

HCJDA-38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 80035 of 2022

Nasira Bibi

versus

Special Judge Rent, Lahore and another

JUDGMENT

<i>Date of hearing</i>	09.05.2023
<i>Petitioner by</i>	Mr. Muhammad Iqbal Ghani, Advocate
<i>Respondent No. 2 by</i>	Mr. Atiq-ur-Rehman Mughal, Advocate.

SULTAN TANVIR AHMAD, J:– Through the present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed order dated 23.11.2022 passed by learned Special Judge (Rent), Lahore (the ‘*rent tribunal*’).

2. Facts, necessary for the decision of the present petition, are that Muhammad Ilyas Sulehri son of Chaudhary Shah Din (the ‘*respondent*’) instituted ejectment petition dated 14.11.2019, under section 19 of the Punjab Rented Premises Act, 2009 (the ‘*Act*’) for eviction of Mst. Nasira Bibi wife of Saeed Ahmad (the ‘*petitioner*’) from house No. 55, phase-II, Ameer-ud-Din Park, Tajpura Lahore Cantt, Lahore as further detailed in the ejectment petition (the

'premises'). The *petitioner* filed leave to defend the ejectment petition, *inter alia*, on the ground that the *petitioner* purchased the *premises* fifteen years ago and since then she is in lawful possession of the *premises* for which separate suit for declaration is pending adjudication. She was granted leave to defend the ejectment petition and after framing the relevant issues, the process of recording of evidence in terms of section 25 of the *Act* was initiated. The *respondent* after produced two witnesses closed the oral evidence for which statement dated 23.04.2022 of the learned counsel of the respondent is part of the record. Thereafter, the *respondent* instituted an application for producing further oral evidence and certain additional documents including a DVD allegedly containing voice recording of telephonic conversation between the *respondent* and the *petitioner* as well as her husband (the '*voice recording*'). The learned *rent tribunal* vide order dated 23.11.2022 partially allowed the application, which has been assailed in this constitutional petition. This petition is pressed to the extent of permission given by the learned *rent tribunal* to produce the *voice recording*.

3. Mr. Muhammad Iqbal Ghani-learned counsel for the petitioner has submitted that impugned order is passed in violation of section 19(3) of the *Act*, which requires that all the documents relied by an ejectment petitioner must be appended with the ejectment petition at the time of institution of such petition. He submitted that command of law has not been followed by the learned *rent tribunal*. Learned counsel for the petitioner has further contended that even if the principles of equity and fairness are followed and / or the case is examined on touchstone of the relevant provisions of the Civil Procedure Code, 1908 (the '*Code*'), the application is bound to fail as the *respondent* has not given 'sufficient cause'

or reasonable explanation in the application for not producing the *voice recording* at the time of institution of the ejectment petition. He has relied upon case titled “Muslim Commercial Bank Limited Versus Syed Ahmad Saeed Kirmani” (1991 CLC 140) to convince the Court that the conversation sought to be produced is inadmissible as it is not pleaded in the ejectment petition; that evidence cannot be led beyond pleadings. The learned counsel raised serious objections on the permission to adduce private conversation of a lady while relying on the cases titled “Zafar Iqbal and Others Versus Bashir Ahmad and another”(PLD 1988 Supreme Court 109), “Nawab Din through Legal Representatives Versus Said and 6 Others”(2005 YLR 2024) and “Muhammad Younus Versus Mst. Kaniz Fatima”(PLD 2000 Karachi 348). Conversely, Mr. Attiq-ur-Rehman Mughal-learned counsel for the *respondent* has opposed this petition. He has stated that section 19(3) or 22(3) are not mandatory provisions of law; that it has already been settled that section 34 of the *Act* does not oust the principles of fairness and equity to completely preclude the ejectment petitioners from producing documents, which are not appended with the ejectment petition.

4. Heard. Documents available on the file have been perused.

4. Mr. Attiq-ur-Rehman Mughal has relied upon case titled “Dr. Sajjad Nazir Versus Special Judge Rent Tribunal, Lahore and 2 Others” (2017 CLC Note 131) whereby, this Court has observed that though the word “shall” is used in section 19(3) and 22(3) of the *Act* but since they are not followed by any consequence for non-compliance, the same cannot be termed or construed as mandatory. There is no gainsaying as to the same. I am also in agreement with the

arguments of the learned counsel of the *respondent* that section 34 of the *Act* cannot be interpreted as ousting the equitable principles regulating procedure of the proceedings and the rent tribunals can invoke the such principles in interest of fairness and justice. However, the real question is if by construing section 19(3) of the *Act* as directory, the rent tribunal can be permitted to altogether ignore giving the due weight or significance to the said provisions or if it is at all in the interest of justice or fair play to permit the litigants to introduce new evidence at belated stages and by doing the same the relevant provisions are being rendered useless or redundant.

