site sketch of leased area.
9. During the course of evidence, the Record Keeper of office of the Deputy Commissioner, Orakzai was produced as PW-1. He produced the copy of application submitted by the defendant to Deputy Commissioner, Orakzai as Ex. PW 1/1. In his application with the title of "Coal Mining instead of cancellation of lease", the defendant submitted that the plaintiff had obtained lease upon the landed property of the defendant at


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Oblan Dana Khula Gungoro Kamar District Orakzai against which the defendant made a report to the Mines Department resulting into cancellation of the lease. But the plaintiff is still carrying on the mining work forcefully with the help of armed persons; therefore, strict legal action be taken against the plaintiff. The application was marked to Additional Deputy Commissioner, Orakzai for forwarding to concerned Assistant Commissioner and Assistant Director for necessary action under intimation to District Police Officer, Orakzai. The ADC vide letter No. 1593/DC-ORK/1012/2017 dated 28.09.2023 Ex.

PW 1/2 forwarded the application to AC, Lower Orakzai and Assistant Director (Tech) Mineral Division, Orakzai for necessary action. The PW-1 also produced letter No. 223/FDA/MCC/OKI/PL-Coal (1012)/2017 Dated 03.10.2023 as Ex. PW 1/3 by the Assistant Director (Tech) Mineral

Development Orakzai to the Additional Deputy Commissioner (F&P), Orakzai. According to Ex. PW 1/3, the Assistant Director replied to ADC, Orakzai that the plaintiff was granted a Prospecting License for coal over an area of 930.0 acres near Gazdara Bezoti, District Orakzai by the Minerals Directorate of erstwhile FATA, work order was issued on 05.06.2018 for a period of two years. After merger of defunct FATA into Khyber Pakhtunkhwa, the said Prospecting License was validated by Mineral Title Committee as per Section (2) (a) and Section 105 (5) of the Khyber Pakhtunkhwa Mines and Minerals Act-2017

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as per Schedule-1 for further three years. The said Prospecting License was rectified in the presence of concerned tribe under Schedule-VIII of the Khyber Pakhtunkhwa Mines and Minerals Act-2017. The office of Assistant Director (Tech) issued rectification of sketch on 09.02.2023. The said Prospecting License was valid up to 03.06.2023. As per available record, prospecting work in the area was in progress. The plaintiff submitted an application for conversion of Prospecting License into Mining Lease on 09.03.2023 and also completed all codal formalities and the case of conversion was in process. It was further replied in Ex. PW 1/3 that the defendant has stated in his application dated 28.09.2023 that lease of the plaintiff is cancelled by Mineral Department, which is not correct as per office record and further that the Mineral Title of the plaintiff is legal under File No. FDA/MCC/OKI/PL-Coal (1012)/2017.

10. The plaintiff also produced three witnesses before the Court as PW-2 to PW-4. They deposed that the plaintiff obtained the lease for coal mining at Bezot Dana Khula in the year 2018. He started work on four coal mines; however, coal was found in one of the mines in the year 2021. The road was constructed to the said mine in the year 2022 and production was started in the year 2023. The plaintiff deployed heavy machinery including Halaj machine and line, compressor and generator for the said purpose. He also hired four security guards for the security purposes. The mine was producing 25 tons of coal on daily

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basis. A total of 318 tons of coal was excavated when the defendant submitted an application to Deputy Commissioner, Orakzai resulting into sealing of the mine causing heavy losses to the plaintiff to the tune of Rs. 05 crore. PW-3 further submitted that the suspension of work has damaged all the mines which too resulted into losses and the road, constructed toward the mines for a cost of Rs. 95 lacs, has also been damaged due to rain. Whereas PW-4 submitted that he was driver with the plaintiff. The expenditure incurred on the road was about 95 lacs. The mines were sealed by the Tehsildar, Lower Orakzai on 29.09.2023 on the application of defendant.

The daily income from the mines was Rs. 05 lacs.

11. The Record Keeper of the office of the Assistant Director Minerals appeared before the Court as PW-5. He again produced Ex. PW 1/2 and Ex. PW 1/3 as Ex. PW 5/2 and Ex. PW 5/1 respectively. He also produced letter dated 14.10.2024 with a brief history of FDA/MCC/OKI/PL-Coal (1012)/2017 by the Assistant Director Minerals, Orakzai to Deputy Commissioner, Orakzai as Ex. PW 5/3. The PW also produced validation of Prospecting License for coal dated 27.10.2020 as Ex. PW 5/4 with corrigendum dated 03.10.2024 as Ex. PW 5/5 and conversion of Prospecting License into mining lease for coal dated 06.12.2024 as Ex. PW 5/6 and challan book as Ex. PW 5/7.

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12. The brief history attached with Ex. PW 5/1 discloses that an application/complaint regarding change of sketch was submitted to Secretary Minerals Development Department. A detailed inquiry was carried out and the recommendations were;

1. The case may be referred to the Dispute Resolution Committee (DRC) for submission of its recommendation to the Competent Authority regarding consent of Qoum whether they have issued NOC to Mr. Mohtasim Khan in the disputed area or otherwise.

2. The mining operations in the disputed area may be suspended till the recommendation of Dispute Resolution Committee.

13. The brief history with Ex. PW 5/3 further discloses that the said inquiry report was forwarded to Deputy Commissioner, Orakzai vide letter No. SO(PIO)/MDD/6-32/Orakzai/2022/3882-84 dated 20.03.2023 requesting to arrange meeting of Dispute Resolution Committee to determine the actual mining rights of the area and institute the same to the Mineral Development Department for further process. It was further requested to suspend the mining activities in the area till the conclusion of DRC. The said brief history further discloses that the said letter was withdrawn vide letter No. 5748-51 dated 31.10.2023. It was also observed in the said brief history that M/s New Madina Coal Company Phase-6, Hayatabad,

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Peshawar has applied for grant of Prospecting License for coal in the year 2020 vide token No. 8821 having file No. MDW/OKI/PL-Coal (60)/2020. The same area is overlapped with the granted area of Mr. Mohtasim Khan having file No. FDA/MCC/OKI/PL-Coal (1012)/2017.

14. The plaintiff appeared before the Court as PW-6. He submitted that he got coal lease in the Ghozdara area of Bezot Orakzai. He started survey for the suitable place of coal mine. In the end of 2019 and 2020, mine digging was started in the leased area. They reached to the coal in mines in 2021 and started road to the mine. The expenses incurred on the construction of road was produced as Ex. PW 6/1. On 28.09.2023, the defendants filed an application and, on his application, Tehsildar sealed the disputed mines. The plaintiff produced the pictures of sealing the mines as Ex. PW-6/2 and Ex. PW-6/3. He submitted that he was handed over lease challan by the Mineral Department for issuance to transporters. Fifteen (15) receipts were issued in this respect to the vehicles concerned. The same were produced as Ex. PW-6/4. According to the receipts, a total of 318 tons of coal was transported from the mine in question on 11.09.2023 to 28.09.2023. He produced the receipts regarding expenditure incurred on the mine excavation as Ex. PW-6/5 pertaining to 05.05.2020, 11.04.2021, 04.12.2021, 01.07.2021, 15.07.2021, 04.01.2022, 07.02.2022, 05.11.2021, 07.10.2021, 10.09.2021, 16.03.2020, 11.04.2021. He stated that there were four mines.

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Two were his personal and the other two were owned by a subcontractor. Due to application of the defendant, both the plaintiff and the subcontractor have sustained huge losses. He submitted that he used to transport about 25 tons coal on daily basis, but after submission of application by the defendant, the transportation of coal was suspended resulting into approximately Rs. 5 lacs losses on daily basis with the expenditure of 03 crore incurred on the excavation of the mine. He submitted that after application of the defendant, the mining department confirmed the lease; however, the investors withdrawn their investment and the local people also stopped them from mining. His proposed contract with a subcontractor also could not be executed which was agreed to be executed for Rs. 50 lacs each with regard to 04 mines. Since the application of the defendant the work in the mines is stopped causing them huge losses. The plaintiff submitted that he has also suffered mental torture due to application of the defendant and his reputation was also damaged in the locality. The defendant was having no interest in the project in question as he does not belong to District Orakzai, but he submitted the application to cause losses to the plaintiff. He was defamed and tortured mentally along with business losses. He requested that the suit may be decreed as prayed for.

