IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE TASSADUQ HUSSAIN JILLANI
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE MUHAMMAD ATHER SAEED

CIVIL APPEAL NO.679-L OF 2012
(Against the order dated 9.8.2012 of the Lahore High Court, Lahore passed in Writ Petition No. 9871 of 2012)

Rana Abdul Hameed Talib

...Appellant

VERSUS

Additional District Judge, Lahore and others

...Respondents

...

For the appellant: Mr. Qamar Zaman Qureshi, ASC

For respondent No.3: Mr. Iqbal Mehmood Awan, ASC
Mr. Faiz-ur-Rehman, AOR

Date of hearing: 9.1.2013.

...

JUDGMENT

MIAN SAQIB NISAR, J.- The primary proposition(s) involved in this appeal, with the leave of the Court dated 20.12.2012, is about the interpretation and the effect of non-compliance of the provisions of Section 9(b), independently, and also when read in the context of Section 8 of the Punjab Rented Premises Act, 2009 (the Act, 2009). In relation to the above proposition, the facts of the case are:- that on 18.1.2010, respondent No.3 brought an ejectment petition against the appellant under Act, 2009, on the ground(s), *inter alia*, of default in the payment of the rent due. The property in dispute is a room bearing No.21 Bashir Mansion, Turner Road, Lahore. The appellant filed an application for leave to contest the ejectment petition,

which was dismissed and as a consequence thereof, eviction order dated 28.1.2011 was passed against him; appellant's appeal was disallowed on 20.3.2012, and same is the fate of his constitution petition, which has been discarded by the learned High Court vide impugned judgment dated 9.8.2012.

2. Learned counsel for the appellant has argued, that according to Section 8 of the Act, 2009, an existing tenancy has to be brought inconformity with the provisions of the Act and if the needful is not done, the Rent Tribunal, as per the mandate of Section 9, *ibid* shall not **"entertain"** any application either filed by the landlord or the tenant as the case may be, unless he *(petitioner before the Tribunal)* deposits a fine envisaged by the section and this has to be done even before an application is moved or at least the Rent Tribunal should pass an order to that effect, before issuing a notice to the other side; as the respondent-landlord of the case has failed to follow the mandatory provisions of law, therefore, his ejectment petition was not **entertainable**, and thus the Rent Tribunal had no jurisdiction to pass the eviction order against the appellant. It is further argued that respondent No.3, during the pendency of the appeal filed by the appellant, before the District Judge, was directed by the said Court to deposit 10% of penalty in terms of Section 9 of the Act, 2009, but this was not permissible under the law and the inherent defect in the very 'entertaining' of the application could not be allowed to be cured. In support of his contention that the provisions of Section 9 of the Act, 2009 are mandatory and that the eviction application could not be entertained by the Rent Tribunal, reliance has been placed by the appellant's learned counsel upon a judgment dated 25.5.2011 rendered by this Court in Civil Petition No. 349-L of 2010 (Allah Ditta

Sajid Vs. Muhammad Saleem Qureshi & others). It is further submitted that the property in issue vide notification dated 18.1.2010 was taken over by Auqaf Department in terms of Section 7 of the West Pakistan Auqaf Ordinance, 1979 and, therefore, the relationship of tenancy between the parties has ceased to exist; and it is for this reason that the appellant had rightly denied the relationship of tenancy between the parties. This aspect of the matter has been totally ignored by all the forums below.

3. On the other hand, learned counsel for respondent No.3 states that the provisions of Section 9 of the Act, 2009 have to be read in conjunction and consonance with the provisions of Section 8, which provides that the existing tenancies should be brought inconformity with the mandate of the Act within a period of two years, which is the grace period for doing the needful. At the time when the eviction petition was filed by the respondent i.e. 18.1.2010, the two years period had not expired as yet, as the Act, 2009 was enforced on 17th November, 2009, thus, when such period matured, while the appeal was pending, the learned Court, was well within its jurisdiction as per the spirit of the Act, 2009, to issue the direction to the respondent/landlord for the deposit of fine under Section 9, which was duly paid (deposited) on or before 16.11.2011 and, therefore, respondent No.3 cannot be held to have violated the law. Meeting the argument of the appellant's learned counsel about the Auqaf Department's notification, it is submitted that the notification referred to above by the appellant's counsel was challenged by respondent No.3 vide Writ Petition No. 1474 of 2008, in which the operation of the same has been suspended. Moreover, admittedly the appellant was inducted into possession of the property by the said respondent and, therefore,

the appellant is estopped under Article 116 of the Qanoon-e-Shahadat Order, 1894 to deny the relationship.

4. Heard. For the purposes of resolving the key proposition and the ancillary question(s) which may come up for answer(s) in the matter, I find it expedient to briefly touch upon the meaning and concept of a lease/tenancy; how it is created, and in reference thereto, the relevant law in force from time to time and the development thereof; in other words the legislative history and the object of the law on the subject. In this context there can be no two opinion that the lease/tenancy has its genesis (*note: except the statutory tenancies)* in a contract between two parties, the lessor and the lessee. According to Black's Law Dictionary (Eight Edition) lease is defined as: "*a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, for a fixed period, or for a period terminable at will".* Whereas, the tenancy means "*the possession or occupancy of land under a lease; a leasehold interest in real estate"*. In our law, as per Section 105 of the Transfer of Property Act, 1882 **(TP Act, 2009)**, the lease is defined as:-

> *"105.* ***Lease defined.-*** *A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing or value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."*

Section 107 of the Act ibid stipulates, as to how a lease is made, and reads as:-

> *"107.* ***Leases how made.-*** *A lease of immovable property from year to year, or for any term exceeding*

> *one year, or reserving a yearly rent, can be made only by a registered instrument.*
>
> *All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.*
>
> *Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments, than one each such instrument shall be executed by both the lessor and the lessee:*
>
> *Provided ……..".*

Section 108 of the Act *(supra)* provides for the rights and liabilities of the lessor and a lessee and certain other sections stipulates, the effect of the expiry of the lease period, such as the concept of holding over and the tenancy at sufferance. Besides the noted enactment, according to Section 17 of the Registration Act, 1908 *"leases of immovable property, from year to year, or for any term exceeding one year reserving a yearly rent*;" shall be affected through compulsorily registrable document/instrument and if not so done, as per Section 46 of the Act, it *(such document)* shall not operate to create, etc. any right, title or interest, whether vested or contingent to or in the immovable property, whether in present or in future. Obviously meaning, that without a registered instrument, no valid lease beyond the period of one year shall validly be effected. It may be of some interest to mention here, that in the ordinary and common parlance, the terms lease and tenancy, more or less are taken to be analogous, however, if any distinction for the above two concepts/terms is required/expedient, reference can be made to ***Ramzan and 5 others vs. Member, Board of Revenue and others* (1991 CLC 2125)**; besides, the distinction is also aptly elucidated in a book titled Legal Terms and Phrases (2006 Edition) by M. Ilyas as under:-

> "*The word, 'lease' would employ a contract of occupation of land for fixed term, whereas the word 'tenancy' implies that occupier would hold land till same was terminated expressly or by implication.*"

5. Be that as it may, prior to 1959, the leases/tenancies subject to the aforestated laws were regulated by the terms and conditions of the contract between the lessor and the lessee. And the issues in relation thereto arising between the landlord(s) and tenant(s) were sorted out by the civil courts of plenary jurisdiction or the revenue courts as the case may be. However, vide West Pakistan Urban Rent Restriction Ordinance, 1959 (Ordinance, 1959) enforced on 23.2.1959, a vital and drastic change was brought into the law on the subject of tenancies, inasmuch as, certain urban properties were taken out of the preview of the general law and also the jurisdiction of the civil courts. The tenancies existing at that time, either contractual or statutory, as also the future tenancies/leases coming into being thereafter, were to be governed and regulated in material aspects by the provisions of the 1959 Ordinance as envisaged thereby. The specific contractual terms and conditions of the existing tenancies/leases were almost rendered nugatory and redundant; neither the rent could be increased as per the contract between the parties, nor the landlord could seek the eviction of the tenant in terms of the stipulations of the lease document. A special forum of Rent Controller was established to determine the issues between the landlord(s) and the tenant(s), strictly as provided by the said Ordinance. However, it may be pertinent to mention here, that unlike the Act neither the lease/tenancy was defined nor a mechanism was provided in the Ordinance as to how the future tenancies/leases shall

be created or constituted. It was quite obscure and unclear, if the provisions of the TP Act and the Registration Act shall have due and efficacious application in relation to the creation of future tenancies/leases after the enforcement of 1959 Ordinance. And even if, the two noted laws were not strictly adhered to, whether it shall make any difference; this was so because the eviction of a tenant, which emerged to be the main area of dispute *(litigation)* inter se, the landlord and tenant *(under the Ordinance ibid)* was no more *(in many ways)* regulated by the tenancy instrument(s) duly executed between them or TP Act, but the provisions of the said Ordinance. This was so because Section 13 of the *(supra Ordinance, 1959)* categorically mandated that *"a tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Ordinance, or otherwise, and whether before or after the termination of the tenancy, except in accordance with the provisions of this section"*. It may be stated here with emphasis, that for the eviction of a tenant on the grounds mentioned in Section 13 of the Ordinance, 1959, *the expiry of the period of tenancy as agreed upon between the parties was absolutely irrelevant* *(emphasis supplied)*, for example, if the period of lease/tenancy either existing or future, *(as agreed upon between the parties)* was for a term of three years and such period has expired, the landlord yet was precluded to seek the eviction of his tenant, on account of the expiry of the lease period, rather was only entitled to ask for the eviction on the grounds specifically mentioned in the Section 13 *ibid* *(note:- if however the tenancy was for a fixed period the landlord under the said section could not ask for eviction on account of his personal need, till the expiry of that period, which looks quite anomalous).*

6. This law remained in vogue for a considerable period and had its own **pros** and **cons**, which I do not feel are relevant to be

specified and discussed here. But it seems expedient to highlight *(even at the cost of repetition)*, that no particular mechanism/procedure, or form for entering into a lease and was prescribed by the Ordinance 1959, and moreover Section 13 thereof, had an overriding effect in many ways over the laws in force at that time, therefore the above provisions of TP Act, the Registration Act, and the contractual stipulations between the parties, as mentioned earlier had practically lost its efficacy. In the said scenario, as also to avoid the expenses of requisite stamp duty(ies) and registration fee(s) etc. the tenancies through unregistered instrument and oral in nature became rampant, which as experienced subsequently, gave rise to numerous vice(s), and depravity. The foremost being usual and casual denial of the relationship(s) of tenancy by the tenant on number of scores. In this context, the setting up of the defence of adverse title; and being put into the possession of the property on account of some alleged agreement(s) to sell or by some third party etc. was *(were)* a common phenomena. Besides, the issues, about the rate of rent; the nature of the property, as also the use for which it was rented out, the subletting, got more and more complexed. There was considerable mess and confusion(s) and grey areas in the field. Above all, it was an eminent public perception that Ordinance, 1959 is a law, which is too pro the tenants.

7. It seems that in order to eliminate the confusions and to sort out the vice(s) which had emerged and surfaced in relation to the disputes, inter se the landlord and tenants under the Ordinance, and with a view to meet the present day exigencies and to draw a balance for regulating the relationship *inter se* the landlord(s) and the tenant(s), the legislature thought expedient to enforce a new law, which should

be self serving and comprehensive in nature, on the subject. Thus, firstly an Ordinance was enforced in 2007, followed by an Act, titled Punjab Rented Premises Act, 2009. In this law(s) *inter alia* in order to exclude, rather virtually preclude the creation of leases/tenancies orally or through unregistered instruments, which earlier in practical terms was not impermissible, and such a situation had added, to the flummox and abundance to the rent litigation, and the prolongation thereof, had augmented to the miseries of the litigant, that Section 5 seems to have been introduced, which provides a mechanism, as to how a tenancy for the purpose of the Act ibid (2009) shall be created; the section 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)."*

It is expedient to mention here, that in all the erstwhile laws on the subject, such a stipulation was never the requirement of the law. Anyhow, it is clear from the language of sub-section (1) that a specific command has been given to the landlord that he *"shall not let out a premises to a tenant except by a tenancy agreement"*, and as per definition clause section 2(m) *"a tenancy agreement means an agreement in writing by which landlords let out a premises to a tenant"* meaning thereby, that the very creation and the subsistence of a valid tenancy has been made subservient and subject to the execution of a written tenancy agreement, which agreement the landlord is obliged to present before the Rent Registrar for the registration *[see Section 5(2)]*. The above mandate of law, is fortified by the factum that the certified copy of the tenancy agreement has been made the proof of relationship of tenancy *[see Section 5(5)]*. In my opinion, through this mechanism an effort has been made, to do away with the possibility of any grey areas and the confusions in regard to the creation of tenancies and the issues related and having nexus thereto.

8. Further, in line with the above stated object and with a view to ensure precision, leaving wee room for uncertainty, even in regard to the contents of such tenancy agreement(s), Section 6 of the Act, 2009 stipulates as under:-

> *"**6. Contents of tenancy agreement**.–(1) A tenancy agreement shall contain, as far as possible, the following:*
>
> *(a) particulars of the landlord and the tenant;*
>
> *(b) description of the premises;*
>
> *(c) period of the tenancy;*
>
> *(d) rate of rent, rate of enhancement, due date and mode of payment of rent;*

(e) particulars of the bank account of the landlord, if the rent is to be paid through a bank;

(f) the purpose for which the premises is let out; and

(g) amount of advance rent, security or pagri, if any.

(2) If the tenure of the tenancy is fixed but a rent is fixed only for a part of the tenure, in the absence of any stipulation to the contrary in the tenancy agreement, the rent shall be deemed to remain the same for the whole of the tenure."

Be that as it may, pursuant to the resolution of the proposition herein involved *(note: mentioned in the opening para of the judgment)*, I would also like to add here that both, Ordinance, 2007 and Act, 2009 were given immediate effect in the words *"it shall come into force at once"* and on the enforcement of the latter enactment, as per Section 35 of the Act, 2009 *(Section 35 of the Ordinance, 2007 also)*, the Punjab Urban Rent Restriction Ordinance was repealed, besides according to Section 4 of the Act, 2009, this law has an overriding effect on any law for the time being in force. However, all the matters which were pending adjudication under the repealed law were preserved and saved to be decided according to the earlier law, but *(such matters)* were transferred to the forum i.e. Rent Tribunal, constituted under the new enactment *(note:- see section 35)*. From the object clause of these two new legislations and from the parts/sections thereof *(note: which have been mentioned above or shall be referred in the succeeding part of the judgment)*, it is clear that all the existing tenancies, may be oral or the one constituted vide registered or unregistered instruments, or for that matter, even statutory tenancies, in respect of which the disputes between the landlord and tenant had not yet even arisen, were also brought into the net and purview of Act, 2009 and made amenable to the jurisdiction of the Rent Tribunal with immediate effect *(a specific forum created under the Act, 2009 for that purpose)*. In

other words the existing tenancies were not set apart or separated or saved to be dealt with under the repealed law, except the pending matters. Rather in relation to the **disputes** in respect of the existing tenancies arising in future, were to be adjudged under the provisions of Act, 2009, from the date of its enforcement. Resultantly in order to keep the conformity and parity with respect to the class/category of cases which might come before the Rent Tribunal in future, *(obviously under Act 2009 now)*, and for the purposes of catering for and for securing the rights and liabilities of the landlord(s) and the tenant(s) qua previous *(existing)* tenancy(ies), Section 8 of Act, 2009 mandates as:-

> *"8. **Existing tenancy.-** An existing landlord and tenant shall, as soon as possible but not later than two years from the date of coming into force of this Act, bring the tenancy in conformity with the provisions of this Act."*

9. Thus, from the above stated legal position and the factual backdrop, it is my candid opinion that the nature, the interpretation and the effect of Section 9 in relation to the proposition in hand, *(note: stated at the very outset of this judgment)* has to be reckoned and made, keeping in view the aforementioned object(s) of the law, not only with respect to those tenancies coming in being in future, but also those existing *(prior to the new law)*. And this has to be done on account of the collective reading of Sections 9, as also the other provisions of the Act mentioned earlier, including 5, 6, 7 *ibid*, and thus it should be determined and adjudged, as to whether the said Section (9) is a mandatory or a directory provision of law and the effect thereof.

Before proceeding further with the matter, it may be expedient to state here, that Sections 12 and 13 of the Act, 2009, also have an important bearing and nexus to the proposition of this case, which

sections define and prescribe the statutory obligations of the landlord and a tenant towards each other, including, for example, the duty of the landlord to provide the copy of the tenancy agreement to the tenant *[see section 12(1)(a)]* and the obligation of the tenant to handover vacant possession of the premises to the landlord on the determination *(expiry)* of the tenancy *[see section 13(1)(d)]*. Besides, these two provisions also envisage the remedies available to both the above named *(landlord and tenant)*, if there is any breach of such obligation on either of their parts. In this context reference can also be made to another important provision of the Act, 2009 i.e. Section 10, which provides that no agreement to sell etc., after the execution of the tenancy agreement *(emphasis supplied)* between the parties *(landlord and tenant)* shall affect, the relationship of tenancy, unless the tenancy is revoked by a written agreement entered before the sub-Registrar in accordance with the provisions of Section 5 of the Act, 2009. Moreover, in Section 15 of the Act, 2009 which prescribes the grounds for the eviction of a tenant, the expiry of period is now a new addition, which is one of the grounds of eviction, and this is in sharp contrast to the earlier law *(1959 Ordinance)*, because the expiry of period of tenancy was irrelevant, as the express provisions of Section 13 thereof, provided that no tenant shall be evicted except as per the provisions of the said Section *(13 ibid)* and the expiry of tenancy period was not one of the grounds stipulated therein.

10. Reverting to the proposition in hand, it seem expedient at this stage to reproduce Section 9 of the Act 2009, which 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."*

Upon the unmistakable reading of the Section and especially when conjointly read with all other relevant provisions *(referred to supra)* it seems that all these are integrated provisions, having nexus to the very purpose of the Act as described above, and the palpable object of the law is to compel the parties to enter into a tenancy agreement within the purview and scope of the provisions of Sections 5, 6 and 7 of the Act, 2009 *(read together)*. Therefore, a penalty has been provided by the law for the breach of the obligations, envisaged thereby, in that, where the tenancy agreement is not so entered and registered and a landlord or the tenant approach the Tribunal for the enforcement of his right(s) under the Act, 2009 he has to pay a **fine.** The definition *(of fine)* whereof is *"a sum of money as a penalty by a Court of law"* OR *"a punishment to pay a sum of money for the breach of the law"*. As it is a penalty and a punishment which has been imposed by the law itself, thus the Tribunal is left with no discretion to wave it off, exonerate or absolve a party coming before it, from such a fine. Anyhow for the present, the fundamental and critical moot points are:- (a) what is the point of time when such fine is to be imposed by the Rent Tribunal? (b) What is the effect if the fine is not deposited as imposed by the Rent Tribunal? (c) Whether the Rent Tribunal shall have no jurisdiction to receive the application at all, or it can so receive, but shall not proceed with the matter until that fine is paid? In my view the resolution of the last

proposition *(proposition c)* shall also make the answer to the first two propositions easier and clear; therefore I shall take upon this in priority. In this regard, the syntax of the expression *"the Rent Tribunal shall not entertain an application under this Act"* appearing in Section 9 *ibid* and specially the word **Entertain** is of immense significance. But as the word has not been defined under the Act 2009, therefore in order to comprehend the same, resort should be had to the dictionary meaning and the **case law** in which the word has been legally construed and elucidated.

In Black's Law Dictionary Eighth Edition entertain is defined to mean *"To bear in mind or consider; esp., to give judicial consideration to <the court then entertained motions for continuance>. To amuse or please. To receive (a person) as a guest or provide hospitality to (a person). Parliamentary law. To recognize and state (a motion); to receive and take into consideration (emphasis supplied) <the chair will entertain the motion>".* Concise Oxford Dictionary Eleventh Edition, defines it as *"Provide with amusement or enjoyment, show hospitality to. Give attention to or consideration to (emphasis supplied)"*. In the Indian case law, the word has been construed, as in ***Nepram Kali Singh vs. Mutum Chana Singh and another (AIR 1955 Manipur 39):-***

> *"The word "entertain" means "to receive and take into consideration." The rule thus clearly means that no Court would be competent to receive any plaint which is based on unregistered document after promulgation of the rules referred to above and so it becomes quite clear that jurisdiction to entertain suits on the basis of unregistered document was expressly taken away by these rules and in the present case there was no question of irregularity in the exercise of jurisdiction."*

In ***M/s Lakshmiratan Engineering Works Ltd. vs. Asst. Commissioner (Judicial) I, Sales Tax, Kanpur Range Kanpur and another*** (***AIR 1968 Supreme Court 488),*** it enunciated:**-**

> *"The word 'entertain' is explained by a Divisional Bench of the Allahabad High Court as denoting the point of time at which an application to set aside the sale is heard by the court. The expression 'entertain', it is stated does not mean the same thing as the filing of the application or admission of the application by the Court. A similar view was again taken in Dhoom Chand Jain v. Chamanlal Gupta, AIR 1962 All 543 in which the learned Chief Justice Desai and Mr. Justice Dwivedi gave the same meaning to the expression 'entertain'. It is observed by Dwivedi, J. that the word 'entertain' in its application bears the meaning 'admitting to consideration'."*

This view has been followed in ***Hindusthan Commercial Bank Ltd. vs. Punnu Sahu (dead) through legal representatives*** ***(AIR 1970 Supreme Court 1384)***:-

> *"These decisions have interpreted the expression "entertain" as meaning 'adjudicate upon' or 'proceed to consider on merits'. This view of the High Court has been accepted as correct by this Court in Lakshmiratan Engineering Works Ltd. v. Asst. Commr., Sales Tax, Kanpur, AIR 1968 SC 488. We are bound by that decision and as such we are unable to accept the contention of the appellant that Cl.(b) of the proviso did not apply to the present proceedings."*

In our jurisdiction, in the case reported as ***Amjad Ali alias Amjadulla Talukdar and others vs. Asadulla and another*** (***PLD 1952 Dacca 301)*** it has been held:-

> *"In my view the word "entertain" as used in section 16 of the Act means "to receive and to take into consideration" and, therefore, it signifies initially the*

> *duty of the Court, when proceedings is sought to be started before it."*

In ***All Pakistan Newspapers Society and others v. Federation of Pakistan and others*** ***(PLD 2004 SC 600)***, the apex court has construed the expression "entertain" as under:-

> "*Thus with reference to these rules in the instant case, expression 'entertain' would be defined in its ordinary dictionary meanings i.e. 'to receive'. This definition seems to be more appropriate because the learned Single Judge in Chamber has directed the office 'to entertain the Constitution petition, register it and fix before the Bench'. Needless to observe that the Hon'ble Judges responsible to administer justice are fully aware about the relevant provisions of law on the subject and unless it is proved otherwise, it would be deemed that orders have been passed in accordance with law. Since Order XXV, Rule 7 of the Rules 1980 is mandatory in nature."*

In ***Ch. Bashir Ahmad and 4 others vs. Province of Punjab through Collector, Sargodha and 4 others*** ***(1990 MLD 986)***, a Division Bench of the Lahore High Court while surveying the case law both from Indian and our jurisdiction held:-

> *"16. It would be legitimate to accept the dictionary meaning of the word 'entertain' used by the Supreme Court of Pakistan in its judgment. Therefore, the expression 'that no appeal can or should be entertained' would signify that the appeal would not be given any judicial consideration by the Court."*

In ***Pakistan Steel Peoples Workers' Union vs. Registrar of Trade Unions, Karachi and 6 others*** ***(1992 PLC 715)***, it has been held:-

> *"This contention is devoid of force as the expression "entertain" used in section 22 of the Ordinance means not merely filing of an application or initiation of proceedings but would mean 'adjudicate upon' or proceed to consider on merits. The word "entertain" does not mean the same thing as the filing of the*

> *application or admission of the application by the Registrar of Trade Unions."*

In ***Divisional Superintendent, P.W.R. Multan vs. Abdul Khaliq (1984 SCMR 1311),*** it has been held:-

> *"The word "entertain" in legal parlance means 'adjudicate upon' or 'proceed to consider on merits'. This can only be achieved if the application is not hit by limitation for that closes the door for entry into the field of any adjudication or decision on merits."*

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 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 proceeding 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 the 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)*.

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 alongwith 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 inconformity 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 fallout 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.

12. The question which may however arise is; what should be the fate of those petition(s)/application(s), in relation to existing tenancies, which have been entertained by the Rent Tribunal(s) under the impression that for two years period the provisions of Section 9 are not attracted, because of Section 8 *ibid*. And the matters are either pending before the Rent Tribunal where some *(considerable)* proceedings having already taken place, or the Rent Tribunal has finally decided the matter before it by overruling the objection of the respondent in the context of Section 9 and the further challenge thereto is pending in appeal or before the High Court in its constitutional jurisdiction, or even before this Court. In my opinion all such Courts seized of the matter shall halt the proceedings and should direct the original petitioner/applicant of the case to first pay the fine as mandated by Section 9, by determining the exact amount payable and by fixing the period in which the needful should be done; and if the amount of fine is paid, the case/matter shall be proceeded and decided on merits, if however, the order is not complied and the needful is not done the original petition/application, of the landlord or the tenant as the case may be, shall be dismissed; with all the consequences to follow which have been highlighted above, while considering the effect of non-compliance of the order passed by the Rent Tribunal where a direction is issued for the deposit of the fine.

It may be pertinent to mention here, that where the order passed on the original side *(petition/application)* has attained finality and the execution proceedings are pending, the executing forum shall stop

further proceedings in the matter and shall first direct the execution petitioner to pay the fine in the mode and the manner provided above *(note: by determining the amount and fixing the time)* and till the time such fine is deposited/paid, the execution proceedings shall remain stayed. However, where the order is already executed, the rule of past and closed transaction shall be attracted and no order shall be annulled on the basis the fine envisaged by Section 9 *ibid* has not been paid.

13. Before parting it may however be observed that on account of the various provisions of the Act mentioned above, as it is the primary obligation of the landlord to create the tenancy through a valid tenancy agreement inconformity with the Act, 2009, it is for this reason that a failure on his part entails double the amount i.e. ten percent of the fine as compared to five percent by the tenant. Anyhow, as in the present case the fine already stands paid by the respondent at the appellate stage, therefore, Section 9 *supra* shall in view of the reasoning given in this discourse shall not render the judgments of the forums below invalid on this account.

14. In the light of the above, this appeal has no merits which is hereby dismissed.

JUDGE

JUDGE

JUDGE

Announced in open Court
on 21.6.2013 at Lahore
APPROVED FOR REPORTING
Waqas Naseer/*