5. By now it is well settled law that mandatory enactments require strict compliance. An act or thing in non-adherence of the mandatory enactments is invalid. It is also equally settled that a provision of law when is determined as directory, its substantial compliance is obligatory. When needed in the interest of justice the minor deviations from directory laws can be overlooked provided that there is substantial compliance. It is duty of the Courts to attend the scheme of *Act* and then to carefully examine the concerned provisions to reach the intent of legislature and to give effect to the same. Reference can be made to the cases titled “The State through Regional Director ANF Versus Imam Bakhsh and Others” (2018 SCMR 2039), “Mafizullah Versus Manai Ullah and Others” (PLD 1963 Dacca 318), “S.N. Nagaraja Rao Vs. Chikkachennappa and Ors.” (1981 (1) Kar LJ 201) and “Shri Harish. Chandra Mishra and Others Versus The Hon’ble Mr. Justice S. Ali Ahmed, Opposite Party” (AIR 1986 PATNA 65).

6. In the “The State through Regional Director

ANF” case (*supra*) the Supreme Court of Pakistan has concluded that non-compliance of directory provisions might not invalidate an act but as it provides legislative process based on public interest, transparency and good governance, its substantial compliance is necessary. It will be further beneficial to reproduce paragraph 11 of the said judgment, which reads as follows: -

*“To distinguish where the directions of the legislature are imperative and where they are directory, the real question is whether a thing has been ordered by the legislature to be done and what is the consequence, if it is not done. **Some rules are vital and go to the root of matter, they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance. The duty of the court is to try to unravel the real intention of the legislature. This exercise entails carefully attending to the scheme of the Act and then highlighting the provisions that actually embody the real purpose and object of the Act.** A provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceedings. Thus, some parts of a statute may be mandatory whilst others may be directory. It can even be the case that a certain portion of a provision, obligating something to be done, is mandatory in nature whilst another part of the same provision, is directory, owing to the guiding legislative intent behind it. Even parts of a single provision or rule may be mandatory or directory. “In each case one must look to the subject matter and consider the importance of the*

provision disregarded and the relation of that provision to the general object intended to be secured.” “Crawford opined that “as a general rule, [those provisions that] relate to the essence of the thing to be performed or to matters of substance, are mandatory, and those which do not relate to the essence and whose compliance is merely of convenience rather than of substance, are directory.” In another context, whether a statute or rule be termed mandatory or directory would depend upon larger public interest, nicely balanced with the precious right of the common man. According to Maxwell, “Where the prescription of statute relates to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed or in other words as directory only. The neglect of them may be penal indeed, but it does not affect the validity of the act done in disregard of them.” Our Court has held while determining the status of a mandatory or directory provision that “perhaps the cleverest indicator is the object and purpose of the statute and the provision in question.” And to see the “legislative intent as revealed by the examination of the whole Act.”

(Emphasis supplied)

7. In order to further appreciate the arguments of the two sides, it is expedient to reproduce the relevant provisions of the Act.

Section 19. Filing of Application. -

- (1) *An application in respect of a rented premises shall be filed in the Rent Tribunal of the area or the district.*
- (2) *If an application is filed under sub-section (1), the Administrative Special Judge (Rent) of the area or the district may take cognizance of the case or entrust the same to any other Special Judge (Rent.)*
- (3) *An application under sub-section (1) **shall** contain a concise statement of facts, the relief claimed and **shall be accompanied by copies of all relevant documents in possession of the applicant.***
- (4) *If the application is for eviction of a tenant, the landlord **shall submit his affidavit and affidavits of not more than two witnesses along with the eviction application.***

Section 22. Leave to contest. -

- (1) *A Rent Tribunal **shall** not allow a respondent to defend the application unless he obtains leave to contest.*
- (2) *Subject to this Act, a respondent **shall** file an application for leave to contest **within ten days of his first appearance** in the Rent Tribunal.*
- (3) *An application for leave to contest shall be in the form of a written reply, stating grounds on which the leave is sought and **shall be accompanied by an affidavit of the respondent, copy of all relevant documents in his possession and, if desired, affidavits of not more than two witnesses.***
- (4) *The Rent Tribunal **shall not allow leave** to contest to a respondent **unless the application discloses sufficient grounds** for production of oral evidence.*
- (5) *The Rent Tribunal **shall decide** the application for leave to contest **within a period of fifteen days** from the date of its filing.*
- (6) *If the leave to contest is refused or the respondent has failed to file application for leave to contest within the stipulated time, the Rent Tribunal shall pass the final order.*

Section 25. Recording of evidence. -

- (1) *At the time of grant of leave to contest, the Rent Tribunal shall direct a party to produce his evidence on a date fixed.*
- (2) *The Rent Tribunal **shall treat an affidavit filed by a party as evidence** and-*
 - (a) *may, of its own motion, order the attendance of deponent for cross examination; and*

- (b) shall, if so requested by a party, direct production of the deponent for cross examination.
- (3) **The Rent Tribunal shall not grant more than two opportunities to a party for production of the evidence.**
- (4) *The Rent Tribunal shall not grant an adjournment for cross examination of a witness except for a sufficient cause and on payment of the costs to the witness as it may deem fit.*
- (5) *After recording the evidence of the parties, if any, and hearing the arguments, the Rent Tribunal shall pass the final order.*

