

**Judgment Sheet**  
**IN THE LAHORE HIGH COURT,**  
**LAHORE JUDICIAL DEPARTMENT**

**W.P. No.75857 of 2022**

**Younas Rasheed**

*Versus*

**Muhammad Kashif Iqbal & another**

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

Date of Hearing	<b>27.01.2023</b>
For the petitioner	Mr. Imran Muhammad Sarwar, Advocate
For Respondent No.1	Mr. Muhammad Asif Mughal, Advocate.

**Raheel Kamran J:-** Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”) the petitioner has challenged the validity of order dated 12.11.2022 passed by the Rent Tribunal, Faisalabad whereby his application for setting aside *ex parte* proceedings and leave to contest the eviction petition was dismissed.

2. The facts giving rise to this constitutional petition are that respondent No.1 filed an eviction petition wherein notice was issued against the petitioner, however, on 14.09.2022 due to his non-appearance, *ex parte* proceedings were initiated against him. On 06.10.2022, the petitioner moved an application for setting aside *ex parte* proceedings and leave to contest the petition, which was dismissed vide the order impugned herein.

3. Learned counsel for the petitioner contends that the petitioner was never served in the eviction proceedings filed by respondent No.1 in accordance with the provisions of sub-sections (1) and (2) of Section 21 of the Punjab Rented Premises Act, 2009 (“the Act”) and the Rent Tribunal,

Faisalabad erroneously proceeded against him *ex parte* on 14.09.2022 without satisfying the mandatory requirement of law qua service of notice. While referring to the orders dated 07.07.2022 and 02.09.2022, he elaborates that no order to serve notice through courier service was passed even though that was a mandatory requirement of law under sub-section (1) and there was nothing whatsoever available on record to establish that copies of the application and the documents annexed therewith were served on the petitioner along with the notice in the prescribed form, as mandated under sub-section (2) of Section 21 of the Act. He maintains that while passing the impugned order the petitioner has been denied fair trial, which is in violation of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. Further contends that the application for setting aside *ex parte* proceedings has been decided in a slipshod manner which hardly shows application of judicious mind, therefore, the impugned order is not sustainable in law.

4. Conversely, learned counsel for respondent No.1 has supported the impugned order for the reasons stated therein.

5. Heard. Record perused.

6. For proper appreciation of respective contentions of learned counsel for the parties, it would be imperative to refer to the provisions of Section 21 of the Act, which read as under:-

***"21. Appearance of parties and consequences of non-appearance.*** (1) If an application under this Act other than application for deposit of rent is filed, the Rent Tribunal shall issue notice to the respondent in the form prescribed in the Schedule, for appearance of the respondent on a date not later than ten days through process server, registered post acknowledgement due and courier service.

(2) A notice under sub-section (1) shall be accompanied by copies of the application and the documents annexed with the application.

(3) If the respondent fails to appear and the Rent Tribunal is satisfied that: -

(a) *the notice has not been served on the respondent or the respondent is willfully avoiding the service of the notice, the Rent Tribunal may direct service of the notice by:*

- (i) *affixing a copy of the notice at some conspicuous part of the rented premises or residence of the respondent; or*
- (ii) *Publication in the press, electronic media or any other mode; and*
- (b) *the notice has been served, the Rent Tribunal may proceed ex-parte and pass the final order.*

(4) *If an ex-parte order is passed against a respondent, the respondent may, within ten days from the date of knowledge, apply to the Rent Tribunal for setting aside the ex-parte order alongwith an application for leave to contest.*

(5) *If the respondent shows a sufficient cause for his non-appearance, the Rent Tribunal may set aside the ex-parte order on such terms as it may fit.*

(6) *The parties may appear in person or through a recognized agent in the Rent Tribunal.*

(7) *If on a date fixed, the applicant fails to appear, the Rent Tribunal may dismiss the application.*

(8) *If an application has been dismissed in default of the appearance of an applicant and an application for restoration of the same is made within thirty days of the dismissal order, the Rent Tribunal may restore the application on such terms as it may deems appropriate.*

7. From perusal of the provisions of Section 21 of the Act, it is abundantly clear that the same manifestly regulate the procedure qua appearance of parties and consequences of non-appearance before the Rent Tribunal in applications under the Act, wherein leave to contest is required to be obtained, other than the application for deposit of rent. The notice for appearance in such proceedings is required to be issued in the form prescribed in the Schedule to the Act with the limitation that the date of appearance of the respondent to be not later than 10 days. In terms of sub-section (1) of Section 21 of the Act, service of the notice is required to be effected not only through the process server but also through acknowledgement due and courier service and all such modes of service are to be invoked simultaneously. In terms of sub-section (2) of section 21 ibid, alongwith the notice, copy of the application and

