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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.79017/2023
Sohail Niaz Khan **Versus** Bilal Rizwan etc.

J U D G M E N T

Date of Hearing:	06.05.2024
Petitioner by:	Mr. Shezada Mazhar, Advocate.
Respondent No.1 by:	Mr. Fayyaz Mahmood Khan, Advocate.

Anwaar Hussain, J. Challenge has been laid to the concurrent findings of the Courts below whereby the eviction petition filed by respondent No.1 (“**the respondent**”) has been allowed after dismissal of leave to appear and contest (“**PLA**”) filed by the petitioner in terms of Section 22 of the Punjab Rented Premises Act, 2009 (“**the Act**”).

2. By way of factual background, it has been noted that, on 22.06.2022, the respondent filed ejectment petition with the averments that the rented premises, detail whereof is given in para 2 of the ejectment petition, was rented out to the petitioner, under an oral agreement, and the petitioner has committed default since April, 2018. The petitioner was initially proceeded against *ex-parte* and final order dated 05.09.2022 was passed after recording of evidence of the respondent, which upon filing of application by the petitioner was set aside whereafter the petitioner filed the PLA with the averments that he was inducted, as tenant, by father of the respondent in the year 2000, under an oral tenancy, and he continued to pay the amount of monthly rent and after demise of father of the respondent, the petitioner has been paying rent to the mother of the respondent against receipts, however, one year prior to the filing of the ejectment petition, the respondent started claiming payment of rent directly to

him, with *mala fide* intention, and the ejectment petition was accordingly filed. While placing reliance on the *dicta* laid down by the Supreme Court of Pakistan in case reported as “Shajar Islam v. Muhammad Siddique and 2 others” (PLD 2007 SC 45), the Rent Tribunal, through impugned order dated 14.04.2023, dismissed the PLA of the petitioner, holding that the tenancy relationship exists between the parties. The appeal preferred by the petitioner, against order dated 14.04.2023, has also been dismissed by the Appellate Court below, through impugned judgment dated 30.10.2023.

3. Learned counsel for the petitioner submits that the *dicta* laid down by the Supreme Court in case of *Shajar Islam supra* has been wrongly applied, rather misconstrued, by the Courts below in the instant case as the petitioner has categorically denied the tenancy relationship with the petitioner and claimed that he was inducted as tenant by the late father of the respondent in the year 2000 and ownership of the respondent in respect of the rented premises *ipso facto* does not make the respondent as the landlord. Adds that the respondent alleges default in payment of rent since April, 2018, however, the ejectment petition was filed in the year 2022 without explaining the delay thereof, which fact exhibits *mala fide* on part of the respondent and the same has escaped notice of the *fora* below. Further adds that the Rent Tribunal has erred in recording that the petitioner has acknowledged relationship of landlord and tenant with the respondent.

4. Conversely, learned counsel for the respondent submits that the Rent Tribunal has not granted arrears of the rent with effect from April, 2018 and even if there is any ambiguity in the impugned decisions, the respondent does not lay his claim as far as arrears of rent are concerned. Prays for dismissal of the present constitutional petition.

5. Arguments heard. Record perused.

6. It has been noted that, on 30.11.2023, when this petition was admitted by this Court and notices were issued, to the respondent, the petitioner was directed to deposit the monthly rent with the Deputy Registrar (Judicial) of this Court. Admittedly, the petitioner has committed default and the rent for the month of April, 2024 was not deposited by 5th of the said month as directed by this Court. The application was filed by the petitioner for extension of time to deposit the rent for the said month, which was dismissed, *vide* order dated 22.04.2024. When confronted with, learned counsel for the petitioner has relied upon the law laid down in case reported as “Mian Umar Ikram-ul-Haque v. Dr. Shahida Hasnain and another” (2016 SCMR 2186) to contend that since the relationship of landlord and tenant was denied, neither the Tribunal nor this Court could have directed the petitioner to deposit the rent, hence, the petitioner cannot be non-suited on this ground. The argument is misconceived for two-fold reason. Firstly, order dated 30.11.2023, passed in present proceedings, directing the petitioner to deposit the rent was neither objected to nor assailed by the petitioner before the higher forum rather, the petitioner benefitted from the said order, partially, to the extent of retention and protection of possession of the rented premises. In addition, the petitioner side itself filed application for extension of time for deposit of rent on the ground that due to Eid Holidays, rent could not be deposited, which was dismissed *vide* order dated 22.04.2024 for the reason that Eid-ul-Fitr was on 10.04.2024 and not on or before 05.04.2024. Hence, it behoves with the petitioner to have deposited the rent in compliance of the said order from which the petitioner cannot take such a, ironically speaking, remarkable *volte face*. Secondly, the case of Mian Umar Ikram-ul-Haque supra is of no help to the petitioner inasmuch as, unlike the case in hand, the petitioner

therein was claiming possession of the property disputed therein on the basis of an agreement to sell entered into before the execution of the tenancy agreement relied upon by the ejectment petitioner of the said case. On the contrary, the petitioner in the instant case has categorically admitted and acknowledged himself having been inducted and got possession of the rented premises as tenant *albeit* by father of the respondent through an oral tenancy. In para 3 of his appeal preferred against eviction order, the petitioner has stated as under:

“3. That the succinctly stated facts of the matter are that the Appellant entered in to an oral rent agreement with the Father of Respondent in the Year 2000, regarding Basement of Plaza measuring 9 Marlas situated Block No.6, Sector A-II, Township, Lahore (“Rented Premises”). Since 23 years the Appellant has been regularly paying the rent to the Father of Respondent and after the demise of Father of Respondent, Appellant has been paying the rent to the Mother of the Respondent the (*sic*) without any default. The rent agreement is also extended mutually time to time. However, last year the Respondent started pressurizing the Appellant for the payment of rent to him directly instead of his mother. The Appellant has been paying the rent to the Mother of Respondent on regular basis and there is no question of default of the payment of rent.....”

(Emphasis supplied)

There is no explanation as to what the petitioner did after demand of the respondent that the rent should be paid directly to him instead of his mother (of the respondent). No receipts have been referred by the petitioner to show that he has been continuously paying the rent to the mother of the respondent after the demise of the father of the petitioner.

7. Hypothetically, even if this is presumed to be true that the petitioner was inducted as tenant by father of the respondent, the rented premises has devolved upon the respondent being legal heir,

which status of the respondent is neither denied nor disputed by the petitioner. Moreover, the petitioner, as a measure of showing his *bona fide*, has neither approached the Rent Tribunal for deposit of rent to be paid to the lawful landlord/landowner nor has been any interpleader suit filed rather the petitioner has failed to deposit the rent even on the direction of this Court. This indicates the dereliction, with audacity, on part of the petitioner that cannot be countenanced. The demand of the rent by the respondent/landowner not neutralized by conflicting demand by any other legal heir including the mother of the respondent/wife of the deceased father of the respondent (who was the landlord as per contention of the petitioner) obligated the petitioner to make payment of rent to the respondent, keeping in view the settled principle of law that once a tenant is always a tenant. Admittedly, the petitioner is not holding the rented premises for any fixed period. It is also settled principle of law that an oral tenancy is a tenancy on month to month basis and the petitioner was obligated to vacate the rented premises, upon intimation of the landlord. No other person on behalf of father of the respondent has come forward to lay any claim, although the sale deeds, pertaining to the rented premises, in favour of the respondent depicting him exclusive owner thereof are also not disputed. Therefore, denial of the tenancy relationship by the petitioner with the respondent is contumacious and therefore, the PLA was rightly dismissed and ejectment order has been correctly passed by the *fora* below.

8. As far as the averment of learned counsel for the petitioner that the Rent Tribunal has erred in allowing the ejectment petition as prayed for and allowed the recovery of rent from April, 2018 till handing over of the possession of the rented premises is concerned, suffice to observe that the said averment is belied from the record. In

the impugned order dated 14.04.2023, the Rent Tribunal has held as under:

“28.The petitioner has claimed default in payment of monthly rent since April-2018 but there is no reasonable explanation available on record as to why the petitioner failed to agitate his grievance for such a long time. **Therefore, the claim of the petitioner for default in amount of outstanding rent since April-2018 is rejected....**”

(Emphasis supplied)

The above-quoted finding of the Rent Tribunal is self-explanatory. Even otherwise, learned counsel for the respondent has already stated, before this Court, that in order to avoid litigation and/or avert protraction thereof, the respondent has not assailed or laid challenge to the finding to the extent of recovery of arrears of monthly rent and would be satisfied if the petitioner is evicted and possession of the rented premises is restored.

9. There are concurrent findings of the Courts below against the petitioner, which are immune from interference by this Court in its constitutional jurisdiction unless there is some gross illegality, misappreciation of record or procedural impropriety therein, which could not be pointed out by learned counsel for the petitioner. In the circumstances, no interference is called for. For what has been discussed above, this writ petition has no merit, hence, **dismissed**. No order as to costs.

(ANWAAR HUSSAIN)
Judge

Approved for reporting.

Judge

Akram