

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.532 of 2016

Ahmad Nadeem Abbasi

VERSUS

Chaudhry Muhammad Ishaq & others

Date of Hearing: 15.02.2016, 25.02.2016, 07.03.2016, 09.03.2016,
10.03.2016, 14.03.2016, 16.03.2016 & 18.03.2016
Petitioner by: Syed Mujtaba Haider Sherazi, Advocate
Respondents by: Mr. Khurram Mehmood Qureshi,
Advocate

MIANGUL HASSAN AURANGZEB, J:- Through this consolidated judgment, I propose to dispose of Writ Petition No.532/2016 and Writ Petition No.591/2016 as common questions of law and fact are involved in these petitions.

2. W.P.No.532/2016 has been filed against the judgment dated 07.01.2016, passed by the Court of the learned Additional District Judge-West, Islamabad, whereby the petitioner's appeal against the Order dated 07.07.2015, passed by the court of the learned Rent Controller, Islamabad, was dismissed. Vide the said Order dated 07.07.2015, respondents No.1 to 3's eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO"), was allowed, and the petitioner was directed to handover vacant possession of the rented premises within a period of one month.

3. W.P.No.591/2016 has been filed against the judgment dated 07.01.2016, passed by the Court of the learned Additional District Judge-West, Islamabad, whereby the petitioner's appeal against the Order dated 07.07.2015, passed by the learned Rent Controller, Islamabad, was dismissed. Vide the said Order dated 07.07.2015, respondent No.1's eviction petition under Section 17 of the IRRO, was allowed, and the petitioner was directed to handover vacant possession of the rented premises within a period of one month.

4. The facts essential for the disposal of these petitions are that on 22.05.2007, respondents No.1 to 3 in W.P.No.532/2016, filed an eviction petition under Section 17 of the IRRO seeking the eviction of the petitioner from Shop-cum-Flat/Unit No.2, Gole

Market, Sector F-7/3, Islamabad ("Unit No.2"). On the same day (i.e. 22.05.2007), respondent No.1 in W.P.No.591/2016, filed an eviction petition under Section 17 of the IRRO seeking the eviction of the petitioner from Unit No.1, Gol Market, Sector F-7/3, Islamabad ("Unit No.1"). Unit No.1 and Unit No.2 ("the rented premises") are adjacent to each other and were rented out by the petitioner on 11.10.2003 from their respective owners. The eviction petitions instituted by the owners of the rented premises are more or less identical in their essential particulars save the description of the rented premises and the names of the eviction petitioners. The grounds on which these eviction petitions were filed were (1) expiry of the lease agreement, (2) the landlord's personal bonafide need so as to establish a bakery to be run by the landlord's children, (3) default in the payment of rent since 01.11.2006, and default in the payment of utility bills, and (4) the conversion of the external open space/verandah into a dinning hall in violation of the Islamabad Zoning Control Building Regulation, 1993, and removal of common walls between the rented premises.

5. The petitioner contested these eviction petitions by filing his written replies. On 16.12.2008, the learned Rent Controller passed a tentative rent order under Section 17(8) of the IRRO directing the petitioner to deposit arrears of rent from November, 2006 till December, 2008 at the rate of Rs.44,748/- per month with a 10 % increase per annum. Furthermore, the petitioner was directed to deposit future rent at the rate of Rs.59,559/- per month on or before the 15th of each month. Subsequently, vide order dated 17.04.2009, the said order dated 16.12.2008 was modified with the consent of the parties and the petitioner was directed to pay future rent at the rate of Rs.54,145/- instead of Rs.59,559/- per month. On 18.05.2013, the respondents filed an application under Section 17(9) of the IRRO praying for an eviction order on the ground that the petitioner had not deposited the tentative rent with a 10% statutory increase since October, 2009. The learned Rent Controller, vide order dated 07.06.2013, dismissed the respondents' said application under Section 17(9) of the IRRO. The said order dated 07.06.2013 was assailed by the petitioner

before the Hon'ble Islamabad High Court in W.P.Nos.2655 & 2997 of 2013, which were allowed, vide orders dated 18.06.2014, the operative part whereof is reproduced herein below:-

“11. There is no exception to the consequences of non-deposit, non-compliance of order of Rent Controller having been given in Sub Section 9 of Section 17 of IRRO, 2001. On the contrary, in addition to such rigidity the mandatory provision not only depicts striking off the defence, but also keeping the landlord in possession of the building without any further proceedings.

12. In view of above discussion, I am of the confirm view that the tenant has committed willful default in payment of statutory increase rent since October, 2009, therefore, order passed by the learned Trial Court is liable to be set aside, same is therefore, set aside. Respondent is directed to deliver the vacant possession of Unit No.1 (Shop-cum-flat) in question to the petitioner on or before 31.7.2014. In case, he fails to do so, the petitioner will be at liberty to execute the ejectment order in accordance with law.”

6. The said orders dated 18.06.2014 were challenged by the petitioner before the Hon'ble Supreme Court in Civil Petitions No.1372 and 1373/2014. Vide Order dated 01.09.2014, the said petitions were converted into appeals and allowed by setting aside the order dated 18.06.2014, passed by the Hon'ble High Court. The matters were remanded to the Court of the learned Rent Controller with the direction to complete the proceedings within a period of two months. The operative part of the Order dated 01.09.2014, passed by the Hon'ble Supreme Court is reproduced herein below:-

“4.Order of the Rent Controller dated 16.12.2008 can be split into two parts; one relating to the deposit of future rent and the other is 10% increase restricted to the arrears. The future rent for each of the property at the rate of 59559/- per month was ordered to be deposited on or before 15th of each month. The 10% increase per annum was not mentioned regarding future rent. This is the plain reading of the said order. No other construction can be placed upon it. This order was passed way back in 2008 and no effort was made by the respondents for its modification.

5. The High Court had referred to the rent deed to conclude that the petitioner was obliged to pay the future rent at the increased rate of 10%. For the purpose of interpretation of the order of the Rent Controller the provisions of lease agreements cannot be invoked. Sub- Section (9) of Section 17 of the Ordinance of 2001 is a special provision whereby the Rent Controller strikes down the defence of the tenants in case he fails to deposit the rent as ordered. Thus, only the order of the Rent Controller is to be looked into to determine whether the provisions of Sub-Section (9) of Section 17 of the Ordinance of 2001 can be invoked. Thus, the High Court had erred in law in allowing the Writ Petitions filed by the respondents landlords. The petitions were therefore converted into appeals and allowed by our short order, which reads:

"For reasons to be recorded later, these petitions are converted into appeals and allowed. The impugned judgments are set aside. Since the ejectment petition was filed by the respondents way back in the year 2007 and evidence has yet to be concluded, the Rent Controller shall complete the proceedings within a period of two months and intimate the Registrar of this Court."

7. After the remand of the matter by the Hon'ble Supreme Court, the learned Rent Controller recorded the evidence of the parties' witnesses. In both the cases, the petitioner produced himself as RW-1, and Chaudhry Muhammad Ramzan entered the witness box as AW-1. Vide Orders dated 07.07.2015, the learned Rent Controller allowed the eviction petitions and directed the petitioner to hand over vacant possession of the rented premises to the landlords within a period of one month. These orders were assailed by the petitioner in appeals before the Court of the learned Additional District Judge, Islamabad. Vide orders dated, 07.01.2016, the learned appellate Court dismissed the said appeals.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER/LANDLORD:

8. Learned counsel for the petitioner in W.P.No.532/2016 submitted that the title page of the eviction petition shows that it was instituted by three petitioners, whereas the said petition was signed by only one eviction petitioner, namely, Muhammad Ishaq (respondent No.1), who claims to be the special attorney of the other two eviction petitioners, namely, Mrs. Sakina Jamil and Mrs. Zarina Ramzan (respondents No.2 & 3). The body of the eviction petition does not disclose as to why respondents No.2 & 3 have not signed the eviction petition. It is next contended that the lease agreement dated 11.10.2003 with respect to Unit No.2 was signed by respondents No.2 & 3 as landlords. Unit No.2 is admittedly an un-partitioned property co-owned by respondents No.1 to 3. No *wakalatnama* was filed before the learned Rent Controller on behalf of respondents No.2 & 3, and, therefore, they engaged no counsel for their representation. Respondents No.2 & 3 never entered the witness box to verify the contents of the eviction petition. The legal effect of all these omissions was that there was no eviction petition on behalf of respondents No.2 & 3 and they

never sought the petitioner's eviction from Unit No.2. He further submitted that in the eviction petition, the portion of Unit No.2 owned by respondents No.2 & 3 should have been separated. He contended that the learned Rent Controller erred in law by allowing the eviction petition for the whole of the property. As regards respondent No.1, learned counsel for the petitioner submitted that he never entered the witness box and that respondent No.1's attorney (Chaudhry Muhammad Ramzan/A.W.1) had submitted an affidavit-in-evidence (Exh.A-1). A.W.1 was not the attorney of respondents No.2 & 3.

9. Learned counsel for the petitioner further submitted that one of the grounds taken by the respondents in the eviction petition was the expiry of the lease agreement, but the learned Rent Controller has held that the lease agreement had not expired. According to the 3rd paragraph of the lease agreement, the same is valid up to 2020. The plea taken by the respondents in the eviction petition was that the lease expired in October 2006. The respondents had deposed on oath that the rent agreement was valid until October 2006. The long validity period of the lease agreement, and the power of the petitioner to sublet the rented premises is the main reason, while the respondents denied the execution of the lease agreement. The learned Rent Controller did not believe the contention of the respondents that the lease agreement had expired, but he believed their contention regarding the allegation of default.

10. It was further submitted that in the eviction petition, the respondents admitted their signatures on the lease agreement but asserted that they were obtained by fraud. On the contrary, in the evidence, the respondents deposed that the signatures on the lease agreement are someone else's. Since Unit No.2 is a commercial property, therefore, the plea of personal *bonafide* need was not available to the respondents.

11. Learned counsel for the petitioner submitted that the eviction petition was granted by the learned Rent Controller primarily on the ground of default in the payment of rent, and unauthorized structural changes. The respondents had alleged that the petitioner defaulted in the payment of rent since

November, 2006. In Paragraph 4.1 of the eviction petition, it is pleaded/alleged that the default in the payment of rent on the part of the petitioner started from the month, when, according to the respondents, the lease agreement expired. Before November, 2006 there is no allegation of any default in the payment of rent. In fact since October 2006, the respondents refused to receive rent from the petitioner. The respondents' motive behind not receiving the rent was to engineer a default and attribute the same to the petitioner. As the respondents refused to receive the rent from the petitioner, the petitioner tendered it through Pay Order dated 31.05.2007 for the months of December 2006 to August 2007, and a postal receipt in this regard was also placed on record. The mode of payment of rent was provided in the rent agreement. Until May 2007, there were two terms of three months each for which advance rent had to be paid - the first term was from November 2006 to January 2007, and the second term was from February 2007 to April 2007. The rent for this period was tendered through the above mentioned Pay Order in May 2007. The alleged default on the part of the petitioner was of two terms (of three months each) and not that of six months. The alleged default is for the period during which the respondents allege that there was no rent agreement. Notionally speaking, there was no rent agreement until the learned Rent Controller ruled that there existed an agreement between the parties. Where there was no rent agreement, the statute would govern and regulate the relationship between the landlord and tenant. Under Section 17(2)(i) of the IRRO, a landlord can seek the eviction of a tenant if the tenant has not paid or "tendered" the rent due from him. As the petitioner had "tendered" the rent for the two, three-month terms through pay order dated 31.05.2007 Exh.R.23, an eviction petition could not have been filed against the petitioner. The learned Rent Controller misread the evidence by holding that there was no evidence as to the refusal to receive rent. The petitioner was cross-examined on this matter; that the learned Rent Controller should have given reasons for not believing this aspect of the petitioner's evidence, therefore, the order of the learned Rent

Controller was not the result of appropriate adjudication of the said matter.

12. Learned counsel for the petitioner submitted that upon the expiry of the rent agreement, the statutory provisions take the place of the rent agreement; that when there is no rent agreement, the statutory provisions would govern the relationship between the landlord and the tenant; that although, the default was alleged to be under the rent agreement, but the respondents were denying the rent agreement; that the learned Rent Controller relied upon the terms of the rent agreement and held the petitioner to be a defaulter by holding that the petitioner had to pay rent in advance for three months; that the respondents were asserting default, and at the same time denying the rent agreement; that the allegation of default should have been decided in accordance with statutory provisions; that under the law, a default has to be a willful default - a default for which there is no explanation; that under the rent laws, default is an act resulting in penal consequences; that where a subject was being tried for imposition of penal consequences, the circumstances should be thrashed out prejudicially and all inferences have to be drawn in favour of the subject; that prior to November 2006, there was no allegation of default made by the respondents; that the default is for a very small period - a default of two terms only; that the bank certificates confirm the issuance and diary of the pay orders; that the said default on the part of the petitioner is admitted but it should have been considered in the attending circumstances; and that had the attending circumstances been taken into account, the learned Rent Controller would have certainly held that it was an engineered default.

13. The eviction petition was filed by the respondents on 22.05.2007. When this eviction petition was filed, there had been a default of two terms of three months each. The petitioner admits that he should have gone to the learned Rent Controller and applied for permission to deposit the rent. However, the petitioner kept on sending pay orders until the order dated 16.12.2008 was passed under Section 17(8) of the IRRO. When this order was passed, there were no arrears in rent. Nonetheless an application

was filed by the respondents under Section 17(9) of the IRRO. This application was turned down by the learned Rent Controller. However, the respondents' second application under Section 17(9) of the IRRO was granted. This application was granted by holding that there was a delay of one day in the payment of rent. The petitioner went in appeal and the appellate court reversed the order passed by the learned Rent Controller under Section 17(9) of the IRRO. The grounds taken by the respondents in their application under Section 17(9) of the IRRO was that the petitioner was not depositing the increased rent in terms of the rent agreement - a rent agreement which the respondents were denying. The said appellate order was challenged in the writ jurisdiction of the Hon'ble Islamabad High Court. The writ petitions were allowed by the Hon'ble High Court holding the non-payment of an increased rent to be a default. The petitioner impugned the judgment of the Hon'ble High Court before the Hon'ble Supreme Court, which reversed the orders passed by the Hon'ble High Court and remanded the matter to the learned Rent Controller, holding that there was no order to deposit any increased rent. Since December 2008 till date, there has been no default in the deposit of rent. Therefore, the respondents are estopped to raise any plea of default from May 2007 till date.

14. In the order dated 16.12.2008, passed by the learned Rent Controller, there was a direction to deposit rent from November 2006 to December 2008. The petitioner had taken the position that as the rent due had been tendered through pay orders, there was no reason to deposit the arrears in the Court. However, the rent for the said two terms was deposited in the Court. The appellate court had also held that there had been no default. The learned counsel for the petitioner did not place reliance on any case law in support of his submissions.

15. That as regards the ground of structural changes on which the respondents sought the eviction of the petitioner from the rented premises, the same was denied by the petitioner; and that a restaurant had admittedly been established at the rented premises.

SUBMISSIONS MADE BY THE LEARNED COUNSEL FOR THE LANDLORDS / PRIVATE RESPONDENTS:

16. Mr. Khurram M. Qureshi, Advocate for the landlords / private respondents read over the four grounds on which the eviction petition was filed. On 22.05.2007, the eviction petition was filed by the landlords under Section 17 of the IRRO. As the petitioner was avoiding notices from the Court, a proclamation was issued. As late as 16.06.2008, the petitioner put in appearance. This was after ex-parte proceedings against the petitioner had been initiated on 06.08.2007, and the matter had been fixed for recording of ex-parte evidence. With the consent of the contesting parties, the order to proceed with the case ex-parte was recalled.

17. Learned counsel for the respondents submitted that there were four categories of default in the payment of rent \committed by the petitioner. These categories have been listed herein below:-

- (i) Rent for the month of November, 2006 has not been paid at any stage;
- (ii) The lease agreement required the petitioner to pay advance rent on quarterly basis. It is an admitted position that advance rent on quarterly basis after October 2006 was not paid by the petitioner;
- (iii) Since February 2009 the rent was being deposited by the petitioner at a fixed rate with no increase. In other words, since the past seven years, there had been no increase in the rent deposited by the petitioner in the Court. The lease agreement provided for a yearly increase in rent by 10% and;
- (iv) For the months of December 2006 and February 2009, the petitioner claims to have paid the rent through pay orders, whereas there is no evidence of any tender, receipt and encashment of any pay order.

18. It is admitted that until October 2006, rent had been paid by the petitioner. The dispute regarding the default in the payment of rent arose from November 2006 onwards. During cross-examination of the petitioner, he admitted that there was no proof for the payment of rent for the month of November 2006. The mere fact that rent for the month of November 2006 has not been paid, renders the petitioner liable to eviction. Learned counsel for the respondents submitted that the petitioner had committed default in the payment of rent from November 2006 to February 2009, and that the petitioner had committed default by not paying advance quarterly rent. Since February 2009, the petitioner was paying a

fixed amount as rent, with no increase. For Unit No.01, the petitioner was paying Rs.32,152/- per month, whereas for Unit No.02, he was paying Rs.54,145/- per month. As regards the period from December, 2006 to February 2009, the petitioner in his cross-examination had deposed that rent for the said period had been paid through pay orders which had been sent through courier. The petitioner has not been able to prove the six or seven pay orders or that they have been en-cashed. Under the law, the delivery of the pay orders to the landlord was mandatory. In the written reply filed by the petitioner, there is no plea regarding the tendering of rent through pay orders. When the parties were at variance on the question whether payments were made through pay orders, the burden was on the petitioner to prove this fact. He placed reliance on the cases of Liberty Paper Ltd. Vs. Mrs. Ghazala (2004 YLR 1784) and Roshan Habib Vs. Haji Usman (1987 CLC 1484) and contended that the delivery of a cheque or a pay order was mandatory. The petitioner in his cross-examination has admitted that the pay order was for the period between December 2006 to August 2007 (i.e. for a period of nine months). The date of this pay order is 31.05.2007 and it is for an amount of Rs.6,42,510/-. Learned counsel for the respondents submitted that the mere fact that the rent for December 2006 to August, 2007 was claimed to have been paid by the petitioner on 31.05.2007, is a default *ipso facto* on the part of the petitioner.

19. He further submitted that an order under Section 17(8) of the IRRO is only a tentative order and is subject to evidence. The lease agreement had provided for yearly increase of rent by 10%. Under Section 10 of the IRRO, rent has to be enhanced by 25% after every three years. In both the situations, the petitioner was a defaulter. A specific order directing the petitioner to pay an increased rent was not required.

20. Learned counsel for the respondents submitted that Section 5 of the IRRO required the lease agreement to be registered. The lease agreement between the parties was also compulsorily registerable under Section 17 of the Registration Act, 1908. The consequences of non-registration of a compulsorily registerable document are provided in Section 49 of the Registration Act,

1908. As the lease agreements between the contesting parties were not registered, by operation of law they had a validity period of eleven months only. The learned counsel in this regard placed reliance on the cases of HBL Vs. Munawar Ali Siddiqui (1991 SCMR 1185), M.K. Muhammad V. Muhammad Abu Bakar (1993 SCMR 200), Abdul Shakoor Vs. Azeem Yousaf (2013 YLR 1004). Therefore, the respondents were correct in pleading that the lease agreements had expired.

21. It was further submitted that any one of the co-owners was competent to file an eviction petition without impleading the other co-owners. In this regard, he placed reliance on the cases of Maqsood Ahmad Vs. Khalid Hussain Khan (2002 SCMR 1112), Dr. Masuma Hasan Vs. Muhammad Hafeez (2015 MLD 1577), and Muhammad Anwar Vs. Mir Rafique Ahmed Talpur (2014 MLD 23). He stressed that under the provisions of IRRO, any person entitled to receive rent came within the definition of a landlord. Therefore, the eviction petitions were competently filed.

22. Learned counsel for the respondents/landlords drew the Court's attention to Exh.A.3, which is a special power of attorney executed by Ch. Muhammad Ishaq (respondent No.1 in writ petition No.532/2016) and Mrs. Zarina Ramzan (respondent No.3 in W.P.No.532/2016) in favour of Ch. Muhammad Ramzan Tahir A.W.1 and respondent No.1 in writ petition No.591/2016), authorizing the latter to be their special attorney in the eviction petition titled "Ch. Ishaq and others Vs. Ahmad Nadeem" before the learned Rent Controller. The said attorney has been specifically authorized to appear in the Court on behalf of the said principals and make statements, give evidence, sign on documents, initiate proceedings, etc. Similarly, through Exh.A.2, Ch. Muhammad Ishaq has appointed Ch. Muhammad Ramzan Tahir as a Special Attorney in respect of the eviction petition titled "Ch. Muhammad Ishaq Vs. Ahmad Nadeem Abbasi" before the learned Rent Controller.

23. Mrs. Zarina Ramzan (respondent No.3 in W.P.No.532/2013) is Ch. Muhammad Ramzan's wife. Unit No.01 is wholly owned by Ch. Muhammad Ramzan. In Unit No.02, 75% shares are owned by

Mrs. Zarina Ramzan, whereas 25% shares are owned by the legal heirs of Ch. Muhammad Ishaq's wife, Mrs. Zainab Bibi (deceased).

24. As mentioned above, Ch. Muhammad Ramzan Tahir (respondent No.1 in W.P.No.591/2016) was the owner of Unit No.01 and also the eviction petitioner before the learned Rent Controller. He submitted his affidavit in evidence. He is the real brother of Ch. Muhammad Ishaq, who is one of the co-owners of Unit No.02 and also the eviction petitioner.

25. The lease agreement with respect to Unit No.02 was signed by Ch. Muhammad Ishaq on behalf of all the co-owners. He was under no legal impediment to sign the lease agreement in terms of Section 2(g) of the IRRO, which defines a "landlord". In conclusion, he prayed for the writ petitions to be dismissed.

26. Learned counsel further submitted that the learned courts below have erred in law by deciding the ground of personal bonafide need against the respondents. He contended that in these proceedings, he can also question that part of the impugned order, which was against the respondents. In this regard, he placed reliance on the case of Muhammad Ayub Khan Vs. Abdul Aziz Burney (1994 CLC 1123). He submitted that the rented premises were required for the respondents' children namely, Muhammad Faizan (aged 30) and Ehsan (aged 28), who were old enough to run their business at the rented premises.

27. On the question of making structural changes in the rented premises, A.W.1 was not cross-examined. His testimony about the conversion of the verandah into the dinning hall had gone un-rebutted.

SUBMISSIONS IN REJOINDER BY THE LEARNED COUNSEL FOR THE PETITIONER:

28. In his rejoinder, the learned counsel for the petitioner submitted that it is not disputed that any co-owner of the rented premises could file the eviction petition. However, he submitted that two of the eviction petitioners had not signed the eviction petition and had also not authorized any body else to sign the eviction petition. The powers of attorney (Exh.A.2 and Exh.A.3) were in favour of Ch. Muhammad Ramzan Tahir and not in favour of Ch. Muhammad Ishaq, who had signed one of the eviction

petitions. In such a situation, the learned Rent Controller had two options before him viz (i) either to delete or strike off the names of the eviction petitioners, who had not signed the petition, or (ii) reject the eviction petition to their extent. By not exercising either of these options, the learned Rent Controller granted the petition in favour of landlords, who had not signed the eviction petitions. Additionally, it was submitted that the eviction petition did not disclose as to who and in what proportion the rented premises is owned by. Consequently, the presumption would be that all the co-owners owned the rented premises in equal proportion. As regards Unit No.01, the other co-owners did not join Ch. Muhammad Ishaq in filing the eviction petition. This, the learned counsel submitted, was a legal question that should have been answered by the learned Rent Controller.

29. The learned counsel for the petitioner drew the attention of the Court to Section 24 of the IRRO and submitted that no order could be passed by the learned Rent Controller without holding an inquiry and affording an opportunity of hearing. The eviction petitioner was supposed to stand on his own legs by proving his own case, after which the onus shifts on to the other side. He submitted that the petitioner had carried out no structural changes and that the restaurant is still in the same shape. The respondents had not discharged the onus of proving that structural changes have been made by the petitioner. He further submitted that as the provisions of Transfer of Property Act, 1882, were not applicable to the Islamabad Capital Territory, hence, the objection of the respondents as to the non-registration of the lease agreements pails into insignificance.

30. The petitioner had paid the rent for the first year in advance. Thereafter, the rent was paid on quarterly/three monthly basis in advance. Default in the payment of rent for the month of October 2006 had not been alleged by the respondents. Rent for the months of October, November and December, 2006, was due on 01.10.2006. There is no allegation of any default in payment of rent for the month of October 2006. Default had been alleged for the month of November 2006 and not October 2006. The petitioner was entitled to the statutory grace period of sixty days for the

payment of rent under Section 17(2)(i) of the IRRO. As the respondents had denied the lease agreement, the mode of payment would not be in advance but in accordance with the provisions of the IRRO. The learned Rent Controller did not conduct an inquiry as contemplated by the provisions of IRRO to see if any willful default had been committed by the petitioner. Default on the part of the petitioner could either have been on 01.10.2006 or 01.01.2007. Accordingly, it would not be until 31.03.2007 when the rent would be next due. The rent due on 31.03.2007 could have been paid by the petitioner on 30.05.2007 (i.e. within the statutory grace period). The learned counsel for the petitioner prayed for the writ petitions to be allowed and the concurrent orders passed by the Courts below to be set aside.

31. I have heard the learned counsel for the parties at great length, stretched over a number of days, and perused the voluminous record with their able assistance. The facts have been set out with sufficient detail in paragraphs 04 to 06 above, and need not be recapitulated.

32. The lease agreement with respect to Unit No.2 was executed on 10.10.2003, between the petitioner, as lessee, and Chaudhry Muhammad Ishaq for himself and as the general attorney of (1) Mrs. Sakina Jamil, (2) Mrs. Zainab, and (3) Mrs. Zarina Ramzan, as lessors. The lease period was agreed to be effective from 01.10.2003 to 30.06.2020. The monthly rent for the first one year of the tenancy was agreed to be Rs.33,620/-. This amount was to be enhanced every year by 10%. The rent for the first one year was paid in advance.

33. The lease agreement with respect to Unit No.1 was executed on 10.10.2003, between the petitioner, as lessee, and Chaudhry Muhammad Ramzan Tahir, as lessor. The monthly rent for the first one year of the tenancy was agreed to be Rs.19,965/-. The rest of the terms and conditions of this lease agreement are almost identical to those of lease agreement regarding Unit No.2.

34. The first covenant of the lessee in both the lease agreements is as follows:-

"1. That after the expiry of the first one year the lessee shall pay the rent on quarterly basis in advance till 10th day of first month of every new period of rent to the Lessors regularly. In

case of non-payment of the rent quarterly basis in advance till 10th day of first month of every new period of rent by the Lessee to the Lessors, the Lessee shall be considered defaulter and liable for ejectment.”

35. The primary ground on which the learned lower Courts have orders the eviction of the petitioner from the rented premises is default in the payment of rent in accordance with the terms of the lease agreements. The findings of the learned Rent Controller and the learned Appellate Court on the question of default in the payment of rent by the petitioner are as follows:-

Findings of the learned Rent Controller	Findings of the learned Appellate Court
<p>“15. In the light of above discussion it is to be ascertained that the quarterly rent of demised premises was to be paid in advance before the 10th of each first month. From the appraisal of the testimony this fact is substantially emerged on the face of record that Ex-R23 was prepared for the period of 09 months on 31.05.2007. Besides this there is a clear admission on the part of respondent that pay orders remitted in lieu of rent was transferred in favour of petitioners or not. Likewise, the witness has shown his inability to bring on record any documents showing that the rent from November 2006 to January 2007 has been paid. Hence, the respondent failed to explain that as to why the rent since November 2006 was not tendered to the petitioners on due date as per terms and conditions of the lease agreement Mark-A. Respondent has even not produced any evidence to the effect that petitioner refused to receive the rent, or he attempted to sent the same through money orders and then was compelled to tendered the same in court. In view of the above clear willful default in payment of rent has been made on the part of the respondent as the result, this ground is answered in affirmative”</p>	<p>“9. Second point for consideration in the matter in hand relates to default. The respondent alleges that appellant committed default in payment of money rent since November, 2006, whereas latter denied. Appellant produced Ex.R 2 to Ex.R 20 in support of his version. RW 1 categorically acknowledged that the quarterly rent of demised premises was to be paid in advance before 10th of each first month and thus non-payment before 10th of each first month will be considered for commission of default. Admittedly, Ex.R 23 was prepared for the monthly rent of 09 months and before this no payment order was prepared and no documentary evidence has been proved regarding payment of rent from November, 2006 to January, 2007, ere preparation of draft is not sufficient to prove the version of appellant. Even if as per version of the appellant, the default is considered after lapse of 03 months time, even then in case of non-payment of above-mentioned rent, default would be considered and thus it has been rightly held by the learned Rent Controller that willful default in payment of rent has been made on the part of the appellant and this ground was correctly answered in affirmative.”</p>

36. The petitioner entered the witness box as (R.W.1). His cross-examination shows that he was fully aware of the terms and conditions of the lease agreements, including his obligation to pay rent for every three months in advance – by the 10th of the first

month. The learned counsel for the contesting parties were in unison on their submission that until October, 2006, the petitioner did not default in his obligation to pay rent in accordance with the terms of the lease agreements. The respondents' case is that the petitioner did not pay rent for the month of November 2006, and that even if it is assumed that the petitioner had tendered rent for December, 2006 to August, 2007, (i.e. nine months), this was not until 31.05.2007 when the pay order for an amount of Rs.6,45,010/- was alleged to have been issued.

37. Now the petitioner (R.W.1) in his cross-examination deposed as follows:-

Mein nai pay order morkha 31.05.2007 mubligh 642,510/- jaari kr standard chartered bank apnay jawab darkhawast k hath laf kia tha, usay batore ExR-25 tasleem krta hon. yeh durust/correct hai k mazkoora baala pay order December, 2006 tah August 2007, 9 maa k kar'aahay/rent ki mad mein tha.

38. Under the terms of the lease agreements, the petitioner was required to pay rent in advance (by the 10th of every first month) for every three of the tenancy. The learned counsel for the petitioner, after referring to the petitioner's cross-examination, contended that a pay order dated 31.05.2007 for an amount of Rs.642,510/- drawn on Standard Chartered Bank was paid to the respondents, and that this amount was paid as rent for December, 2006 to August, 2007. Although, the respondents deny the receipt of this amount, even if it is assumed that this amount was paid, it violates the first covenant of the lessee in both the lease agreements. Under the terms of the lease agreements, quarterly rent was to be paid in advance prior to the 10th day of first month of each quarter. Furthermore, there is no evidence that the petitioner paid rent for the month of November, 2006. Hence, it does not lie in the mouth of the petitioner to contend that he did not commit default in the payment of rent.

39. The petitioner in his cross-examination has virtually admitted default in the payment of rent. If credence is to be given to the assertion of the petitioner that the respondents were 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)

40. 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. Hence, the petitioner can be held to have committed default in the payment of rent in accordance with the provisions of the lease agreement. I do not see jurisdictional infirmity or error in the said findings of the learned Rent Controller and the learned appellate Court.

41. The contention of the learned counsel for the petitioner that since the respondents had taken the position that the lease agreement had expired, therefore, the petitioner stood absolved from paying rent in accordance with the terms of the lease agreement, and that rent would be payable in accordance with the statute (IRRO), is not tenable. The respondents' contention that the lease agreement had expired was not correct. The lease agreement was valid until 2020. The learned Courts below had concurrently held so. The petitioner could not take advantage of the respondents' fallacious contention as to the expiry of the lease agreements and release himself from the liability to pay rent in accordance with the first covenant of the lessee/petitioner in the lease agreement. Furthermore, in Paragraph 1 of the eviction petition, the respondents had *inter alia* pleaded that the lease agreement had ended on 10.10.2006. This pleading was controverted by the petitioner in his reply to the eviction petition, wherein it was pleaded that *"[i]n fact, the lease period provided in the Agreement is until the year 2020 and the petitioners are well aware of this fact right from the beginning of the tenancy."* The petitioner could not take a vault face and depart from his pleadings by contending that simply because the respondents

assert that the lease period had ended, he was not required to pay rent in accordance with the terms of the lease agreement. Prior to the passing of the order under Section 17 (8) of the IRRO, there was no escape for the petitioner from his obligation to pay rent in accordance with the provisions of the lease agreements. In the case of Mrs. Zehra Begum Vs. M/s. Pakistan Burmah-Shell Ltd., (PLD 1984 SC 38), the Hon'ble Supreme Court has quoted with approval the following passage from Halsbury's Laws of England (4th Edition) Volume 27 para. 44:-

“It is most important to note that in both the public and private sectors as between the landlord and the tenant it is the contract made between them from which their respective rights derive and on to which the statute engrafts modifications or in respect of which it confers opportunities. The ordinary law of contract and the ordinary rules of law applying as between landlord and tenant continue to apply both in the private and the public sectors, subject to these special statutory modifications and additions. The law of landlord and tenant is therefore a topic of very uncertain definition and scope and in respect of any problem which arises as between landlord and tenant it is at all times important to consider whether there are statutory provisions of general application which impinge upon the rights of landlord and tenant without being conventionally regarded as part of the law of landlord and tenant.”

42. Another ground on which the learned Courts below have ordered the ejectment of the petitioner from the rented premises is that the petitioner has carried out structural changes in the rented premises. Under paragraph 3 of the covenants of the lessee in the lease agreement, the lessee cannot demolish or damage the rented premises or remove any installation during the lease period. Furthermore, the lease agreement does not permit the lessee to make any structural alterations or additions in the rented premises without the prior consent of the lessor. It is an admitted position that the petitioner had engaged the services of a designer to carry out changes and modifications in the rented premises.

43. The petitioner in support of his contention that no structural changes had been made at the rented premises or that the verandah was not included in the dining hall of the restaurant, placed reliance on Ex.R-21 & Ex.R-22. Ex.R-21 is an offer dated 30.03.2004 from the Capital Development Authority to the petitioner for a license of open space / covered space adjacent to

Olive Garden Restaurant (Unit No.1) Gole Market, F-7/3, Islamabad. Vide Ex.R-22 (letter dated 21.11.2004), the Capital Development Authority granted a license to the petitioner to use the open and covered space adjacent to the restaurant for sitting purposes on the terms and conditions stipulated therein. The Capital Development Authority, on the application of the petitioner, had permitted the petitioner to use the open space and covered space in front and rear of the restaurant for outdoor sitting purpose against the payment of a license fee. This letter/offer is not a permission from the Capital Development Authority to carry out changes in the rented premises.

44. Even if it is assumed that the Capital Development Authority had granted the petitioner permission to carry out structural changes in the rented premises, the fact remains that at no material stage did the petitioner seek the lessor/landlord/respondents' permission to carry out changes and modifications in the rented premises. Learned counsel for the respondents was correct in his submission that the respondents' testimony about the conversion of the verandah into the dinning hall had gone un-rebutted. Indeed, on the question of making structural changes in the rented premises, A.W.1 was not cross-examined. Hence, the learned Rent Controller and the learned appellate Court had correctly found that the petitioner had carried out changes in the rented premises in violation of the terms of the lease agreements.

45. As regards the contention of the learned counsel for the petitioner that the co-owners have not signed the eviction petition with respect to Unit No.2, suffice it to say that it is well settled that a co-sharer of the property was entitled to file ejectment petition without impleading the other owners. In the case of Muhammad Hanif Vs. Muhammad Jamil Turk (2002 SCMR 429), it has been held as follows:-

“...general rule of law has been that a co-sharer can file ejectment proceedings against a tenant without impleading other co-sharers. The wisdom behind such principle is that, co-sharer acts on behalf of and represents the, interest of all the co-owners of the property.”

46. Law to this effect has also been laid down in the cases of Dr. Masuma Hasan Vs. Muhammad Hafeez (2015 MLD 1577), Mohsin Jabeen Vs. Abdul Sattar Shekha (2007 YLR 2783), and Mrs. Escolastica Vs. Peter D'souza (1986 CLC 1472). As Chaudhry Muhammad Ishaq was one of the co-owners of Unit No.2, and had signed the eviction petition, the non-signing of the eviction petition by the other co-owners is without any consequences. Moreover, it is not the petitioner's case that the other co-owners had no grouse or complaint against the petitioner or wanted him to continue occupying the Unit No.2 as a tenant.

47. As regards the contention of the learned counsel for the respondents that the learned Rent Controller should have also allowed the respondents' eviction petition on the ground of personal *bona fide* need, it is an admitted position that the rented premises are commercial properties. The second recital of the lease agreement shows that the lease period is fixed with effect from 01.10.2003 to 30.06.2020. The eviction petitions were filed during the subsistence of the lease period.

48. Now, since the lease period was from 10.10.2003 to 30.06.2020, it needs to be determined whether the ground of personal bona fide need was available to the landlords for the eviction of the petitioner. Section 17 (4) (b) and its first proviso reads as follows:-

“(4) A landlord may apply to the Controller for an. order directing the tenant to put the landlord in possession,

a)

b) in the case of a commercial building or rented land, if he requires it in good faith for his own use or for the use of any member of his family:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this subsection before the expiry of such period.”

49. As in the case at hand, the tenancy agreed between the petitioner and landlords was for a specified period (i.e. from 10.10.2003 to 30.06.2020), the landlord was not entitled, prior to the expiry of the lease period, to apply for the eviction of the petitioner on the ground of the landlord's requirement of the rented premises, which are commercial in nature, in good faith or for the use of any of his family member.

50. In the case of Arshad Ali Vs. Mst. Zubaidah Bibi (2008 SCMR 1457), the Hon'ble Supreme Court of Pakistan, while interpreting the first proviso to Section 13(3)(ii)(c) of the West Pakistan Urban Rent Restriction Ordinance, 1959, which is in *pari materia* to the first proviso to Section 17(4)(b) of the IRRO, held as follows:-

“Under the law, even in the presence of dire personal need of the landlord, he was debarred from filing the ejectment petition before the expiry of the period of lease fixed in the agreement ...”

51. Therefore, the learned Courts below were correct in holding that the ground of personal *bona fide* need of the landlords for the rented premises during the subsistence of the lease was not available to the landlords/respondents.

52. During the course of the arguments, the learned counsel for the contesting respondents, did not make any serious effort to show that the signatures of the lessors on the lease agreements were forgeries or that the signatures were obtained fraudulently. No specific issue was framed by the learned Rent Controller on this matter. Therefore, I do not feel the necessity to delve into this controversy. Furthermore, since I do not find any reason to interfere with the concurrent findings of the learned Rent Controller and the learned appellate Court, there is no reason to delve into the cross-objections raised by the learned counsel for the respondents, regarding the non-registration of the lease agreements.

53. For the foregoing reasons, the petitions are dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*