

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 1761/2016

Muhammad Akbar Chohan

Versus

Rent Controller Islamabad, etc.

PETITIONER BY: Mr. Manzoor Hussain, Advocate

DATE OF HEARING: 29.06.2016

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MOHSIN AKHTAR KAYANI J. Through this instant writ petition, the petitioner has prayed for the following relief:-

"In the circumstances it is, therefore, prayed that the Respondent No. 1 may kindly be ordered to conduct the fair, impartial and law based proceedings and to avoid of transgression of statutory limits".

2. Brief facts of the instant writ petition are that the petitioner has filed eviction petition U/S 17 of IRRO, 2001 against the respondent No. 2 in June, 2014, however, the matter was not decided by the learned Rent Controller till end of April 2016 whereby the petitioner has raised some important questions of public importance in the instant writ petition which are as follows:-

- a. If the Rent Controller failed to conclude the eviction proceedings within the statutory period of four (04) months, what would be the consequences?*
- b. What is procedure for service of respondent (tenant) under the IRRO, 2001?*
- c. How many adjournments could be granted to the parties for the purposes of recording of evidence in the rent proceedings?*
- d. What would be the minimum requirement of inquiry under IRRO, 2001?*
- e. Whether it is necessary to frame issues, record evidence of the parties under IRRO, 2001?*

3. In view of the questions raised by the petitioner in the writ petition, a report has been called from the District & Sessions Judges East & West, Islamabad along with the details of cases which are pending before different Rent Controllers of District East and West, Islamabad with justification and reasons of delay for non compliance of statutory

requirement to complete the proceedings within the period of four (04) months as provided under IRRO, 2001.

4. Detail reports have been submitted by Syed Sabih ul Hassan, Rent Controller West, Islamabad, Syed Muhammad Zahid Trimizi , Rent Controller, West , Islamabad, Salman Badar, Rent Controller West, Islamabad, Umar Shabbir Rent, East, Islamabad.

5. From the details given by the above mentioned Rent Controllers, following pendency details comes on record:-

S. No.	Name of the court	Number of case
1	Syed Sabih ul Hassan Rent Controller West, Islamabad.	26
2	Syed Muhammad Zahid Trimzi Rent Controller West, Islamabad.	39
3	Salman Badar Rent Controller West, Islamabad.	76
4	Umar Shabbir Rent Controller East, Islamabad.	03

6. From the perusal of reasons and their justification given by the Rent Controllers in each of their case, following major reasons emerges on record:-

- Pendency of writ petition against any interim order.
- Frequent transfers of cases from one court to another.
- Strike of local Bar Association.
- Filing of miscellaneous applications by the tenants to prolong the trial in rent matters.
- Unnecessary adjournments claimed by the counsel of the parties.
- Rent matters are treated as civil suits by the Rent Controllers.
- Service mode for the summoning of parties has been applied in terms of CPC 1908.
- Non production of evidence (affidavits) by the parties on the first date of hearing.
- Non appearance of witnesses.
- Summoning of witnesses and record of different departments through court.
- Delay in filing written reply.
- Delay caused by the petitioner.

7. From the perusal of entire record and after hearing the petitioner counsel, it has been observed that Islamabad Rent Restriction Ordinance, 2001 has not been appreciated in its true perspective by the Rent Controllers as the said law promulgated

is to regulate the relation between the landlords and tenants of rented premises whereas Section 4 provides a special status to the said law with the following words:-

4. Ordinance to override other Laws. *The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force, or in any instrument or document.*

The above mentioned provision clearly express the special status of IRRO 2001 vis-à-vis the other laws, especially the general law of Transfer of Property Act, 1881, Civil Procedure Code, 1908 and Qanun-e-Shahadat Order, 1984 whereby the general law provides the procedural details of filing of the cases, summoning of parties and the witnesses, recording of evidence, admissibility of evidence and mode of execution whereas IRRO, 2001 covers all aspects, keeping in view the statutory mandate provided in Section 25 (3) of IRRO, 2001 whereby the law itself restricts the Rent Controller to decide the application under this Ordinance as expeditiously as possible but not later than four (04) months of the date of first hearing after the service of summons on respondent. The wisdom behind the statutory time frame referred in the said law is based upon the fact that the relationship of the parties is dependent upon lease agreement or upon the terms of lease agreed between them where one party being landlord hands over the possession to the second party in capacity of tenant, therefore, the disputes which require inquiry by the Rent Controller are:-

