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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P. No.10130/2024

Atif Munawar vs. Additional District Judge, etc.

JUDGMENT

Date of Hearing:	24.09.2024
Petitioner by:	Syed Riaz ul Hassan Gilani, Advocate.
Respondent No.3 by:	Malik Sajjad Haider Maitla and Malik M. Akram Bhatti, Advocates.

Anwaar Hussain, J. The petitioner filed an ejectment petition under the Punjab Rented Premises Act, 2009 (“**the Act**”) against respondent No.3 (“**the respondent**”) on the basis of a written tenancy agreement dated 25.01.2021 (“**the tenancy agreement**”) on grounds of default in payment of monthly rent for the months of November, 2022, December, 2022, March, 2023 and September, 2023; sub-letting; and damage to the rented premises. Leave to appear and contest the ejectment petition (“**PLA**”) was filed by the respondent. Plea was taken that the respondent is not defaulter. Through order dated 01.02.2024, learned Special Judge (Rent), Multan (“**the Rent Tribunal**”) declined the PLA on the ground that the rent has not been paid in accordance with the terms and conditions of the tenancy agreement, which mandates that the rent shall only be paid in the bank account of the petitioner. Against order dated 01.02.2024 passed by the Rent Tribunal, an appeal was preferred by the respondent under Section 28 of the Act, which was accepted through the impugned judgment dated 05.07.2024 on the ground that the tenancy was valid till 31.01.2027 and since the respondent had cleared the amount due and in respect of allegations of sub-letting as well as damage to rented premises, recording of evidence is required, therefore, he is entitled to leave to defend in order to substantiate that he has not violated any terms and conditions of the tenancy agreement including payment of rent, hence, this constitutional petition.

2. Learned counsel for the petitioner contends that although expiry date of tenancy agreement is 31.01.2027, but the respondent has defaulted in payment of monthly rent, as a result of which eviction order was passed by the Rent Tribunal, but the same has been set aside by the Appellate Court below, without appreciating the factum of default and breach of the tenancy agreement committed by the respondent.

3. Conversely, learned counsel for the respondent has supported the findings of the Appellate Court below with the averments that the payment of monthly rent for the disputed period was made in cash on the verbal direction of the petitioner on account of some health emergency and on one occasion in the bank account of brother of the petitioner.

4. Arguments heard. Record perused.

5. The nub of the matter is to examine whether a tenant, who fails to deposit the rent, in accordance with the terms and conditions of the tenancy agreement, is entitled to the acceptance of PLA in order to establish that he is not a defaulter.

6. Before rendering the opinion on the legal question formulated hereinabove, it is pertinent to observe that 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. Under the Act, a landlord shall not let out a premises to a tenant, except by a written and registered tenancy agreement as provided under Section 5 thereof and in terms of Section 6 of the Act, a tenancy agreement, *inter alia*, contain particulars of the landlord and tenant, description of the premises, period of tenancy, rate of rent, due date and mode of payment and particulars of bank account of the landlord if the rent is to be paid through a bank. The payment of the rent and what constitutes default thereof, under the law, is governed and determined by a conjunctive

application of various provisions of the Act including Section 7 that 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.”

(Emphasis supplied)

In present case, the relationship of landlord and tenant is admitted between the parties. Clause-2 of the tenancy agreement, explicitly provides the mode of payment of rent in the following manner:

- کرایہ مہانہ مبلغ 30,000 (تیس ہزار روپے) مقرر ہوا ہے۔ جو
کہ فتریق اول کرایہ دار ہر انگریزی ماہ کی کم تا سے (10) تاریخ تک بنک
اکاؤنٹ نمبر 05030100446862 میزان بنک میں جمع کروانے کا
پابند و مذمہ دار ہو گا۔ دستی کرایہ کی ادائیگی نہ کی جائے گی اور بغیر
رسید بنک ادائیگی کرایہ نہ ہو گا اور نہ ادا شدہ تصور ہو گا۔ سالانہ
کرایہ میں 10% اضافہ ہو گا۔ کرایہ کا اضافہ ہر سال اگست کے
ہیئے میں ہو گا۔

(Emphasis supplied)

Once the parties had a consensus that monthly rent will be deposited on or before a particular date in a specified bank account of the petitioner-landlord, there is no room for the respondent-tenant to pay or tender the rent, through any mode other than one envisaged under the tenancy agreement, unless the landlord agrees in writing. Suffice to observe that the contracts are meant to be performed and the obligation undertaken by the parties are to be strictly adhered to, which, admittedly, has been violated by the respondent. In fact, the respondent took contradictory stance *qua* payment of rent. In his PLA, the respondent stated as under:

- یہ کہ فترہ نمبر 2 درخواست بید خلی زیر جواب عنطہ ہے،
درست تسلیم نہ ہے۔

(a) یہ کہ حصہ نمبر (a) درخواست بید خلی زیر جواب عنطہ ہے،
درست تسلیم نہ ہے۔ مسئول علیہ کبھی بھی نادہنده کرایہ دار نہ رہا
ہے۔ ماہ بے ماہ باٹ اعدگی سے کرایہ جایزہ دادا کرتا چلا آ رہا ہے۔

Whereas in ground (ii) of his appeal, before the Appellate Court below, the respondent admitted that he paid the monthly rent in cash for few months, which is reproduced hereunder:-

“ii. That the allegation leveled by the respondent/landlord against the appellant/tenant is totally false and illegal because the appellant paid the said rent amount for the month of November 2022, December 2022 and March 2023 through cash payment received by the respondent himself and for the month of September 2023 Rs.40,000/- of rent was transferred through bank account of appellant to Safeer Munawar on the direction of respondent, hence the appellant is not willful defaulter in any manner and continuously paying the rent amount, as such it was the case of evidence but the learned trial court without framing of issues and recording of evidence of both the parties dismissed the application for leave to defend and accepted the ejectment petition illegally and unlawfully.”

(Emphasis supplied)

Once the respondent admitted that he has not paid the monthly rent in accordance with the terms and conditions of the tenancy agreement, there was no room for allowing the PLA of the respondent enabling him to lead evidence after framing of issue *qua* default or other grounds of eviction. Such an exercise will defeat the intent of legislature as also the parties who have executed a written tenancy agreement containing specific terms and conditions. It is not permissible for the Courts to read into the contract-the tenancy agreement in present case, an implied or tacit term (payment in cash by the respondent in the present case) that is in direct conflict with its express terms and conditions i.e., clause-2 of the tenancy agreement reproduced hereinabove. A Court cannot allow a party to deviate from the terms and conditions of the contract, rather, it is a duty of the Court to intervene where enforcement of an agreement between the

parties is required. It is also not permissible for the Courts to excuse any of the parties from the consequence of the contract that they have freely and voluntarily accepted, even if they are shown to be onerous or oppressive. This is so as a matter of policy. This legal aspect of the matter has not been kept in sight by the Appellate Court below while passing the impugned judgment. Moreover, on a pointed question by this Court, learned counsel for the respondent admitted that the respondent is not seized with any receipt of payment of rent in cash, hence, this is a case where the principle of express or implied novation is also not attracted.

7. In view of the above discussion, this petition is **allowed** and the impugned judgment passed by the Appellate Court below is set aside and order of the Rent Tribunal is upheld.

(ANWAAR HUSSAIN)
Judge

Approved for Reporting

Judge

Tahir Noor