

## ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP 390 of 2010

Titled Mohammad Younis vs Rana Mohammad Zahid etc.

(a) Judgment approved for reporting

☒ Yes / No

(b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made.

Yes / No ☒

(In case the answer is the affirmative Separate  
confidential note may be Sent to the Registrar  
drawing his Attention to the particular aspect).

  
Initial of the Judge.

### NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

Form No: HCJD/C-121.

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P. No.390/2010

**Muhammad Younas**  
**Vs.**  
**Rana Muhammad Zahid etc.**

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
02)	30-11-2011	Syed Wusat-ul-Hassan Shah, Advocate for petitioner. Mr. Atiq-ur-Rehman Kiyani, Advocate for respondent along with respondent.

The petitioner, being tenant of Shop No.5 along with basement situated in Mehmood Plaza, Blue Area, Islamabad is aggrieved with the judgment passed by the learned Additional District Judge, Islamabad for accepting the ejectment application of respondent No.1/landlord, has preferred the present writ petition.

2. Brief facts of the case as per petition for ejectment initially filed before the Senior Rent Controller, Islamabad are that Shop No.5 along with basement situated in Mehmood Plaza, Blue Area, Islamabad was rented out to the petitioner/tenant vide lease agreement dated 01.04.2003. The said agreement was executed for a period of three years

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only w.e.f. 01.01.2003 to 31.12.2005 and the rent of the demise premises for the said tenancy period was settled for Rs.15,000/-.

3. Since the period of tenancy expired on 31.12.2005, before its expiration, the petitioner/tenant was intimated that said lease agreement would not be extended and further that respondent/landlord requires the shop for his personal use. A legal notice was also served upon petitioner/tenant, but with no response.

4. Therefore, he further urged that the amount as per market rate of rent, which is more than Rs.45,000/- per month, failed to tender the rent by the petitioner/tenant.

5. Preliminary objections were filed by the petitioner/tenant wherein, the tenant denied the service of notice upon him. So far as the expiration of the agreement on 31.12.2005 is concerned, he while admitting the fact, further added that respondent/landlord is receiving the rent on monthly basis. The Rent Controller, therefore, formulated the following issues: -

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- 1) Whether the suit property is required by the petitioner for personal bonafide need? OPA
- 2) Whether respondent is rent defaulter, hence liable to be evicted? OPA
- 3) Whether the petitioner has no cause of action against the respondent, hence the petition is liable to be dismissed? OPR
- 4) Relief.

6. The parties, on the issues, adduced their evidence and according to record, Rana Muhammad Zahid submitted affidavit as Exh.A-1 and he was cross-examined by the counsel for the opposite side. Muhammad Younas, the tenant also submitted his affidavit Exh.Rw-1, who too was cross-examined by the counsel for the opposite side.

7. However, the Rent Controller, Islamabad, after hearing both the parties discussed the issues, declined the relief sought in the petition by the landlord. Resultantly, the same was dismissed. The landlord i.e. respondent, being aggrieved with the said decision of the Rent Controller, preferred an appeal against the order dated 02.01.2009. After hearing both the parties, the learned Additional District Judge, Islamabad while considering all legal and factual aspects involved, accepted the

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appeal. Consequently, the application filed by the landlord Rana Muhammad Zahid was accepted and the petitioner in the instant writ petition was directed to vacate the premises within two months.

8. Being aggrieved, finding no further appeal, the petitioner preferred the present writ petition for setting aside the impugned order dated 04.01.2010 passed by the learned Additional District Judge, Islamabad with additional prayer to set aside ejectment petition filed by respondent No.1.

9. Arguments heard. Record perused.

10. At the very outset, both the learned counsel agreed upon the issue of default that same could not be proved, not the learned counsel for respondent/landlord concentrated to press upon the same in view of the decision of Islamabad High Court in a writ petition between the same parties, whereby the increase of rent is shown to have been deposited. Hence, only the issue in respect of personal bonafide use was taken into consideration.

11. Learned counsel for the petitioner/tenant argued that since

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respondent/landlord while submitting the ejectment application has not elaborated the reason of his personal use, therefore, the same could not be proved nor can it be established in his favour. In support of his contention, he relied upon the following case law: -

2005 CLC 1119  
2003 YLR 1601

12. The case law reported as "**2005 CLC 1119**" focusing the requirements of Section 17 of Islamabad Rent Restriction Ordinance, 2001, which nothing suggests that the tenant could be ordered to be ejected from the building merely on the ground of expiry of lease period, which is not in fact the issue in the present matter.

13. The other case reported as "**2003 YLR 1601**" delivered by the Hon'ble Lahore High Court, which on such principles, to some extent, meeting with the arguments extended, whereby the Hon'ble Court observed that the landlord must enter in the witness box while deposing on oath about personal bonafide need and assigning reasons therefore. Assertion or claim of landlord,

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if consistent with his averments in application and not shaken in cross-examination or disproved in rebuttal, would be sufficient to prove that need was bonafide and Court would normally not question such need.

14. On the contrary, the case law suggests the case of landlord because while going through the record and evidence adduced by the parties, it positively infers from cross-examination of the landlord Rana Muhammad Zahid, wherein such question was put to him, to which, he replied that earlier he was residing in Saudi Arabia continuing the business of vegetable and here, he intends to establish such business.

15. From the above portion of the evidence, it becomes crystal clear explicitly that landlord might have not stated the reason, but inquiries during cross-examination, such reason was disclosed by him, therefore, that stands proved.

16. Learned counsel for the petitioner/tenant emphasized on the ground that the respondent/landlord also owns some other properties, but could

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not substantiate the same by bringing on record such documents or through any other evidence, except the document submitted as Mark-A during proceedings, which was not even confronted to the landlord during cross-examination.

17. Learned counsel for the respondent/landlord emphasized that the choice to retain some of the properties is a prerogative of the landlord and question, as to which portion of the building would suit the landlord, must be left to his discretion. In support whereof, he relied upon PLD 1990 SC 394, which in my humble view, strongly supports his version.

18. As far as the contention raised that requirement of landlord not bonafide and not made in good faith and it is for enhancement of rent, the learned counsel relied upon reported case law "**1984 CLC 50**", the decision of the Hon'ble Karachi High Court.

19. As far as the technical ground urged respecting maintainability of the writ petition is concerned, learned counsel for the respondent/landlord, while relying upon reported case law

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"1990 SCMR 1070", whereby the golden principle introduced that ordinarily, the constitutional jurisdiction of the High Court, could not be interfered normally.

20. With the precious assistance of learned counsels for parties, I have gone through the order and documentary evidence on record and giving anxious considerations to the arguments advanced. While exercising writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, the High Court does not interfere with the findings of facts recorded by courts below, unless there is misreading of evidence, or omission to consider the material, not applying the rule of law laid down by the superior courts, even the basic law statute or provision thereof has been violated by the courts below, the High Court can interfere by invoking writ jurisdiction. Hence both the counsels never ever pointed out any such error on the part of courts below.

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21. It is a general principal and there is no legal bar upon the landlord to disclose

the nature of business he intends to conduct in the shop, for which ejectment sought, therefore, while going through the referred provisions of Islamabad Rent Restriction Ordinance, 2002, particularly Section 6, any provisions or provisos of section 17 of such Ordinance. Hence, it is a prerogative of the landlord to choose the suitable for his personal use, as such it is not fatal for the landlord's case, if fails to such an aspect, as wrongly erred by the Rent Controller, cannot be considered as rule of law.

22. Learned counsel for the petitioner/tenant was not able to controvert such legal points raised.

23. However, he concentrated the requirements of Section 17(6) of the Islamabad Rent Restriction Ordinance, 2001, which provides protection to tenant in case when the ejectment sought for personal bonafide use is violated then the tenant be put into the same premises by following Section 17(6)(vi) of Islamabad Rent Restriction Ordinance, 2001, which proposition of law has not been controverted by the learned counsel for respondent/landlord.

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24. In view of the foregoing reasons, factual and legal aspects considered above, I am of the considered view that the present writ petition merits no consideration, hence the same is dismissed. Resultantly, the order passed by the learned Additional District Judge, Islamabad is maintained.

25. However, the petitioner/tenant is at liberty to move before proper forum on findings such a violation of the personal ground, after his ejectment as required by Section 17 (6) of the Rent Restriction Ordinance, 2001.

  
**(NOOR-UL-HAQ N. QURESHI)**  
**JUDGE**

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