

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.2059 of 2015

Syed Bilal Adil

Vs.

Learned District Judge-West, Islamabad & two others.

Petitioner's by: Shahzad Ali Rana & Mir Aurangzeb,
Advocates in their respective petitions.

Respondents by: Munawar Hussain Abbasi, Advocate.

Date of hearing: 12.08.2015.

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AAMER FAROOQ, J.- This consolidated judgement shall decide the instant petition as well Writ Petitions No.1966, 1975, 2005, 2006, 2040, 2041, 2042, 2043, 2044, 2045, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068 of 2015 as common question of law is involved.

02. The facts leading to filing of the instant petitions are that petitioners, in all the petitions, are tenants of respondent No.3 with respect to shops situated in Zafar Chamber, Plot No.12, G-6 Markaz, CDA Civic Centre, Melody Market, Islamabad. The petitioners claim to be the tenants with respect to the above mentioned property since long and in all cases tenancy is oral. Respondent No.3 instituted eviction applications against the

petitioners on the grounds of default in payment of rent, requiring the property for structural changes and non-payment of utility bills by the petitioners. In all the cases respondent No.3 requested the learned Rent Controller i.e. respondent No.2 for passing order under section 17(8) of Islamabad Rent Restrictions Ordinance, 2001 (the **Ordinance**). In this behalf on 16.03.2015 the learned Rent Controller passed orders under section 17(8) *ibid* whereby the petitioners were directed to pay the arrears of rent from January, 2015 till today on or before next date of hearing and produce the receipts of the same. Respondent No.3 also directed the petitioner to deposit the rent in future before 15th of each month till conclusion of the petitions. In this behalf respondent No.2 tentatively assessed the rent at the rate of Rs.7500/- per month with 20% increase after every two (2) years. The next date of hearing was fixed by the learned Trial Court as 31.03.2015. On the referred date the Presiding Officer was on leave, therefore, the case was adjourned to 06.04.2015. Respondent No.2, on 06.04.2015 examined the receipts produced by the petitioners and framed issues, however, on 09.05.2015 the defence of the petitioners was struck off on account of delay in deposit of arrears of rent and the eviction petitions were allowed in favour of respondent No.3. The petitioners assailed the orders for eviction in appeals before respondent No.1, which were dismissed *vide* judgement dated 06.06.2015.

03. The learned counsels for the petitioners, *inter alia*, submitted that there is no default in compliance with order dated 16.03.2015 passed by respondent No.2 inasmuch as all the

petitioners authorized Syed Bilal Adil (petitioner in the instant petition) to deposit rent and he in pursuance thereof sent a cheque to the tune of Rs.505710/-(Rupees five hundred five thousand seven hundred and ten only) for the months of January to March, 2015 drawn on Meezan Bank Limited dated 28.03.2015 through courier to respondent No.3. The referred mail was not received by respondent No.3, therefore, cheque was returned undelivered on 31.03.2015. It was further submitted that since on 31.03.2015 the Presiding Officer was on leave, therefore, amount in question was deposited on 02.04.2015. The learned counsel also submitted that there is no willful default and delay of two days in compliance with order is due to firstly non-acceptance of the cheque by respondent No.3 and secondly absence of the Presiding Officer on the date in question. The learned counsel further contended that such like situations do not constitute default in compliance with the order under section 17(8) of the Ordinance. In support of their contentions learned counsels placed reliance on cases titled "Abdullah Ghanghro & another vs. Mst. Tahira Begum & another"(1988 SCMR 970), "Shahabuddin vs. Zubair Aslam & three others"(2010 MLD 1002), "Major (Rtd.) A.S.K. Samad vs. Lt. Col. (Rtd.) A.Hussain and another "(1983 SCMR 773), "S.M. Ismail vs. CDA through Chairman & five others"(2006 CLC 131), "M/s Journalist Publications (Pvt.) Limited vs. Mumtaz Begum alias Mustari Begum"(2004 SCMR 1773), "Safeer Travels (Pvt.) Limited through Chief Executive vs. Mohammad Khalid Shafi through legal heirs"(PLD 2004 SC 690). The learned counsels also submitted that order dated 16.03.2015 is not in accordance with section 17(8) of

the Ordinance because there was no rent due on the referred date. In this behalf it was submitted that admittedly tenancy is oral and there is no date fixed for payment of rent, therefore, in light of section 17(2) (I) of the Ordinance the rent was payable within sixty (60) days from the period for which it was payable.

04. The learned counsel for respondent No.3, inter alia, submitted that order dated 16.03.2015 has not been complied with, therefore, the defence of the petitioners was rightly struck off and the eviction applications were allowed. It was further submitted that the rent was required to be deposited in the Court and the payment of the same through cheque to the landlord was just another act on part of the petitioners to linger on the matter. The learned counsel further contended that it is an established law that even delay of one day is not to be condoned. In support of his submissions the learned counsel placed reliance on an unreported judgement of this Court passed in Writ Petition No.2537/2013, as well as cases titled "Shamshad Ali vs. Ghulam Mohammad Ch. & another" (2009 CLC 52), "Saeed Ahmed vs. Rehana Zahid & two others"(PLD 2012 Islamabad 161), "Shahabuddin vs. Zubair Aslam & three others"(2012 MLD 1002) and "Mushtaq Ahmed Kiani vs.Bilal Umair & others. "(2009 SCMR 1008). The learned counsel also contended that the petitioners admitted that rent for the months of January to March, 2015 is outstanding by sending a cheque for the referred period and later depositing the same in the Court. Moreover, Syed Bilal Adil in an affidavit conceded before the Rent Controller that there was delay in deposit of rent from January to March, 2015. The learned counsel further

submitted that even monthly rent is being paid with delay, therefore, order dated 16.03.2015 has been violated by the petitioners in that regards as well.

05. By order dated 16.03.2015 under section 17(8) of the Ordinance, the petitioners were ordered to deposit arrears of rent by or before the next date of hearing and deposit the future rent before 15th of each month. The petitioners allege that initially they sent a cheque through courier to respondent No.3 who refused to accept the same and subsequently on 31.03.2015 the same could not be deposited due to absence of the Presiding Officer. Since the controversy in question revolves interpretation of section 17 (8) *ibid*, therefore, for the sake of brevity the said provision is reproduced below and is as follows:

“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 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, and if there be any dispute as to the amount of rent due, the Controller shall determine such amount approximately.”

The plain reading of the above provision of law shows that the arrears of rent which are to be deposited in pursuance of the order of the Rent Controller are to be deposited with the Court and not to be tendered to the landlord. The petitioners during the course of arguments submitted that the rent was paid in past in cash. There is no justification for the petitioners to tender rent

through cheque to respondent No.3. In this behalf under explanation to section 17 ibid it is provided that for the purposes of referred section the rent remitted by money order or tendered to the landlord in such manner as may be agreed upon by the landlord and the tenant or deposited in the office of the Rent Controller shall be deemed to have been duly tendered. Therefore, sending cheque is not a valid tender. In so far as non-deposit of rent on 31.03.2015 on the ground of absence of the Presiding Officer is concerned the same has no justification or basis. In this behalf this Court in **W.P. No.2537/2013** vide judgement dated 26.11.2013 held that there is no exception to the consequences of non-deposit or non-compliance of the order of the Rent Controller as provided in subsection 9 of section 17 of the Ordinance. Similarly, in case titled "Mushtaq Ahmed Kiani vs. Bilal Umair" (**2009 SCMR 1008**) the Hon'ble Supreme Court of Pakistan held that provisions of section 17(9) of the Ordinance were mandatory inasmuch as consequence of non-deposit or non-compliance of the order of the Rent Controller are provided therein and discretion is left with the Rent Controller except to order ejectment of the tenants without further proceedings. It was further observed by the Apex Court that no extension can be granted.

06. The contention of the learned counsels for the petitioners that delay of two (2) days can be condoned has no substance and the case law relied upon by them is distinguishable. In the case report as **PLD 2004 SC 690** the delay of a day was condoned as the last date fixed by the Rent Controller was a Public Holiday,

therefore, the Court allowed deposit on the next date. Similarly, in **1985 CLC 1207** since Courts were closed during vacation and only one Civil Judge was available to deal with specified urgent matters, therefore, the Court held that it could not be said that office of Rent Controller was not closed. The Hon'ble Lahore High Court in the referred judgement further observed that default imports an element of negligence or fault and means something more than mere non-compliance. The Court if finds that default was unavoidable and beyond control of the tenant then an order of ejectment may not follow. In **1990 SCMR 1354** the Hon'ble Supreme Court upheld the condonation of default in payment of rent. All the cases relied upon by the learned Counsels for the petitioners are prior to the judgement of the Apex Court in **2009 SCMR 1008** in which, as observed above, while interpreting section 17(9) of the Ordinance it was held that there is no discretion left with the Rent Controller in case of default in compliance with order under section 17(8) of the Ordinance. Moreover, even if the learned Rent Controller was on leave on the date in question the Duty Judge was available and the Courts were not closed as such, therefore, the arrears of rent could have been made.

07. The learned counsels for the petitioners while arguing consequences of non-compliance with order under section 17(8) of the Ordinance before respondent No.2 did not allege that rent for the months of January to March, 2015 was not due. Similarly, in the affidavit submitted by Syed Bilal Adil (petitioner in the instant petition) it was acknowledged that rent for the referred

months was due but paid with delay of two (2) days. In the referred affidavit not only the arrears are admitted but also delay is accepted. In light of the referred fact the petitioners at this stage cannot argue that there was no rent due on 16.03.2015.

08. It is an established principle that this Court in exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 does not interfere with the decisions of the Courts below unless there is an illegality or jurisdictional infirmity.

09. For the foregoing reasons the instant petition as well as the petitions mentioned hereinabove are without merit, therefore, dismissed.

(AAMER FAROOQ)
JUDGE

Altaf Malik

Approved for Reporting