

Stereo.HCJDA 38.
JUDGMENT SHEET.

***LAHORE HIGH COURT,
RAWALPINDI BENCH RAWALPINDI.
JUDICIAL DEPARTMENT***

W.P.No.1215 OF 2020

IRSHAD AHMED.

Versus.

SHAUKAT HUSSAIN KIYANI, ETC.

JUDGMENT.

Date of hearing: ***10.10.2023.***

Petitioner by: ***Qazi Hafeez-ur-Rehman, Advocate.***

Respondent No.1 ***Mr. Muhammad Zahoor Kiyani,***
by: ***Advocate.***

Mirza Viqas Rauf, J. *This constitutional petition though arises out of concurrent findings of the foras below but it canvasses a pivotal question of law, seriously affecting the propriety of impugned decisions.*

2. The facts forming background of this petition are that respondent No.1 (hereinafter referred to as “respondent”) claiming himself to be the landlord of the house No.3, street No.8, Ali Town, Adiala Road, Kiani Plaza, Rawalpindi, moved a petition under section 19 of the Punjab Rented Premises Act, 2009 (hereinafter referred to as “Act, 2009”) seeking eviction of the petitioner from the ground floor of the house, which was rented to him at the monthly rent of Rs.6000/- vide agreement No.4179 dated 24th January, 2015. It is asserted in the ejectment petition that rent agreement expired on 24th January, 2016, which was never renewed and after its expiry, the “respondent” has though requested the petitioner to vacate the rented premises but he refused. The eviction of the petitioner was also sought on the grounds of violation of terms and conditions of rent agreement and non-payment of rent at the enhanced rate.

3. The petitioner resisted the ejectment proceedings and moved an application seeking leave to contest averring therein that he is occupying the premises since 2007 and on 8th July, 2015, fresh rent agreement was

executed under which the tenancy period is to expire on June, 2025. After finding the grounds raised in the application for leave to contest sufficient for production of oral evidence, leave was granted and from the divergent pleadings of the parties, issues were framed. After framing of issues, evidence of both the sides was recorded and finally ejectment petition was accepted through order dated 30th October, 2019 directing the petitioner to hand over the vacant possession of the rented premises to the “respondent” within 30 days. Feeling dissatisfied, the petitioner though preferred an appeal before the learned Additional District Judge but his appeal was dismissed vide judgment dated 2nd March, 2020, hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

4. Learned counsel for the petitioner submitted that while resisting the ejectment proceedings, the petitioner has though specifically pleaded that a rent agreement dated 8th July, 2015 was entered into between the parties wherein tenancy period was to expire in June, 2025 but no issue to this effect was framed. He added that despite holding the said tenancy agreement as genuine, it was discarded merely on the ground that it was not registered under section 17 of the Registration Act, 1908. Learned counsel emphasized that while discarding the rent agreement, the appellate Court as well as Special Judge (Rent) ignored the mandatory provisions of section 9 of the “Act, 2009”. It is argued with vehemence that eviction order is not sustainable under the law.

5. Conversely, learned counsel representing the “respondent” defended the eviction order and submitted that in view of concurrent findings, constitutional petition is not maintainable.

6. Heard. Record perused.

7. The relationship of landlord and tenant interse parties is not in dispute. As per stance of the “respondent”, the premises were given to the petitioner on rent in the year 2007 on the basis of oral tenancy, which was later on, however, reduced into writing in the year 2015 for one year and the tenancy thus expired on 24th June, 2016. In order 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, the “Act, 2009” was promulgated, which provides a detailed mechanism for the settlement of any controversy arising between the landlord and tenant.

8. *As already observed that the relationship of landlord and tenant interse parties is not in dispute. Section 5 of the “Act, 2009” bounds down the landlord and tenant to have the tenancy registered with the Rent Registrar and reads as under: -*

5. Agreement between landlord and tenant.- (1) A landlord shall not let out a premises to a tenant except by a tenancy agreement.

(2) A landlord shall present the tenancy agreement before the Rent Registrar.

(3) The Rent Registrar shall enter the particulars of the tenancy in a register, affix his official seal on the tenancy agreement, retain a copy thereof and return the original tenancy agreement to the landlord.

(4) The entry of particulars of the tenancy shall not absolve the landlord or the tenant of their liability to register the tenancy agreement under the law relating to registration of documents.

(5) A tenancy agreement entered in the office of a Rent Registrar or a certified copy thereof shall be a proof of the relationship of landlord and tenant.

