

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 1966/2019
Abid Pervaiz
Vs
Rasheed Khan etc

Petitioner by: Syed Muhammad Ali Bukhari, Advocate.
Respondents by: Ch. Zubair Mehmood Gujjar, Advocate.
Date of Decision: 16.03.2020.

FIAZ AHMAD ANJUM JANDRAN, J:- Through the instant writ petition, the petitioner has challenged the order dated 30.4.2019, passed by the learned Rent Controller, Islamabad-West in terms whereof, the petitioner was directed to deposit monthly rent @ Rs.32,000/- from June 2017 to May 2018 and Rs.35,200/- per month from June 2018 till date with direction to continue depositing future rent @ of Rs.35,2000/- *(as mentioned in the impugned order)* per month on or before 15th of each coming month. Through the said order, the learned Rent Controller also directed the parties to advance arguments on the next date of hearing on the point as to why the eviction petition should not be decided summarily on the ground of expiry of lease agreement.

2. Learned counsel for the petitioner contends that plot No.250 was sold to respondent No.3; peaceful possession of the said plot was also handed over to the respondent who made part payment regarding the said plot and thereafter failed to make the balance payment because the cheques issued in favour of petitioner by the respondents were bounced due to insufficient funds; that respondents failed to make balance payment and offered the petitioner for sale of their Flat No.22 which is adjacent to Flat No.23 (subject matter of the instant writ petition); that in this respect petitioner filed suit for specific

performance of agreement, cancellation of transfer letter, mandatory and permanent injunction against the respondents for performance of their obligation regarding said plot No.250 situated at Industrial Triangle Kahuta; that possession of said plot had been transferred to them, balance payment of petitioner is outstanding towards the respondents and they have even lastly promised to transfer Flat No.22. In this view of the matter, petitioner is not obliged to make any payment of rent regarding Flat No.23 in respect of which ejectment petition is pending.

3. On the other hand, learned counsel for the private respondents states that the facts stated by the petitioner relate to distinct and independent matter having no connection with the present controversy; that existing controversy between the parties is in respect of Flat No.23 regarding which lease agreement had already been expired and the petitioner is not tendering the rent as per order passed by the learned Rent Controller. Further states that instead of complying with the order of the learned Rent Controller, petitioner is alleging vague assertions regarding subject matter of the other suit. In this respect, submitted copy of suit filed by the present petitioner against the respondent with the title of specific performance of agreement, cancellation of transfer letter dated 29.11.2018, mandatory and permanent injunction. According to the learned counsel, said suit had already been dismissed. Also states that without admitting anything the amounts paid by the present petitioner had been withdrawn by him. Prays for dismissal of the instant petition.

4. Heard the learned counsels for the parties and examined the record with their able assistance.

5. Record appended with the instant writ petition shows that the learned Rent Controller vide order dated 30.4.2019, impugned herein, has directed the petitioner to

deposit arrears of rent, current rent and for future, certain directions were given regarding payment of the rent. Application filed by the present petitioner under Section 13 of the IRRO, 2001 had already been dismissed vide order dated 12.03.2018. Albeit, case of the petitioner is regarding certain payments but as per record that has no relevancy with the present subject matter, in which the proceedings are conducted in the light of IRRO 2001. The relationship of landlord and tenant has not been specifically denied but as per contents of the reply filed by the present petitioner to the ejectment petition filed by the respondent, the execution of written lease agreement is admitted.

6. The law on the subject is very much clear that if a party entered into rented premises as tenant through a lease agreement and afterwards he has any claim regarding ownership of said premises then, first of all, he has to vacate the premises and thereafter file a suit for specific performance or to avail any other remedy for which he is entitled as per his stance. Filing of suit on different premises and for some other property is no ground for denial to payment of tentative rent. In this respect reliance is placed upon case law reported as *Muhammad Iqbal Haider Vs IST ADJ, Karachi Central and others* (PLD 2018 Supreme Court 35) wherein paragraph No.7 it is held that:-

"4. We have heard the petitioner as well as the learned counsel for the contesting respondent No.2 at length and have also perused the available record. We find that the institution of two civil suits by the petitioner; one for specific performance of agreement and the other for cancellation of sale deed of the respondent No.2 per se, would not be sufficient to refuse compliance of an order of the Rent Controller under section 16(1) of the Ordinance pending final determination. Reliance can be placed on the cases of Nazir Ahmed v. Mst. Sardar Bibi and others (1989 SCMR 913), Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 87), Waheedullah v. Mst. Rehana Nasim and others (2004 SCMR 1568), Haji Jumma Khan

v. Haji Zarin Khan (PLD 1999 SC 1101), Khawaja Ammar Hussain v. Muhammad Shabbiruddin Khan (PLD 1986 Karachi 74), Habib Khan v. Haji Haroon-ur- Rasheed (1989 CLC 783); Gohar Ali Shah v. Shahzada Alam (2000 MLD 82), Iqbal and others v. Mst. Rabia Bibi and another (PLD 1991 SC 242) and Syed Imran Ahmed v. Bilal and another (Civil Appeal No.2230 of 2008 decided by this Court on 9.6.2009). Once the petitioner was prima facie, shown to be inducted as a tenant of the demised premises, he could not claim any exemption from payment of rent on account of institution of suits for specific performance and for cancellation of sale deed. Article 115 of the Qanun-e-Shahadat Order, 1984 lays down that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that his landlord had a title to such property. The relationship of landlord and a tenant is not severed even if the execution of an agreement to sell is admitted. The petitioner was not absolved of his responsibility of compliance of order passed by the Rent Controller under the provisions of section 16 of the Ordinance for making of payment of arrears and future rent. In our view, the impugned judgment of the High Court is plainly correct to which no exception can be taken.

5. For the foregoing reasons, we do not find any merit in this petition which is dismissed and leave to appeal is refused accordingly."

In fact, first of all, petitioner has to comply with the order regarding payment of rent whether he likes or not consider it just, or otherwise, and then to proceed further. He is not legally entitled to challenge that interim order and opted not to comply with the payment of tentative rent. In this respect in case (Supra) it was held in paragraph 9 as follows:-

"It is settled law that an order passed by a Court (whether or not a party considers it just, valid and fair) has to be complied with subject to his right to challenge the same before the fora provided in law. In case of non-compliance, the consequences provided in law are bound to follow. In the instant case, the order for deposit of rent passed by the Rent Controller was challenged and upheld upto this Court and it was unequivocally held that, "we find that the institution of two civil suits by the petitioner; one for specific performance of agreement and the other for cancellation of sale deed of the respondent No.2 per se would not be sufficient to refuse compliance of an order of the Rent Controller under

section 16(1) of the Ordinance pending final determination." As such, the petitioner has no body but himself to blame if his defence was struck off on account of his admitted failure to comply with the order leading to an order for his ejectment from the rented premises."

7. The instant writ petition has been filed against the order dated 30.04.2019, which is an interim order in its nature because no final adjudication has been made by the learned Rent Controller and it appears that order is in respect of deposit of certain amounts of rent which if, in the opinion of the learned counsel for the petitioner is illegal, then same could be questioned at the later stage while challenging the same at the time of final adjudication of the ejectment petition. No writ petition is maintainable against interim order of Rent Controller as specific exclusion in this regard is provided vide Clause (2) of Section 21 of the IRRO, 2001 and thus mechanism to file a writ petition against the interim order would amount to frustrate that provision.

8. In view of above, the instant writ petition being devoid of merits and not maintainable, is accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R. Ansari