

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.873 of 2016

Farhad Khan

VERSUS

Asad Zulfiqar & others

Date of Hearing: 24.03.2016
Petitioner by: Ms. Romana Shabbir Malik, Advocate
Respondent No.1 by: Raja M. Aleem Khan, Abbasi, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner has impugned the judgment dated 20.11.2015, passed by the Court of learned Rent Controller, and the judgment dated 24.02.2016, passed by the Court of the learned Additional District Judge-West, Islamabad. Vide the said Judgment dated 20.11.2015, the Court of the learned Rent Controller allowed respondent No.1's eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO"), and vide judgment dated 24.02.2016, the learned appellate court dismissed the petitioner's appeal under Section 21 of the IRRO and maintained the said judgment of the learned Rent Controller.

2. The facts essential for the disposal of this petition are that basement shop No.05, Plot No.08, Class III Shopping Centre, Sector F-7/2, Rana Market, Islamabad (hereinafter referred to as the "rented premises") are in occupation of the petitioner (Farhad Khan) as a tenant. Respondent No.1 (Asad Zulfiqar) is the lawful owner of the entire commercial plot/building in which the rented premises are situated. This plot/building was transferred in the name of respondent No.1 through transfer letter No.CDA/EM-27(2213)/92/74, dated 12.01.2012. The previous owner of the building had rented out the rented premises to the petitioner. On 11.04.2013, respondent No.1 filed an eviction petition under Section 17 of the IRRO against the petitioner. The grounds taken in the said eviction petition *inter-alia* were (1) the expiry of the lease agreement, (2) default

in the payment of rent since February 2013, (3) personal bonafide need of respondent No.1 and the renovation of the building, (4) violation of the terms of the lease agreement, and (5) violation of the Capital Development Authority bye-laws. The petitioner contested this eviction petition by filing his reply. From the divergent pleadings of the parties, the learned Rent Controller framed the following issues:-

1. *"Whether the lease agreement is expired? OPP*
2. *Whether the respondent had failed in payment of rent? OPP*
3. *Whether the respondent has impaired the demised premises without permission of landlord? OPP*
4. *Whether the petitioner has required the demised premises for his personal bonafide need? OPP*
5. *Whether the petition is liable to be dismissed? OPR*
6. *Relief."*

3. In support of his eviction petition, respondent No.1 produced three witnesses, namely, Muhammad Mehboob (A.W.1), Muhammad Aftab (A.W.2) and Raja Zulfiqar. The petitioner himself entered the witness box as (R.W.1). The trial before the learned Rent Controller culminated in the judgment and decree dated 20.11.2015, whereby respondent No.1's eviction petition was allowed. The Court of the Additional District Judge-West, Islamabad, vide judgment dated 24.02.2016 dismissed respondent No.1's appeal against the said judgment & decree. The petitioner in the instant writ petition has impugned these concurrent judgments.

4. Learned counsel for the petitioner, at the very outset, submitted that the period of fifteen days given by the learned Rent Controller to the petitioner to vacate the rented premises was too short. She further submitted that in order to enable the petitioner to find alternative premises to run his business, reasonable time, in terms of the proviso to Section 17(2)(v) of the IRRO, should have been given to the petitioner for putting the landlord/respondent No.1 in possession of the rented premises. Learned counsel for the petitioner insisted that a reasonable period, in this case, would be six months and not less than that. The learned counsel for respondent No.1 was not inclined to give such a long period to the petitioner given the rigors of litigation that respondent No.1 had been subjected to

since 2013. Therefore, this Court asked the learned counsel for the petitioner to argue her case on merits.

5. Learned counsel for the petitioner drew the attention of the Court to an "*iqrarnama*" dated 04.10.2011 executed between the petitioner and one Mushtaq Ahmad Aali, and submitted that this *iqrarnama* was in fact a sub-lease agreement under which the petitioner was occupying the rented premises; that Mushtaq Ahmad Aali was the lessee of the original owner; that the petitioner was not in possession of the lease agreement executed with the original owner; that the said sub-lease agreement was valid for a period of two years; that expiry of the lease agreement cannot be a ground for the tenant's eviction under the provisions of the IRRO; that the petitioner, as a sub-lessee, came within the definition of a "tenant" under Section 2(j) of the IRRO; that respondent No.1 had not obtained permission for the reconstruction of the building from the Capital Development Authority as required under Section 17 (2) (v) of the IRRO, hence, he could not seek the petitioner's eviction on the ground of renovating the rented premises; that since the owner of the rented premises is residing abroad, therefore his claim for the personal bonafide use of the rented premises is not tenable; and that the owner of the rented premises never entered the witness box. In support of her submissions, she placed reliance on the following cases:-

- i) Muhammad Ajmal Khan Vs. Shahid Rafique reported as 2012 SCMR 854, where it was held that it was obligatory for the owner/landlord of the building to obtain the necessary sanction for reconstruction or erection from the relevant authorities at the time of filing of the eviction petition or even during its pendency.
- ii) Mst. Nayyar Naheed Vs. Malik Zaheer Ullah reported as 2011 YLR 1535, where the Hon'ble Peshawar High Court upheld the eviction order passed by the learned Rent Controller on the plea of the landlady that the rented premises required reconstruction and that the Municipal Corporation had issued a notice for the demolition of the rented premises on account of being dilapidated. The

eviction order was passed even though the approval of the reconstruction plan had not been annexed with the ejectment petition but was produced during the proceedings before the Rent Controller.

- (iii) Mehraj Din and another Vs. Muhammad Yasin and two others reported as PLD 1968 Lahore 20, where it was held that when the rented property had been sublet, it was fair and proper that the sub-tenant should be treated as a party by the landlord in the eviction petition. Furthermore, it was held that before passing an eviction order the Rent Controller has to record that the tenant had sublet the rented premises to a sub-tenant.
- (iv) Hakim Ali Vs. Muhammad Salim and another reported as 1992 SCMR 46, where it was held that where the relationship of landlord and tenant was admitted but the rent agreement was not in writing or was not executed in the manner provided in the Sindh Rented Premises Ordinance, 1979, the terms and conditions of such an agreement, if inconsistent with the provisions of the said Ordinance, would be invalid to the extent of the inconsistency.
- (v) Zhang Guogen Vs. Mst. Jahanzeba Begum and others reported as 2013 CLC 963. In this case, the Rent Controller had passed an eviction order mainly on the ground that according to the terms of the rent agreement the tenant had failed to pay a fine to the landlady for the delay in the payment of rent, and had also not paid the increase rent. The condition of payment of Rs.500/- per day in the rent agreement was in the nature of a penalty. It was held by the Hon'ble Islamabad High Court that Section 11 of the IRRO specifically prohibited such a penalty, and the rent agreement to that extent was void *ab initio*. The Hon'ble High Court, in exercise of constitutional jurisdiction set aside the eviction orders passed by the Rent Controller and dismissed the eviction petition.

- (vi) Unair Ali Khan and others Vs. Faiz Rasool and others reported as PLD 2013 SC 190, where it was held that a power of attorney should be construed strictly and only such powers, which are expressly and specifically mentioned in the power of attorney, must be exercised by the agent as considered to have been delegated to him.
- (vii) Muhammad Imran Vs. Ghulam Mustafa and six others reported as 2015 YLR 2683, where it was held that the landlord was bound to give a plausible and satisfactory explanation for his insistence on occupying a particular premise in preference to other premises owned by him for his bonafide use. As the landlord and his son were already carrying on business in other premises owned by them, it was held by the Hon'ble High Court that no case for a personal bonafide requirement was made out by the landlord.
- (viii) Aslam Ali Shah Vs. Muhammad Azam reported as 2015 CLC 1204, where it was held by the Hon'ble Lahore High Court that personal bonafide need for the brother of the landlord was not recognized as a valid ground for the eviction of a tenant. Furthermore, it was held that violation of the terms and conditions of a rent agreement was nowhere provided in the West Pakistan Urban Rent Restriction Ordinance, 1959, as a ground for the eviction of a tenant.
- (ix) Dr. Abdul Basit Vs. Additional District Judge-II, Abbotabad & two others reported as 2012 CLC 906, where it was held that the malafide intention of the landlord for ejectment on the ground of personal need could only be ascertained if it was proved that the landlord was in fact not "needy" but was "greedy" and only wanted to enhance the rent or to rent out the premises to another person on a higher rent. Furthermore, it was held that "good faith" was the prime and essential ingredient for ejectment of a tenant.
- (x) Mahesh Kumar Chawala Vs. Haji Abdul Karim reported as 2011 CLC 1844, where it was held that since the eviction

petition was on the ground of the personal bonafide need of the landlord's son, his appearance before the Court and the recording of his statement was necessary being the proper person to explain his requirement. As the statement of the landlord's son, for whose use the premises were required, had not been recorded, the ejectment petition filed by the landlord was dismissed.

6. On the question of the tenant being granted reasonable time to vacate the rented premises, the learned counsel for the petitioner placed reliance on the cases of (1) Tahir Mehmood Vs. National Bank of Pakistan reported as 2015 CLC 1247, where the tenant was directed to vacate the rented premises within a period of four months; (2) Pakistan Institute of International Affairs Vs. Naveed Merchant reported as 2012 SCMR 1498, where the tenants were allowed two months time to vacate and handover physical possession of the rented premises to the landlord; (3) Ahmad Jan Vs. Anjuman-e- Islamia reported as 2012 CLC 179, where the order of the Rent Controller directing the tenants to vacate the rented premises within four months, and directing the landlord to give shops to tenants in the newly constructed building was upheld by the Hon'ble High Court.

7. On the other hand, learned counsel for respondent No.1 submitted that in January, 2012 the building in which the rented premises are located, was transferred to respondent No.1; that the rented premises had been rented out to the petitioner by the previous owner; that when respondent No.1 purchased the rented premises, the petitioner was paying monthly rent at the rate of Rs.35,000/-; that respondent No.1 had requested the petitioner to vacate the rented premises, but to no avail; that since the month of February, 2013 the petitioner had stopped paying the rent; that respondent No.1 required the rented premises for his personal bona fide use; that these factors compelled respondent No.1 to file an eviction petition under Section 17 of the IRRO against the petitioner before the Court of the learned Rent Controller, Islamabad, on 11.04.2013; that the grounds for the eviction petition are clearly set out therein; that

in the reply to the said eviction petition, the petitioner admitted that there was no written lease agreement between the parties, and that rent for the months of February to June, 2013 would be deposited in the Court; that the *factum* of the sub-lease was not pleaded by the petitioner in his reply; that as the said reply was filed on 22.06.2013, rent had not been paid or deposited in the Court by the petitioner until then; that rent was deposited by the petitioner under orders of the Court passed on 21.01.2015 under Section 17 (8) of the IRRO; that an amount of Rs.7,35,000/- was deposited on 14.10.2014 as rent from January 2013 to October 2014; that the learned Rent Controller had ordered for rent to be deposited at the rate of Rs.38,000/- per month, but the rent deposited by the petitioner on 12.03.2015 was only Rs.35,000/-; that this default rendered the petitioner liable to eviction under Section 17(9) of the IRRO, and in accordance with the law laid down in the case of Mushtaq Ahmad Kiani Vs. Bilal Umair, reported 2009 SCMR 1008; that the petitioner did not pay the statutory increase in rent under Section 10 of the IRRO; and that under Section 5 of the IRRO, the rent agreement between the landlord and tenant is required to be in writing.

8. Learned counsel for respondent No.1 further submitted that Section 17 (d) of the Registration Act, 1908, required a lease agreement for a term exceeding one year to be compulsorily registered; that the consequences of non-registration of such a lease agreement are provided in Section 49 of the Registration Act, 1908, hence, an un-registered lease deed for a term exceeding one year cannot operate to create any right or interest in an immovable property.

9. Learned counsel for respondent No.1 read the evidence recorded by the learned Rent Controller to establish the absence of a rent agreement and default in the payment of rent on the part of the petitioner. It was further submitted that the petitioner, in his reply to the eviction petition, did not deny that the rented premises were required by respondent No.1 for his personal bonafide need; that respondent No.1's witnesses were not subjected to any cross-examination on the question of

respondent No.1's personal bonafide need for the rented premises; that it is settled law that if a witness is not cross examined on a particular point, it is deemed to have been accepted and admitted. Reference in this regard was made to the law laid down in the cases of Sheraz Tufail Vs. The State reported as 2007 SCMR 518 and Chief Engineer Irrigation Department, N.-W.F.P. Peshawar & two others Vs. Mazhar Hussain & two others reported as PLD 2004 SC 682. Additionally, it was submitted that when the landlord makes a statement on oath that the rented premises are required for his bonafide need, the onus shifts on the other side. Reference in this regard has been made by the learned counsel for the petitioner to the cases of (1) Muhammad Shoaib Alam & others Vs. Muhammad Iqbal reported as 2000 SCMR 903; (2) Mst. Jehan Ara through Attorney Vs. Raja Zafarullah Janjua reported as PLD 2003 SC 277; and (3) Muhammad Iqbal Vs. Syed Sohail Wajid Gillani reported as 2004 SCMR 1607. In support of his submissions, learned counsel for respondent No.1 placed reliance on the following case law:-

- (a) Jahan Ara through Attorney Vs. Zafarullah Janjua, reported as PLD 2003 SC 277, where it has been held at Paragraph 9 as follows:-

9. "We are afraid the appellant cannot be non-suited only on the ground of non-examining herself in support of her personal bona fide need and that her representation through attorney was fatal to her case. The record reveals that the appellant has been able to establish her case by producing sufficient evidence of her attorney, namely Altaf Hussain and one Dr. Tehsin-ur-Rehman in support of her contention. Not even a single question was put to the attorney of the appellant to rebut the claim of her personal bona fide need as such the judgment of the learned High Court is not sustainable and it has traveled beyond the scope of the pleadings of the parties. Above mentioned witnesses, namely, Altaf Hussain and Dr. Tehsin-ur-Rehman had categorically stated in their evidence that the appellant needed the premises for her bona fide personal need and she demanded the premises many a time for vacating the premises in question but the respondent refused to vacate the same. This version was never controverted by the respondent in his evidence as such the finding recorded by the High Court is not sustainable in law and in thus set aside whereas the judgment of the Rent

Controller being based on sufficient reasoning is maintained."

- (b) Muhammad Shoaib Alam Vs. Muhammad Iqbal reported as 2000 SCMR 903, where it was held that the statement of the landlord on oath if consistent with the application for ejectment and not shaken in cross examination or disapproved in rebuttal is sufficient to prove that the requirement of the landlord was bonafide.
- (c) Mst. Rukhsana Bhatti Vs. K & N's Food (Pvt.) Ltd and others reported as PLD 2013 Lahore 119. In this case, it was held by the Hon'ble Lahore High Court at Paragraph 5 of the report as follows:-

"It has been consistently held by the Hon'ble Supreme Court that a lease agreement which is beyond a period of one year requires registration by virtue of the provisions of section 107 of the Transfer of Property Act, 1882, read with sections 17(d) and 49 of the Registration Act, 1908. In case a lease agreement is for a term exceeding one year or reserves a yearly rent and is not registered then it is bad in law. In such a case the relationship between the landlord and tenant is to be regulated by the provisions of the Statute in question which in the instant case is the Act, ibid. It has been further held that even though the lease agreement would be bad in law yet it can be acted upon for other collateral terms and conditions between the parties."

- (d) M.K. Muhammad Vs. Muhammad Abu Bakar reported as 1993 SCMR 200, where it was held that since an agreement of tenancy for an indefinite period was an agreement for a period longer than eleven months, it required the registration. The agreement in question having not been registered was bad in law apart from being violative of Section 7 of the West Pakistan Urban Rent Restriction Ordinance, 1959, and thus, not enforceable.
- (e) Habib Bank Limited Vs. Dr. Munawar Ali Siddiqui reported as 1991 SCMR 1158, where it was held that a lease of an immovable property from year to year or for any term exceeding one year or reserving a yearly rent could only be made by a registered instrument.

10. I have heard the arguments of the learned counsel for the parties and have perused the voluminous record with their able assistance.

11. I propose, first to deal with the contention of the learned counsel for the petitioner that the expiry of the lease agreement or the non-existence of a lease agreement cannot be a ground for evicting the tenant under Section 17 of the IRRO. The petitioner in his examination-in-chief before the learned Rent Controller deposed that he is in occupation of the rented premises as a tenant since 2010 and an oral tenancy agreement was made with Muhammad Azam, which was to be valid for fifteen years. He also deposed that a written rent agreement was not executed. In his cross-examination, the petitioner deposed that there is no written rent agreement in existence, and that respondent No.1 had not executed or extended any rent agreement with or in favour of the petitioner. He further deposed that he had not executed any rent agreement either with the previous owner or with the present owner of the rented premises. As the sub-lease agreement finds no mention in the petitioner's testimony or in his reply to the eviction petition, the same cannot be taken into consideration by this court in its constitutional jurisdiction.

12. In view of the petitioner's evidence as mentioned above, an admitted position emerges that the petitioner executed no written rent agreement with the landlord. Section 5(1) of the IRRO, clearly provides that every agreement for letting out a building or rented land shall be in writing and if such an agreement is not compulsorily registerable under any law for the time being in force, it shall be attested by the Rent Controller by signing and affixing his seal thereto.

13. Since the petitioner claims that the tenancy was created after the promulgation of the IRRO, and it was for a period of more than one year, it was mandatorily required to be in writing and registered. As the alleged tenancy agreement was not reduced into writing and obviously not registered, it could not operate to create any right or interest in favour of the petitioner in the rented premises.

14. Now the vital question that needs to be answered is whether in the absence of a written tenancy agreement or when the tenancy had expired, the landlord could seek the tenant's eviction under Section 17 of the IRRO. This question has been definitively answered in the judgment dated 22.01.2016, passed by the Hon'ble Islamabad High Court in Writ Petition No.854/2015, titled "Muhammad Mushtaq Vs. Muhammad Zubair etc" where, after reproducing Section 17 (1) & (2) of the IRRO, it has been held at paragraph 8 as follows:-

*8. "The bare reading of the provision of law shows that where the tenant infringes any condition on which the building or rented land is held by the tenant that is a ground for eviction. In the lease agreement where it is specifically provided that the lease shall expire on a specific date and the tenant on the referred date fails to deliver the vacant possession of the demised property the same may be considered as a breach of condition of the lease agreement. In this behalf landlord is required to prove that it was a condition on which the property was leased out to the tenant that on expiry of the lease agreement possession of the property shall be handed over to him; whether the lease agreement is in writing or oral or even where after the expiry of written lease agreement the parties continue the arrangement through oral agreement the condition regarding the expiry of the lease may provide to the landlord a ground for eviction if it is proved that intention of the parties was to the effect. Learned counsel for petitioner during the course of arguments referred to the definition of tenant as provided in Section 2 (J) of 2001 Ordinance which provides that the tenant includes any person which continues to be in possession or occupation after termination of tenancy. Similarly in Section 6 of the Ordinance, it is provided that no tenancy shall be valid beyond such period as the landlord and tenant may by mutual agreement fix before or after commencement of the Ordinance. The effect of the referred provisions alongwith Section 17 (2)(ii)(b) *ibid* is that even after expiry of the lease agreement the tenant continues to qualify as a tenant, however, there has to be a specific expiry date of the lease agreement and in case of failure by the tenant to deliver possession of the property in question to the landlord then the same may amount to breach of condition of tenancy. The Honourable Supreme Court in case titled *Qaiser Javed Malik Vs Pervez Hameed* (2009 SCMR 846) held that the plain reading of Section 6 of the Ordinance commencing with the use of word "subject to the provision of Section 17" signifies that the provision of Section 17 continues to apply as a ground for eviction of the tenant. It was observed by the Apex Court that Section 6 of the Ordinance is in addition to the grounds for eviction and is available exclusively with respect to the property situated within territorial limit where provision of the Ordinance apply. The Honourable Supreme Court in the referred judgment held that after expiry of lease the tenant is not entitled to retain possession of the rented property and can be evicted on the basis thereof. The referred decision of the Honourable Supreme Court is binding on this court. Under Sub*

*Section 1 to Section 17 of the Ordinance a tenant in possession of the building or rented land shall not be evicted from the same except in accordance with provisions of the section. The bare reading of the referred provision shows that the grounds on which the eviction application can be filed by the landlord are provided in Section 17 and though there is no ground for eviction on the basis of expiry of lease agreement, however, it is reiterated that the effect of Section 6 of the Ordinance read with Section 17 (2)(ii)(b) *ibid* is that a tenant may be evicted if he fails to deliver the possession of the property after expiry of the lease agreement."*

15. In view of the above, the expiry of the lease period can be a ground for filing an eviction petition. This principle would also apply when there is an absence of a written rent agreement, as in the instant case. Where there is no written rent agreement in existence between the landlord and the tenant, the landlord is at liberty, at any stage, to institute eviction proceedings before the Court of the Rent Controller.

16. Now, even if the rent agreement between the petitioner and respondent No.1 had been in writing, since the same was for a period exceeding one year the same would have been compulsorily registerable under Section 17(d) of the Registration Act, 1908. Such an unregistered rent agreement could not have operated to create any right or interest in the rented premises/immovable property. In terms of the law laid down in the cases of Habib Bank Ltd Vs. Dr. Munawar Ali Siddiqui (supra), M.K. Muhammad Vs. Muhammad Abu Bakkar (supra) and Rukhsana Bhatti Vs. K & N's Food (Pvt) Limited (supra) an unregistered lease agreement, for the purposes of tenure, would only be binding for a period of eleven months, and such an agreement having not been registered was bad in law apart from being violative of Section 5 of the IRRO. Furthermore, such an unregistered rent agreement cannot be accepted in evidence as proof of the relationship of landlord and tenant in terms of Section 5(2) of the IRRO.

17. Coming to the question whether it was obligatory upon the landlord to have entered the witness box in support of his eviction petition. Section 2(g) of the IRRO defines a landlord to include any person authorized by the owner of the rented premises. In the case at hand, a special power of attorney dated

04.04.2013 was executed by the owner of the rented premises in favour of his father, who had been specifically authorized to file ejectment petitions, issue eviction notices, take possession, pursue the cases and file executions. This special power of attorney was executed on 04.04.2013, duly witnessed and attested by a notary public. In the case of Syed Abdul Rauf Vs. Abdul Sattar reported as 1998 SCMR 2525, it has been held as follows:-

“The Courts are meant for the citizens from where they seek justice and, therefore, to put a clog or non-suit them on account of non-appearance even in genuine cases without any valid and cogent reasons would be a dangerous proposition for administering justice with even hands between the parties. In our opinion, it will not be in the interest of justice to lay down that in every case where a party does not appear or arranges his appearance through attorney, an adverse inference should be drawn against him. Such a rule if laid down, would result into great hardship in cases where the parties, for instance, reside abroad, who will have to sue and defend themselves through their attorney.”
(Emphasis added)

18. In the case at hand, the owner of the rented premises was admittedly residing abroad, therefore, there was no infirmity in the institution of the eviction petition through a duly authorized attorney of the landlord.

19. As regards the question of default in the payment of rent, the learned counsel for the petitioner had submitted, in reiteration of the petitioner's pleadings in his reply to the eviction petition, that the petitioner had tried to send the rent to respondent No.1 several times via postal services, but the agent of the landlord did not receive it. In his cross-examination, the petitioner had deposed that the rent had been deposited in compliance with the order of the learned Rent Controller. It was also deposed that the enhanced rent had not been deposited in compliance with the order passed by the learned Rent Controller under Section 17(8) of the IRRO. The petitioner also admitted that he had not applied to the Court for the deposit of rent, and had waited for the order of the Court for the deposit of rent.

