

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.711 of 2016

Najeeb Ullah Khan & another
VERSUS
Mst. Hameeda Chaudhry & others

Date of Hearing: 15.03.2016
Petitioners by: Rana Abid Nazir Khan, Advocate
Respondent No.1 by: Malik Mumtaz Ahmad, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, Najeeb Ullah Khan etc, have impugned the Order dated 18.02.2016, passed by the Court of learned Additional District Judge, Islamabad, whereby the petitioners' appeal against the order dated 21.12.2015, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order dated 21.12.2015, the learned Rent Controller had allowed respondent No.1's eviction petition by striking off the petitioners' defence under Section 17(9) of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") and directed them to vacate the rented property within a period of fifteen days.

2. The essential facts are that vide rent agreement dated 08.04.2000, the petitioners had rented shops No.1 & 2, Block No.73, I & T Centre, Sector G-9/4, Islamabad. When the eviction petition under Section 17 of the IRRO was filed on 01.06.2015, the monthly rent of the said two shops was Rs.13,500/-. The grounds on which the said eviction petition was filed were that the lease agreement had expired on 31.12.2000; that the petitioners had violated clause 5 of the lease agreement by sub-letting one of the shops to respondent No.1; that the petitioners had defaulted in the payment of rent; and that the petitioners had not paid the increase rent to respondent No.1. The petitioners contested this eviction petition by filing a written reply. Vide order

dated 05.10.2015, the learned Rent Controller framed the issues. Furthermore, on the said date, the learned Rent Controller also passed an order under Section 17(8) of the IRRO in the following terms:-

2. *"Relationship between the parties as landlord and tenant is admitted. Learned counsel for the petitioner admitted the monthly rent @ Rs.6750/- of each shop and submitted that respondent is rent defaulter since May 2015 and respondent be directed to deposit the rent of the rented premises in the court @ Rs.6750/- per month of each shop. On the other hand learned counsel for the respondent also admitted the rate of monthly rent @ Rs.6750/-. While the only controversy between the parties is the default of the respondent from May 2015 till to date. Therefore respondent is directed to pay the rent of the shops (6750+6750=13500/-) from the month of May 2015 to October 2015 (13500x05=67500) in the court and submit the receipts in the court (if not deposited). Furthermore, respondent is directed to pay future rent at the same rate before the 15th of every month and submit the receipt in the court till final conclusion of the petition."*

3. On 05.10.2015, the learned Rent Controller adjourned the matter to 12.10.2015 for the submission of receipts of the rent deposited by the petitioners. On 12.10.2015, the direction of the learned Rent Controller under Section 17(8) of the IRRO had not been complied with, and the petitioners simply submitted their affidavits in evidence. The matter was adjourned to 16.10.2015 so that the petitioners could deposit the receipts for the rent. On 16.10.2015, the petitioners deposited the rent for the month of October, 2015 only. As the petitioners had not shown compliance with the order dated 05.10.2015, passed by the learned Rent Controller under Section 17(8) of the IRRO, respondent No.1, on 06.11.2015, filed an application under Section 17(9) of the IRRO. On 12.11.2015, the petitioners deposited the arrears in purported compliance with the said order dated 05.10.2015, passed by the learned Rent Controller. Thereafter, the matter was adjourned on four occasions, and eventually on 21.12.2015, after an *inter-parte* hearing, the learned Rent Controller passed an order under Section 17(9) of the IRRO and directed the petitioners to vacate the rented premises within a period of fifteen days. This order

was assailed by the petitioners in an appeal filed under Section 21 of the IRRO before the Court of the learned Addl. District Judge, Islamabad. This appeal was also dismissed by the learned appellate court vide order dated 18.02.2016. The concurrent orders passed by the learned lower courts have been assailed by the petitioners in the instant writ petition.

4. Learned counsel for the petitioners submitted that the non- deposit of the rent on 12.10.2015 was not deliberate and was the result of a *bonafide* error inasmuch as the petitioners and their learned counsel were under the mistaken impression that the petitioners were supposed to deposit the arrears in rent on 12.11.2015 instead of 12.10.2015; that compliance with the order dated 05.10.2015 passed by the learned Rent Controller under Section 17(8) of the IRRO was shown by the petitioners on 12.11.2015, by depositing Rs.81000/- as rent for the period between May 2015 to September, 2015; that the petitioners should not have been subjected to the penal measure under Section 17(9) of the IRRO on account of this *bonafide* lapse; that the petitioners had a very strong case on merits and therefore, should have been permitted to defend the eviction petition filed by respondent No.1; and that the courts have the jurisdiction in appropriate cases to condone the delay in the deposit of rent. In making his submissions, the learned counsel for the petitioners placed reliance on the case of Wasal Khan & others Vs. Dr. Niaz Ali Khan reported as 2016 SCMR 40, Messrs Uzma Construction Co. Vs. Navid H. Malik reported as 2015 SCMR 642 and Hashim Khan Vs. Ghulam Nabi & 7 others reported as 1973 SCMR 112.

5. On the other hand, the learned counsel for the respondent No.1 defended the concurrent orders passed by the learned lower courts and submitted that as the order dated 05.10.2015 had admittedly not been complied with by the petitioners, they deserved no indulgence from this

Court. He prayed for the dismissal of the instant petition. In support of his submissions, learned counsel relied upon case law titled as Mushtaq Ahmad Kiani Vs. Bilal Umair & others reported as 2009 SCMR 1008 and M.H. Mussadaq Vs. Muhammad Zafar Iqbal & another reported as 2004 SCMR 1453.

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

7. It is an admitted position that the petitioners had not shown compliance with the order dated 05.10.2015, passed by the learned Rent Controller under Section 17(8) of the IRRO wherein the petitioners were unequivocally directed to pay the arrears in rent for the two shops from May 2015 to October, 2015 at the rate of Rs.13500/- for both the shops, and additionally to pay the future rent before the 15th day of every month. The petitioners were also directed to submit the receipt in the Court. The matter was adjourned to 12.10.2015 for the submission of the receipts of the rent which was to be deposited by the petitioners. The learned Rent Controller was under no obligation to stipulate a date in the order under Section 17 (8) of the IRRO on which the petitioners were to deposit the arrears in the rent. In such a scenario, the direction of the learned Rent Controller under Section 17(8) of the IRRO had to be complied with by the next date of hearing. In this case, the petitioners admittedly did not show compliance with the order dated 05.10.2015, passed by the learned Rent Controller by submitting the required receipts on 12.10.2015 (which was the next date of hearing). In such circumstances, the learned Rent Controller is left with no discretion but to pass an order under Section 17(9) of the IRRO, which is reproduced herein below:-

“17(9) If the tenant fail to deposit the amount of rent before the specified date or, as the case may be, before the fifteenth day of the month, his application if he is an applicant shall be dismissed or his defense,

if he is a respondent, shall be struck off, and the landlord shall be put in possession of the building without any further proceedings."

8. In the judgment dated 12.08.2015, passed by the Hon'ble Islamabad High Court in W.P.No.2059/2015, titled "Syed Bilal Adil Vs. Learned District Judge (West), Islamabad, etc" the tenant's case was that compliance with an order under Section 17(8) of the IRRO could not be shown because on the next date of hearing fixed by the learned Rent Controller, the Presiding Officer was on leave. The Hon'ble Islamabad High Court spurned this excuse by holding as follows:-

"In so far as non-deposit of rent on 31.03.2015 on the ground of absence of the Presiding Officer is concerned the same has no justification or basis. In this behalf this Court in W.P.No.2537/2013 vide judgment dated 26.11.2013 held that there is no exception to the consequences of non-deposit or non-compliance of the order of the Rent Controller as provided in subsection 9 of Section 17 of the Ordinance."

9. I find that the order dated 21.12.2015, passed by the learned Rent Controller, is strictly in accordance with the statute and the law laid down by the Superior Courts in the following cases:-

- (i) In the case of Mushtaq Ahmad Kiani Vs. Bilal Umair, reported 2009 SCMR 1008, 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.

- (ii) In the case of M.H. Mussadaq Vs. Muhammad Zafar Iqbal & another reported as 2004 SCMR 1453, it has been held as follows:-

10. On this aspect of the matter, the legal position is very clear. According to subsection (9) of Section 17 of the Act, if the tenant fails to deposit the amount of rent before specified date, or, as the case may be, before 5th of the month, his defence shall be struck off. On its bare perusal, it is manifest that the above provisions are mandatory in nature and even on day's delay in making the deposit would be default within its meaning and Rent Controller has no power to extend time and condone the same."

- (iii) In the case of Bilal Abid Vs. District Judge (West) Islamabad reported as 2015 YLR 2405, this Court has not even condoned a delay of two days in the deposit of rent in compliance with Section 17(8) of the IRRO. On account of such delay in the deposit of rent, the tenant was held to have become a defaulter and liable to be evicted from the rented premises under Section 17(9) of the IRRO.
- (iv) In the case of Shamshad Ali Vs. Ghulam Muhammad Chaudhry reported as 2009 CLC 52, this Court held that the learned Rent Controller was fully competent under the law to pass the ejectment order and strike off the defence of the tenant in case of non compliance of an order passed under Section 17(8) of the IRRO. In the said case, the Islamabad High Court dismissed a writ petition against an appellate order, whereby the appeal against the eviction order passed by the learned Rent Controller under Section 17(9) of the IRRO, was dismissed. This is what also happened in the case of Hassan Ali Khan Vs. Additional District Judge Islamabad, reported as 2003 CLC 1819.
- (v) In the case of Major (R) Shakil-ud-Din Ahmad Vs. Addl. District Judge, Islamabad, reported as 2007 CLC 601,

it has been held at paragraph 5 of the said judgment as follows:-

"5. In the instant case the facts are very simple. The relationship of landlord and tenant between the parties is admitted, therefore, on 13-6-2006 the learned Rent Controller correctly passed an order in exercise of jurisdiction under section 17(8) of the Islamabad Rent Restriction Ordinance, 2001 directing the petitioner to deposit the past rent and fixed the case for 28-6-2006 for production of proof of the rent deposited. The petitioner did not challenge the jurisdiction of the Rent Controller at the time of passing the order under section 17(8) of the Ordinance, but he moved an application on the said date for extension of time of 15 days for payment of rent instead of depositing the same. Since the petitioner violated the order dated 13-6-2006 passed by the Rent Controller under section 17(8) of the Islamabad Rent Restriction Ordinance and did not deposit the rent as ordered by the Court, therefore, the Rent Controller had no option except to strike off the defence of the petitioner and passed the order of ejectment in exercise of the jurisdiction under section 17(9) of the Ordinance. In the case reported as Zikar Muhammad v. Mrs. Arifa Sabir and another 2000 SCMR 1328, where the Rent Controller had struck off defence of the tenant and ordered him to hand over the vacant possession of premises to landlord and the High Court holding that there was no good cause or reasonable explanation for delay/negligence in payment of rent by the tenant dismissed the appeal, the Honourable Supreme Court while interpreting the provisions of section 13(6) of the West Pakistan Urban Rent Restriction Ordinance (VI of 1959), which are pari materia of section 17(8) of the Islamabad Rent Restriction Ordinance, 2001 (IV of 2001), has ruled that, "High Court having rightly concluded that defence of the tenant was rightly struck off by the Court below, no valid ground existed for interference in the order of High Court" and refused leave to appeal."

10. As regards the contention of the learned counsel for the petitioners that the non-deposit of the arrears in rent on 12.10.2015 was the consequence of a *bonafide* mistake, is

also not tenable. It is well settled that the law assists those who are vigilant about their rights and not those who sleep over them. Reference in this regard may be made to the law laid down in the cases of Aftab Iqbal Khan Khichi & another Vs. Messrs United Distributors Pakistan Ltd Karachi reported as 1999 SCMR 1326 & Nazakat Ali Vs. WAPDA through Manager & others reported as 2004 SCMR 145. The petitioners knew or ought to have known the contents and import of the order dated 05.10.2015, passed by the learned Rent Controller under Section 17(8) of the IRRO. The unsavory consequences that flowed from the petitioners' non compliance with the said order are something that the petitioners have only themselves to thank for. The petitioners have not been able to show that the default in showing compliance with the order passed by the learned Rent Controller under Section 17 (8) of the IRRO was unavoidable or beyond their control. Hence, there was no reason in law to condone such a default.

11. In the result, there is no merit in this petition and it is, accordingly, dismissed but in the circumstances of the case, there shall be 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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