15. PW-7 submitted that they started work in the year 2020 with plaintiff as his manager. The mine reached to coal in the year


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2021. Due to non-availability of road, they took their logistics to the mine through donkeys. He was responsible for all the preparations of monthly expenses of daily wagers. He endorsed Ex. PW-6/6 and submitted that it was prepared by him. He submitted that the contractor started construction of road at the end of year 2021 and completed it in 2022. After construction of the road, about 300 tons of coal was extracted and transported through 15 trucks. In the month of September, 2023, the Tehsildar came and sealed the mines. The labourers waited for about one month, but the work could not be restored; therefore, they left the site.

16. The PW-8 stated that he entered into a contract of mine with Mohtasim Khan (plaintiff) in the year 2020. There were no road and no place for residence, but only one tent. They made walkable pathway to mines and started work on the mines. They transported logistics on donkeys for about one and a half year. After finding coal, the contractor started construction of road to mine. When road was completed to the mines, the contractor purchased Daina Truck for transport of logistics. In September 2023, Tehsildar came to the mines and sealed the same. There was no dispute from the year 2020 till 2023, but as soon as the extraction of coal started, the disputes arose.

17. On the other hand, the defendant produced Jangrez Khan as DW-1. He stated that he is Bezot by caste and permanent resident of Tehsil Lower Orakzai. The elders of Bezot caste

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executed an agreement with him on 08.03.2019 regarding lease of Tangi, Gungoro Kamar. Thereafter, he applied to the Mine and Minerals Department and the sketch was approved. He established New Madina Coal Company for the said purpose. Thereafter, a Jalsa-e-Aam was convened. Earlier the plaintiff was allotted lease with regard to Ghozdara for an area of 300 hectares. Some militants were found present in the mines at Ghozdara and the law enforcement agencies carried out operation against them in which 04 militants were died in the mines. Mountain of Ghozdara and mountain of Gungoro Kamar are two different mountains. Both the mountain areas are adjacent to each other. Before issuance of NOC by District Administration to him, the plaintiff's lease was extended to 900 hectares illegally. The elders of Bezot caste namely Malak Ghulam Habib, Malak Sena Gul, Malak Muhammad Mir and Malak Usman lodged complaint against the plaintiff. The defendant has got no concern with the lease allotted to him. The defendant has not made a complaint against anyone. He submitted that he appointed the defendant as attorney for the area leased out in his favour to carry out official work for him. Defendant has no concern with the losses sustained by the plaintiff. The plaint of the plaintiff is based on malafide intention. The defendant and plaintiff belong to Dara Adam Khel, Kohat and have no concern with the mountain in question. He is elder of Qoum Bezot. He requested that the suit

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be dismissed. He produced photocopy of the agreement dated 08.03.2019 as mark "A", advertisement for Jalsa-e-Aam as mark "B", sketch of the leased area as mark "C" and agreement with the elders dated 28.08.2020 as mark "D".

18. Jasarat Khan was produced as DW-2. He submitted that the DW-1 is having the lease in his favour in respect of Tangi, Gungoro Kamar. Whereas, Ghozdara was leased out in favour of the plaintiff. The plaintiff had overlapped towards the leased area allotted to DW-1. He carried out the mining work for a month or two in the overlapped area whereafter the work was stopped by the local authorities. The defendant has got nothing to do with the dispute between the plaintiff and DW-1. The elders have also submitted a complaint against the plaintiff.

19. The defendant appeared before the Court as DW-3. He submitted that the plaintiff has no business relationship with him and he has nothing outstanding against him nor do he have anything outstanding against the plaintiff. He is attorney on behalf of Bezot Qoum vide power of attorney dated 06.06.2023 which is Ex. DW-3/1. He has no proprietary rights in Orakzai as he belongs to Dara Adam Khel. One of the owners Jangriz (DW-1) was given lease by his Qoum at Gungoro Kamar. The said leased area was overlapped by the plaintiff against which he submitted an application on behalf of Qoum Bezot. The mines of plaintiff were sealed by the Administration due to his overlapping into the leased area of Jangriz Khan/DW-1. The

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elders of Bezot Qoum have also lodged complaint against the plaintiff for affixing their forged thumb impressions on the lease papers. He had submitted the application on the directions of lease holder Jangriz Khan and he personally has nothing to do with the plaintiff. He has caused no loss to the plaintiff rather the action against the plaintiff was taken by the Competent Authority. He requested that the suit be dismissed.

20. During the course of arguments, it transpired that the Hon'ble Peshawar High Court, Peshawar vide order dated 24.05.2025 passed in Writ Petition No. 1510-P/2024, while setting aside the proceedings conducted by the Dispute Resolution Committee pursuant to the office order dated 25.10.2023, directed the officials of Mines Development Department to process the pending application of respondent No. 5 (DW-1) for grant of lease strictly in accordance with law. Therefore, the Assistant Director Minerals, District Orakzai was summoned and his statement was recorded as CW-1 to inquire about the progress of process upon the pending application of DW-1 for the grant of lease.

21. The CW-1 produced the record of file No. FDA/MCC/OKI/PL-Coal (1012)/2017 in favour of the plaintiff as Ex. CW 1/1. He submitted that the lease in favour of the plaintiff was granted on 05.06.2018 for an area of 930 acres which was subsequently reduced to 799.95 acres on 27.10.2020 due to area limitation for coal to 800 acres in the new enactment. He also produced the

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record of file No. MDW/OKI/PL-Coal (60)/2020 in favour of DW-1 and submitted that the application of Mr. Jangriz Khan (DW-1) was sent to District Administration Orakzai to obtain the consent of local owners as per Schedule VIII of the Khyber Pakhtunkhwa Mines and Minerals Act, 2017. However, no further proceedings were carried out on the application of Mr. Jangriz Khan due to non-observance of codal formalities. He also produced the overlapping sketch plan as Ex. CW-1/3 and submitted that the reduced leased area granted to the plaintiff is shown at serial No. 2 and it consists upon the sketch in between points No. A to L. Similarly, the applied area of New Madina Mining Company is shown in Ex. CW-1/3 between the points No. M to S. The overlapping area is shown with green ink between points No. T to Z & A to D in the second sheet of Ex. CW-1/3.

22. The above record, with particular reference to brief history of file No. FDA/MCC/OKI/PL-Coal (1012)/2017 attached with Ex. PW 5/3 and statements of the PWs disclose that the plaintiff was granted Prospecting License for coal over an area of 930 acres near Gazdara Bezoti District Orakzai on 24.08.2017. Letter was issued by ex-FATA Minerals Directorate to Political Agent, Orakzai for execution of Ijlas-e-Aam and issuance of NOC. In response Qoumi agreement was executed on 26.12.2017 and ex-Political Agent, Orakzai issued NOC on 24.01.2018. Working papers were prepared and submitted to

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Mines Committee whereas Mines Committee in its meeting dated 24.04.2018 decided to grant two years Prospecting License over an area of 930 acres. Allotment letter was issued on 29.05.2018 and after completion of codal formalities, work order was issued on 05.06.2018. The Minerals Title Committee in its meeting dated 25.08.2020 validated the Prospecting License and validation letter was issued on 27.10.2020 over an area of 799.95 acres. The plaintiff on 08.02.2022 submitted an application for rectification of sketch which was approved by Mineral Title Committee and accordingly rectification letter was issued. Later on, the plaintiff applied for conversion of Prospecting License into Mining Lease which is under process.

23. The defendant on 28.09.2023 submitted an application to Deputy Commissioner, Orakzai which is Ex. PW 1/1. According to the application, the plaintiff had obtained lease upon the landed property of the defendant at Oblan Dana Khula Gungoro Kamar District Orakzai against which the defendant made a report to the Mines Department resulting into cancellation of the lease. But the plaintiff is still carrying on the mining work forcefully with the help of armed persons; therefore, strict legal action be taken against the plaintiff. In response to the said application, the Assistant Director Minerals Development, Orakzai submitted to ADC (F&P) District Orakzai on 03.10.2023 (Ex. PW 1/3 and Ex. PW 5/2) that the defendant stated in his application submitted in your office that

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lease of the plaintiff is cancelled by the Mineral Department, which is not correct. It was further replied that the Mineral Title of the plaintiff is legal. The Secretary Mineral Development, after carrying out a detailed inquiry regarding change of sketch by the plaintiff, recommended Dispute Resolution Committee proceedings to Deputy Commissioner on 20.03.2023 to determine the actual mining rights of the area, but the said recommendations were withdrawn on 31.10.2023.

24. The Hon'ble Peshawar High Court, Peshawar in its order dated 14.05.2025 passed in Writ Petition No. 1510-P/2024, produced by the defendant as Ex. PW 6/x-1, has held that the respondent No. 5 (DW-1) could not controvert the precise plea of the petitioner (plaintiff) that since the grant of Prospecting License viz.05.06.2018, he has fully developed the entire area and that there is no objection whatsoever of the official respondent in so far as the leased area of the petitioner (plaintiff) is concerned.

25. In the written statement as well as in the statement of the DW-1 and statement of the defendant (DW-3), the submission of application Ex. PW 1/1 was admitted with the contention that it was pertaining to overlapping by the plaintiff into the leased area of DW-1 at Dana Khula Gongoro Kamar and it was not pertaining to Ghozdara where lease was granted in favour of the plaintiff. The application Ex. PW 1/1 states that the plaintiff is carrying out mining work at Oblan Dana Khula Gongoro Kamar, District Orakzai in spite of cancellation of lease without

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mentioning the fact of overlapping in the leased area of DW-1.

Hence, the written statement is in contradiction with the application of defendant as well as statements of the DWs. The application Ex. PW 1/1 resulted into sealing the coal mines of the plaintiff. So far, the grant of lease in favour of the DW-1 is concerned, it was deposed by the Assistant Director Minerals who appeared before the Court as CW-1 that the same is pending before the Competent Authority and no further proceedings were carried out on the application of Mr. Jangriz Khan due to non-observance of codal formalities. Hence, no lease of any area is so far granted in favour of the DW-1. Thirdly, the defendant, for the first time during the course of his evidence, produced a power of attorney before the Court as Ex. DW 3/1 on behalf of DW-1 and others bearing its date as 06.06.2023 and submitted that he moved the application Ex. PW 1/1 as attorney on behalf of the DW-1. But the perusal of the power of attorney Ex. DW 3/1 discloses that both the defendant and DW-1 are partners in New Madina Mining Company. Fourthly, it is evident from the perusal of overlapping sketch Ex. CW-1/3 and statement of the CW-01 that the proposed area of lease by New Madina Mining Company was overlapping the area already leased out in favour of the plaintiff.

26. After closing the evidence by both the parties, the defendant submitted an application for amendment in the written

statement to give details of the overlapping and the defendant being attorney on behalf of the DW-1. It was contested by the plaintiff by submitting his written reply. The application is turned down in view of my observations at para-25 above.

27. The plaintiff has submitted the details of expenditure incurred on the development of mines through different PWs to the tune of Rs. 30926681/- . The PWs have given the details of said expenditures in their statements before the Court with no material contradiction in their cross examinations and have submitted that the plaintiff is facing huge losses due to suspension of production on account of application by the defendant. The plaintiff has also claimed an amount of Rs. 02 crores on account of defamation and mental torture.

28. In view of the above facts and circumstances, the plaintiff has successfully proved his case against the defendant; therefore, the issues are decided in positive in favour of the plaintiff and against the defendant.

29. **Issues No. 2, 4 and 6:** These issues were framed on the basis of objections raised by the defendant in the written statement but the same were neither proved nor pressed during the course of arguments. Therefore, the same are deleted as redundant.

30. **Issues No. 1 and 9:** In view of my findings on issues No. 7 and 8, the plaintiff was having a good cause of action to bring this suit against the defendant and he is entitled to the decree as prayed for.

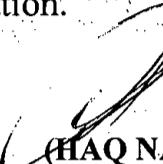
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31. **Relief:** The suit is decreed as prayed for in favour of the plaintiff and against the defendant.

32. File of this Court be consigned to record room after its necessary completion and compilation.

Announced:

11.12.2025


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of twenty (20) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 11.12.2025


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela