

Form No.HCJD/C-121

**ORDER SHEET**

**IN THE LAHORE HIGH COURT LAHORE**

**JUDICIAL DEPARTMENT**

W.P. No.35336 of 2024.

Muhammad Ilyas.                          **Versus**                          Muhammad Saeed, etc.

S.No.of order/ Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties' counsel, where necessary.
	05.06.2024	Mr. Amjad Qayum, Advocate for the petitioner.

In this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 02.04.2024 passed by the Special Judge Rent, Gujranwala whereby application of the petitioner for setting aside *ex-parte* final order was dismissed as well as the judgment dated 23.04.2024 passed by the Additional District Judge, Gujranwala whereby appeal of the petitioner thereagainst was also dismissed.

2. Learned counsel for the petitioner contends that the impugned decisions of the courts below are against the law and facts and result of misapplication of law inasmuch as the petitioner was not aware about the proceedings as no notice was ever served upon the petitioner.

3. The impugned judgment dated 23.04.2024 of the lower appellate court has been passed to the following effect:-

*"9. In the instant case appellant/tenant was served personally and learned trial court had recorded the statement of Process Server in this regard who on oath submitted that he effected service of appellant in person. It is manifest from the record that appellant/tenant has filed simple application for setting aside ex-parte proceedings and final order, whereas no application for leave to contest has been accompanied alongwith the said*

*petition which is against the spirit of Section 21(4) of the Punjab Rented Premises Act, 2009.”*

4. When confronted, learned counsel for the petitioner concedes that although no application for leave to contest was filed, however, specific plea was taken in the application for setting aside *ex-parte* final order to question ownership of respondent No.1 qua demised premises which warranted grant of leave, framing of issues and decision after recording of evidence.

5. Section 21(4) of the Punjab Rented Premises Act, 2009 ('Act') states that 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 *ex-parte* order along with an application for leave to contest. Section 22(3) of the Act provides that an application for leave to contest shall be in the form of a written reply, stating grounds on which the leave is sought and shall be accompanied by an affidavit of the respondent, copy of all relevant documents in his possession and, if desired, affidavits of not more than two witnesses.

6. From perusal of Section 21(4) of the Act, it is abundantly clear that while applying for setting aside *ex-parte* order, a separate application for leave to contest, in the form and manner prescribed in Section 22(3) of the Act has to be filed within the period of limitation. Any plea taken on merits of the case in the application for setting aside *ex-parte* order passed by the Rent Tribunal under Section 21 of the Act without an application seeking leave to contest in the form and

manner prescribed under Section 22(3) of the Act cannot be taken into consideration. Therefore, the impugned order dated 23.04.2024 is unexceptionable and warrants no interference.

7. In view of foregoing, no illegality, infirmity or jurisdictional error has been pointed out by learned counsel for the petitioner in the impugned decisions of the courts below warranting interference of this Court in the exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Resultantly, instant petition, being devoid of any merit, is hereby ***dismissed in limine***.

**(RAHEEL KAMRAN)**  
**JUDGE**

Approved for reporting.

**JUDGE**

\*Asim Shahzad\*