

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1273/2017
Malik Muhammad Ramzan Sabir
Versus.
Mst. Shahina Akhtar and others

Date of Hearing: 04.12.2017
Petitioner by: Ch. Muhammad Tahir Mehmood, Advocate
Respondent No.1 by: Ms. Rakhshanda Yunus, Advocate.

MIANGUL HASSAN AURANGZEB, J:-Through the instant writ petition, the petitioner, Malik Muhammad Ramzan Sabir, impugns the judgment and decree dated 14.02.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby respondent No.1's appeal against the order and decree dated 21.12.2016, passed by the Court of learned Rent Controller, Islamabad, was allowed, and the eviction petition filed by respondent No.1 against the petitioner under Section 17 of the Islamabad Rent Restrictions Ordinance, 2001 ("IRRO") was allowed, and the petitioner was directed to hand over vacant possession of Basement Shop No.3-B, Muzaffar Chamber, 82-W, Fazal-ul-Haq Road, Blue Area, Islamabad ("the rented premises") within a period of 30 days.

2. The record shows that on 07.08.2006, a lease agreement was entered into between the petitioner (tenant) and respondent No.1 (landlord) under which the rented premises were taken on lease by the petitioner for a period of two years i.e. from 01.07.2006 to 30.06.2008. The monthly rent was agreed to be Rs.2,200/- only. It is an admitted position that after the expiry of the said lease agreement, a fresh lease agreement was not executed between the parties. The petitioner's case is that he is occupying the rented premises on the basis of an oral lease agreement.

3. On 31.10.2015, respondent No.1 filed an eviction petition against the petitioner. The grounds taken in the said eviction petition were; (i) default in the payment of rent, and (ii) expiry of the lease agreement. The petitioner contested the said eviction petition by filing a written reply. From the divergent pleadings of the contesting parties, the learned trial Court framed the following issues:-

- “1. *Whether the lease agreement between the parties has already expired? OPP*
2. *Whether the respondent is a willful rent defaulter? OPP*
3. *Whether the petition is not maintainable hence, liable to be dismissed? OPR*
4. *Whether the petition is false, frivolous & vexatious hence, liable to be dismissed? OPR*
5. *Relief?”*

4. Respondent No.1’s attorney appeared as AW.1, whereas the petitioner appeared as RW.1. AW.1 produced a copy of lease agreement as Exh.A/4. In his evidence, RW.1 tendered receipts of cheque No.52398318 as Exh.R/2, cheque No.3936307 as Exh.R/3, and cheque No.CAE6960648 as Exh.R/4.

5. Vide order and decree dated 21.12.2016, the learned Rent Controller dismissed the said eviction petition primarily on the ground that the petitioner had paid the rent to respondent No.1’s previous attorney, and that after the expiry of the lease agreement dated 07.08.2006, the tenancy continued orally between the parties. The said order and decree dated 21.12.2016 was assailed by respondent No.1 in an appeal before the Court of the learned District Judge, Islamabad. Vide judgment and decree dated 14.02.2017, the learned Additional District Judge, Islamabad, allowed respondent No.1’s appeal, and set aside the Rent Controller’s order and decree dated 21.12.2016. Furthermore, respondent No.1’s eviction petition was allowed, and the petitioner was directed to vacate the rented premises within a period of 30 days. The said judgment and decree dated 14.02.2017 has been assailed by the petitioner in the instant writ petition.

6. Learned counsel for the petitioner submitted that the order and decree dated 21.12.2016, passed by the learned Rent Controller was strictly in accordance with the law and facts of the case; that respondent No.1 had not pressed the ground as regards the expiry of the lease agreement; that respondent No.1, in her eviction petition had pleaded that the petitioner had defaulted in the payment of rent since 2012; that in fact for the period between November 2012 to October 2016, the petitioner had paid Rs.124,000/- as rent through cheque No.52398318, dated 25.09.2012 in favour of respondent No.1’s attorney, Sarfraz Bhatti; that the said attorney had issued a receipt with respect to the said cheque; that the said

cheque was for an enhanced rental; that it was never respondent No.1's case that she was entitled to rent with a statutory increase in terms of Section 10 of the IRRO; that for the period between November 2008 to October 2009, the petitioner had paid Rs.26,400/- as rent through cheque No.CAE6960648, dated 07.11.2008 to respondent No.1's above named attorney; that for the period between November 2009 to October 2012, the petitioner had paid Rs.86,400/- as rent through cheque No.3936307, dated 22.05.2010 in favour of respondent No.1's attorney, Sarfraz Bhatti; and that in view of the said payments, the petitioner had committed a default only to the extent of Rs.16,000/-, which was to be used by the petitioner for the renovation of the rented premises. Learned counsel for the petitioner prayed for the writ petition to be allowed and the judgment and decree passed by the learned appellate Court to be set aside.

7. On the other hand, learned counsel for respondent No.1 submitted that the lease agreement between the petitioner and respondent No.1 had expired on 30.06.2008; that after the expiry of the said lease agreement, a fresh lease agreement was not executed; that the petitioner continued to occupy the rented premises, by paying meager rent at the rate of Rs.2,200/- per month; that under Section 10(1) of the IRRO, respondent No.1 was entitled to be paid rent at a rate 25% in addition to the monthly rent of Rs.2,200/- after 30.06.2009 (i.e. upon lapse of three years of the lease agreement dated 07.08.2006); that since the petitioner admits paying rent for the period between November 2009 to October 2012 through cheque dated 22.05.2010, there is a clear default in the timely payment of rent; and that even if it is assumed that the petitioner paid rent through the cheques exhibited as Exh.R/2 to Exh.R/4, the amount paid is not in accordance with the statutory increase to which respondent No.1 was entitled to under Section 10 of the IRRO. Learned counsel further submitted that there was no jurisdictional infirmity with the impugned judgment and decree dated 14.02.2017. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties, and perused the record with their able

assistance. The facts leading to the filing of the instant writ petition have been set out in sufficient details in paragraphs 2 to 05 above, and need not be recapitulated.

9. The admitted position is that through a lease agreement dated 07.08.2006, the relationship of landlord and tenant was created between respondent No.1 and the petitioner, respectively, for a period of two years. The monthly rent was agreed to be Rs.2,200/-. There was no provision in the said lease agreement for an increase in the rent. The said lease agreement expired on 30.06.2008. The petitioner continued to occupy the rented premises beyond 30.06.2008. For the period between November 2008 to October 2009, the petitioner paid Rs.26,400/- through cheque No.CAE6960648 dated 07.11.2008 to respondent No.1 through her attorney, Sarfraz Bhatti. There is nothing on the record to show that the petitioner had paid rent for the months of July to October 2008. The rent for the period between November 2008 to October 2009 was paid at the rate of Rs.2,200/- per month.

10. For the period between November 2009 to October 2012, the petitioner paid Rs.86,400/- as rent through cheque No.3936307 dated 22.05.2010, to respondent No.1 through her above named attorney. This rent was paid at the rate of Rs.2,400/- per month.

11. For the period between November 2012 to October 2016, the petitioner paid Rs.1,24,000/- as rent through cheque No.52398318, dated 26.09.2012, to respondent No.1 through her above named attorney. This rent was paid at the rate of Rs.2,583.33 per month.

12. Although the learned Rent Controller had dismissed respondent No.1's eviction petition, the learned appellate Court allowed the said eviction petition primarily on the ground that the petitioner had not paid the rent with the statutory increase under Section 10 of the IRRO. The said Section is reproduced herein below:-

"10. Increase of rent of residential and non-residential buildings.--(1) The rent of residential as well as a non-residential building shall stand automatically increased at the end of every three years of its tenancy twenty-five per cent. of the rent already being paid by the tenant.

(2) The first increase under subsection (1) shall accrue on the completion of three years of tenancy in the case of a tenancy which has not been existing for three years on the commencement of this Ordinance.

(3) Where, during the period of three years, in cases mentioned in subsection (2)--

(i) the rent has already been increased by an amount less than twenty-five per cent of the total rent the amount of such increase shall be deducted from the increase under subsection (1); and

(ii) if the rent has already been increased by an amount equal to or more than twenty per cent of the total rent, no increase under subsection (1) shall accrue until the expiry of three years from the date of such increase.

(4) The arrears becoming due as a result of the increase of rent under this section shall, unless paid earlier, be deemed to be rent due under clause (i) of subsection (2) of section 17, on the expiry of sixty days from the date of commencement of this Ordinance.

(5) Nothing in subsections (1) to (4) shall apply if a landlord and a tenant agree to increase the rent by an agreement in writing."

13. Since three years of the tenancy expired on 30.06.2009, the petitioner was under an obligation to increase the rent by 25% after 30.06.2009. Therefore, for the period between 30.06.2009 to 30.06.2012, the petitioner was liable to pay rent at the rate of Rs.2,750/- per month (i.e. Rs.2,200/- plus its 25%). Therefore, for the period between 30.06.2009 to 30.06.2012, the petitioner was to pay a total amount of Rs.99,000/- (i.e. Rs.2,750/- per month for 36 months). Additionally, for the period between 30.06.2012 to 30.06.2015, the petitioner was liable to pay rent at rate of Rs.3,437.50 per month (i.e. Rs.2,750/- plus its 25%). Therefore, for the period between 30.06.2012 to 30.06.2015, the petitioner was to pay Rs.1,23,750/- (i.e. Rs.3,437.50 per month for 36 months). From 30.06.2015 onwards the petitioner was to pay rent at the rate of Rs.4,296.87 per month (i.e Rs.3,437.50 plus its 25%).

14. Bearing the above calculation in mind, it is clear that the petitioner did not pay rent along with the statutory increase in terms of Section 10 of the IRRO. At no material stage, did respondent No.1 give her consent to the petitioner not to pay the rent with a statutory increase. The learned appellate Court has aptly relied on the petitioner's testimony that he was not even aware that he was supposed to pay rent with a statutory increase of 25% after every three years. The appellate Court was also correct in holding that the arrears of rent becoming due as a result of the increase of rent under Section 10 of the IRRO is deemed to be rent due under Section 17(2)(i) of the IRRO. Since the petitioner was not even aware that he had to pay rent with a statutory increase in terms of Section

10 of the IRRO, the default in the payment of rent is stand to be admitted.

15. The principles behind Section 10 of the IRRO and Section 5-A of the West Pakistan Urban Rent Restriction Ordinance, 1959, are the same. Therefore, in holding that the learned appellate Court correctly allowed respondent No.1's eviction petition on the ground that the petitioner had not paid rent with a statutory increase as contemplated by Section 10 of the IRRO, I derived guidance from the following case law:-

- i. In the case of Muhammad Irfan Vs. Muhammad Zahid Hussain Anjum (2000 SCMR 207), it has been held that that service of a notice under section 5-A of the Urban Rent Restriction Ordinance, 1959, by a landlord to a tenant for statutory increase of rent is not a condition precedent to invoke the jurisdiction of the Rent Controller and that under the said provision the 25% increase in rent becomes due on the expiry of three years and is deemed to be a rent due.
- ii. In the case of Malik Abdul Aziz Awan and another Vs. Rana Maqbool Ahmad Khan and others (2012 SCMR 91), it has been held as follows:-

"...respondent however was bound to enhance 25% rent after every three years, but admittedly it has not been so done therefore, notwithstanding the subletting, the default on the part of the petitioner stand duly proved. We are not impressed that the landlord/respondent should have served upon the petitioner/tenant the notice asking for the payment of the increased rent and only on lapse thereafter, the default could be said to have been committed, rather the said increase was envisaged by the statute itself and the petitioner was duty bound to enhance the rent, failure whereof would entail the consequences of willful default."

- iii. In the case of Pakistan Bait-ul-Mal Vs. Umar Mahmood Kasuri (PLD 2008 Lahore 250), it has been held as follows:-

"15. Regarding section 5-A which deals automatic increase in rent, the provision again is mandatory. Where during the tenancy period from the date of agreement to the next three years, there is no increase in rent, the addition of 25% is automatic. This has been so provided in the aforementioned section 5-A of the Rent Restriction Ordinance and is applicable in respect of non-residential building. The only exception to this rule is the landlord consent. Otherwise than that this addition is automatic and without any exception."

- iv. In the case of Sikandar Hayat Vs. Hasina Sheikh (PLD 2010 SC 19), it has been held as follows:-

"16. On an examination of the provisions of subsections (1) & (4) of section 5-A in juxtaposition with clause (i) of subsection (2) of section 13 of the Ordinance, the liability of the tenant to be evicted from the premises where he has not paid or tendered the

rent due is clearly spelt out. Under subsection (4), the arrears becoming due as a result of the increase of rent under section 5A are to be deemed to be rent due. ... The failure of the tenant to discharge his obligation within the time so stipulated brings him within the ambit of the penal consequence envisaged in subsection (2) of section 13 and makes him liable to be ejected on the ground. In a nutshell, section 5-A is a self-executory provision, which comes into operation without being prefaced by a prior notice of demand by the landlord.

17. ...

18. ... Thus, after the insertion of section 5-A, where a tenancy is executed for a period of 10 years, the rent would keep on increasing by 25% after every three years and if the tenant does not pay the rent at the increased rate within fifteen days after the expiry of the time fixed in the agreement of tenancy with the landlord, or in the absence of any such agreement within sixty days from the period for which the rent is payable, the landlord would be well within his right to straightaway file application for his ejectment on the ground of default in payment of rent."

16. In view of the above, I do not find any jurisdictional infirmity in the impugned judgment dated 14.02.2017, passed by the learned appellate Court. Therefore, this petition is dismissed. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Announced in an open Court on _____ of 2017.

JUDGE

Sultan*

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