

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.116 of 2016

Muhammad Shahid Fahim
VERSUS.
Abdullah Tayyab & two others

Date of Hearing: 22.02.2016
Petitioner by: Raja Aleem Khan Abbasi, learned ASC
Respondent No.1 by: Ch. Abdul Rehman Bajwa, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Shahid Fahim, has impugned the Order dated 07.01.2016, passed by the Court of Additional District Judge (West) Islamabad, whereby the petitioner's appeal against the order dated 10.10.2015, passed by the Court of the learned Rent Controller, was dismissed. Vide the said Order dated 10.10.2015, the learned Rent Controller allowed the eviction petition filed by respondent No.1, by striking off the petitioner's defence under Section 17(9) of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO"), and the petitioner was directed to forthwith handover vacant possession of the rented premises to respondent No.1.

2. The case of respondent No.1/landlord is that he is the absolute owner of Shop No.3, Madina Market, F-8/2, Islamabad; that these premises were leased to the petitioner for a period of five years commencing from 20.04.2010 to 19.04.2015; that the rent for these premises was fixed at Rs.8,000/- per month for the said lease period; that the lease agreement expired on 19.04.2015, whereafter respondent No.1 required the said premises for his personal bonafide use; that on 07.04.2015, a legal notice was served on the petitioner on behalf of the respondent requiring the petitioner to vacate the said premises. The two grounds taken in the eviction petition filed by respondent No.1 under Section 17 of the IRRO were that the demised premises were required for

respondent No.1's personal bonafide use, and that the lease agreement had expired with effect from 19.04.2015.

3. The petitioner contested the respondent No.1's eviction petition by filing a detailed written reply on 05.09.2015. In the said written reply, it was pleaded that the previous tenancy between the parties was from 20.04.2010 to 19.04.2015; that the parties had agreed to extend the tenancy for the further period of five years commencing from 20.04.2015 to 19.04.2020; that in order to reduce the oral agreement regarding the extension of the tenancy into writing a stamp paper was obtained by the respondent; that the petitioner was asked to sign on the blank stamp paper with an assurance that a lease agreement will be printed thereon and signed by respondent No.1; that the petitioner signed the blank stamp paper in good faith, and; that the petitioner despite repeated requests was not provided with a copy of the lease agreement. It is further pleaded that it was only after the filing of the eviction petition that the petitioners came to know that respondent No.1 had deceitfully, fraudulently and in violation of what was agreed between the parties converted/printed the lease period to be commencing from 20.04.2010 to 19.04.2015 instead of 20.04.2015 to 19.04.2020. The lease agreement annexed to the eviction petition was alleged to be a forged and a fabricated document and procured fraudulently and collusively. It appears that on 30.05.2015, the learned Rent Controller decided to proceed ex-parte against the petitioner. This prompted the petitioner to file an application to set-aside the ex-parte proceedings. The said application appears to have been allowed, whereafter the petitioner filed his written reply and contested the eviction petition.

4. On 10.10.2015, the learned Rent Controller passed the following order:-

"The relationship of landlord & tenant is admitted and rate of rent is also admitted. The petitioner has alleged default in payment of rent since September, 2015. The respondent has failed to produce the receipts of payment of rent. Therefore, in these circumstances tentatively rent is fixed @ Rs.15,000/- per. The respondent is directed to deposit the

arrears of rent @ Rs.15,000/- per month from September 2015 till to date and to produce the receipts of the same in the court on or before next date of hearing. The respondent is further directed to deposit the future monthly rent on the same rate in the court account before 15th of each month till final disposal of the petition with 25% increase after every 3 years. Now to come up on 22.10.2015 for production of receipts."

5. Since the learned Rent Controller had struck off the petitioner's defence under Section 17(9) of the IRRO and had directed him to vacate the rented premises, I intend to confine myself to the question of whether the learned Rent Controller could lawfully pass such an order. I do not deem it necessary to delve into allegations regarding forgery and fabrication made by the contesting parties against each other.

6. As it apparent from the bare perusal of the order dated 10.10.2015, the learned Rent Controller had directed the petitioner to deposit the arrears of rent from September, 2015 till the date of the said order. The petitioner was also directed to deposit the future monthly rent in the Court and to produce the receipts relating to the same on the next date of hearing i.e. 22.10.2015.

7. Now there appears to have been a mistake committed by the learned Rent Controller by fixing Rs.15,000/- per month as the tentative rent and directing the respondent to deposit the said amount. The learned Rent Controller seems to have acknowledged this mistake in his order dated 22.10.2015. The tentative rent ought to have been fixed at the rate of Rs.8,000/- per month, which was the amount expressly pleaded by respondent No.1 in his eviction petition to be the monthly rent for the rented premises. Be that as it may, the petitioner did not even deposit Rs.8,000/- after the order dated 10.10.2015, passed by the learned Rent Controller. This default on the part of the petitioner caused the learned Rent Controller to strike off petitioner's defence under Section 17(9) of the IRRO and direct him to vacate the rented premises.

8. Learned counsel for the petitioner submits that there was no occasion for the learned Rent Controller to

have directed the petitioner to deposit Rs.15,000/- per month from September, 2015, because he had already, on 07.10.2015 paid Rs.8,000/- to respondent No.1. A copy of the receipt dated 07.10.2015 is annexed at Page 47 of the instant petition. Learned counsel for the petitioner further submitted that as the petitioner had already discharged his obligation of paying Rs.8,000/- as rent for the month of September, 2015, the learned Rent Controller ought not to have directed the petitioner to deposit the rent for the month of September, 2015, and that too at an erroneously enhanced amount. He submitted that even with a 25% increase in the figure of Rs.8,000/-, the monthly rent for the rented premises did not come to Rs.15,000/-; that the petitioner could not be penalized on account of an obvious mistake committed by the learned Rent Controller; that the tentative order dated 10.10.2015, passed by the learned Rent Controller under Section 17(8) of the IRRO, was uncertain, ambiguous and invalid, and the petitioner could not have been subjected to penal consequences for not complying with the same. In support of his submissions, the learned counsel for the petitioner placed reliance on the cases of Muhammad Baqar Qureshi Vs. Mst. Razia Begum reported as 1981 SCMR 18, Haji Saat Muhammad Vs. Dr. Muhammad Saleem Qureshi and another reported as PLD 1988 Quetta 42, Tauqeer Shahid Vs. Additional District Judge & others reported as 1993 CLC 2435 Lahore, Syed Yaqoob Shah Bokhari Vs. Sheikh Shah Muhammad and others reported as 2001 YLR 2767 Lahore, Muhammad Zubair Vs. Mian Muhammad Zia and 7 others reported as 2004 SCMR 1070, Muhammad Naeem Abbasi Vs. Mst. Muhammad Jan reported as 2008 MLD 1659 Lahore, and Mrs. Abida Mehmood and 3 others Vs. Malik Muhammad Bashir and 2 others reported as 2014 YLR 1525 Lahore.

9. He further submitted that the learned Rent Controller could not have invoked the penal measures contained in Section 17(9) of the IRRO, on 22.10.2015, because the petitioner on 07.10.2015 had already paid the rent for the month of September, 2015, and that the rent for the month of October, 2015, was not due until 15.11.2015.

Therefore, he submitted that the impugned order dated 22.10.2015, was pre-mature and passed without application of mind.

10. The learned counsel for the respondent No.1 defended the concurrent orders passed by the Courts below and prayed for dismissal of the writ petition. He submitted that the petitioner had not paid the rent for the month of September, 2015, and that the receipt appended at Page 47 was a fabrication. Had such a receipt been in existence, the petitioner would certainly have filed the same before the Court of the learned Rent Controller.

11. On account of the said submission of the learned counsel, this Court, vide order dated 08.02.2016, called for the record of the trial court as well as the appellate court to see *inter-alia* whether the receipt regarding the payment of rent for the month of September, 2015 was on the record of the courts below. An examination of the record reveals that the receipt dated 07.10.2015 is not a part of the record of the learned Trial Court/Rent Controller. A copy of this receipt is, however, on the record of the Appellate Court.

12. Now if the petitioner had indeed paid the rent for the month of September, 2015 to respondent No.1 on 07.10.2015, I fail to understand why the petitioner did not bring this fact to the notice of the learned Rent Controller soon after the order dated 10.10.2015 was passed. The petitioner could have, through an appropriate application, not just brought the receipt dated 07.10.2015 on the record but could have also applied for the correction of the incorrect figure of the tentative rent mentioned in the said order. The petitioner chose to remain silent on these matters and now that an adverse order has been passed against him under Section 17(9) of the IRRO, he has raised the issue as to the payment of the rent for the month of September, 2015. The learned Rent Controller was correct in holding that even if the amount of Rs.15,000/- mentioned in the order dated 10.10.2015 was not correct, there was nothing to prevent the petitioner from depositing Rs.8,000/- and producing the receipt therefor on 22.10.2015 before the learned Rent Controller.

13. It is my view that the order dated 10.10.2015, passed under Section 17(8) of the IRRO, by the learned Rent Controller is unambiguous. Nothing turns on the wrong entry of the figure (Rs.15,000/- instead of Rs.8,000/-) as tentative rent in the said order, because the petitioner was nonetheless under an obligation to deposit the monthly rent, which under the agreement between the parties was admittedly Rs.8,000/-.

14. The case law relied upon by the learned counsel for the petitioner does not come to his aid. In the case of Abida Mehmood Vs. Muhammad Bashir reported as 2014 YLR 1525, the order of the learned Special Judge (Rent) for the deposit of rent was held by the Hon'ble Lahore High Court to be vague and not clear as to which date of which month, the future rent was to be paid by the tenant. Hence, the tenant was not held bound by the same. In the case of Muhammad Naeem Abbasi Vs. Mst. Muhammad Jan reported as 2008 MLD 1659, it was held by the Hon'ble Lahore High Court that rent for a month would become due upon its expiry and would be payable before the 15th day of the next month. The order of the Rent Controller directing the deposit of rent for one month before the 15th day of the same month was held to be illegal. In the case of Muhammad Zubair Vs. Mian Muhammad Zia and 7 others reported as 2004 SCMR 1070, the order of the Rent Controller directing the deposit of monthly rent at the rate of Rs.5 per square foot for the covered area as determined through a Commission, was held to be vague and ambiguous. It was further held that the tenant could not be penalized for non-compliance with such a vague and an ambiguous order. In the case of Syed Yaqoob Shah Bokhari Vs. Sheikh Shah Muhammad and others reported as 2001 YLR 2767 Lahore, it was held by the Hon'ble Lahore High Court that if a lease agreement had stipulated the payment of advance rent by a certain date, then the rent would become due on that date. The ejectment order passed against a tenant for not paying rent within fifteen days after the expiry of the time fixed in the agreement, was held to be valid. In the case of Tauqeer Shahid Vs. Additional District

Judge reported as 1993 CLC 2535, it was held by the Hon'ble Lahore High Court that before passing an order for the deposit of monthly rent it was incumbent upon the Rent Controller to have first resolved the controversy as to the month from which the rent for the premises was due. The tentative rent order passed by the Rent Controller before carrying out this exercise was held not to be lawful. In the case of Haji Saat Muhammad Vs. Muhammad Saleem Qureshi reported as PLD 1988 Quetta 42, it was held that a tenant would not suffer the consequence of non-compliance with an invalid and arbitrary tentative rent order. In the case of Muhammad Baqir Qureshi Vs. Razia Begum reported as 1981 SCMR 18, it was held that the phrase "rent due by him" means the rent becoming due according to the terms of the tenancy. Rent in such a case if not paid within fifteen days after the expiry of the time fixed in the agreement would render the tenant liable to eviction.

15. In the instant case, the rent for the month of September, 2015, had become payable on 15.10.2015. The learned Rent Controller, vide order dated 10.10.2015, directed the petitioner to deposit the rent for the month of September, 2015 and to produce the receipt for the same on 22.10.2015, (which was a date after 15.10.2015). As mentioned above, the orders passed by the learned Rent Controller do not suffer from any vagueness or ambiguity. The petitioner was, through order dated 10.10.2015, placed under an obligation to deposit the rent for the month of September, 2015 and submit the receipt on 22.10.2015. The petitioner could have easily paid the required amount on or before 15.10.2015 and submitted the receipt for the same on 22.10.2015. If at all, there was any doubt in his mind as to whether he was obligated to deposit Rs.15,000/- or Rs.8,000/- he could have filed an application for clarification before the learned Rent Controller soon after the order dated 10.10.2015 was passed. Additionally, even if it is assumed that he had already paid an amount of Rs.8,000/- to respondent No.1 on 07.10.2015 (being rent for the month of September, 2015)

he could have brought this fact as well as the receipt on the record of the learned Rent Controller. As the petitioner chose not to do so, he has only himself to thank for the unsavory consequences.

16. It is by now well settled that where a tenant fails to comply with the direction to deposit the rent under Section 17(8) of the IRRO, the learned Rent Controller is left with no option but to strike off the defence of the tenant and direct him to vacate the rented premises. Law to this effect has been laid down by the Superior Courts in the cases of Mushtaq Admad Kiani Vs. Bilal Umair, reported 2009 SCMR 1008, Bilal Abid Vs. District Judge (West) Islamabad reported as 2015 YLR 2405, Shamshad Ali Vs. Ghulam Muhammad Chaudhry reported as 2009 CLC 52, Hassan Ali Khan Vs. Additional District Judge Islamabad, reported as 2003 CLC 1819, Major (R) Shakil-ud-Din Ahmad Vs. Addl. District Judge, Islamabad, reported as 2007 CLC 601.

17. For the foregoing reasons, I am not inclined to interfere in the concurrent orders passed by the Courts below. The penal provisions contained in Section 17(9) of the IRRO, were correctly invoked by the learned Rent Controller. Consequently, the petition is dismissed with no order as to costs.

(MAINGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan*