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JUDGMENT SHEET
LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.50434 of 2023

Muhammad Irfan Versus Addl. District Judge, etc.

J U D G M E N T

Date of Hearing:	17.10.2023
Petitioner by:	Mr. Muhammad Yaseen Chughtai, Advocate.
Respondents No.2 to 5 by:	Mr. Amir Waqas Chaudhary, Advocate.

Anwaar Hussain, J. By way of factual background, it has been noted that respondents No.2 to 5 (“**the respondents**”) filed an ejectment petition against the petitioner, on the basis of an oral tenancy. The petitioner denied the tenancy relationship, while filing leave to appear and contest the ejectment petition that was allowed. After framing of issues and recording of evidence, final order dated 13.06.2023 was passed by the Rent Tribunal. The petitioner was held liable to be evicted and also directed to pay the outstanding rent amount w.e.f., October 2016. When the appeal was preferred by the petitioner against order dated 13.06.2023, the Appellate Court, through impugned order dated 10.07.2023, admitted the appeal and directed the parties to maintain the *status quo*, however, the petitioner was also directed to deposit arrears of rent at the rate of Rs.13,800/- per month, with 10% annual increase from October, 2016 till June, 2023, and monthly rent during pendency of the appeal. Hence, the present constitutional petition has been filed.

2. Learned counsel for the petitioner submits that the relationship of landlord and tenant was denied by the petitioner before the Rent Tribunal and, hence, there is no justification in passing the impugned order, while admitting the appeal, and directing the petitioner to deposit arrears of rent as it defeats the purpose of preferring an appeal, inasmuch as it is settled principle of law that where relationship of landlord and tenant is denied, order of deposit of rent is an exercise in excess of the jurisdiction by the Rent Tribunal. Adds that the same principle applies to the appellate proceedings. Places reliance on the case reported as “Ashiq Hussain and another v. Jamia Masjid Hanfia Ghousia through President” (PLD 2007 Lahore 283) in support of his contentions.

3. Conversely, learned counsel for the respondents has placed reliance upon case reported as “Sarfraz v. Mukhtar Ahmed and others” (2016 CLC Note 48) and submits that in terms of sub-Section (6) of Section 28 of the Punjab Rented Premises Act, 2009 (“**the Act**”), all the powers, which the Rent Tribunal possess are available with the Appellate Court and the impugned order has been rightly passed in terms of Section 24 that contemplates that the Rent Tribunal can pass the interim order directing the tenant to deposit amount of monthly rent due in favour of a landlord irrespective of the fact that the tenancy relationship has been denied.

4. Arguments heard. Record perused.

5. The only legal question that requires determination by this Court is articulated as under:

Whether in an appeal, emanating from the eviction proceedings, wherein the respondent has denied the relationship of landlord and tenant, the Appellate Court while admitting the said appeal can pass an order directing the appellant to deposit the arrears of rent,

adjudicated by the Rent Tribunal, along with regular deposit of monthly rent, till the pendency of the appeal?

6. Section 24 of the Act deals with the deposit of rent, during the pendency of the ejectment petition, before the Rent Tribunal. The same 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.”

When an eviction petition is filed and the respondent therein appears and files leave to appear and contest the case, Section 24 comes into play and the Rent Tribunal is empowered to pass an order directing the tenant to deposit the monthly rent due.

7. The question whether the respondent of an eviction petition who denies the tenancy relationship, with the ejectment petitioner, can be directed by the Rent Tribunal to deposit the rent due till the pendency of the eviction proceedings came under discussion before this Court in number of cases. While examining scope of Section 24 of the Act, in case reported as “Umar Farooq v. Rent Controller/Civil Judge, Multan and another” (2018 CLC Note 42), this Court held that a Rent Tribunal could not pass an order for deposit of tentative rent if the relationship of landlord and tenant was yet to be established and the Rent Tribunal would have to frame an issue with respect to the

relationship of landlord and tenant and decide the same, before proceeding to pass an order for deposit of the rent.

8. Similar question also came under discussion before this Court in terms of provisions of the erstwhile West Pakistan Urban Rent Restriction Ordinance, 1959 (**‘the Ordinance’**) while interpreting sub-Section (6) of Section 13 thereof that is in *pari materia* with sub-Section (2) of Section 24 of the Act. This Court in case reported as “Babu Din v. Civil Judge/Rent Controller, Multan and 6 others” (2006 CLC 926) held that the Rent Controller could not pass tentative rent order where relationship of landlord and tenant has been denied and could only do so once the said relationship was determined. Similar view was taken in case reported as “Mrs. Yasmin Razi-ud-Din and another v. Mst. Tehmina” (2012 CLC 1223). Case of Aashiq Hussain and others supra relied upon by learned counsel for the petitioner is also referred in his regard.

9. In other Provinces, the law on the subject is *pari materia* to Section 24 of the Act as well as Section 13 of the Ordinance. Other Coordinate High Courts in the Provinces as well as Islamabad Capital Territory (**‘the ICT’**) have taken similar view. In case reported as “Haji Abdul Sattar v. Dr. Shahid Inayat and another” (2003 CLC 1870), the Peshawar High Court held that since the relationship of landlord and tenant has been denied and the same was not frivolous, the Rent Controller was bound to frame a preliminary issue about the tenancy relationship between the parties before proceeding further or passing an order for deposit of the rent. Similar view was also taken by the Peshawar High Court in another case reported as “Irfan Ullah Shah v. Wahabullah and another” (2003 YLR 1195). The Sindh High Court in case reported as “Muhammad Danish Rafiq v. Mst. Nafisa Siddiqui and another” (2009 MLD 144) and the Islamabad High Court, in case

reported as “Muhammad Taj v. Muhammad Younis Khilji and another” (2008 CLC 1666) have also taken the same view.

10. On the contrary, in case of Sarfraz supra, relied upon by learned counsel for the respondent, this Court held that a Rent Tribunal while granting leave to contest had powers to pass order for deposit of arrears of rent and the respondent in the case denying the tenancy relationship must produce some documents to show his title over the disputed property/rented premises, when the tenancy is denied, failing which mere denial of tenancy without any solid proof did not debar the Rent Tribunal from passing directions for deposit of rent. Another *contra* view on the subject has been also rendered by this Court while dealing with the scope of Section 24 of the Act, in case reported as “Dr. Shahida Hasnain v. Mian Umar Ikram-ul-Haq and another” (PLD 2016 Lahore 123). This Court held that the mandate of Section 24 is clear and after allowing the application for leave to contest, it falls upon the Rent Tribunal to pass an order for the deposit of rent due from the tenant and continue to deposit the same in accordance with the tenancy agreement even if the relationship has been denied by the respondent as sub-Section (2) of Section 24 of the Act lays down that if there is dispute as to the amount of rent due, then the Rent Tribunal shall tentatively determine the dispute and pass the order for the deposit of rent and since the term “rent due” has a wide sweep and would include a dispute of the nature where the tenancy relationship is denied, therefore, any other construction would not only nullify the intention of the legislature but also would give a lever in the hands of the tenants to avoid the payment of rent.

11. Further analysis of the jurisprudence developed on the subject reveals that the matter also came before the Supreme Court of Pakistan, more particularly, while hearing civil petition for leave to appeal against the decision rendered by this Court in case of Dr. Shahida

Hasnain supra. The pronouncement rendered by the Supreme Court is reported as “*Mian Umar Ikram ul Haque v. Dr. Shahida Hasnain and another*” (2016 SCMR 2186). The findings of this Court in case of *Dr. Shahida Husnain supra* were reversed. The Supreme Court held that since the denial of the relationship created a jurisdictional issue for the Rent Tribunal, the same would have to be decided before an order under Section 24 of the Act can be passed. The Supreme Court held as under:

“5. ...Through the impugned judgment the learned High Court has tried to resolve the question at hand by dwelling upon the larger scheme of the new rent laws by trying to decipher the latent intent of the legislature, which in our view was completely unnecessary because the answer to the question is quite patent. A plain reading of section 24 of the Act reproduced hereinabove makes it clear that a direction is not to be issued to the respondent of an eviction application but to a tenant. The use of the word 'tenant' as opposed to 'respondent' speaks to the legislative intent. This usage appears to be conscious and deliberate, because elsewhere in the Act where the parties to a lis are meant to be referred to without identifying their legal characters, the words 'applicant' and 'respondent' are used instead of 'landlord' and 'tenant' (see Sections 19, 21 and 22 etc.). Where there is a specific intention to do so and the attending context requires that the parties be referred to by their legal status, the legislature has used the words 'landlord' and 'tenant' (see sections 5, 7, 9, 10, 11, 12, 13, 14, 15, 20, 24 etc.). It is a settled canon of statutory interpretation that where a statute uses a particular word(s), the presumption is that such word(s) is illustrative of the legislative intent unless there are very cogent reasons to displace the same and in our view, there are no such reasons that justify interpreting section 24 of the Act in a way that defeats its express meaning. Therefore, it follows that where the relationship of landlord and tenant is denied, the Rent Tribunal would lack jurisdiction, on account of the doctrine of jurisdictional fact, to pass an order for payment of rent due under section 24 of the Act until and unless the Tribunal positively ascertains the relationship of tenancy and establishes that the

respondent to the eviction application is in fact a 'tenant' in terms of section 2(1) of the Act..... To hold otherwise would be to defeat the express intention of the statute, which is that an order for payment of rent due should only be passed against a tenant, and not merely a respondent of an eviction application. The relationship of landlord and tenant is an essential question which has a direct effect upon the assumption and exercise of the jurisdiction of the Rent Tribunal, which (question) must necessarily be positively ascertained before passing an order for payment of rent due under section 24 of the Act.”

(Emphasis supplied)

12. Scanning of catena of the judgments under the Act as also under the Ordinance and under the law in vogue in other Provinces and the ICT on the subject depicts the predominant view of the Courts in the terms that an order for deposit of interim or tentative rent should not be passed if the relationship of landlord and tenant is denied. In view of the *ratio decidendi* laid down by the Supreme Court in case of Mian Umar Ikram ul Haque supra, there appears no doubt as to the intent of the legislature that the Rent Tribunal cannot direct the respondent in an eviction petition to deposit the rent where relationship of landlord and tenant is denied and the Rent Tribunal grants the leave to appear and contest the eviction petition. Here it is imperative to note that in the context of the Ordinance, a similar view was also taken by the Supreme Court in case reported as “Ghulam Rasool v. Mian Khurshid Ahmed” (2000 SCMR 632).

13. The predominant view on the legal issue gains traction inasmuch as the grant of leave to contest in cases where the tenancy relationship is denied, is itself indicative of the fact that the denial is not frivolous or perfunctory and requires recording of evidence. In cases where the denial of tenancy relationship is frivolous and shallow, the Rent Tribunal, is empowered to refuse the leave and straightaway allow the eviction application and whilst so doing, the Rent Tribunal can

simultaneously pass an order under Section 24 of the Act finally determining the rent due from the tenant and direct that the same be deposited/paid as held in case of Mian Umar Ikram ul Haque supra.

14. Having the above legal position in sight, this Court has to answer the legal question formulated above and to opine whether the same rule is applicable to the appellate proceedings emanating from a *lis* under the Act. It can be argued that once the Rent Tribunal has held a respondent of the eviction petition to be a tenant, there is a judicial verdict against the said respondent and therefore, the Appellate Court can pass an order directing such respondent (appellant before it) to deposit the arrears of rent, as also the monthly rent, during the pendency of appeal, as directed through the impugned order, in the instant case. Section 28 of the Act deals with the appeals and in terms of its sub-Section (6), the powers of the Rent Tribunal are available to the Appellate Court. Sub-Section (6) of Section 28 reads as under:

“**28. Appeal.**— (1).....

(2)

(3)

(4)

(5)

(6) The District Judge or the Additional District Judge may exercise any or all the powers of Rent Tribunal under this Act.”

(Emphasis supplied)

The above quoted provision is somewhat similar to Section 15 of the Ordinance and sub-Section (5) thereof reads as under:

15. ***Appeal.*** —1).....

(2).....

(3)

(4)

“(5) The appellate authority admitting an appeal for hearing shall have the same powers to direct the tenant to deposit the rent as are vested in the Controller under this Ordinance and, if the tenant makes default in compliance with such an order, then, if he is

the appellant, his appeal shall be dismissed summarily and, if he is the respondent, his defence shall be struck off”.

(Emphasis supplied)

It is well evident that under sub-Section (5) of Section 15 of the Ordinance, the Appellate Court can only direct the tenant to deposit rent and not the “appellant”.

15. While examining the scope of Section 15 of the Ordinance, the Supreme Court in case reported as “M. Imamuddin v. Surriya Khanum”(PLD 1991 SC 317) while referring to its earlier decisions held that the power of the Appellate Court must be considered co-extensive with that of the Rent Controller. The analysis of various provisions of the Act in case of Mian Umar Ikram ul Haque supra by the Supreme Court is aptly applicable to sub-Section (6) of Section 28 of the Act as well. Said provision of the Act affirms and reiterates the settled principle of law that the Appellate Court is vested with all the powers that can be exercised by the lower forum as appeal is continuation of the *lis*. This principle also applies to such powers which the Trial Court cannot exercise under the law, in terms of passing an interim order like the one under Section 24 of the Act, directing the respondent to deposit the rent due. If the Rent Tribunal is not vested with the power under Section 24 to direct deposit of the interim/tentative rent in case where the tenancy relationship is denied, then in terms of sub-Section (6) of Section 28 of the Act, while hearing the appeal, the same principle applies to the Appellate Court where the said respondent after losing before the Rent Tribunal, prefers an appeal against the final order of eviction that includes the rent payable as determined by the Rent Tribunal.

16. Matter can be examined from another perspective. Once an eviction petition succeeds and the respondent therein prefers an appeal, the dispute in the appeal itself pertains as to whether the Rent Tribunal

has rightly held that the tenancy exists between the parties. Sub-Section (6) of Section 28 by reference makes Section 24 of the Act applicable to the appeals, which has been predominantly interpreted in various cases that the Rent Tribunal has no power to pass the order to deposit tentative rent if the tenancy relationship is denied. The power of the Appellate Court in such matter co-exists with that of the Rent Tribunal as noted hereinabove. Needless to mention that the Appellate Court, in terms of sub-Section (4) of Section 28, can always dismiss the appeal *in limine* if after examining the final order passed by the Rent Tribunal and the record, if any, appended with the appeal, it reaches the conclusion that the denial of tenancy relationship was contumacious and the Rent Tribunal has rendered a just decision, which does not require any further probe and the issuance of notice to the ejectment petitioner is not necessary.

17. Examining the matter from yet another angle, this Court is of the opinion that the Appellate Court while issuing notice and admitting the appeal should not pass an order directing the appellant (purported tenant) to deposit the arrears of rent determined by the Rent Tribunal, along with monthly rent till pendency of the appeal as the same would lead to a self-defeating inference drawn by the Appellate Court inasmuch as on the one hand, the Appellate Court considers the case of the appellant to *prima facie* have some force and on the other hand, simultaneously burdening the appellant with deposit of arrears of rent and/or monthly rent in cases where the tenancy relationship is denied. Such contradictory and self-defeating inference is certainly not envisaged under sub-Section (6) of Section 28 of the Act read with Section 24 thereof. At this juncture, it is pertinent to observe that the legislature in its wisdom has provided for decision of an appeal, preferred under the Act, within prescribed period of 60-days in terms of sub-Section (7) of Section 28 thereof. In cases where the tenancy relationship is denied, significance of such time bound provision of the

law gets accentuated, which is necessarily required to be strictly adhered by the Appellate Court, in order to ensure that rights of the landlord and/or the tenant do not hang in an uncertainty, for too long.

18. In view of the above discussion, this petition has force and therefore, is **allowed**. The impugned order is set aside to the extent that the petitioner is not obligated to deposit the amount of arrears of rent as also the monthly rent during the pendency of the appeal in terms of the impugned order. It is expected that the Appellate Court will decide the appeal, within a period of one month from receipt of certified copy of this order and if need so arise, conduct day to day proceedings.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood