

PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

WP No. 583-A/2025.

Date of hearing 27.10.2025.

***Petitioner/s (Sajid Iqbal) Mr. Sajjad
Ahmed Abbasi, Advocate.***

***Respondent/s (Mst. Farhat Moosa
Hasany) Mr. Farhat Nawaz Lodhi,
Advocate.***

J U D G M E N T

SYED MUDASSER AMEER, J. Through
this petition under Article 199 of *The
Constitution of Islamic Republic of
Pakistan, 1973*, petitioner has sought the
following prayer:-

It is therefore, humbly prayed
that on acceptance of the instant
writ petition, the judgment and
decree dated: 10.05.2025 passed
by the Court of Additional
District Judge-II, Abbottabad and
judgment, decree and order
dated: 24.10.2024, 06.03.2025 and
19.04.2025 passed by the Court
of Rent Controller Abbottabad
may kindly be set-aside and the

judgment and order dated: 24.10.2024 passed by the Court of Rent Controller Abbottabad be declared as against the statutory provision of law contained in section 13(6) of West Pakistan Urban Rent Restriction Ordinance, 1959 and the learned Rent Controller Abbottabad be directed to decide eviction petition on merit after recording the evidence and after giving opportunity of defense to the petitioner.

2. Facts of the case in brief are that the respondent/landlady (Mst. Farhat Moosa Hasany) filed a petition before the Rent Controller, Abbottabad to evict the petitioner (the tenant) from a shop known as "Dilkash Jeweler," numbered 421. The landlord also sought to recover unpaid rent totaling 596,198/- rupees, plus any further rent that became due from the time the case was filed until the court's final decision, as per their rental agreement dated July 27, 2019. That the

petitioner/tenant opposed the contention of respondent and filed a formal reply. After both sides presented their arguments, the court defined the legal issues to be decided. During the proceedings, the petitioner/tenant submitted an application on April 4, 2024, to deposit a portion of the outstanding rent, amounting to Rs. 171,490/-. The Rent Controller accepted this request in an order dated October 24, 2024. The court also directed the tenant to deposit the future monthly rent of Rs. 22,500 by the 10th of each subsequent month, warning that failure to do so would result in his right to defend being taken away. However, because the petitioner/tenant later defaulted on these monthly payments, the Rent Controller, on March 6, 2025, followed through on the warning and struck off the tenant's defence. Finally, through the challenged order and decree dated April 19, 2025, the Rent Controller ruled in the respondent's/landlady's favor, decreed the

eviction petition, and ordered the tenant to vacate the shop within 30 days. It is against this final order that the petitioner/tenant has preferred an appeal before the learned Additional District Judge-II, Abbottabad, who vide judgment dated: 10.05.2025 dismissed the same. Hence, the petitioner has now approached this Court by filing instant Constitutional petition.

3. Arguments heard and record perused.

4. At the very outset, counsel for respondent raised preliminary objection to the maintainability of the instant petition on the ground of *res-judicata* and concealment of material facts. It was contended that petitioner had earlier moved a WP No583-A/2025 for the same relief, which was later-on withdrawn and the order of withdrawal does not reflect that it was withdrawn with permission to file afresh one, therefore, the petitioner is barred from bringing afresh petition for

the same relief. More-so, when he has also concealed this fact from the Court. To substantiate his arguments, learned counsel for respondent has filed CM No. 478/2025 wherein, copies of said order and petition have been annexed.

5. Conversely, counsel for petitioner submitted that the earlier petition was filed against the interim order determining the rent and directing its payment, however, when later-on, final order of ejectment was passed the said interim order merged into final order, which was assailed in appeal. Consequently, petitioner withdrew his WP No. 583-A/2025, as the relief had been sought in appeal and that this fact has not been concealed rather it has been mentioned in para-15 of the writ petition.

6. The submissions made by the learned counsel for petitioner carry weight, as the earlier petition was withdrawn and no findings on the merits of the case were given and the timeline of

the subsequent orders, appeal and withdrawal of the earlier writ petition also suggests that the contention of the petitioner is correct. In this view of the matter, the objection of the learned counsel for respondent is not sustainable and is accordingly overruled.

7. Coming to the merits of the case, realizing limited scope of writ petition in rent matter, learned counsel for petitioner confined his arguments to the sole ground that the impugned order of the rent controller dated: 24.10.2024 is illegal, being beyond the scope of section 13(6) of *The Khyber Pakhtunkhwa Rent Restriction Ordinance, 1959* [***The Ordinance of 1959***']. It was contended that section 13(6) dealt with the deposit of arrears as well as the future monthly rent, and whereas no specific date had been provided by the statute for deposit of the former, the latter portion requires that payment of future monthly rent to be deposited by the tenant in the Court before 15th of each month. Thus, it was

contended that, the order of rent controller directing the deposit of future monthly rent before the 10th of each month is not sustainable in law and therefore, the entire superstructure built thereupon including the final order of ejectment is contrary to law and liable to be set-aside. In support of this contention learned counsel for petitioner relied on two judgments of Hon'ble Lahore High Court in case(s) of *Muhammad Munir-vs-Zahida Parveen* (PLD 1995, Lahore 352) and *Pir Baksh-Vs-Additional District Judge, Multan* (2005 CLC 1700).

8. To appreciate the validity of this argument, it is important to examine section 13(6) of *The Ordinance of 1959*, which is reproduced below for ready reference:

Section 13(6) In proceedings under this section on the first date of hearing or as soon as possible after that date and before issues are framed, the Controller shall direct the tenant to deposit all the rent due from him and also to deposit regularly till the final decision of the

case, before the [fifteenth] day of each month, the monthly rent due from him. If there is any dispute about the amount of rent due or the rate of rent, the Controller shall determine such amount approximately and direct that the same be deposited by the tenant before a date to be fixed for the purpose. If the tenant makes default in the compliance of such an order, then if he is the petitioner, his application shall be dismissed summarily and if he is the respondent, his defence shall be struck off and the landlord put in to possession of the property without taking further proceedings in the case.

[The Controller shall finally determine the amount of rent due from the tenant and direct that the same be paid to the landlord, subject to adjustment of the approximate amount deposited by the tenant.]

(Underlining supplied)

9. A careful perusal of section 13(6) *ibid* reveals that it deals with two distinct situations; *firstly*: where the quantum of rent is not deposited and same is directed to be deposited in the Court and *secondly*: where there is dispute regarding quantum

of rent and Court proceeds to determine fair rent and directs its deposit in Court, which determination of quantum is subject to final outcome of rent case. Whereas, in the former case, the statute provides that the same is to be deposited before 15th of each month, in the latter case the statute does not provide the date itself rather it leaves it to the discretion of the Court to fix any date for the said deposit.

10. In the instant case, it is clear from the order dated: 24.10.2024 that the learned rent controller determined the fair rent as Rs. 22500/- and directed its deposit before the 10th of each month. This clearly falls in the latter category for which no date has been provided by the statute, therefore, the above referred judgments of Hon'ble Lahore High Court are not applicable to the present case, as those deal with entirely different situation(s) and as such the contention of learned counsel for petitioner is untenable in law and is of no help to his case.

11. It needs no reiteration that any default in compliance of the tentative order passed by the Rent Controller under section 13 (6) of the Ordinance of 1959 has to be met with the penalty provided therein, i.e striking off his defence and passing of the eviction order without further proceedings. The law leaves no discretion with the Courts in this regard. The Rent Controller is bound by law to give affect to this provision, as he rightly has in the instant case. Reliance can be placed on the case of *Muhammad Zaman-Vs-Abdul Khaliq* (1991 SCMR, 1982), *Muhammad Yousuf-Vs-Muhammad Bashir* (1990 SCMR 557), *Muhammad Arshad Khokhar-Vs-Mrs. Zohra Khanum and others* (2010 SCMR 1071), *Raja Sohail Javed and others-Vs-Raja Atiq-ur-Rehman* (PLD 2008 SC 470), *Safeer Travels (PVT.) LTD-Vs-Muhammad Khalid Shafi* (PLD 2007 SC 504) and *Waheed Ullah-Vs-Mst. Rehanan Nasim and others* (2004 SCMR 1568). It is also settled that if the tenant has any reservations about the

tentative rent order, he may agitate the same before the Rent Controller but after complying with the order. (2010 SCMR 1)

12. In view of above, both the Courts below have rightly passed ejectment order of the petitioner and struck off the defence of the petitioner, which orders/judgments are well-reasoned warranting no interference of this Court in its constitutional jurisdiction. Hence, same are maintained and as a result thereof, the instant petition is dismissed.

Announced.
27.10.2025.

Tahir C/Secretary.

J U D G E