

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.372 of 2016

Syed Usman Khalid

Versus

Atta Mohammad and others

Date of Hearing: 28.03.2017
Petitioner by: Mr. Tahir Mahmood Abbasi, Advocate
Respondent No.1 by: Hafiz Ali Asghar and Mr. Safeer Khadim,
Advocates.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Syed Usman Khalid, impugns the judgment dated 20.01.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby respondent No.1's appeal against the order dated 30.11.2015, passed by the Court of learned Rent Controller, Islamabad, was allowed. Vide the said order dated 30.11.2015, the learned Rent Controller, Islamabad, had dismissed the eviction petition filed by respondent No.1 under Section 17 of the Islamabad Rent Restriction Ordinance, 2001, ("IRRO") seeking the petitioner's eviction from Shop No.08, First Floor, Shaukat SPA, Super Market, Markaz F-6, Islamabad ("the rented premises"). Vide the said judgment dated 20.01.2016 the learned Appellate Court allowed respondent No.1's appeal and held that the petitioner was liable to be evicted from the rented premises for violating the tentative rent order passed by the learned Rent Controller.

2. The record shows that on 11.11.2013, respondent No.1 filed an eviction petition praying for the petitioner's eviction from the rented premises. The grounds taken in the said eviction petition were; (i) default in the payment of rent, and (ii) respondent No.1's personal bonafide need for the rented premises. The petitioner contested the said eviction petition by filing a written reply. In the said written reply, the position taken by the petitioner was that he was occupying the rented premises on the basis of a lease agreement dated 20.01.2011, which had a

validity period of 06 years and 02 months i.e. upto 03.03.2017. Furthermore, it was pleaded that the eviction petition filed prior to the expiry of the lease period was premature, and liable to be returned. From the divergent pleadings of the parties, the following issues were framed:-

- "1. *Whether the respondent is rent defaulter and liable to be ejected from the demised premises? OPA*
2. *Whether the rented premises is required by the petitioner for the personal bonafide need? OPR*
3. *Whether the petitioner has no cause of action to file instant petition? OPR*
4. *Relief."*

3. After the framing of issues and recording of evidence, the learned Rent Controller vide order dated 30.11.2015, dismissed the said eviction petition. Respondent No.1's appeal against the said order dated 30.11.2015, was allowed vide judgment dated 20.01.2016. The petitioner was held to have breached the tentative rent order dated 31.05.2014, passed by the learned Rent Controller under Section 17(8) of the IRRO. The learned Appellate Court spurned respondent No.1's plea regarding his *bona fide* need for the rented premises, because the lease period under the lease agreement had not expired at that stage. The said appellate judgment dated 20.01.2016, has been impugned by the petitioner in the instant writ petition.

4. Learned counsel for the petitioner submitted that the petitioner occupied the rented premises on the basis of the lease agreement dated 20.01.2011; that the validity period of the said agreement was 06 years and 02 months i.e. from 01.01.2011 to 03.03.2017; that the lease period expired during the pendency of the writ petition before this Court; and that the expiry of the lease period was not one of the grounds on which the eviction petition was filed by respondent No.1.

5. Learned counsel for the petitioner further submitted that the sole ground on which the learned Appellate Court allowed respondent No.1's eviction petition was that the petitioner had defaulted in showing compliance with the tentative rent order dated 31.05.2014, passed by the learned Rent Controller; that

the findings of the learned Appellate Court are erroneous inasmuch as the petitioner deposited the tentative rent in accordance with the said tentative rent order; that the learned Rent Controller had required the petitioner to deposit tentative rent at the rate of Rs.15,000/- per month from March 2014; that the petitioner was also directed to deposit rent at the said rate on or before the 15th day of each succeeding month in the future; and that the petitioner complied with the said tentative rent order by depositing rent well before the 15th day of each succeeding month. Learned counsel for the petitioner prayed for the writ petition to be allowed, and the appellate judgment dated 20.01.2016, to be set aside.

6. On the other hand, learned counsel for respondent No.1 submitted that the impugned judgment dated 20.01.2016, passed by the learned Appellate Court was strictly in accordance with the law and did not suffer from any legal infirmity. He further submitted that there was no ambiguity in the tentative rent order dated 31.05.2014, which obligated the petitioner to deposit tentative rent at the rate of Rs.15,000/- per month by the 15th day of each month; that the petitioner was under an obligation to deposit tentative rent for a particular month by the 15th day of that month and not the following month; that the learned Appellate Court had correctly appreciated that rent for the months of July 2014 and February 2015 were deposited with a delay of two days, and rent for the month of May 2015 was deposited with a delay of five days; and that in view of the said default in the deposit of tentative rent, the petitioner was liable to be evicted from the rented premises in terms of Section 17(9) of the IRRO. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

7. In support of his contentions, the learned counsel for respondent No.1 placed reliance on the case of Mohammad Zahir Vs. Mst. Hussan Zari (2007 CLC 556), wherein it has been held that Section 17(9) of the Cantonments Rent Restriction Act, 1963, (which provided that if a tenant fails to deposit tentative

rent before a specified date or as the case may be before the fifth of the month, his defence would be struck off), was mandatory in nature and where there was a delay of even a single day in making the deposit of rent would be a 'default', and the Rent Controller had no power to extend the time or condone the delay. Law to the same effect has been laid down in the cases of Messrs Unique Services Vs. Occupant Owners Welfare Association (2003 YLR 466), Shoaib Mohammad Vs. Kulsoom Bibi (2006 YLR 1389), Malik Nazar Hussain Vs. Commander (R.) Zafar Iqbal (PLD 2006 Lahore 684), Pervaiz Masood Dar Vs. Riffat Masood Dar (2007 CLC 140), Mirza Irfan Baig Vs. Mubashar Ahmad Bajwa (2007 CLC 234), Ghulam Mohammad Vs. Mrs. Mustafa Kazmie (2012 YLR 1291), Mrs. Ghazala Iftikhar Vs. Controller/Additional Controller of Rents (2012 YLR 74), and Syed Bilal Adil Vs. District Judge, West-Islamabad (2015 YLR 2405). Learned counsel for the petitioner also placed reliance on the case of Mohammad Naseer Vs. Sajid Hussain (2009 SCMR 784), wherein it was held that if any order specifically provided for tentative rent to be deposited before a specified date, no party had a right to interpret such an order otherwise. Additionally, in the case of M.H. Mussadaq Vs. Muhammad Zafar Iqbal (2004 SCMR 1453), it was held that a delay of a single day in making the deposit of tentative rent would be a default within the meaning of Section 17(9) of the Cantonment Rent Restriction Act, 1963, as the same was mandatory in nature, and the Rent Controller had no power to extend time or condone the delay.

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

9. The facts leading to filing of this petition have been set out in sufficient detail in paragraphs 2 to 3 above, and need not be recapitulated. Since, the learned Appellate Court has allowed respondent No.1's eviction petition only on the ground that the petitioner did not show compliance with a tentative rent order

dated 31.05.2014, I intend to confine myself to the question whether the learned Appellate Court was correct in holding so.

10. As mentioned above, on 11.11.2013, respondent No.1 filed an eviction petition seeking the petitioner's eviction from the rented premises. After the petitioner filed his reply to the said eviction petition, the learned Rent Controller, vide order dated 31.05.2014, passed a tentative rent order under Section 17(8) of the IRRO. The operative part of the said order is reproduced herein below:-

“Snapshot of above discussion is that a tentative order is passed U/S 17(8) of IRRO-2001 and the respondent is directed to deposit the past rent @ Rs.15,000/- per month since March, 2014 and future rent of demised premises at the same rate, in the court account and also to produce receipts regarding payment of rent in Court on the next date of hearing. The respondent is further directed to deposit the rent of demised premises at the same rate in the court's account on or before 15th of each succeeding month in future”.

11. The consequences for non-compliance with the directions passed under Section 17(8) of the IRRO are provided in Section 17(9) of the IRRO, which are that the tenant's defence is struck off and the eviction petition is allowed. As mentioned above, the learned Appellate Court allowed respondent No.1's eviction petition by holding that the petitioner had delayed the deposit of tentative rent for the months of July 2014 and February 2015, by two days, and for the month of May 2015, by five days. The rent deposit receipts show that Rs.60,000/- being the tentative rent for the months of March to June 2014, was deposited by the petitioner on 10.06.2014. Tentative rent for the month of July, 2014, was deposited on 17.07.2014; rent for the month of February 2015, was deposited on 17.02.2015, and that for the month of May 2015, was deposited on 20.05.2015. This is an admitted position. The petitioner's case is that since the learned Rent Controller had directed the petitioner to deposit tentative rent for each month by the 15th day of every succeeding month, and not the current month, the petitioner had not committed any default in showing compliance with the tentative rent order. Respondent No.1's case was that the petitioner should have

deposited the tentative rent for each month by the 15th day of each current month and not by the 15th day of every succeeding month.

12. Under Section 17(8) of the IRRO, the Rent Controller has been empowered to direct the tenant to deposit all the rent due before a 'specified date'. Thus the Rent Controller could pass an order under Section 17(8) of the IRRO directing the tenant to deposit the accumulated rent for the period prior to the passing of the tentative rent order by a specified date. If the tenant does not deposit such rent by the date specified in the tentative rent order, the consequences envisaged under Section 17(9) ensue. However, as regards the rent which becomes due subsequent to the passing of the tentative rent order, the same has to be deposited *"before the fifteenth day of each month."* Now, the vital question that needs to be answered is whether the tentative rent for a particular month has to be deposited by the 15th day of that month or the 15th day of the succeeding month. This question has to be answered in the light of the following case law on the subject:-

- (i) In the case of Ibrahim Trust, Karachi Vs. Shaheen Freight Services (PLD 2011 SC 331), the Rent Controller had passed a tentative rent order under section 16 of the Sindh Rented Premises Ordinance, 1979, directing the tenant to deposit future rent on or before the 10th of each calendar month. Section 16 (1) of the said Ordinance reads as follows:-

"16. Arrears of rent.- (1) Where a case for eviction of the tenant has been filed, the Controller shall, on application by the landlord and after such summary inquiry as he deems fit to make, determine the arrears of the rent due and order the tenant to deposit the same within such period as the Controller may fix in this behalf and further direct the tenant to deposit monthly rent regularly on or before the tenth of every month, until final disposal of the case."

13. The Rent Controller struck off the tenant's defence on the ground that rent for some of the months had not been deposited by the 10th of the current months. The tenant's appeal was also

dismissed. The Hon'ble High Court of Sindh allowed the tenant's writ petition and set aside the order of the Courts below. The landlord's appeal to the Hon'ble Supreme Court was dismissed. It was *inter alia* held as follows:-

"It is quite obvious that the provisions of section 16(1) of the Ordinance of 1979 do not permit the Rent Controller to pass an order for advance payment of rent for current months. In case the Rent Controller had taken reasonable care at the time of passing the two orders under section 16(1) of the Ordinance of 1979, she could have clarified this legal position in her order regarding payment of current monthly rent, by incorporating the words "next month", "coming month", "subsequent month" or "succeeding month". In the instant case, oblivious of such legal aspect, the Rent Controller and the first appellate Court, both proceeded on misinterpretation of the rent order under misconception of law, that the rent for three alleged months of default i.e. December, 2007, January, 2008 and June, 2008 was payable in advance by the 10th of each calendar month, though in accordance with law, to avoid commission of default, rent for the month of December, 2007 was payable by 10th of January, 2008, when it became due, and similarly the rent for the month of January, 2008 and June, 2008, in the succeeding months of February and July, 2008 respectively. Thus, in the instant appeals, from no stretch of imagination the respondent No.1 can be held defaulters in the compliance of rent orders dated 25-10-2007, as alleged by the appellant."

- (ii) In the case of Mehboob Illahi Vs. Saqib Mehmood Riaz (1990 SCMR 1688), the Rent Controller had directed the tenant to deposit rent for a specified month before the 15th of the next month. The tenant remitted the rent for the month of March, 1987, to the landlord on 11.03.1987, which the landlord refused to accept. The tenant then remitted the rent for the months of March and April, 1987 on 02.04.1987. The Rent Controller struck off the tenant's defence and allowed the landlord's eviction petition. The tenant's appeal against the eviction order was dismissed, and so was his constitutional petition against the appellate order and the order of the Rent Controller. The Hon'ble Supreme Court allowed the tenant's appeal and remanded the matter to the Rent Controller for a decision on merits. It was held that the tenant could not be adjudged as a defaulter.

- (iii) In the case of Muhammad Ashfaq Vs. Aziz-ur-Rahman (1993 CLC 2293), the Rent Controller had struck off the tenant's defence due to non-compliance with the order for the deposit of future monthly rent. In that case, the Rent Controller had passed a tentative rent order *inter alia* directing the tenant to deposit future monthly rent before the 10th of every month. For the month of August, 1991, the tenant deposited rent on 02.09.1991. As mentioned above, the Rent Controller struck off the tenant's defence and allowed the eviction petition. The tenant's appeal was also dismissed. The Hon'ble Peshawar High Court allowed the tenant's writ petition and held that rent for the month of August, 1991 could be deposited before the 15th of September, 1991. Furthermore, it was held as follows:-

"6. The ratio deducible from the two authorities of Ata Hussain and Syed Masood Hussain is that the rent for the current month would become due on its last day and could be validly deposited under section 13(6) of the Ordinance before 15th of the succeeding month and not before the 15th of the same month."

14. Since the Hon'ble author Judge (the Hon'ble Mr. Justice Muhammad Bashir Jehangiri) rose to grace the Hon'ble Supreme Court of Pakistan, the said judgment deserves utmost reverence and respect.

- (iv) In the case of Mian Ashraf Hussain Vs. Asad Bashir Bajwa (2007 CLC 579), the Rent Controller directed the tenant to deposit future monthly rent till the 15th of each month. Since, the tenant had deposited rent after the fifteenth of each month, his defence was struck off and the landlord's eviction petition was allowed. The tenant's appeal was also dismissed. The Hon'ble Lahore High Court allowed the tenant's writ petition by holding that tentative rent for a particular month had to be deposited before the 15th day of the succeeding month. Paragraph 04 of the said judgment is reproduced herein below:-

"4. Both the Courts below proceeded on the erroneous assumption of law that future monthly rent was to be deposited on 15th day of same month and non-suited the

appellant on the ground that rent for the months of July, 2001, September, 2001, May, 2002, January, 2002 and October, 2002 was deposited after 15th day of each month. This is against the intent of section 13 (6), as noted above, and against the law laid down in the cases relied upon by the learned counsel for the appellant. I am of the considered view that the order dated 17.04.2000, on the basis of which the ejectment order was passed and first appeal was dismissed, was not an order, which could be treated to have been passed under section 13 (6) of the Ordinance, 1959, thus, the defence of the appellant could not have been struck off.”

- (v) In the case of Mohammad Naeem Abbasi Vs. Mst. Mohammad Jan (2008 MLD 1659), it was held by the Hon'ble Lahore High Court as follows:-

“3. ...However, the matter of deposit of rent in Court during the pendency of an ejectment petition is governed by section 13 (6) of the said Ordinance and the Rent Controller is bound to direct a tenant to deposit the rent regularly till the final decision of the case before the 15th day of each month the monthly rent due from him. The rent for a month, of course, becomes due upon the expiry of the said month and upon thus becoming due it is payable before the 15th day from the said date. This clearly means that rent for October, 2007, was to be deposited before the 15th day of November, 2007.”

- (vi) In the case of Mrs. Abida Mahmood Vs. Malik Mohammad Bashir (2014 YLR 1525), the learned Special Judge (Rent) had passed a tentative rent order directing the tenant to pay future rent by the 10th of each month. Since, the tenant deposited the rent beyond the 10th day of the current month, his defence was struck off and the eviction petition was allowed. The Hon'ble Lahore High Court held that the tentative rent order was vague inasmuch as it had not been clarified whether the rent had to be deposited by the 10th of the current month or the succeeding month. It was held that in the absence of any tenancy agreement in between the parties to the litigation, the rent due for a particular month was always considered to be payable after the expiry of that month. Consequently, the tenant's writ petition was allowed, and the eviction order was set aside.

15. Most of the judgments referred to herein above are with respect to proceedings under the Urban Rent Restriction Ordinance, 1959. In order to draw a comparison, Section 13 (6) of the said Ordinance, and Section 17(8) and (9) of the Islamabad Rent Restriction Ordinance, 2001, are reproduced herein below:-

Section 17(8) and (9) of the Islamabad Rent Restriction Ordinance, 2001	Section 13 (6) of the Urban Rent Restriction Ordinance, 1959
<p><i>17(8) “In proceedings under this section on the first date of hearing, or as soon thereafter as may be but before the issues are framed, the Controller shall direct the tenant to deposit in his office before a specified date all the rent due from him <u>and also to deposit regularly till the final decision of the case before the fifteenth day of each month, the monthly rent which subsequently becomes due,</u> and if there be any dispute as to the amount of rent due, the Controller shall determine such amount approximately”.</i></p> <p><i>17(9) “If the tenant fail to deposit the amount of rent before the specified date or as the case may be before the fifteenth day of the month his application if he is an applicant shall be dismissed or his defense, if he is a respondent, shall be struck off, and the landlord shall be put in possession of the building without any further proceedings”.</i></p>	<p><i>13(6) In proceedings under this section on the first date of hearing or as soon as possible after that date and before issues are framed, the Controller shall direct the tenant to deposit all the rent due from him and also to deposit regularly till the final decision of the case, before the [fifteenth] day of each month, the monthly rent due from him. If there is any dispute about the amount of rent due or the rate of rent, the Controller shall determine such amount approximately and direct that the same be deposited by the tenant before a date to be fixed for the purpose. If the tenant makes default in the compliance of such an order, then if he is the petitioner, his application shall be dismissed summarily and if he is the respondent, his defense shall be struck off and the landlord put into possession of the property without taking any further proceedings in the case.”</i></p>

16. Although Section 17(8) of the IRRO has more clarity, in essence, the first part of Section 13(6) of the said Ordinance appears to be in *pari materia* with Section 17(8) of the IRRO. The term “*monthly rent which subsequently becomes due*” in Section 17(8) of the IRRO refers to the monthly rent that falls due in the period after the passing of the tentative rent order until the eviction petition is decided. Additionally, Section 17(8) refers to a “*specified date*” by which the Rent Controller can require the tenant to deposit the unpaid rent accumulated upto the date of

the passing the tentative rent order. However, the absence of these words in Section 13(6) of the Urban Rent Restriction Ordinance, 1959, do not prevent the Rent Controller from specifying or fixing a date by which the tenant can be directed to pay the unpaid accumulated rent. Both the said statutes do not require the tenant to pay the monthly rent in advance, but "*before the fifteenth day of each month*" which term has been subject to copious interpretation in the case law mentioned above. However, in determining the tentative rent the Rent Controller is required to take into account the terms and conditions of the rent agreement between the landlord and the tenant. Such a rent agreement plays a role in not just determining the quantum of the tentative rent but also the manner and the time when it is to be paid. For instance, if the rent agreement provides for payment in advance, the Rent Controller in the tentative rent order can require the tenant to pay the tentative rent in advance. Section 17(8) does not prohibit the Rent Controller from requiring the tenant to pay the tentative rent in advance. In the event, the Rent Controller orders the tenant to pay the tentative rent in the succeeding month, despite the fact that the rent agreement required the tenant to pay rent in advance, or vice versa, then unless the Rent Controller modifies his order, the tenant would be under an obligation to comply with the order of the Rent Controller in order to avert the penal consequences under Section 17(9) of the IRRO.

17. Now, the tentative rent order dated 31.05.2014, obligated the petitioner to *inter alia* deposit tentative rent at the rate of Rs.15,000/- per month "*on or before 15th of each succeeding month in future*". The learned Rent Controller did not strike off the petitioner's defence for depositing rent for the months of July 2014 and February 2014, with a delay of two days, and for the month of May 2015, with a delay of five days. This is perhaps because the learned Rent Controller was cognizant of the obligation placed on the petitioner to deposit tentative rent for every month by the 15th of every succeeding month, and not the

current month. It is the learned Appellate Court that interpreted the tentative rent order passed by the learned Rent Controller and penalized the petitioner by holding that the petitioner had defaulted in showing compliance with the tentative rent order, and was liable to be evicted from the rented premises.

18. As per the tentative rent order, the rent for the months of July, 2014, February, 2015 and May, 2015, was required to be deposited by the petitioner by the 15th day of August, 2014, March 2015 and June, 2015, respectively. Since, admittedly, the petitioner deposited the tentative rent for each month before the 15th day of each succeeding month, such a deposit was in consonance with the direction contained in the tentative rent order dated 31.05.2014. Therefore, the learned Appellate Court was not correct in holding that the petitioner had defaulted in showing compliance with the tentative rent order passed by the learned Rent Controller. The said order dated 31.05.2014 has not been correctly understood or interrelated by the learned Appellate Court.

19. There is no cavil to law laid down in the case law cited by the learned counsel for respondent No.1 that unless strict compliance is shown by the tenant with the tentative rent order passed by the Rent Controller, he renders his defence liable to be struck off. It is also well settled that the even a single day's default in showing compliance with a tentative rent order entails the penal consequences envisaged under Section 17(9) of the IRRO.

20. In the past, I have had the occasion of dismissing a petition against concurrent orders passed by the Courts below striking off the tenant's defence for not showing compliance with the direction to deposit tentative rent in the current months. In the said case, there had been no direction to deposit tentative rent in the succeeding month. It may be observed that in cases where the rent agreement between the landlord and the tenant does not require the tenant to pay rent in advance, the learned Rent Controllers ought to specify in the tentative rent orders passed

under Section 17(8) of the IRRO that future rent is to be deposited by tenants/respondents by the 15th day of the succeeding months and not the current months.

21. In view of the above discussion, the writ petition is allowed and impugned appellate judgment dated 20.01.2016, is set aside. The matter is remanded to the learned Appellate Court for a decision afresh on respondent No.1's appeal. Since, the lease agreement has expired, and the eviction petition was with respect to a commercial property, the learned Appellate Court may reconsider respondent No.1's plea regarding his *bona fide* need for the rented premises. Furthermore, since respondent No.1 filed the eviction petition in 2013, the learned Appellate Court is expected to decide the appeal within a period of one month from the date of the receipt of this judgment. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

APPROVED FOR REPORTING

M.A. Raza

Uploaded By: Zulqarnain Shah