Section 27. Period for disposal of application. -

- (1) *The Rent Tribunal shall pass a final order on an application **as expeditiously as possible but not later than four months** from the date of filing of the application.*
- (2) *If the final order is not passed on an application within the period of four months, the Rent Tribunal shall conduct the proceedings on day to day basis.*

Reading of above provisions, keeping in view the object as well as the scheme of the *Act*, leads to irresistible conclusion that the legislature has intended that in order to resolve dispute of landlords and tenants in quick, expeditious and cost-effective manners the litigants should provide copies of all documents in their possession that they want to rely upon, at initial stage, by appending them with ejectment petition or leave petition, as the case may be. The pleadings are required to be accompanied by affidavits of witnesses and if the leave is granted the affidavits can be treated as examination-in-chief. The legislature has provided time limitation of ten days to file leave application from the date of first appearance of the defender before the rent tribunals. Time period is provided to complete almost every step of the proceedings and then in section 27 of the *Act* it is expected from rent tribunals to dispose of such cases as expeditiously as possible.

8. Any inadvertent defect in following the aforesaid

provisions can be cured exceptionally, when explanation is available to the satisfaction of the rent tribunals, which can give permission in compelling needs to safeguard the interest of justice that too after recording reasons for grant of such permission. The litigant to proceeding under the *Act* are not allowed to adduce evidence in non-adherence of above reproduced provisions, as a right or matter of course or in routine. In “Khalil-ur-Rehman and another Versus Dr. Manzoor Ahmed and Others” (PLD 2011 Supreme Court 512) section 22(3) of the Punjab Rent Premises Ordinance, 2007 (repealed) was interpreted. The said provision is identical to the present section 22(3) of the *Act*. Upon interpretation of the same the following law is laid down: -

“6. The second part of the section commands that the application should be accompanied by the affidavit of the respondent. As it is an express requirement of the law, and it is settled by now that where the law requires an act to be done or performed in a particular manner it has to be accordingly done / performed and not otherwise, besides, it is also the rule of law that where an application / pleading should be supported by an affidavit under a statutory provision which is not filed, such application shall not be maintainable. However, the defect in this behalf is curable, but only in those cases where a ‘sufficient cause’ and ‘reasonable explanation’ is propounded by the respondent for not filing his affidavit along with the leave application, otherwise such defect should not be permitted to be cured by the Tribunal as a matter of course or routine; to this extent the provisions are mandatory.”

(Emphasis supplied)

9. Reverting to the facts of the case. The ejectment petition was filed in the year 2019. After grant of leave,

petitioner completed the process of producing oral evidence and learned counsel gave statement dated 23.4.2022 to close the same. When the case was fixed for producing documentary evidence, an application was filed to produce several documents, which were not appended with ejectment petition. Some of them were permitted and not objected by the present petitioner but the *voice recording*. The reason that prevailed with the learned *rent tribunal* to give permission to produce *voice recording* is given in paragraph 6 of the order assailed that reads as under: -

“6... So far as the prayer regarding submission of (f) DVD of voice recording of telephone calls of the respondent is concerned; it is alleged by the petitioner that the respondent as well as her husband promised to pay the rent of demised premises on phone call which was recorded and transcript of the same is available in shape of DVD. As per article 164 of the Qanoon-e-Shahadat Order, 1984 the court may allow to be produced any evidence that may have become available because of modern devices or techniques in such cases as the court may consider appropriate...”

10. The learned counsel for the *respondent* has admitted before me that entire oral evidence from his side has been completed and dismissal for request to produce additional oral evidence has attained finality. When confronted that how the *voice recording* shall be produced, he has submitted that the same will be produced in without oath statement of learned counsel. The ground *vis-à-vis* production of the *voice recording* is set-up in para 3 of application, which does not disclose the date of such recording. There is no reason given in the application regarding failure to provide the *voice recording* at initial stage. The learned counsel for the

respondent also remained unable to give any reason for failure as to non-compliance of law. Apparently, it also escaped view of the learned *rent tribunal* that before adverting to the question of admissibility, it was essential to state reasons for departure from the provisions of law or failure in substantial compliance. The *respondent* had to satisfy the learned *rent tribunal* as to those grounds on the basis of which they remained unable to produce this evidence or give notice in this regard at the previous stages of trial, which started in the year 2019. It was also incumbent to satisfy the learned *rent tribunal* as to how it is in interest of equity and fairness to permit the petitioner to produce the particular document at this belated stage. In my reading the application filed after about three years of ejectment petition for producing the *voice recording* lacks sufficient grounds to permit the same.

11. Consequent upon above discussion, the order dated 23.11.2022 passed by the learned *rent tribunal*, to the extent of permission to produce the *voice recording*, is *set-aside*. No order as to costs.

Petition is allowed in the above terms.

(Sultan Tanvir Ahmad)
Judge

Approved for Reporting
Announced in open Court on 05.07.2023.

Judge