

Judgment Sheet

**LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

W.P No.36692/2021

Muhammad Rabi Zahid

*Versus*

Abdul Razzaq Manzoor etc.

**J U D G M E N T**

Date of Hearing	<b>29.05.2023</b>
Petitioner By:	Mr. A.W. Chaddha, Advocate.
Respondent No.1 By:	Mr. S.M. Zeeshan Mirza, Advocate

**Anwaar Hussain J:** The petitioner has laid challenge to the orders dated 12.04.2021 and 21.05.2021 passed by respondent No.3 (“**the Rent Tribunal**”) and respondent No.2 (“**the Appellate Court**”) respectively. By virtue of the former order, ejection of the petitioner from the rented premises fully described in the eviction petition has been ordered; whereas through the latter, the order dated 12.04.2021 has been upheld.

2. Learned counsel for the petitioner submits that on the one hand, the Rent Tribunal, *vide* order dated 12.04.2021, partially accepted the petitioner’s application for leave to contest the eviction petition, filed by respondent No.1 (**‘the respondent’**), and framed Issue No.1 with regard to the default; and on the other hand, the Rent Tribunal partially accepted the eviction petition on the ground of default that is self-contradictory and this aspect has escaped the notice of the Appellate Court below as well. He further submits that once the issue with regard to default had been framed, ejection of the petitioner could not have been ordered without recording of evidence and the determination of the issue framed to this effect. Further avers that the learned *fora* below have applied Section 20 of the Punjab Rented Premises Act, 2009 (“**the Act**”) while reaching the conclusion that

the petitioner is admittedly a defaulter in respect of the rent for the month of September, 2020 whereas in-fact the applicable provision of the Act is Section 24, inasmuch as once an eviction petition is filed and the parties are before the Rent Tribunal, the rent is to be determined and paid as per the direction of the Rent Tribunal, if there is dispute regarding the amount of rent, which is precisely the situation in the present case.

3. Conversely, learned counsel for the respondent supports the impugned orders and submits that Section 7 of the Act contemplates that in case a landlord refuses to receive the rent, it is obligatory on part of the tenant (the petitioner) to either tender the same through money order or approach the Rent Tribunal by way of filing an application for deposit of the rent and in the instant case, such an application has not been made, at least for the deposit of rent for the month of September, 2020 as per the contents of the leave to contest filed by the petitioner, therefore, both the Courts below have correctly rendered the impugned findings.

4. Arguments heard. Record perused.

5. The relationship of landlord and tenant is admitted between the parties. It is the case of the petitioner that the tenancy commenced in the year 2018 for a period of 10 years and the monthly rent was settled as Rs.12,000/-, which due to agreed annual increment was Rs.13,200/- per month in the month of September, 2020, however, the respondent, with *malafide* intention, filed the eviction petition in July, 2020 on the basis of a forged tenancy agreement purportedly executed in the year 2019 and also kept on receiving the rent @ Rs.13,200/- but refused to issue receipt for the month of September, 2020 and when the petitioner appeared before the Rent Tribunal, after publication of notice issued to effect the service of the petitioner in the eviction petition, the petitioner filed leave to contest on the date fixed and volunteered to deposit the monthly rent as per direction of the Rent Tribunal. On the other hand, it is the case of the respondent that the

tenancy between the parties commenced in the year 2019, for a period of one year only against payment of monthly rent @ Rs.44,000/- and the petitioner is defaulter since April, 2020. The Rent Tribunal partially allowed the leave to contest to determine whether the petitioner is entitled to receive the amount of security under the agreement, which the petitioner relied upon and whether the said agreement is valid for a period of 10 years, however, the leave was partly refused on the ground that the petitioner has admittedly not paid the rent for the month of September, 2020 and, hence, liable to be evicted on the basis of admitted default in the light of Section 20 of the Act, whereas the petitioner side contends that applicable provision of Act is Section 24. Therefore, the question that requires determination from this Court is articulated as under:

- **What is the true import of Sections 7, 20 and 24 of the Act and whether the petitioner's leave has been rightly refused, by correct application of law, while treating him as a defaulter?**

6. Before examining the legality of the impugned orders whereby application of the petitioner for leave to contest was partially declined and answering the legal question formulated hereinabove, it will be appropriate to reproduce the operative part of the impugned order passed by the Rent Tribunal that reads as under:

*“5. Perusal of record reflects that the parties are at variance regarding the execution of different rent agreements. The ejectment petitioner has relied his stance on rent agreement dated 03.09.2019 and the applicant/respondent has relied his stance on rent agreement dated 01.11.2018.* It is observed that both these agreements are not registered..... *It is observed that the ejectment petitioner has claimed default in payment of rent with the contentions that the respondent has failed to pay the rent of demised premises from the month of April, 2020.....It is also important to note here that the applicant/respondent in parawise reply No.2 (on merits) of his leave to contest contended that he has paid the monthly rent till August, 2020* and contended that the ejectment petitioner with malafide intention prevaricated from receiving the

monthly rent of September, 2020 on one or other pretext just to achieve his ulterior motives and the **respondent is ready to deposit the rent for the month of September, 2020 and so on in this forum.** If the ejectment petitioner has refused to receive the rent then under the law remedy was available to the respondent either to deposit or tender the rent as per section 20 of PRPA, 2009.....and it is settled law that ‘when law prescribes a manner for doing of a particular thing that thing is to be done in the manner which is provided by law’. **Since the applicant/respondent has not adopted the prescribed mode under the law for payment of rent in case of refusal of landlord to receive the rent. The applicant/respondent has failed to pay or tender any rent to the landlord through money order or deposit in the bank account or he has failed to file any application before rent tribunal.** The applicant/respondent in parawise reply No.2 (on merits) of his leave to contest himself admitted that he has not paid the rent from September, 2020 and onwards. Admittedly, the applicant/respondent is in possession of demised premises as tenant. **If applicant/respondent has admitted his status as tenant on the basis of rent agreement dated 01.11.2018 then he should approach to the rent tribunal for grant of permission to deposit the rent on the basis of agreement dated 01.11.2018 (relied by the applicant/respondent) but he has failed to do so. Hence, this tribunal has no hesitation to hold him a defaulter in payment of rent.** Hence, default on part of the applicant/respondent is also proved which is also a statutory ground for eviction of tenant provided u/s 15 (b) of PRPA, 2009.”

*(Emphasis supplied)*

7. The payment of the rent and what constitutes default thereof, under the law, is governed and determined by a conjunctive application of not only Sections 7, 20 and 24 of the Act but also Section 15 thereof. Section 7 reads as under:

“**7. Payment of rent.**—(1) A tenant shall pay or tender the rent to the landlord in the mode and by the date mentioned in the tenancy agreement.

(2) If the date of payment is not mentioned in the tenancy agreement, a tenant shall pay or tender the rent not later than tenth day of the following month.

(3) If the mode of payment is not mentioned in the tenancy agreement, a tenant shall pay or tender the rent to

the landlord through money order or deposit in the bank account of the landlord.”

Whereas Section 20 of the Act reads as under:

**“20. Application for deposit of rent.— (1) Notwithstanding anything contained in this Act, if a landlord refuses to accept the rent, the tenant may file an application in the Rent Tribunal for deposit of the rent.**

(2) The Rent Tribunal shall, without prejudice to the rights of the landlord, allow the tenant to deposit the rent for the period for which the landlord has refused to receive the rent.

(3) The Rent Tribunal shall inform the landlord of the deposit of rent by the tenant and may pass an order permitting the landlord to collect the same.”

*(Emphasis supplied)*

Section 7 of the Act merely states that a tenant shall pay or tender rent in accordance with mode and date recorded in the tenancy agreement and if no date and/or manner has been mentioned in the tenancy agreement, the tenant shall follow the date and mode prescribed under Section 7 i.e., pay or tender rent not later than 10<sup>th</sup> day of the following month and the rent shall be paid through money order or deposit in the bank account. In the instant case, the tenancy agreement dated 03.09.2019 relied upon by the respondent depicts that the rent was to be paid between 1<sup>st</sup> to 5<sup>th</sup> of every month in advance. There is no mention of the bank account of the respondent in the said agreement. So even if the said agreement is taken as a genuine document to have been executed between the parties governing their relationship as landlord and tenant, the obligation of the petitioner to pay the rent was by 5<sup>th</sup> of every month and in case the respondent had refused to receive the same and issue receipt accordingly, the petitioner as tenant was obligated to tender the same through money order or deposit in the bank account of the respondent. In the instant case, since the agreement does not provide the details of the bank of the respondent, tender could have been made through the money order

only. Section 7 is to be then read with Section 15 of the Act to determine as to the time limit available, under the law, to a tenant (the petitioner) to tender the rent upon refusal of the landlord (the respondent), through money order or by filing an application in the Rent Tribunal, failing which the tenant becomes a defaulter. Section 15 envisages the grounds for eviction that also includes default as one of the grounds of eviction. The said provision reads as under:

**“15. Grounds for eviction.—**

- (a) .....
- (b) *the tenant has failed to pay or tender the rent, within a period of thirty days after the expiry of the period stipulated in section 7;”*

*(Emphasis supplied)*

The averments of the petitioner that he has not paid the rent for the month of September, 2020 and non-filing of the application with the Rent Tribunal for deposit of rent has been treated as an admission of default is not justified when conjunctive reading of Section 7 with Section 15(b) is made while keeping in view the agreement dated 03.09.2019 upon which the respondent himself has relied. A period of thirty days with effect from 5<sup>th</sup> of every month was available to the petitioner to tender the rent. Rent for September, 2020 was due by 05<sup>th</sup> of the said month and when read with Section 15(b), the petitioner had a period of further thirty days that extends to 05.10.2020. The petitioner first appeared before the Rent Tribunal, on 29.09.2020, well within the period available to the petitioner in terms of Section 15(b) of the Act and he could have filed the application in terms of said provision till 05.10.2020. However, after obtaining knowledge of pendency of the eviction petition, as also the grounds of eviction and the assertion of default in terms of agreement dated 03.09.2019, the petitioner was not obligated to send any money order or file a separate application for deposit of rent for the month of September, 2020 before 05.10.2020 as the Rent Tribunal, on 29.09.2020, adjourned the case for 09.10.2020. It is admitted feature of the case that on

