

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.1532/2015.**

**Hameed Akhtar Khan Niazi**

**Vs.**

**Atif Saeed etc.**

Petitioner by:

Ms. Jamila Jahanoor Aslam & Misbah  
Malik, Advocates.

Respondent No.1 by:

Mr. Faisal Ijaz Sheikh, Advocate.

**Date of Decision:**

**21.10.2019.**

**MOHSIN AKHTAR KAYANI, J:-** Through the instant writ petition, the petitioner has assailed the judgment dated 30.10.2014 passed by learned Additional District Judge-VII (West) Islamabad, in appeal U/S 104 read with section 47 and Order XLIII Rule 1 CPC, whereby the appeal was dismissed. The petitioner has also assailed the order dated 11.09.2013, passed by learned Rent Controller (West) Islamabad/Executing Court, whereby the warrant of possession was issued and further proceedings on the basis of recovery of dues was regretted.

2. Learned counsel for the petitioner contends that the petitioner is aggrieved with two separate judgment and order, whereby he filed eviction petition in terms of section 17 of Islamabad Rent Restriction Ordinance, 2001 titled *Hammed Akhtar Khan Niazi vs. Atif Saeed etc.* which was allowed vide order dated 14.06.2013, however, respondent No.1 has not complied with the direction in terms of section 17(8) of IRRO, 2001 and eviction order has been passed in terms of section 17(9) of the Ordinance; that respondent No.1 has made different representations in which he has agreed to deposit the rent in compliance of the Rent Controller direction, however, such order for deposit of the rent was not complied with and ex-parte eviction order was passed; that it is duty of learned Rent Controller in execution to implement the orders passed in terms of sections 17(8) and 17(9) of the Ordinance alongwith delivery of possession of leased premises; that the order passed by learned Executing Court, whereby the petitioner was directed to file recovery suit before the competent Court is against the spirit of law and in this regard learned

counsel for the petitioner has relied upon 2016 SCMR 2186 (*Mian Umar Ikram ul Haque vs. Dr. Shahid Hasnain and another*).

3. On the other hand, learned counsel for respondent No.1 contends that the petitioner is at liberty to approach the competent Court having the jurisdiction in the matter for recovery of the amount if any and as such Executing Court has no jurisdiction to implement the order of Rent Controller as it has become functus officio; that instant writ petition is not competent as the impugned order dated 30.10.2014 was assailed on 21.05.2015 through the instant writ petition after elapse of seven months as such instant writ petition is hit by laches, whereas no legal explanation has been rendered as to why the instant writ petition has been filed with delay; that the execution proceedings on the basis of eviction order passed by learned Rent Controller in eviction petition has been consigned to the record room after handing over the possession to the petitioner as such Executing Court in compliance of order passed U/S 17 of IRRO, 2001 is not empowered to grant past rent nor equipped with the authority to execute the recovery of rent against the tenant; that the petitioner has to approach the Court of plenary jurisdiction for recovery of the rent in accordance with law.

4. I have heard the arguments and gone through the record.

5. Perusal of the record reveals that the petitioner is landlord of House No.240, Street No.54, Sector I-8/3, Islamabad, which was leased out to respondent No.1 vide agreement dated 01.07.2011 w.e.f 01.07.2011 to 30.06.2013 against monthly rent of Rs.55,000/-. The matter was contested on behalf of respondent No.1/tenant. Learned Rent Controller passed the order in terms of section 17(8) of IRRO, 2001 against respondent No.1, who was directed to pay the due rent to the petitioner but the said order was not complied with and as per assertion of the petitioner side, the rent was calculated as per orders of the Court dated 27.04.2013, which was Rs.8,25,000/- and even the matter was fixed for deposit of amount on 7.5.2013, 16.5.2013, 29.5.2013 and 30.06.2013 but the said order was not complied with, therefore, final order of eviction in terms of section 17(9) of the Ordinance was passed by learned Rent Controller, however, learned Executing Court has issued the warrant of possession vide order dated 11.9.2013 whereby Baillif of the Court was

directed to take over the possession from judgment debtor, however, learned Executing Court has observed as under:-

*“however so far as recovery of the dues is concerned, the judgment debtor seek his remedy at the appropriate forum”*

But instead of that the petitioner filed an appeal against the said order with application for condonation of delay as such the appeal was dismissed being time barred. Learned counsel for the petitioner has heavily relied upon 2016 SCMR 2186 (Mian Umar Ikram ul Haque vs. Dr. Shahid Hasnain and another), wherein it has been held as under:-

*“It may however be mentioned here that where default in the payment of rent is set out as a ground in the eviction application, the relationship of tenancy is denied by the respondent, leave is granted to the respondent of the case, an issue in this context is framed, evidence is led by the parties, and the Rent Tribunal comes to the conclusion that such relationship exists, the Tribunal by applying the principles of estoppels and the rule of forfeiture of tenancy shall straightway pass an order of eviction against the respondent/tenant and shall also pass the final order regarding the amount of rent due to the landlord which the respondent (adjudged as a tenant) is obliged to pay, and such order shall be executable against the tenant, besides the execution of the eviction. However where grounds envisaged by section 15 of the Act other than default are raised in an eviction application, obviously the Rent Tribunal after deciding the issue of relationship of tenancy and finding in favour of the landlord may frame further issues on merits and at that point of time pass an order under section 34 ibid.”*

6. The above referred judgment of Apex Court has been passed with reference to Punjab Rented Premises Act, 2009, whereby section 31 deals with execution of orders, which is referred as under:-

**“31. Execution of orders.-** A Rent Tribunal shall execute an order passed under this Act by a Rent Tribunal or a District Judge or an Additional District Judge as decree of Civil Court and for this purpose, the Rent Tribunal may exercise any or all the powers of a Civil Court.”

7. The above referred provision of the Act 2009 extends authority to Rent Tribunal to execute an order passed under the said Act as decree of Civil Court and for such purpose Rent Tribunal may exercise all powers of the Civil Judge including recovery of rent, hence, there is no cavil to the proposition that the Apex Court has passed the observations rightly for execution of orders passed by Rent Tribunal in Mian Umar Ikram ul Haque case *Supra*.

8. The above referred provision as well as judgment of Apex Court could not be set as precedent in the case of Islamabad Rent Restriction Ordinance, in which no such provision comparable to section 31 is available and as such the petitioner has to approach the Court of competent jurisdiction for recovery of rent under the law and learned Executing Court has rightly passed the observations, therefore, order passed by learned Executing Court as well as judgment of Appellate Court are in accordance with law.

9. Besides the above referred legal ground, it has been observed that eviction order of respondent No.1 was passed by learned Rent Controller, which has been maintained up to the Appellate Court in compliance of the said order, the possession of the leased premises was handed over to the petitioner/landlord, whereby the petitioner has not raised any objection and the execution petition has been consigned to the record room. The petitioner is mainly aggrieved with the judgment dated 30.10.2014, passed by the Court of learned Additional District Judge (West) Islamabad in appeal but surprisingly the instant writ petition has been filed on 22.05.2015 after the elapse of approximately 07 months and no justification has been provided as to why the petitioner kept silent for 07 months especially when the execution proceedings have been consigned to the record room. The instant writ petition is hit by laches and at the same time, the same is not maintainable.

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

(MOHSIN AKHTAR KAYANI)  
JUDGE

R Anjam