1. Violation of terms and conditions of the lease.
2. Personal bonafide need of the landlord.
3. Reconstruction of the rented premises.
4. Non payment of rent/default.
5. Tenant has committed certain acts which impair materially the value or utility of the building or land.
6. Tenant is involved in causing nuisance to the neighbours.
7. Subletting.

Rent Controller has to satisfy himself as to whether the reasons put forward by the landlord in eviction petition are justified, however, the procedure for the inquiry has not been defined specifically when parties deny certain facts, the Rent Controller has to frame issues and record evidence, as a result whereof considerable time is consumed although the application of Civil Procedure Code, 1908 and Qanun-e-Shahadat Order, 1984 has been excluded.

Section 24 of IRRO, 2001 has provided the procedure and power to the Controller to regulate the proceedings with the specific words ***"holding an inquiry and affording to the parties an opportunity of being heard"***, these words do not give a complete procedure which has already been provided in Civil Procedure Code, 1908, therefore, majority of the Rent Controllers have adopted the only approach to frame issues and record evidence of the parties before pronouncement of the order whereas in some of the cases when it is apparent on record that default and subletting are apparent, framing of issues and recording of evidence is not required.

The other important reason of delay in rent proceedings is the procedural acts of summoning of respondent through different modes provided U/O 5 CPC in which each and every service mode has been adopted one after another and finally through publication as a substituted mode. It is the requirement of law to issue notice to the respondent side in all proceedings but the procedure for service of summon has to be applied, keeping in view the statutory period of four (04) months, therefore, any procedure in terms of order 5 CPC is against the mandate of Section 25 (3) of IRRO, 2001.

8. In some of the cases it has also been observed that the Rent Controllers have not applied the penalties provided in Section 28 & 26 of IRRO, 2001 which are as under:-

26. Compensation for frivolous applications and defence. If in the opinion of the Controller or, as the case may be, the appellate authority any party to the proceedings under this Ordinance is found guilty of abuse of the process of law by filing frivolous or vexatious application or by taking pleas in defence which are false or intended to prolong the proceedings unnecessarily he or, as the case may be, it shall, while passing the final order, award compensation to the other party which shall not be less than five thousand rupees or more than ten thousand rupees.

28. Penalties. (1) *Whoever contravenes, or fails to comply with, any provisions of this Ordinance or the rules made thereunder shall, if no other penalty is provided in this Ordinance for such contravention or failure, be punishable with fine which may extend to five thousand rupees.*

(2) *No Court shall take cognizance of an offence under this section except upon*

(a) a complaint of facts which constitute such offence filed with the sanction of the Controller in writing; and

(b) a report in writing of such facts made by the Controller.

9. Whereas if the penalty provision is applied by the Rent Controllers in appropriate cases where parties are causing intentional delay, the matter could be resolved within the statutory period.

10. In order to understand the issue, the prevailing procedure adopted by the Rent Controllers has been categorized as stage wise steps in the following manner:-

Stage-I

- Service mode simultaneous.
- Registered AD.
- Courier service.
- Special Messenger.
- Affixation of summon on the rented premises.
- Telephone message.
- Statement of Special Messenger.

Stage-II

- Proclamation

Stage-III

- Ex-parte- written reply.

Stage-IV

- First hearing, holding of inquiry.

Stage-V

- Fixation of tentative rent order.

Stage-VI

- Receipts of rents.

Stage-VII

- If any disputed fact is involve which requires proof, issues be framed.

Stage-VIII

- Submission of evidence of petitioner.

Stage-IX

- Cross-examination of petitioner.

Stage-X

- Evidence of respondent.

Stage-XI

- Cross-examination of respondent or of witnesses.

Stage-XII

- Arguments.

Stage-XIII

- Order.

Hence in view of above referred stage wise proceedings conducted by the Rent Controller a prudent mind comes to the conclusion that all these stages if assume to be true and run with a normal routine, it requires at least one and half year with approximately 20 to 25 dates of hearing. In some of the cases it has been observed that these stages were stretched to seven (07) years with more than hundred (100) dates of hearing. This kind of unnecessary delay result into frustration of litigant against the very spirit of special law, resultantly general public looses their trust on the legal system.

11. The other most important question is to evaluate the legislative intent where a statutory period of four (04) months has been provided under IRRO, 2001, this has been done with the view to get early results in the rent matters but non observance of statutory period of completion of rent proceedings does not entail any penal consequences, however, the provisions relating to violation and penalties are available in Section 26 & 28 of IRRO, 2001 but the Rent Controller are reluctant to pass any such order which gives rise to unnecessary delay in the disposal of rent matters.

12. The legislative intent has to be followed in its essence and any deviation from the said concept will lead into negation and denial of rights envisaged under the said law and the concerned stakeholders will not get benefit from the said law in its true sense such like practice amounts to clear defiance of that very special law as well as deprives the people from the fruits of speedy trial, which is the basic intention of legislature while making such like legislation, therefore, the courts are guardian to protect the said intention of legislature as they are bound to follow the same.

Reliance is placed upon **PLD 2007 SC 369 titled as Imtiaz Ahmad Lali Vs. Ghulam Muhammad Lali** wherein it was held that:-

"Courts while interpreting a statute are bound to follow intention of legislature and are prohibited to interpret law in the manner contrary to the legislature".

Similarly, when the legislation is unambiguous then its simple meaning has to be given effect in its true spirit and any other interpretation by way of different meaning should not be considered as valid. Reliance is placed upon **PLD 2007 SC 277 titled as Rana Muhammad Tajamul Hussain Vs. Rana Shaukat Mehmood** wherein it was held that:-

"Doctrine of telescoping or pragmatic construction-Applicability-specific provisions provided in enactment has to be followed-when legislation is unambiguous, the doctrine of telescoping and doctrine of pragmatic construction and contemporaneous construction has to be avoided".

It is the mandate of law and is a principle of safe administration of justice that anything must be done in a manner in which it has been provided and any other mode of doing the same amounts to denial of certain legal obligations. Reliance is placed upon 2016 YLR 285 Lahore titled as Sheikh Ghulam Hussain Vs. Chief Settlement Commissioner and others wherein it was held that:-

"If law required a thing to be done in a particular manner then it should be done in that manner only and not otherwise".

PLD 2006 Supreme Court 24 titled as Muhammad Jamil Versus Munawar Khan and others wherein it was held that:-

"---Statutory directions to individuals---Principles---When a statute directs things to be done by a private person within specified time and makes his rights dependent on proper performance thereof, unless the failure, to perform in time may injure the public or individuals, the statute is mandatory---When an individual is the person not complying, he has no grounds for complaint---Under statutes of procedure, failure to complete required steps within the time specified, is fatal to the case".

Similarly in 2006 CLC 1579 titled as KHURSHID BIBI through MUHAMMAD DIN Versus SHAHBAZ ALI wherein it was held that:-

"---S. 24---Civil Procedure Code (V of, 1908), S.148---Deposit of one third of pre-emption money within maximum period of 30 days from date of filing of suit---Extension of such period by Court---Scope---Purpose of requiring such deposit within specified period

*was to test bona fides of pre-emptor and discourage fake and frivolous litigants---Extension of time fixed by statute would negate such purpose and create complications and expansion of litigation--
-Court could extend time fixed by it, but not that fixed by statute itself---Principles".*

Hence in view of above mentioned principles enshrined by the Hon'ble Courts as well as by the Supreme Court of Pakistan it is mandatory to follow the law as legislated, therefore, the Apex Court has issued directions to deal with such kind of affairs in rent matters. Reliance is placed upon **2000 SCMR 556 titled as Barkat Ali Vs.**

Muhammad Ehsan and another wherein it was held that:-

"11. Unfortunately, the law declared by this Court in the case of Khadim Mohy-ud-Din (supra) has not been properly understood, appreciated and applied in proceedings, under the rent laws. It is, therefore, necessary in the interest of justice and to advance the cause of rent laws to state the guidelines with clarity and particularity as to the procedure that may be followed with immediate effect so that the evidence already recorded in the given cases should be made basis for the quick decision and for future it shall be regulated as follows:--

(1) Affidavits of not more than two witnesses in support of the ejectment application shall be filed in the Court in addition to the affidavit of the petitioner himself in support of the contents of the ejectment petition.

(2) While replying to the ejectment application the respondent shall be similarly required to submit his own affidavit and affidavit of two other witnesses in support of his affidavit on the date fixed in the notice served upon him.

(3) The parties shall be bound to produce their witnesses or purpose of their respective cross-examination on the day fixed by the Court.

(4) A party obtaining the affidavits of the witnesses in support of his petition/reply would be bound to produce them in the Court for cross-examination and in case of its failure to do so their evidence shall be excluded from consideration.

(5) Appeals against the interim order of the Rent Controller and resort to Constitutional jurisdiction, against orders at intermediate stages arising out of the ejectment proceedings, should be discouraged.

(6) The Court should take serious view of the situation when witnesses for cross-examination in support of their affidavits deliberately avoid/evade appearance in Court.

(7) Adjournment of ejectment petition should not be allowed except under unavoidable circumstances on an application moved by a party supported by affidavit. In such cases also adjournment should not be made for a period exceeding three days. Following the above procedure in ejectment matters appears to be necessary to achieve the goal of expeditious disposal of a case with a period of three months particularly in respect of residential tenements having regard to the decisions unanimously taken in the Chief Justices' Committee Meeting held on 26-2-2000.

(8) There is need for organization and methodical arrangement of supervision and control by the High Courts over the functioning of the

subordinate Courts which will be in accord with the decisions reached at the Chief Justices' Committee Meeting held on 26-2-2000. The District and Sessions Judges of all Provinces would be responsible for the integrity and expeditious disposal of the cases and working of the subordinate Courts within their respective jurisdiction”.

This court has observed that ejectment petitions have not been finally disposed of within timeline prescribed by legislature U/S 25 (3) of IRRO, 2001 there are number of reasons for such delay but not limited to administrative as well as professional working of different stakeholder of this legal system and one of the main reason of delay in rent matters is the non exercise powers by Rent Controllers under the scheme of IRRO, 2001 therefore, for their guidance following principles /points/guidelines are reiterated, which shall be kept in mind while dealing with any ejectment petition instituted under IRRO, 2001.

- i. Rent Controllers shall keep in mind that legislature has promulgated IRRO, 2001 to ensure expeditious and timely settlement of disputes between landlords and tenants. In order to achieve said goals, procedural requirement as envisaged in CPC for trials of civil suits are not applicable in proceeding before Rent Controller. Moreover, different tools have been provided in IRRO, 2001 to ensure timely adjudication of petitions instituted under IRRO, 2001.*
- ii. Every Rent Controller, while adjudicating upon ejectment petitions under IRRO, 2001, shall keep in mind that legislatures has provided mechanism of inquiry/summary disposal of ejectment petition, which is an essence different from a regular Civil Suit /Trial and some provisions of CPC are made applicable which are referred in Section 24 of IRRO, 2001.*
- iii. Rent Controller can pass order for simultaneous application of service mode including but not limited to register post AD, TCS, UMS, telegram, telephone, email, Special Messenger/Process Server and affixation on the conspicuous place of the rented premises or upon the address of landlord as the case may be.*
- iv. Every Rent Controller shall carefully peruse the report of Process Server. If Rent Controller is satisfied that service is effected upon a party then U/S 25 of IRRO, 2001 he can proceed with the case and it is not necessary that Rent Controller in all eventualities have resorted to service of a party through secondary /alternate mode.*
- v. All services mode can be adopted within the period of fourteen (14) days and after receipt of service report, thereafter Rent Controller can proceed with the matter accordingly.*
- vi. Legislature has not provided any timeline for submission of written reply in IRRO, 2001; therefore, a Rent Controller is not under obligation to wait for completion of thirty (30) days for written reply, only three days may be granted for the submission of written reply and in exceptional*

- circumstances one extra adjournment can be granted not beyond three (03) days.*
- vii. *Every Rent Controller shall ensure that on first date of hearing i.e. after written reply has been submitted, an order U/S 17 (8) IRRO, 2001 shall be passed. No adjournment shall be granted to advance arguments for such an order. In case parties have not advanced arguments, Rent Controller shall pass an order on the basis of available record.*
 - viii. *Rent Controller, in appropriate cases shall also look into the record, if any, petition can be decided while resorting to summary order. Unnecessary procedural requirements should be brushed aside in such situation. It is not necessary that in all cases regular inquiries to be held.*
 - ix. *In appropriate cases, if Rent Controller is of the opinion that controversy between the parties is based upon settled law either statutory law or based upon settled judicial pronouncement, then he can decide the controversy based on the said law, without going into the detail inquiry.*
 - x. *Rent Controller shall carefully look into allegations leveled in petition and admissions made in written reply. Upon perusal of the record if controversy between parties can be resolved through framing of preliminary legal issue (s) only, then Rent Controller shall frame only those issues. In such case, if Rent Controller is of the opinion, based on available material, that such controversy can only be resolved while resorting to legal arguments only then Rent Controller shall fix the date on which he shall hear the arguments of both the parties and decide the matter.*
 - xi. *Every Rent Controller shall carefully exercise its powers while placing onus to prove on issue on a particular party. In appropriate cases, Rent Controller can place onus on respondents/tenant and direct him to adduce his evidence first.*
 - xii. *On the first date of hearing, after receiving written reply of the petition, Rent Controller shall pass an order whereby parties are directed to produce their affidavits of evidence along with their documentary evidence if any.*
 - xiii. *While dealing with any miscellaneous application, a Rent Controller shall take notice, if written reply of the application is necessary or any such application can be decided in a summary manner. It is not necessary for a Rent Controller that for every miscellaneous application written reply is sought.*
 - xiv. *While dealing with any application for summoning of witness, a Rent Controller shall keep in mind its mandate provided U/S 25 (2) of IRRO, 2001, as parties are bound to produce their witnesses upon their own responsibility, in appropriate cases official witnesses can be summoned through Rent Controller.*
 - xv. *Every Rent Controller shall not grant any adjournment for any steps of the proceedings beyond three (03) days and any party who is guilty of taking unnecessary dates or deliberately delaying the proceedings by way of filing of different miscellaneous applications they should be burdened with cost not be less than Rs. 5,000/- or more than Rs. 10,000/- **(in terms of Section 26 of IRRO, 2001).***
 - xvi. *District Judge East and West shall ensure that pendency before every Rent Controller is equalized and same shall be*

considered with respect to workload suggested by National Judicial Policy.

- xvii. Every Rent Controller shall ensure that ejectment petition shall finally be decided within timeline prescribed under Section 25 (3) of IRRO, 2001 i.e. within four (04) months. All ejectment petitions in which timeline have been elapsed shall be decided within the period of two months commencing from 1st September, 2016. Fresh ejectment petitions instituted after 1st May, 2016 shall be decided within the period of four (04) months positively.*
- xviii. Rent Controller shall explain/communicate each and every days of delay to this Court through respective District Judge. Report of delay shall be submitted on weekly basis to Registrar/MIT of this Court, incase delay is not justified, cases shall be referred to Hon'ble Chief Justice for appropriate orders.*
- xix. Rent Controller who are not observing the directions and legislative intent of IRRO, 2001 or failed to comply with the directions of Apex Court cited above are considered guilty of misconduct.*
- xx. The Appellate Courts while hearing the rent appeal are bound to decide the matter within the period of two (02) months from the date of entrustment after the service mode given above.*

Hence, in view of above referred directions, learned Registrar Islamabad High Court is directed to circulate this judgment to the District Judge East & West and also notify the same to the learned Rent Controllers for their compliance. Writ petition stands disposed of in above terms.

(MOHSIN AKHTAR KAYANI)
JUDGE

Approved for reporting.

JUDGE