20. The petitioner in his cross-examination has virtually admitted default in the payment of rent. The learned Rent Controller in his order dated 20.11.2015 has correctly held that on the question of default in the payment of rent, the witnesses of respondent No.1 had not been subjected to cross-examination. If credence is to be given to the assertion of the petitioner that respondent No.1 was refusing to accept the rent, there was nothing preventing the petitioner to make a timely application to the learned Rent Controller for the deposit of rent. The first Explanation to the proviso to Section 17(2) of the IRRO reads as follows:-

"(i) The rent remitted by money order or tendered to the landlord in such manner as may be agreed upon by the landlord and the tenant or deposited in the office of the Controller shall be deemed to have been duly tendered; "
(Emphasis added)

21. Whenever a landlord is reluctant or refuses to accept rent from a tenant, the tenant should lose no time in making an application to the learned Rent Controller for the deposit of rent in order to protect himself from being termed as a "rent defaulter". Since the petitioner did not make such an application, he can make no grouse against and facing the consequences of such default.

22. In the order dated 21.01.2015 passed by the learned Rent Controller under Section 17(8) of the IRRO, the petitioner was directed to deposit rent from February 2013 to January 2015 at the rate of Rs.35,000/- per month (amounting to Rs.8,40,000/-) on or before 15.02.2015, and at the rate of Rs.38,500/- per month from 05.03.2015. The petitioner on 14.10.2014 had deposited Rs.7,35,000/-, and for the month of March 2015, the petitioner had deposited Rs.35,000/- instead of Rs.38,000/-. The petitioner, instead of waiting for an order under Section 17(8) of the IRRO should have on his own volition applied to the learned Rent Controller for the deposit of rent. Even the order dated 21.01.2015 had not been complied with by the petitioner by depositing the enhanced rent. In such circumstances, it was obligatory upon the learned Rent Controller to have passed an order under Section 17(9) of the IRRO as held in the case of

Mushtaq Ahmad Kiani Vs. Bilal Umair, reported 2009 SCMR 1008. In the said case, the tenant was directed, under Section 17(8) of the IRRO to deposit rent on or before a specified date. As the tenant failed to comply with a direction of the learned Rent Controller, his defence was struck off and the eviction petition was allowed. The Hon'ble Supreme Court held that the provision of Section 17(9) of the IRRO was mandatory, and where the tenant does not deposit the rent in compliance with an order passed under Section 17(8) of the IRRO, the learned Rent Controller was left with no discretion except to order the ejectment of the tenant without further proceedings.

23. As regards the contention of the learned counsel for the petitioner that respondent No.1 had not obtained the sanction of a building plan with respect to the rented premises from the Capital Development Authority before filing of the ejectment petition, suffice it to say that as per the pleadings in the eviction petition, the rented premises were required by the landlord for the purpose of renovation. For renovating the rented premises, respondent No.1 did not need the sanction from the Capital Development Authority.

24. On the question of respondent No.1's bonafide need, again the petitioner did not cross examine any of the petitioner's witnesses on this point and the testimony of the respondent No.1's witnesses went un-rebutted. It is settled law that the portion of the witnesses' statement not challenged during cross-examination would be deemed to have been admitted. Reference in this regard may be made to the law laid down in the cases of Muhammad Akhtar Vs. Mst. Manna & three others reported as 2001 SCMR 1700 and Chief Engineer Irrigation Department, N.-W.F.P. Peshawar & two others Vs. Mazhar Hussain & two others reported as PLD 2004 SC 682.

25. As regards the contention of the learned counsel for the petitioner that the learned Rent Controller should have given the petitioner reasonable time for putting the landlord in possession of the rented premises, the proviso to Section 17(2) of the IRRO provides that the Rent Controller may give the tenant reasonable time for putting the landlord in possession of

the rented premises and may extend such time so as not to exceed three months in the aggregate. As it has been far more than three months since the learned Rent Controller passed the eviction order against the petitioner, I do not feel that the petitioner is entitled to any more indulgence. I do not see how the case law relied upon by the learned counsel for the petitioner comes to her aid.

26. By reason of the aforementioned, I do not find any merit in the petition, which is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan*

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