09.10.2020, the petitioner filed leave to contest in which a categorical challenge was laid to the veracity of the tenancy agreement relied upon by the respondent, so also about the rate of rent with the willingness to deposit the amount of rent for the month of September, 2020 as per direction of the Rent Tribunal. The parties were before the Rent Tribunal in the month of September, 2020 in respect of which the statement of petitioner regarding non-payment of rent has been treated as admitted default and made basis of the eviction ignoring the fact that Section 24 of the Act immediately comes into play in such situation that reads as under:

**“24. Payment of rent and other dues pending proceedings.— (1) If an eviction application is filed, the Rent Tribunal, while granting leave to contest, shall direct the tenant to deposit the rent due from him within a specified time and continue to deposit the same in accordance with the tenancy agreement or as may be directed by the Rent Tribunal in the bank account of the landlord or in the Rent Tribunal till the final order.**

**(2) If there is a dispute as to the amount of rent due or rate of rent, the Rent Tribunal shall tentatively determine the dispute and pass the order for deposit of the rent in terms of sub-section (1).**

**(3) In case the tenant has not paid a utility bill, the Rent Tribunal shall direct the tenant to pay the utility bill.**

**(4) If a tenant fails to comply with a direction or order of the Rent Tribunal, the Rent Tribunal shall forthwith pass the final order.”**

*(Emphasis supplied)*

It is the mandate of law in terms of Section 24 of the Act that if eviction petition is filed, it is the Rent Tribunal which, while granting leave to contest, shall direct the tenant to deposit the rent due from him, within the specified time, more particularly when the parties are at variance as to the rate of the monthly rent. Certainly, there is no gainsaying that the petitioner had appeared before the Rent Tribunal on 29.09.2020 and the matter was adjourned to 09.10.2020 when the petitioner volunteered to pay the rent as per the direction of the Rent Tribunal, in terms of Section 24 of the Act, that shows *bona-fides* on

part of the petitioner. Had the tenant not appeared before the Rent Tribunal prior to lapse of time triggering default in terms of conjunctive reading of Section 7 read with Section 15(b) of the Act, the situation would have been different and he could have been said to have defaulted as this would have meant that he either did not appear before the Rent Tribunal, consciously, to avoid payment of rent or would have not been in knowledge of the filing of the eviction petition; therefore, he was obligated to tender rent in accordance with Section 7 read with Sections 15 and 20 of the Act. However, this is not the situation in the instant case as the petitioner had appeared before the Rent Tribunal prior to the lapse of time triggering default and the applicability of Section 20 subsided to give way to Section 24 of the Act.

8. The interplay of Section 24 with reference to Section 20 also came for adjudication before this Court in case reported as "Mst. Rehana Fayyaz v. 1. Rent Tribunal/Civil Judge 1<sup>st</sup> Class, Rahim Yar Khan, 2. Muhammad Iqbal" (**2015 CLJ 732**) and it was held that a plain reading of Section 20 shows that it was enacted to provide for meeting a specific situation that might arise in the event of a landlord's refusal to receive the rent from the tenant and should this happen, the tenant would be able to approach the Rent Tribunal seeking permission to deposit the rent due from him so as to circumvent an attempt on part of a clever landlord who might refuse to receive rent from the tenant and then institute an eviction petition on the ground that the tenant had committed willful default in the payment of the rent whereas Section 24 comes into play after the filing of an eviction petition. This Court is of the opinion that the scope, purview and object of Sections 20 and 24 of the Act are quite distinct, and they are intended to achieve two different objectives and one provision cannot be interpreted in a manner so as to defeat the object and purpose of the other. The legislature has deliberately and consciously incorporated the said two provisions with distinct object

with regard to default. Therefore, the default prior to filing of eviction petition and subsequent to the filing of eviction petition has to be viewed through the prisms of Section 20 and 24 respectively and both the Courts below have erred by not appreciating this distinction.

9. The matter can be examined from another angle. Had there been default by the petitioner prior to filing of the eviction petition in such an unambiguous manner as not to require recording of any evidence, the Rent Tribunal would have been justified in passing the order of eviction straightaway; however, when the Rent Tribunal itself came to the conclusion that there are two tenancy agreements and veracity thereof is yet to be determined that requires recording of evidence and the issue as to default prior to filing of eviction has been also framed, the default in post-filing of eviction petition becomes relevant only if it is made subsequent to the direction issued by the Rent Tribunal under Section 24 of the Act that amply caters for the right of the landlord to receive rent during the pendency of the eviction petition.

10. In view of what has been discussed above, the instant petition is **allowed** and the impugned orders are set aside. As a consequence, the Rent Tribunal may pass an appropriate order in terms of Section 24 of the Act directing the petitioner to pay rent, till the final adjudication of the eviction petition, at the rate and manner to be determined by the Rent Tribunal, in accordance with law.

(ANWAAR HUSSAIN)  
JUDGE

*Approved for reporting*

Judge