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JUDGMENT SHEET

LAHORE HIGH COURT

RAWALPINDI BENCH RAWALPINDI

JUDICIAL DEPARTMENT

Writ Petition No.2292 of 2024

Muhammad Saleem Minhas Vs. Ashfaq Hussain Minhas, etc.

J U D G M E N T

Date of Hearing:	05.11.2024
Petitioner in present and connected W.P. No.2291 of 2024 by:	Raja Imran Aziz, Ghulam Abbas Tarar and Muhammad Bilal, Advocates.
Respondent No.1 by:	Mr. Sami Ullah Khan, Advocate (on behalf of petitioners in connected W.P. Nos.2445 and 2446 of 2024.
Respondent No.2 by:	Mr. Anwar-ul-Haq Chaudhry, Advocate.

Anwaar Hussain, J. Though this single judgment, the present as well as connected constitutional petitions, bearing W.P. No.2291 of 2024, W.P. No.2445 of 2024 and W.P. No.2446 of 2024, are being simultaneously decided for the reasons that the dispute relates to the rented premises, which is a joint property that belongs to present respondent No.1, namely, Ashfaq Hussain Minhas, who is petitioner in connected petition No.2445 of 2024 (“hereinafter referred to as **“the landlord”**”) and Mst. Azra Begum (“hereinafter referred to as **“the landlady”**”) who is petitioner in connected petition No.2446 of 2024 and respondent No.1 in connected petition No.2291 of 2024 and is in occupation of the present petitioner, namely, Muhammad Saleem Minhas (hereinafter referred to as **“the tenant”**”).

2. By way of factual background, it is noted that the tenant as well as Ms. Saiqa Afzaal/respondent No.2 in present petition, were inducted as the tenants through separate tenancy agreements (by the landlord and landlady) and collectively the monthly rent was fixed as Rs.130,000/- (Rs. 65,000/- per month through each tenancy agreement). The rented premises is three storey building along with three shops and Haveli with seven shops therein situated at Naya G.T Road Sarai Alamgir. These facts are admitted. It is also admitted feature of the case that the ejectment petitions were filed by the landlord and the landlady on the ground of default, and first round of litigation ended up before this Court in constitutional petitions bearing W.P. No.5873 of 2022 and W.P. No.5866 of 2022, and during the course of said proceedings, the tenant undertook that he is solely responsible for the tenancy with the landlord and the landlady for the purpose of rent, any default thereof and the litigation pertaining thereto. The said constitutional petitions were disposed of by this Court, with the consent of the parties, *vide* order dated 23.06.2022. Leave to appear and contest was granted to the tenant and the matter was remanded to the Special Judge (Rent), for decision afresh. It is imperative to observe that during the proceedings before this Court in earlier round of litigation, the tenant undertook to clear the amount of rent due as on the said date i.e., 23.06.2022. On remand, issues were framed and evidence was led and recorded whereafter the Special Judge (Rent), through separate order(s) of even date i.e., 01.03.2024 accepted the ejectment petitions and passed order of eviction, however, the claim for arrears of rent was dismissed and when separate appeals were preferred by both sides, the order of the Special Judge (Rent) was maintained and the appeals were dismissed, *vide* impugned judgments of even date i.e., 15.07.2024.

3. The tenant has assailed the impugned order(s) on the ground that once the Special Judge (Rent) reached the conclusion that no arrears were payable as the tenant had cleared the entire amount of arrears after the order of this Court dated 23.06.2022 was passed, in the earlier round of litigation bearing W.P. Nos.5873 of 2022 and 5866 of 2022, no ground for acceptance of the eviction petition stood out.

4. Conversely, learned counsel for the landlord/landlady submits that the tenant was defaulter from day one as he never paid the agreed amount (Rs.130,000/-), in accordance with the terms of the tenancy agreements. Adds that the parties agreed that the rent will be enhanced @ 10% every year after January, 2021, which enhanced amount was also not paid and therefore, the connected petitions merit acceptance and the landlord and landlady are entitled to the arrears of rent on account of the increase. Further contends that even if it is found that the landlord and landlady are not entitled to the arrears, they will be satisfied if the vacant possession of the rented premises is handed over to them as the tenancy agreement(s) have expired, during the pendency of the ejectment proceedings.

5. In rebuttal, learned counsel for the tenant submits that expiry of tenancy was not taken as a ground of eviction and since there is no default in payment of rent, therefore, the impugned orders passed by the *fora* below are not sustainable and the expiry cannot be made basis of the eviction, by this Court. Adds that even if the petitioner paid lessor amount of rent, on few occasions, the petitioner also paid amount in excess of the monthly rent i.e., Rs.130,000/- as evident from the bank statement of the landlord, which was not objected to by the landlord.

6. Arguments heard. Record perused.

7. The legal question which requires determination by this Court is articulated as under:

“Whether an order of eviction can be passed on ground of expiry of the tenancy period/lease when the said ground is not taken and the eviction petitions are only filed on the basis of default?”

8. Before addressing the above referred legal question, it will be appropriate to analyse the factual matrix of the case. It is admitted feature of the case that the tenant was inducted on the basis of written tenancy agreement(s) dated 29.07.2019 and 31.07.2019 executed by the landlord and the landlady respectively, in favour of the tenant, for a period of five years. The eviction petitions were filed on account of personal need and default and when the matter ended up before this Court in the earlier round of litigation, following order dated 23.06.2022 was passed with consent of the parties:

“5. Conversely, it is the case of the respondent that the petitioner has committed willful default in payment of rent in terms of the tenancy agreement in field and at present, an amount of Rs.16,64,800/- including rent for the month of June, 2022 is outstanding against him. However, after arguments at some length, the parties have reached the consensus that the respondents/landlords have no objection if the present petition is allowed and the applications for leave to appear and contest the ejectment petitions filed by the petitioner are granted provided the petitioner deposits an amount of Rs.16,64,800/- in the above referred joint account of the respondents within stipulated timeframe. The parties have reached the consensus in the following terms:

- (i) The petitioner will deposit an amount of Rs.16,64,000/- in the joint bank account of the respondents/landlords within a period of one month from today which will be subject

to adjustment at the time of final decision;
and

- (ii) The petitioner will continue to pay regular monthly rent alongwith statutory increase in terms of the tenancy agreement.

6. In view of the above consensus, this writ petition is **allowed** and the impugned order and judgment passed by learned courts below are set aside. Resultantly, the ejectment petitions filed by the respondents/landlords will be deemed to be pending in which applications of the petitioner for leave to appear and contest are allowed subject to fulfillment of above referred condition of deposit of Rs.16,64,800/- in the joint bank account of the respondents/landlords within stipulated time. It is clarified that in case the petitioner fails to deposit the above said amount within the prescribed time, this order shall cease to have any legal effect and the present petition alongwith the connected writ petition will be deemed to be dismissed.

7. Since this is a rent matter, the learned Special Judge (Rent) will conclude the proceedings expeditiously, preferably within three months commencing from the date of receipt of certified copy of this order, strictly in accordance with law.”

The above quoted order dated 23.06.2022 is unequivocal. It is misconceived on part of the tenant that once the matter was remanded by this Court to the Special Judge (Rent) and the amount of arrears of rent was deposited, question of default came to an end. The application for leave to contest filed by the tenant was allowed and the matter was remanded for decision afresh including the issue of default after recording of evidence by passing a final order. Similarly, it is utterly misconceived and misconstrued on the part of the tenant to contend that since no arrears of rent were awarded, therefore, no case of default was made as it is acknowledged by learned counsel for the tenant that the monthly rent of Rs.130,000/-

was never paid in accordance with the provisions of the tenancy agreements and often short payments were made. Delay in payment has also not been denied. However, it has been averred that by accepting the short and/or delayed payment, the landlord and/or the landlady ratified the default and/or the delay in payment of the rent. The said argument is also misconceived. The *fora* below have only declined the arrears of rent prior to the institution of the petition because the entire default was cleared when the proceedings ended up before this Court. The record as also the acknowledgment on part of the tenant that there were short and delayed payments in monthly rent, which makes the tenant defaulter and liable to be evicted. In this regard, operative part of the judgments of even date rendered by the Appellate Court below is worth reproducing:

"11- ان آمدہ حالات کی روشنی میں، یہ قرار دیا جاتا ہے کہ اپیل کنندہ معاہدہ کرایہ داری Exh.A2 کے تحت مقرر شدہ ماہانہ کرایہ مبلغ -/65000 روپے کی طے شدہ عرصہ یعنی ہر ماہ کی یکم سے 10 تاریخ کے اندر ادائیگی کرنے کا پابند تھا۔ جس میں وہ ناکام رہا۔ اس طرح وہ نادہندہ کرایہ ہو چکا تھا۔ بدیں وجہ، مستوجب بے دخلی تھا۔"

9. Adverting to the claim of the landlord/landlady *qua* arrears of the rent, it has been noted that though there is nothing on record to substantiate that the tenant was paying the amount due, after incorporating/calculating necessary agreed annual increase, however, learned counsel for the landlord/landlady, on instructions, has submitted that in case the order of eviction is implemented, they would not press their claim, in respect of arrears of the rent, through the connected petitions bearing No. 2445 of 2024 and 2446 of 2024. Even otherwise, the landlord/landlady have not given any detail about the actual amount of default (arrears) *qua* the annual increase, which fact persuaded the Appellate Court below to pass the following order:

"13۔ تاہم مقدمہ کی سماعت کے دوران، مسنول علیہ علیہ نمبر 1 واجب الادا کرایہ کی تفصیل بیان کرنے میں ناکام رہا اور اپنی شہادت بطور Pw. 1 کے دوران جب اس سے واجب الادا کرایہ کی تفصیل پوچھی گئی تو اس نے کہا کہ وہ Count کیے بغیر اس کی تفصیل نہ بتا سکتا ہے کہ کتنا کرایہ اس نے وصول کیا ہوا ہے اور کتنا واجب الادا ہے۔ حالانکہ اسے اپنی شہادت میں تمام واجب الادا اور ادا شدہ کرایہ کی تفصیل بیان کرنی چاہیے تھی۔ جو کہ پیش نہ کی گئی۔"

The findings of the Appellate Court below are apt.

