

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.1631/2022
Ms. Memoona Zainab Kazmi
vs.
Additional District Judge (MCAC), Islamabad & 02 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
01.	16.05.2022	Mr. Javed Iqbal Khan, Advocate for petitioner.

Through the instant writ petition, the petitioner Ms. Memoona Zainab Kazmi i.e. tenant has assailed the order dated 20.04.2022, passed by learned Additional District Judge (West) Islamabad as well as the order dated 30.03.2022, passed by learned Rent Controller, whereby appeal filed by the petitioner has been dismissed and eviction order passed by learned Rent Controller has been maintained.

2. Succinctly, the petitioner entered into lease agreement with Yousaf Hussain (respondent No.3 / landlord) with respect to House No.11, Street 84, Sector G-6/4, Islamabad vide lease agreement dated 19.12.2019 for period two years against monthly rent of Rs.325,000/- with 10% annual increase. After expiry of lease period on 31.12.2021, the respondent landlord filed an eviction petition primarily on the ground of non-payment of rent on due dates, expiry of lease and default in payment of rent with different instances as well as on the ground that post dated cheques handed over by the petitioner against the rent, dishonored due to insufficient balance. Learned Rent Controller has

passed eviction order on 30.03.2022 on the ground of expiry of lease, whereas the learned first Appellate Court has dismissed the appeal filed by petitioner vide order dated 20.04.2022 on the ground of default in payment of tentative rent in terms of Section 21(6) of Islamabad Rent Restriction Ordinance, 2001, amended as Islamabad Rent Restriction (Amendment) Act, 2021. Hence, this writ petition.

3. Learned counsel for petitioner contends that the learned first Appellate Court has not considered the rate of monthly rent and non-suited the petitioner while declaring her as defaulter in terms of Section 21(6) of IRRO, 2001, though the complete rent has been deposited on 15.04.2022, as reflected from bank deposit challan, whereby rent of Rs.357,500/- was deposited in favour of respondent landlord in the learned first Appellate Court and he has relied upon 2009 SCMR 1008 (Mushtaq Ahmad Kiani v. Bilal Umair, etc.), 2007 CLC 579 Lahore (Mian Ashraf Hussain v. Asad Bashir Bajwa, etc.) and 2005 CLC 625 Lahore (Asif Amanullah, etc. v. Muhammad Yousaf). In addition to above, he further claims that in terms of Section 16A of the Islamabad Rent Restriction (Amendment) Act, 2021, every case should have been referred to the Mediation Council for settlement of the dispute amongst the landlord and tenant, as such, the Mediation Council has been defined in Section 2(ga) of the amended Act, comprising of the President, Chamber of Commerce and two representatives of tenant and landlord, therefore, the eviction order which has been passed without adverting to

the procedure of Section 16A which is illegal and is liable to be set aside.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner being tenant of leased premises i.e. residential House No.11, Street 84, Sector G-6/4, Islamabad, which is owned by landlord Yousaf Hussain (respondent No.3), who leased out the same to the petitioner vide lease agreement dated 19.12.2019 for the term of two years at monthly rent of Rs.325,000/-, who filed the eviction petition on 18.01.2022 before the learned Rent Controller, Islamabad in terms of Section 17 of IRRO, 2001 primarily on two grounds i.e. expiry of lease and default on account of payment of rent. The eviction petition has been contested by the present petitioner being the tenant on the ground that new amendment under the Islamabad Rent Restriction (Amendment) Act, 2021 envisaged a procedure under Section 16A, which provides the concept of Mediation Council, consisting of President of Chamber of Commerce and representatives of tenant and landlord to decide every dispute between the landlord and tenant, including the dispute of goodwill within the stipulated time period, which has not been applied, though the amended act has been notified on 09.12.2021. The petitioner has also taken the stance that she has paid due rent amount in cash for complete one year from December 2021 up till 31.12.2022, but despite that she has been evicted. Similarly, the lease

agreement used in this case has also been objected to by the petitioner due to its non-registration.

6. In order to resolve the controversy, this Court is in agreement with the primary factum qua the expiry of lease, which is admitted phenomena in this case, whereby lease period has already been expired on 31.12.2021, which has not been denied by the petitioner before this Court, even otherwise, the concept of expiry of lease has been settled by the apex Court in PLD 2018 SC 81 (Waqar Zafar Bakhtawari v. Haji Mazhar Hussain Shah), whereby it has been held that, *“after expiry of tenancy period, a tenant, though continues to hold over the possession of the rented premises, but his tenancy was rendered invalid, in that, it had come to an end, and if there was no express consent of landlord to extend the tenancy period in terms of Section 17(2)(ii)(b) of IRRO, 2001”,* therefore, it has been settled that once the lease period is expired there is no hindrance to proceed further by the learned Rent Controller in the eviction proceedings, except by passing the eviction order forthwith, unless the tenant *prima facie* produces any documentary evidence qua extension of lease period given by the landlord.