(6) Any agreement which may be executed between the landlord and the tenant in respect of the premises shall be presented before the Rent Registrar in the same manner as provided in sub-section (2).

(underlining supplied for emphasis)

9. *In terms of section 8 of the “Act, 2009”, it is incumbent upon the landlord and tenant to bring existing tenancy in conformity with the provisions of the “Act, 2009” as early as possible but not later than two years from the date of coming into force of the “Act, 2009”. Section 9 of the “Act, 2009” provides the consequences if a tenancy does not conform to the provisions of the “Act, 2009” and it reads as under: -*

9. Effect of non-compliance.- If a tenancy does not conform to the provisions of this Act, the Rent Tribunal shall not entertain an application under this Act—

- (a) on behalf of the tenant, unless he deposits a fine equivalent to five percent of the annual value of the rent of the premises in the Government treasury; and
- (b) on behalf of the landlord, unless he deposits a fine equivalent to ten percent of the annual value of the rent of the premises in the Government treasury.

(underlining supplied for emphasis)

10. Before adverting to the question involved in this petition, it would be advantageous to have a bird eye view on the other provisions relevant to the subject. Section 19 of the “Act, 2009” outlines the manner of filing of application before the Rent Tribunal, which reads as under: -

19. Filing of application.- (1) An application in respect of a rented premises shall be filed in the Rent Tribunal of the area or the district.

(2) If an application is filed under sub-section (1), the Administrative Special Judge (Rent) of the area or the district may take cognizance of the case or entrust the same to any other Special Judge (Rent).

(3) An application under sub-section (1) shall contain a concise statement of facts, the relief claimed and shall be accompanied by copies of all relevant documents in possession of the applicant.

(4) If the application is for eviction of a tenant, the landlord shall submit his affidavit and affidavits of not more than two witnesses along with the eviction application.

From the bare perusal of the above referred provision of law, it is manifestly clear that the term “application” used therein is not restricted to the ejectment application, rather it can be any other application falling within the domain of Rent Tribunal established under the “Act, 2009”. Though the “respondent” captioned the ejectment application under section 15 of the “Act, 2009” but in fact, it was an application under section 19 as section 15 only provides the grounds for eviction.

11. Being the special law, the “Act, 2009” also ordains that the Rent Tribunal shall not allow a respondent to defend the application unless he obtains leave to contest. Sub-section 2 of section 22 of the “Act, 2009” mandates that subject to the “Act, 2009”, a respondent shall file an application for leave to contest within ten days of his first appearance in the Rent Tribunal. The petitioner, in order to contest the ejectment petition, moved an application for leave to contest in terms of section 22 of the “Act,

2009”, which for all intent and purposes is an application find mention in section 9 of the Act *ibid*, reproduced hereinabove. In his application for leave to contest, the petitioner has relied upon the tenancy agreement dated 8th July, 2015 i.e. Exh.R-15 to canvass that the tenancy will subsist till June, 2025, which was though denied by the “respondent” but it is noticed that while pondering upon the tenancy agreement Exh.R-15, the Rent Tribunal unequivocally adjudged it as genuine document, which findings were even not disbursed by the appellate Court. The tenancy agreement was, however, discarded from consideration by the Rent Tribunal as well as the appellate Court. It appears that the rent agreement Exh.R-15 was not taken into consideration on the ground that it is not in conformity with the provisions of the Transfer of Property Act, 1882 and it is not registered under section 17 of the Registration Act, 1908. This concurrent opinion is completely oblivious and in derogation of mandatory provisions of section 9 of the “Act, 2009”.

12. Needless to reiterate that if the tenancy agreement introduced by the petitioner in his defence in the application for leave to contest was not registered or it was not conforming to the provisions of the “Act, 2009”, the Rent Tribunal can, at the most, halt further proceedings in the matter and direct the petitioner to pay the penalty in terms of section 9 of the “Act, 2009” within specified period of time. If such amount was deposited by the petitioner within specified period, his application for leave to contest should be proceeded with further and in case of failure, it should have been dismissed. Guidance in this respect can be sought from Rana ABDUL HAMEED TALIB v. ADDITIONAL DISTRICT JUDGE, LAHORE and others (PLD 2013 Supreme Court 775). The relevant extract from the same is reproduced below: -

“11. Now considering the effect of Section 9 with regard and reference to the existing tenancies in the context of Section 8, it may be mentioned that Ordinance, 2007/Act, 2009 have come into force on 16th November, 2007 and 17th November, 2009 respectively (see section 1(3) - it shall come into force at once). From the language of section 8 (of these laws), it is clear that both the landlord/tenant are statutorily duty bound to bring the existing tenancies in conformity with the provisions of the said laws, the expression "An existing landlord and tenant shall" appearing in the section, leave no room for any other interpretation in this behalf. Furthermore, the expression of the section

"as soon as possible" postulates that the needful should be done quickly, promptly and before long, therefore, for all intents and purposes, the date of the enforcement (coming into force) of these laws is the statutory starting point of time, for bringing the existing tenancy in conformity with the Act, 2009; while in view of the expression "not later than two years" the law has prescribed the cutoff date for the purposes of doing the needful. However the question shall be; whether the applicant(s)/petitioner(s) having existing tenancy who shall approach the Rent Tribunal for the enforcement of his rights under the provisions of the Act, 2009, is exempted from the fine for a period of two years; a moratorium of two years has been provided to him and/or the section shall remain dormant, inapplicable and inactive in such case (existing tenancy cases) for two years period and the landlord/tenant may approach the Rent Tribunal for the purposes of availing his rights and remedies under the Act 2009, but without paying the Fine? In order to resolve this proposition(s) we again have to revert to the object and spirit of the Act, 2009 as elucidated above (Ordinance, 2007 as well) and also keep in view the various provisions of the Act, 2009, to which reference has earlier been made, specifically sections 12, 13 and 15. Because under these provisions immediately on the coming into force of the laws, certain rights and obligations of the landlord and the tenant are conferred upon and created, including the entitlement (right) of landlord to seek the eviction of the tenant (see section 15) on the grounds, out of which some grounds are foundationally dependent on the tenancy agreement, such as for example (a) the period of tenancy has expired (b) the tenant has committed breach of a term or condition of tenancy agreement; thus as upon the enforcement of the Act, 2009 and according to section 35 of the said Act, vide which only pending proceedings were/are saved to be adjudged under the Ordinance, 1959, whereas all the future disputes inter se the tenant and the landlord from the commencing day of the Act are to be determined as per the provisions of the Act, 2009, as according to section 12, if the landlord fails to or neglects to fulfill his obligation mentioned in the section, the tenant has the right to approach the Rent Tribunal for the redressal of his grievance and the Tribunal has the power to pass orders in terms of section 12(4). Likewise, if the tenant in terms of section 13 does not fulfill and abide by his obligations, the landlord can take recourse to his legal remedy by approaching the Tribunal. Above all, as mentioned earlier the landlord can seek the eviction of the tenant on the ground enumerated in section 15, and it is conspicuously noted that unlike section 13 of the Ordinance, 1959, the personal requirement, reconstruction etc. are not now one of the grounds, available to the landlord for seeking eviction of the tenant. From the above it is vivid and undoubtedly clear that on the enforcement of the Act, 2009 all the rights and remedies shall be available to the tenant or the landlord as the case may be, and it shall be ludicrous to conceive and interpret although he can avail the remedies and enforce such rights and duties, but shall not be obliged to pay the fine in terms of section 9 *ibid* because two years time is available to him. In my view sections 9 and 8, when both are read together along with the provisions of Act, 2009 and the object and spirit of the said enactment, leads to no other reasonable construction of the two sections (while in interaction), that the landlord/tenant can bring the existing tenancies in conformity with the Act within two years period and in this regard Section 8 should be construed **independent** and **insulated** from Section 9 and applied only in time with the sole object of bringing the tenancy in line with the provisions of the said Act. But where the applicant/petitioner (landlord/tenant) want to avail the remedy of that law (Act 2009), and

exercise his right to enforce the duties of the opposite side, he shall be obliged to pay the fine as mentioned in section 9 *ibid* as in the case of future tenancies; notwithstanding it is an existing tenancy or otherwise. In this behalf no exemption or moratorium etc. on the basis of two years period mentioned in section 8 shall be available to him. And if the fine is not paid by the petitioner/ applicant the fall out and the consequences of failure of the non-compliance as envisaged by Section 9 for the future tenancy cases, as has been prescribed above, shall be duly attracted to such petition(s)/application(s) as well.”

To the above effect, reference can also be made to MIRZA BOOK AGENCY through Managing Partner and others v. ADDITIONAL DISTRICT JUDGE, LAHORE and others (2023 SCMR 1520).

13. *In the case of Kh. MUHAMMAD ISLAM v. SPECIAL JUDGE RENT and others (PLD 2016 Lahore 652), this Court while dealing with the similar proposition, held as under: -*

“5. If the provisions of Section-9 of the Act are read in conjunction with the provisions of Section 8 *ibid* it becomes abundantly clear that non-conformity of the existing tenancies with the provisions of the Act does not oust the jurisdiction of the Rent Tribunal to adjudicate upon the matter rather it places a restriction upon the Rent Tribunal not to proceed with the matter unless the fine as mentioned in section 9 is paid. The case law referred by the learned counsel also deals with the true interpretation and effect of the law on the subject. In the said case the Hon'ble apex Court observed as under:-

"From the above definitions and the survey of case law (*supra*) it is quite clear that the ministerial staff of the Rent Tribunal or for that matter the Tribunal itself shall not refuse to receive an application of the landlord/tenant, as the case may be, when brought before it rather on the first date when the matter comes before the Tribunal for the purposes of proceeding with it, the Tribunal shall ascertain from the applicant (of the case) if a validly executed and registered tenancy agreement (as per the provisions of the Act 2009) is there and its availability on the record. If that not being so, whether the applicant has deposited the amount of fine as envisaged by Section 9 *ibid*. If both these aspects are missing, the Rent Tribunal shall halt further proceedings in the matter (emphasis supplied). No notice shall be issued to the respondent of the case and the applicant shall first be required and directed first to deposit the fine by specifying the exact amount as assessed by the Tribunal on the basis of the assertion of the applicant with regard to the rate of rent, within a specified period of time to be mentioned in the order. If the amount is deposited by the applicant/petitioner of the case within such period or the time further extended by the Tribunal, the matter shall be proceeded with further, otherwise the application shall be dismissed. However, such dismissal shall not operate as a bar in the way of the applicant to initiate the case afresh after depositing the fine or having a tenancy agreement (executed and registered according to law). It may be emphatically held that no

proceeding to determine the case on merit shall be conducted and continued by the Court, until and unless the fine is deposited by the applicant. This is mandate of the law and the provision *ibid* (Section 9) is mandatory, which has to be given effect in letter and spirit, keeping in view the purpose and the object of the Act 2009. This, obviously is the interpretation and the effect of Section 9, when considered independent of Section 8 of the Act 2009, and shall apply to the future tenancies (emphasis supplied)."

6. In the light of above esteemed judgment and at the cost of repetition, it is observed that even if the tenancy is not in consonance with the provisions of the Act, even then the Rent Tribunal has exclusive jurisdiction to adjudicate upon the rent matter subject to fulfillment of requirement of Section-9 of the Act. It is not the case of the petitioner that the respondent has not deposited the fine as per requirement of the law, therefore, this petition having no substance is dismissed in limine. It is, however, observed that in case the requirements of Section 9 are not fulfilled, the learned Rent Tribunal shall halt further proceedings and firstly require the respondent to comply with the mandatory provisions of Section 9 within the specified period of time and then proceed with the matter in accordance with the law."

14. The above survey of law leads me to an irresistible conclusion that section 9 of the "Act, 2009" is not restricted only to the application filed by the landlord, more particularly the ejectment petition. In other words, any application either by the landlord or tenant, as the case may be, when brought before the Rent Tribunal under the "Act, 2009" for enforcement of his rights under the tenancy agreement not conforming to the provisions of the "Act, 2009", can be proceeded after having a recourse to section 9 of the "Act, 2009" by directing the landlord or the tenant to deposit the penalty.

*15. The nutshell of above discussion is that the Rent Tribunal as well as the appellate Court though have formed a concurrent opinion but it is tainted with patent illegalities. Consequently, this petition is **allowed**. As a result thereof, impugned judgment dated 2nd March, 2020 passed by the learned Additional District Judge, Rawalpindi as well as order dated 30th October, 2019 passed by the learned Special Judge (Rent), Rawalpindi are **set aside**, being illegal and unlawful. As a sequel, the ejectment petition as well as application for leave to contest filed by the parties shall be deemed to be pending before the learned Special Judge (Rent), who shall decide the application for leave to contest while taking into consideration section 9 of*

the “Act, 2009” and then proceed with the matter strictly in accordance with law with all swiftness. No order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Approved for reporting

(JUDGE)