10. The above discussion takes this Court to the nub of the matter as to whether an ejectment order, on the basis of expiry of tenancy period/lease can be passed, when the same is not the ground taken in the eviction petition. In this regard, it is imperative to note that the Punjab Rented Premises Act, 2009 ("the Act") aims to consolidate the law relating to the relationship of landlord and tenant, *inter alia*, as to how the tenant is to be inducted in the rented premises and the eviction thereof can be obtained. The object of the Act is to regulate the tenancy relationship between the landlord and the tenants and simultaneously protect the tenants from unjustified and unlawful eviction as well as the rights of the landlord by ensuring eviction in case of default of the tenant from his contractual and statutory obligations. The Act envisaged grounds of eviction in terms of Section 15 thereof. Expiry of the term of tenancy is a valid ground for eviction in terms of clause (a) of Section 15 of the Act, however, admittedly, the same was not taken as a ground for eviction when the ejectment petitions were filed for the obvious reason that at the relevant point of time, the tenancy period was not expired. Admittedly, the tenancy period expired during the pendency of the eviction petitions. This Court is of the opinion that in principle, ejectment order can only be passed on the ground(s) taken in the eviction petition. However, in cases where the eviction is sought on grounds other than expiry and said other ground(s) are not proved but the period of tenancy expires during the pendency of eviction

proceedings, before the Special Judge (Rent), or in appeal, or before this Court, question arises as to whether in such circumstances, the ejectment petitioners be asked to withdraw the ejectment petitions and file amended or fresh petition by adding/taking expiry of the tenancy as additional or fresh ground of eviction. In this regard, it is settled principle of law that once a tenant is always a tenant, nothing but a tenant. Directing the eviction petitioners to file a fresh eviction petition (with expiry of tenancy as a ground of eviction) would amount to lingering on the matter in a manner that the tenant is enabled to continue with the occupation of the rented premises, without consent of the landlord, for no beneficial outcome except that after fulfilling *codal* formalities of issuing notice on such fresh eviction petition, the same merits acceptance. Additionally, such fresh petitions would add to already piled up cases with the Courts for no just reason. Such an interpretation does not dovetail well with the object and purpose of the Act, which aims at ensuring that the disputes, *inter se*, the landlord and tenant are resolved in a cost effective and expeditious manner as is evident from the preamble of the Act:

“Whereas it is expedient to regulate the relationship of landlord and tenant, to provide a *mechanism for settlement of their disputes in an expeditious and cost effective manner and for connected matters*”

(*Emphasis supplied*)

Thus, when Section 15 of the Act, provides for eviction in cases where the tenancy has expired, it is nothing less than *bizarre* to contend that such ground has not been taken by the landlord and he must file a fresh eviction petition. It would have been a different situation, if the tenant had contended extension of tenancy on contractual basis which is not the case of the tenant. In case of admitted position as to the expiry of the tenancy, this Court as well

as the Courts below can take judicial notice of the same and pass an eviction order. Hence, in the absence of a specific provision in the Act precluding the Courts from relying upon subsequent causes of action, this Court is inclined to hold that the order of eviction of the tenant can be validly passed on expiry of tenancy (expired during the pendency of the ejectment proceedings) even if said ground is not taken in the eviction petition. In this regard, I am fortified by the law laid down in case reported as “Muhammad Naseem Khan and 5 others v. United Bank Limited, A Banking Company, Registered under the Companies Act, having its, registered office at I.I. Chundgrigar Road and Branch at Marriot Road, Karachi” (PLD 2002 SC 753). In the said case, the order of High Court of Sindh was set aside, where the expiry of the tenancy was not considered as a valid ground since the same was not raised in the eviction petition. In case of Muhammad Naseem Khan supra, the eviction petition was filed on 11.04.1994 on ground of default and personal need wherein the tenant took the plea that the same was premature as tenancy was valid for a period of five years i.e., 31.12.1995 and the Rent Controller in the said case allowed the eviction petition on ground of personal need whereas issue of default was decided against the ejectment petitioner and both sides preferred appeals, which were decided by holding that the landlord therein had no ground to file eviction petition for personal *bonafide* need when the tenancy was subsisting in the year 1994 whereas the finding on ground of default was affirmed. Operative part is reproduced hereunder:

“10. Learned High Court reversed the findings of the Rent Controller on extraneous considerations, which were based on proper appreciation of the evidence and law. The contention of learned A.O.R. for the respondent that expiry of the lease deed, in any case, does not come in the way of the tenant, is not tenable for the reason that the extension of lease is

always contingent upon the consent of the landlord and such period cannot be extended unilaterally. Mst. Zehra Begun (supra) does not contemplate a perpetual lease in favour of tenant without the consent of the landlord. They cannot be denied their right of occupation of the demised premises.”

(Emphasis supplied)

11. In view of the above discussion, the present as well as connected petitions have no merits and hence, the same are dismissed. No order as to costs.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge