

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

Justice Musarrat Hilali
Justice Shakeel Ahmad
Justice Ishtiaq Ibrahim

Civil Appeals No. 36-P of 2017 and 39-P of 2017

(Against the judgment dated 12.10.2017 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in RFA No. 54/2005)

Haji Sher Afzal

(in CA No. 36-P/2017)

Zilla Nazim Aala, District Dir Upper & others

(in CA No. 39-P/2017)

...Appellant(s)

Versus

Zilla Nazim Aala, District Dir Upper & others

(in CA No. 36-P/2017)

Haji Sher Afzal & others

(in CA No. 39-P/2017)

...Respondent(s)

For the Appellant(s) :

Mr. Aimal Khan Barkandi,
Advocate High Court.

*(in CA No. 36-P/2017 as well as for the
respondent No.1 in CA No. 39-P/2017)*

For Respondent(s) :

M/S Hazrat Said, ASC, and Shah
Faisal Utmankhel, Advocate
General, Khyber Pakhtunkhwa

*(in CA No. 36-P/2017 as well as for the
appellants in CA No. 39-P/2017)*

Date of Hearing

: 11.06.2025

...

ORDER

SHAKEEL AHMAD, J.-

CMAs No. 600-P & 608-P of 2025.

Through these applications filed under Order XXXIII Rules 1 & 6 CPC, the applicant Mr. Aimal Khan Barkandi, Advocate High Court seeks permission of the Court to plead and argue the above-titled appeals on behalf of his deceased father Mr. Mazullah Khan Barkandi, ASC. For the reasons mentioned therein, these CMAs are allowed and the applicant is permitted to plead and argue the appeals.

By filing the titled appeals under Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have questioned the validity of the judgment dated 12.10.2017 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat (**"The High Court"**), whereby and whereunder RFA No. 54 of 2005, preferred against the judgment and decree dated 16.12.2004 of the trial Court, dismissing the suit of the appellant/ plaintiff Haji Sher Afzal, was partially allowed.

2. Precisely, Haji Sher Afzal (to be referred to hereinafter as **"the appellant/ plaintiff"**) instituted a suit for recovery of Rs. 21,60,000/- against Administrator Zilla Council Dir Upper & others, (to be referred to hereinafter as **"the respondents/defendants"**) alleging therein that the respondents/defendants advertised to export timber tax of Upper Dir for the year 1998-99. The appellant/ plaintiff offered Rs. 21,60,000/- (including Educational Cess) for the purpose through open auction, which was accepted by the respondents/defendants, and a contract deed dated 01.08.1998 for the recovery of the subject tax was executed between the parties. Following execution of the contract, the appellant/plaintiff established check posts, however, following protests/ movement by the local right holders of village sundry, Gawaldai and Kalkot against the non-payment of royalty by the Government, the process of recovery of tax affected, as such, the appellant/ plaintiff suffered heavy monetary loss. Feeling aggrieved, the appellant/ plaintiff filed an application (Ex.PW1/4) before the Secretary Local Government, Khyber Pakhtunkhwa, which was marked to the Administrator, District Council Upper Dir for comments, who, in his comments, admitted the fact of stoppage of export of timber from Dir Kohistan (Kalkot and Gawaldai areas). On service of summons, the respondents/ defendants put their appearance before the trial Court, contested the suit by filing written statement. After a full-dressed trial, the trial Court dismissed the suit of the appellant/ plaintiff. Not contented with the same, he filed appeal before the High Court,

which was partially allowed through the impugned judgment. Not satisfied with the same, both the parties filed this and the connected appeals.

3. Heard both sides and record perused.

4. It appears from the record that vide agreement deed Ex.PW1/1, a contract for the collection of timber tax in the year 1998-99 was granted to the appellant/plaintiff, after fulfilling all legal and codal formalities, on the terms and conditions mentioned therein. It was specifically stipulated in the said agreement that in case of closure of export of timber due to *force majeure* or civil disputes in the locality creating hurdles in the business, the appellant/ plaintiff would be entitled to certain remissions, including withdrawal of his amount. During the period of contract, the appellant/ plaintiff deposited monthly installments as per agreed terms of the contract with the District Council. However, soon after execution of the contract, the export of timber from Dir Kohistan was stopped by the locals of the area i.e. Kalkot and Gawaldai, despite best efforts made by the local administration and forest authorities, the stranded timber could not be lifted from the spot as the law and order situation had become bad to worst due to the dispute arose between the locals and the royalty purchasers on non-payment of royalty to them. In this regard, the appellant/ plaintiff submitted an application to the competent authority on 28.07.1999, seeking remission of timber tax collection. In pursuance thereof, much correspondence took place between the authorities concerned. It was claimed by the appellant/ plaintiff that he could not collect timber tax of 3 lac cubic feet of timber and thereby paid 20% Education and Development Cess amounting to Rs. 360,000/-. These facts were duly brought to the notice of the respondents/ defendants through written applications Ex.PW1/4 and Ex.PW2/1. A perusal of the letter dated 09.10.1998, written by the Assistant Commissioner, Dir to the Deputy Commissioner, Dir reflects that during those periods protests had taken place which adversely affected the flow of timber export due to non-payment of royalty to the locals. The inquiry committee as well as

Signed

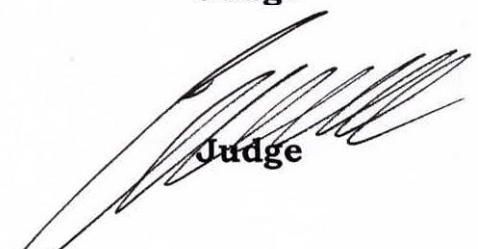
the Deputy Commissioner, Dir submitted their reports to the Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, supporting the stance of the appellant/ plaintiff. A perusal of the letter dated 25.08.1999 appended at page 94 of the appeal addressed by the Administrator, District Council Dir Upper to the Deputy Secretary-III, Local Council Board further reflects that the respondents/ defendants had admitted the claim of the appellant/ plaintiff to the extent that he is entitled to remission of 180,000 cubic feet timber at the rate of Rs. 6 per cubic feet plus 20 % Education Cess.

5. The High Court, after scanning the evidence on record minutely, rightly held that the appellant/ plaintiff has succeeded in proving his claim to the extent of remission of Rs. 13,00,000/- in view of the recommendations made by the Administrator, District Council Dir, while his rest of the claim was denied for want of proof. *u*

6. We find no illegality, irregularity, or jurisdictional defect in the well-reasoned impugned judgment of the High Court, calling for interference. Resultantly, both these appeals are dismissed. No order as to costs.


Judge


Judge


Judge

Peshawar
11.06.2025
Not approved for reporting
Zia/ *