

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

**Mr. Justice Jawwad S. Khawaja**

**Mr. Justice Sh. Azmat Saeed**

**Mr. Justice Mushir Alam**

**Civil Appeal No.548 of 2009**

(Against the 14.4.2009 of the  
Peshawar High Court Abbottabad  
Bench passed in Appeal No.70 of  
2006)

M/s Shah Nawaz Khan and sons ... Appellant(s)

**Versus**

Govt. of NWFP and others ... Respondent(s)

For the appellant(s): Mr. Muhammad Munir Peracha, ASC

For respondents 1-2: Mr. Mujahid Ali Khan, Addl. AG

For respondent No.3: Mr. Khan Afzal, ASC  
Raja Abdul Ghafoor, AOR

Respondents Nos.4-7: *Ex-parte*

Date of hearing: 17.04.2015

**ORDER**

**Jawwad S. Khawaja, J.-** Learned counsel for the appellants states that already in earlier rounds of litigation the case was twice remanded to the trial Court. Through the impugned judgment, yet again the matter has been remanded by the High Court to the trial Court. The reasons for this have been given in the second sub-para of the paragraph 7 of the impugned judgment which, for ease of reference, is reproduced as under:-

*“The respondent/department has denied all these facts. Regrettably, no issue was framed in this respect in terms of Order XIV, rule-1 CPC. No doubt it is the duty of the parties to point out the framing of necessary issue(s) and ordinarily if no such move is made during the pendency of lis, it shall be presumed that the issue has been abandoned. But it is equally the duty of the learned trial Court to frame correct issues which are necessary for*

*determination of the real controversy between the parties and merely because the parties have not pointed out necessary issues does not absolve the learned trial court to perform its legal and statutory duty. Action or inaction on the part of the court cannot prejudice a party to litigation. Failure of the learned trial court to determine material issue amounts to exercise of jurisdiction illegally and with material irregularity."*

We note that in fact this very aspect of the case was encapsulated in the issues framed by the trial Court and in particular issue No.3, in the following terms:-

**"3. Has the plaintiff got a locus standi?"**

It is also evident from the record that both parties were aware of their respective stance as set out in their pleadings and moreover evidence was also led in the light thereof. In this view of the matter, there was no justification for remanding the case by the High Court to the trial Court for the third round of litigation. The High Court had all the material before it to enable it to decide the RFA.

3. In view of the foregoing discussion, we allow this appeal and set aside the impugned judgment. As a consequence, the matter is sent to the High Court for decision of the RFA by itself.

4. We may add that remand should only be resorted to where it is absolutely necessary for a fair and proper adjudication of a case. Unnecessary remand results in undue delay in cases and consequent prolonging of the agony of the litigants. It is quite apart from clogging the court dockets and wastage of precious Court time.

**Judge**

**Judge**

**Judge**

**ISLAMABAD, THE**

17<sup>th</sup> April, 2015

M. Azhar Malik