7. The second important question raised in this case is based upon the amendment made in the IRRO, 2001, expressly known as the Islamabad Rent Restriction (Amendment) Act, 2021, notified on 09.12.2021 in Gazette of Pakistan, whereby the concept of Mediation Council has been introduced in terms of Section 16A consisting of President Chamber of Commerce or any other officer of

Chamber of Commerce as well as representative of tenant and landlord being its member, “*where every dispute between landlord and tenant under this Act, including dispute relating to goodwill shall be referred to Mediation Council.*” This new provision provides an alternative concept of mediation and the legislative intent has been expressed by using the word “*shall*”, which conveys a mandatory meaning in a specific direction to the learned Rent Controller to refer every case to the Mediation Council by all means in terms of Section 16A of the IRRO, 2001. Though, at this stage, this Court has attended to the proposition with reference to the ***Statement of Objects and Reasons*** in the amended bill to lay down its intent as to why such amendment is required, whereby the Statement of Objects and Reasons discloses the emphasis upon Article 38(A) of the Constitution of the Islamic Republic of Pakistan, 1973, which deals with the principle of the State Policy (Chapter 2), to ensure equitable adjustment of rights between landlord and tenant. Similarly, the statement also refers the decade old demands of tenant and landlord in the federal capital for amendment to meet their concerns, but surprisingly it is not the general demand of residential tenants, rather it is the concern raised by the traders, who were tenants in commercial buildings, which is the reason of said amendment, though no specific reference has been made in the statement of objects and reasons *vis-a-vis* the traders (tenants) of the commercial buildings, rather a generalized statement has been referred, but if said reasons are

considered with the second portion of phrase used in Section 16(2) of the IRRO, 2001, which refers to, “*including dispute relating to goodwill*”, though there is not a single word explaining the concept of “goodwill” in IRRO, 2001 or IRRA, 2021.

8. This Court is under legal duty to attend the concept of goodwill, which has not been explained in the IRRO, 2001 or the IRRA, 2021, referred above, therefore, in such situation when the meaning of any term has not been explained in any law, the same has to be considered under rules of interpretation on the basis of the ordinary dictionary meaning as held in 2022 SCMR 25 (Government of Punjab v. Abdul Rehman) and 1994 SCMR 2255 (Abdul Hameed v. Nek Muhammad). Therefore, the term “goodwill”, which has been explained in the Collins Dictionary in the manner that, “*the goodwill of a business is something such as its good reputation, which increases the value of the business.*” Whereas, in Black’s Law Dictionary, 8th Edition, Bryan A. Garner, the term “goodwill” has been explained as “*a business reputation, patronage and other intangible assets, that are considered when appraising the business, esp. for purchase; the ability to earn income in excess of the income that would be expected from the business view as a mere collection of assets.*” Similarly, the term “goodwill” has also been explained in Oxford Thesaurus of English as “*benevolence, compassion, kind, heartedness, big heartedness, goodness, kindness, kindliness, consideration, charity; cooperation, collaboration, friendliness, thoughtfulness, decency,*

amity, sympathy, understanding, amenability, neighborliness, mutual support". Even the said term has also been appreciated by the superior Courts and equalized with the term "Pagri" which was not recognized by the law and plea of tenant that he had paid goodwill for premises, in no manner could succeed as a ground of defence when eviction of tenant was being sought by the landlord as held in 1993 CLC 266 Karachi (Nargis Bano v. Rehman Bhai), and the landlord is not debarred from seeking eviction of the tenant despite receiving the goodwill or *Pagri* as held in PLD 1996 Quetta 48 (Saeed Muhammad v. Mehrullah), 1987 SCMR 307 (Sheikh Muhammad Yousaf v. District Judge, etc.), and 1992 MLD 1225 Karachi (M. Kassam & Bros. v. Sharabat Khan). Similar aspect has also been explained by the apex Court that payment of *Pagri* not forming terms and conditions of tenancy and being contrary to public policy and any supra contractual arrangement, which negated tenancy could not affect maintainability of eviction proceedings as held in 1997 SCMR 1819 (Azizur Rehman v. Pervaiz Shah). It is also pertinent to mention here that term "goodwill" is quite alien in case of lease agreement of a residential building where tenant is neither businessman nor the building is commercial specified for running some business

9. The concept of mediation in terms of Section 16A provides an alternate mechanism to settle the matter amicably, though the concept of mediation has neither been explained separately nor any such rules have been

notified, therefore, the ordinary meaning of the mediation procedure is to be considered firstly from the international standards, meaning that, *"a unilateral intermediary, the mediator, help the parties to reach mutually satisfactory settlement of their dispute"*, as such, the mediation is non-binding procedure controlled by the parties and even a party to mediation cannot be forced to accept an outcome that it does not like, unlike arbitrator or a judge, primarily on the ground that mediator is not a decision maker. The mediator's role is, rather, to assist the party in reaching settlement of a dispute.

10. The mediation also consists of negotiation between the disputing parties, assisted by mutual third party, voluntarily in reaching their own mutually acceptable settlement of the issues in dispute. While considering the provision of Section 16A(2) of the IRRO, 2001, every dispute between landlord and tenant under this Act has to be referred to the Mediation Council and the stage has been set out in the manner that after service of summons from the respondent, the Controller shall refer the matter to Convener for mediation and direct the parties to appear before the Convener within seven days in terms of Section 16A(3) of the Ordinance, as such, after appearance before the Mediation Council, the parties shall be directed to appoint representatives within three days duly authorized by them in writing, who shall make statement about the dispute and thereafter the Convener shall convene the meeting of Mediation Council not later than seven days,

however in case the settlement is not arrived at amongst the parties, the Convener shall intimate the Controller in writing, who shall proceed with the case as referred in sub Section 6 of Section 16A of the IRRO, 2001. This aspect clearly establishes that it is a non-binding procedure after it has been referred to the Mediation Council by the Controller in terms of Section 16A(2), per se, any party can disagree with the mediation at first instance, therefore, the Controller should have kept the eviction proceedings or any other proceedings alive.

11. Besides the above referred concept of mediation in the amended Act, every agreement between the landlord and tenant is compulsorily register-able in terms of Section 5 of the Act, which should be in writing and placed before the Controller within 30 days of signing of the agreement, whereupon the Controller shall enter the particulars of tenancy in a register, affix its seal on the tenancy agreement, retain a copy thereof and return the original to the landlord, as such, both the parties are under legal obligation to get the document registered under the law, per se, the certified copy whereof is considered to be a proof of the relationship of landlord and tenant, which is admissible in evidence before the Rent Controller during the proceedings. However, in case any such lease agreement, which has not been registered under Section 5 of the IRRO, 2001, used in the proceedings before the Rent Controller, the Controller shall take notice of the same and may direct the parties to get the instrument registered at

first instance under the law in terms of sub-section 2 of Section 5 of the IRRO, 2001.

12. During the course of arguments, learned counsel for petitioner has been confronted qua the period of lease and proof of payment of rent under the law, whereby Section 10 provides an automatic increase at the end of every one year by 10% of the rent already being paid by the tenant, but the petitioner being the tenant has failed to submit any document on record to demonstrate such aspect and only referred a bank challan for the month of April 2022, where an amount of Rs.357,500/- was deposited before the learned first Appellate Court of Additional Sessions Judge during pendency of the appeal, though the automatic increase is applicable to the petitioner, in which she was obliged to deposit the rent with enhanced rate notwithstanding passing of any order by the Rent Controller or on the claim of the landlord. Hence, the statutory provision has been violated as the concept of automatic increase is available from different rent laws since inception. If the tenant does not pay the enhanced rent within stipulated period, he deems to be a defaulter as held in PLD 1997 Lahore 99 (Mumtaz Begum v. Wazir Begum), 1997 CLC 1658 Lahore (Sanobar Khan v. Muhammad Younis) and 2000 CLC 1306 Lahore (Utility Store Corporation of Pakistan (Pvt.) Ltd. v. Abdul Mahbood Khan).

13. During the course of arguments, petitioner has been directed to refer lease agreement and other record of the

learned first Appellate Court as well as of the learned Rent Controller to understand his arguments, but same were not attached with instant writ petition for the reason best known to the petitioner rather it has been considered adverse to the petitioner who has violated the requirement of High Court Rules and Order where every document and record of the lower courts or tribunal have to be attached in the constitutional jurisdiction being the mandatory phenomena, therefore, in such situation when the document of tenancy and proceedings of the Rent Controller have not been placed on record, this Court had no other option but to call for the record of the forum below for the purpose of clarity, as such, the record reveals that earlier an FIR No.74, dated 14.12.2020, under Section 489-F PPC, Women P.S, Islamabad has been lodged against the petitioner by the landlord for dishonestly issuing cheque on account of the rent to the landlord, though a compromise has been effected between the parties, whereby the petitioner has paid a sum of Rs.1,950,000/- through pay order No.16829810, drawn at UBL, Jinnah Avenue, Islamabad, dated 25.03.2021, as recorded by the learned Additional Sessions Judge (West), Islamabad in pre-arrest bail proceedings, dated 13.04.2021. This aspect clearly demonstrates that the petitioner tenant is in default on different occasions and such aspect has not been denied by the petitioner side in the Court. In such scenario, the learned Rent Controller has rightly concluded the case in the spirit laid down in 2019 MLD 590 Islamabad (Shuja

Ahmad v. Additional District Judge, etc.), whereby it was held that recording of evidence is not requirement of law when admitted facts in the inquiry clarify the grounds of eviction under Section 17 of IRRO, 2001.

14. In view of above, this Court hereby observes the following for the purpose of direction to the Rent Controller as well as to the Mediation Council for adjudication upon the matters relating to rent disputes amongst the landlord and tenant:

- a) Every lease agreement should be registered compulsorily in terms of Section 5 of the IRRO, 2001 by the Rent Controller within 30 days of its execution and presentation by the landlord before the Controller, however in case any lease agreement has not been registered in terms of sub-section 2 of Section 5 of IRRO, 2001 and proceedings under the law are initiated before the Rent Controller, he shall first pass an order for registration of the tenancy under the law and then proceed further within the period of three days.
- b) The increase in rent of residential and non-residential building in terms of Section 10 of the IRRO, 2001 is automatic on yearly basis with 10% increase of the rent already being paid by the tenant. Such provision has to be applied notwithstanding the orders passed by the Rent Controller, rather it is the obligation of the tenant to pay enhanced rate on due date under the terms

of agreement, failing which it has to be considered as a default and violation of the terms of lease agreement as well as of the law.

- c) The Rent Controller shall refer every dispute between landlord and tenant to the Mediation Council in terms of Section 16A(2) of the IRRO, 2001, however the Mediation Council after receiving the reference shall proceed accordingly in terms of sub-sections 3, 4 & 5 of Section 16A, within the stipulated timeline envisaged thereunder, as such, in case any of the party is not in agreement with the mediation procedure or process, or refuses to participate in the mediation, the mediation proceedings would become ineffective and considered to be in failure, thereafter the matter shall continue with the Rent Controller from the stage where it was being suspended.
- d) The landlord or tenant, as the case may be, has every authority to submit his/her refusal to agree with the Mediation Council mechanism provided in Section 16A on the first date of hearing after the reference of the issue by the Rent Controller to the Mediation Council as the mediation process is not binding upon the parties to compulsorily enter into a settlement, rather it is by a choice.
- e) The Rent Controllers shall not refer those cases to Mediation Council under Section 16A where the

default of rent is apparent or where the order for deposit of rent in terms of Section 17(8) of IRRO, 2001 has not been complied with or where lease agreement has already been expired.

- f) Before transmitting the reference to Mediation Council by the Rent Controller, the Rent Controller should have passed the order for deposit of tentative rent as mediation procedure requires a completion of 30 days time in terms of sub-section 5 of Section 16A of the Ordinance.
- g) The Mediation Council in no case can extend time period provided under the law for the purpose of mediation between the landlord and tenant, as such, in case the mediation proceedings are not concluded within the timeline referred above, a joint request of both the parties may be made to the Rent Controller for extension of time, otherwise the mediation proceedings will be considered non-conclusive and the Rent Controller shall proceed accordingly.
- h) The Rent Controller while referring the matter to the Mediation Council in terms of Section 16A of the Ordinance may adjourn the matter only for one month and shall not disregard the provision of Section 25(3) of IRRO, 2001 in any manner and the guidelines provided in 2017 MLD 53 Islamabad (Muhammad Akbar Chohan v. Rent Controller, Islamabad).

- i) The Rent Controller while referring the matter to Mediation Council under Section 16A of the Ordinance, transmit copy of eviction petition along with attached documents, including the lease agreement, if any, and shall not transmit the original record of the tribunal in any manner.
- j) The President Chamber of Commerce, or any other office holder, who has been nominated by the former to act as a convener under Section 16A(1)(a) of the IRRO, 2001 is under obligation to arrange the mediation within its office in a systematic order while maintaining the register with details of representatives of tenant and landlord as well as of the proceedings thereof. The convener may call both the parties through telephone or any other mode recognized under the law and shall abide the legislative intent to mediate within the timeline prescribed under the law.
- k) The mediation Council or the convener is under obligation to convey the results of mediation in a precise manner to the learned Rent Controller, who referred the matter to the Council, with his own signature and seal or may issue copy of the mediation to relevant parties for the official use before the learned Rent Controller.
- l) The Federal Government shall notify the rules in the official gazette qua the Mediation Council for

effective settlement of the dispute amongst the landlord and tenant, especially the tenant of the commercial buildings, but not in conflict with the mandate provided in Section 16A of the IRRO, 2001.

15. In view of above observations, the instant writ petition is hereby ***DISMISSED*** *in limine* as no case for interference is made out.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 20.05.2022.

JUDGE

Approved for reporting.

Khalid Z.