documents annexed therewith are required to be delivered. Clause (a) of sub-section (3) of Section 21 ibid stipulates alternative or substituted modes of service of notice through affixation or publication in the press or through electronic media to be invoked in cases of failure of the respondent to appear where the Rent Tribunal is satisfied that either the notice could not be served on the respondent or he was willfully avoiding service thereof. Clause (b) of sub-section (3) of Section of the Act empowers the Rent Tribunal to proceed *ex parte* and pass the final order where the respondent fails to appear and the Rent Tribunal is satisfied that the notice has been served. Sub-section (4) of Section 21 of the Act provides a remedy to the respondent to move an application before the Rent Tribunal for setting aside an *ex parte* order within 10 days from the date of his knowledge, however, such application has to be filed alongwith an application for leave to contest and sub-section (5) of Section 21 of the Act empowers the Rent Tribunal to set aside the *ex parte* order on such terms as it may fit if the respondent shows a sufficient cause for his non-appearance.

8. As manifest from its preamble, the Act has been promulgated to regulate the relationship of landlord and tenant and to provide a mechanism for settlement of their disputes in an expeditious and cost effective manner. Section 16(4) of the Act confers exclusive jurisdiction over a case under the Act and Section 22 of the Act restricts the right of a respondent to defend himself in an eviction application unless he obtains leave to contest from the Rent Tribunal within the period of 10 days of his date of knowledge under Section 21(4) or, as the case may be, within 10 days of his first appearance in the Rent Tribunal. However, the fundamental right embodied in Article 10A of the Constitution guarantees that for the determination of his civil rights and obligations, a person is entitled to a fair trial and due process. It has been held by the Hon'ble Supreme

Court in the case of Naveed Asghar and 2 others v. the State (**PLD 2021 SC 600**) that the principles of fair trial guaranteed under Article 10A are to be read as integral part of every sub-constitutional legislative instrument that dealt with determination of civil rights and obligations of any person. Therefore, for the determination of civil rights and obligations *inter se* landlord and tenant under the Act, the provisions curtailing the right to defence must be given narrow and strict construction and the benefit of doubt, if any, should be extended to enable fair opportunity to defend.

9. Undisputedly, no order for service of the notice to the petitioner through courier service was passed even though that was a requirement of law specified in sub-section (1). The question as to whether or not the aforementioned requirement of law is of mandatory in nature, requires detailed analysis of sub-section (1) of Section 21 of the Act. The requirement to serve notice by invoking three modes of service simultaneously under Section 21(1) of the Act has been prescribed to avoid unnecessary delays and service of the notice can be effected in a timely manner. However, no service duly effected through any of the specified modes shall be rendered invalid on account of failure to invoke all modes of service simultaneously inasmuch as no such consequences have been specified in the said provision. This is for the reason that no consequences of failure have been specified in the said provision. Be that as it may, service upon the respondent in the prescribed form and manner through any of the three modes is a *sine qua non* for proceeding *ex parte* against him or deny him the leave to contest which must be established beyond doubt.

10. The requirements to issue notice in the form prescribed in the Schedule to the Act and deliver copy of the application along with annexures attached therewith have been prescribed to duly provide all necessary information and documents to the respondent in a case so that he may be able to prepare and file

his leave to contest within the period of limitation prescribed as well as to make him aware of the consequences which may ensue on his failure to appear and obtain leave to contest. That makes the requirement of service of notice in the form prescribed along with copy of the application and annexures thereto to be mandatory as without satisfying that right of defence of the respondent in a case shall be in jeopardy.

11. Learned counsel for respondent No.1 failed to refer to any document to establish that copies of the application and the documents annexed therewith were served on the petitioner along with the notice in the prescribed form, as mandated under sub-section (2) of Section 21 of the Act. Although the order dated 14.09.2022 indicates that the notice was issued to the petitioner through registered post acknowledgement due yet there is no mention in the order that the acknowledgement due was received back with endorsement of the petitioner or his refusal recorded by the postal authorities, which was necessary to raise presumption of service under Article 129 of Qanun-e-Shahadat, 1984 read with section 27 of the General Clauses Act, 1897. Reliance in this regard is placed on the case of **Mst. Bibi Fatima v. Muhammad Sarwar (2022 SCMR 870)**. The petitioner, who denied service in his application duly supported by affidavit, cannot be presumed to have been served and the Rent Tribunal, without satisfying the mandatory requirement of law, observed that the notice had been served upon the petitioner and proceeded against him *ex-parte* for his failure to appear on 14.09.2022, therefore, the impugned order is unsustainable in law and liable to be reversed.

12. For the foregoing reasons, this writ petition is allowed and the impugned order dated 12.11.2022 passed by the learned Rent Tribunal, Faisalabad is hereby set aside. Resultantly, application of the petitioner for setting aside ex-

parte proceedings is allowed and his application for the grant of leave to contest shall be deemed to be pending before the learned Tribunal for decision thereon expeditiously in accordance with law. There shall be no order as to costs.

**(RAHEEL KAMRAN)  
JUDGE**

**APPROVED FOR REPORTING**

**JUDGE**

\**Saeed Akhtar*\*