

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**“W.P No.569 of 2020”**

Mumtaz Ahmed  
*Versus*  
Tassaduq Hussain & another

Petitioner By: Mr. S. Shajjar Abbas Hamdani, Advocate  
Respondent No.1 by: Mian Tahir Iqbal, Advocate

Date of Hearing: 27.07.2020

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**Ghulam Azam Qambrani, J:** Through this petition, the petitioner, Mumtaz Ahmed, has assailed an interim order, dated 21.01.2020 passed by the learned Rent Controller, Islamabad-West, whereby the petitioner was directed to deposit tentative amount of rent at the rate of Rs.30,000/- per month from September, 2019 and was further directed for future monthly rent to be deposited on or before 15<sup>th</sup> of each subsequent month.

2. Brief facts, as narrated in the petition are that Tassaduq Hussain/respondent No.1 (hereinafter be called as “**respondent**”) filed eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 (hereinafter referred to as the “**Ordinance**”) against the petitioner with the averments that he is owner of shop No.8, Ground Floor, Chughtai Plaza, Plot No.35, Fazal-e-Haq Road, Blue Area, Islamabad, wherein the petitioner is running business in the name and style of “*Mumtaz Brother*”. In the said eviction petition, it has been averred by the respondent that in the month of February, 2018 he verbally rented out the above mentioned premises to the petitioner for a period of one year at the rate of Rs.30,000/- per month. The petitioner was initially paying the monthly rent to the respondent in cash and thereafter, since November, 2018 through cheques on his own name which were drawn at ABL, F-6 Super Market Branch, Islamabad. It was also the

case of the Respondent that the petitioner remained irregular in payment of rent from the month of February, 2018 and subsequently, he paid rental amount of Rs.1,80,000/- through Cheque Nos.2277573216 & 2277573217, dated 07.01.2019 and 12.04.2019, respectively for the outstanding rent payments but defaulted in payment of the rent of Rs.3,60,000/-. Lastly, the Respondent requested him to vacate the rented premises on the ground that the verbal tenancy has been expired as well as personal bonafide use but petitioner failed to vacate the premises.

3. The petitioner has contested the eviction petition on legal as well as on factual grounds before the learned Rent Controller by filing written reply that the respondent is neither owner of the rented premises nor the same has been rented out through him, rather one Nouman Hussain is the owner of the property who rented out him the same in the year 1999. It has also been negated that he became a defaulter in payment of the rent, however in the written reply of the petitioner, there is no specific denial regarding rent of Rs.30,000/- per month.

4. After hearing the parties by the learned Rent Controller, the following order was passed.-

*"2. It appears that petitioner filed eviction petition on the strength of oral tenancy, which expired and also on rent default, which is to tune of Rs.360,000/- at time of filing of eviction petition, whereas, respondent filed written reply contesting petition with plea that neither petitioner is landlord to demised premises nor premises were rented out to him.*

*3. Arguments heard, record perused.*

*4. It appears from record that respondent admits his status as of tenant over demised premises, which petitioner claims to be in his ownership. Question of oral tenancy and its expiry at this stage is left to be decided after exhausting stage of 17 (8) of IRRO 2001. Therefore, it is directed that respondent shall deposit tentative amount of rent @ Rs.30,000/- from September 2019 (from appearance of respondent in the eviction petition) before next date of hearing. Respondent for future monthly rent shall continue to deposit such amount of rent on or before 15<sup>th</sup> of each coming month. Meanwhile, to safeguard concerns of*

*respondent neither petitioner nor any other claimant shall be competent to withdraw the amount of rent deposited. Adjourned...."*

5. Feeling aggrieved from impugned order, dated 21.01.2020 passed by the learned Rent Controller, the petitioner has filed instant writ petition.

6. Learned counsel for the petitioner contends that impugned order, dated 21.01.2020 passed by the learned Rent Controller is against the facts and law, therefore, the same is not sustainable; that the petitioner has denied the relationship of tenant and landlord, in such circumstances, the learned Rent Controller was bound to treat such an objection as preliminary one and was to determine the question by recording of evidence of the parties; that the adjacent three shops <sup>70-74</sup> of the rented premises have been rented out at the rate of Rs.55,000/- per month but the learned Rent Controller without recording any evidence has tentatively passed an order at the rate of Rs.30,000/- per month for the rented premises which is against the facts and law, therefore, the same is not maintainable.

7. Conversely, the learned counsel for the respondent opposed the contentions of the learned counsel for the petitioner and contends that impugned order, dated 21.01.2020 is an interim order and there is a specific bar under the Islamabad Rent Restriction Ordinance, 2001 therefore, the same cannot be challenged hence, the instant petition is not maintainable; that in their reply, the petitioner has admitted the payment of rent to the respondent by issuing cheque on his name for the monthly rent payment; that the monthly rent of Rs.30,000/- has not been specifically denied in the written reply of the petitioner. Lastly, urged for the dismissal of the petition.

8. I have heard the arguments of the learned counsels for the parties and have perused the material available on record with their able assistance.

9. Perusal of the record reveals that respondent filed ejectment petition against the petitioner regarding shop No.8, Ground Floor, Chughtai Plaza, Plot No.35, Fazal-e-Haq Road, Blue Area, Islamabad, which was verbally leased out to the petitioner at the rate of Rs.30,000/- per month in February, 2018 and thereafter, when the petitioner defaulted in the payment of rent the respondent filed ejectment petition under Section 17 of the IRRO, 2001. Pursuant to filing of written reply to the eviction petition, the learned Rent Controller after hearing the parties has passed impugned order, dated 21.01.2020, whereby directed the petitioner to deposit tentative rent at the rate of Rs.30,000/- per month from September, 2019 and for future at the same rate on or before 15<sup>th</sup> of each succeeding month. Sub-sections (1) and (2) of Section 21 of the IRRO, 2001 reads as follows.-

***Section 21 Appeal (1):*** Any party aggrieved by a final order of the controller made under this ordinance may, within 30 days of the date of such order, prefer an appeal to the District Judge.

***Section 21 Appeal (2):*** No appeal shall lie from interlocutory order passed by the controller.

10. Perusal of the record reveals that impugned order, dated 21.01.2020 is an interlocutory order, which is not appealable under the provisions of IRRO, 2001. Sub-section (1) of Section 21 of the Ordinance *ibid*, provides that any party aggrieved by a final order of the learned Rent Controller may prefer an appeal to the learned District Judge within 30 days of the date of such an order, whereas Sub-section (2) of Section 21, explicitly provides that no appeal shall lie from interlocutory order passed by the learned Rent Controller. The intention of legislature can be gathered from the provision of section 21 (2) of the Ordinance *ibid* to avoid delay in disposal of case by the learned Rent Controller. A specific bar has been imposed to challenge the interlocutory orders passed by the learned Rent Controller, therefore, the petitioner cannot be allowed

to circumvent the legislative intent by filing a constitutional petition against the interim order.

11. Law to this effect has also been laid down in the cases of "Abdul Majeed Khan Versus Rent Controller, Civil Judge Gurjranwala" reported as (1997 CLC 1822), "Mehmood ul Hassan Versus Special Judge Rent Tribunal, Lodhran" reported as (2010 CLC 1590) and "Muhammad Sagheer Abbasi versus District Rent Controller" reported as (2015 MLD 417). The principles which may be distilled from the aforesaid judgments and observations made therein would be the following. It is apparent from these judgments that Section 21 (2) of IRRO, 2001 expressly bars a right of appeal from an interim order passed by the learned Rent Controller and the same cannot be circumvented by challenging such an interim order in the constitutional jurisdiction of this Court. An interlocutory order does not dispose of the entire case before the Court. A party aggrieved by such an interim order as to wait until a final order is passed by a learned Rent Controller and then to challenge it under the prescribed provision of the IRRO before the Court of learned District Judge. The purpose behind barring an appeal against an interim order of the learned Rent Controller is to avoid delays in disposal of the cases by the learned Rent Controller. An interim order, merges into the final verdict which is appealable under sub-section (1) of Section 21 *ibid*.

12. Guidance in this regard has been solicited from the judgment of the Hon'ble Supreme Court of Pakistan titled as "President, All Pakistan Women Association, Peshawar Cantt Versus Muhammad Akbar Awan and others" (2020 SCMR 260), wherein it has been held as under:-

*"In the present case, the intent of the Legislature to keep out interlocutory/interim orders from the scope of appeal is not difficult to understand. It is meant to curtail delays, piecemeal and fractured litigation at various fora at the same time. In our view, such orders cannot be challenged under the guise of invoking the constitutional jurisdiction of the High Court because the same would tantamount to negating the provisions of*

*the Statute itself and rendering the bar imposed by the Legislature in the interest of expeditious disposal of rent matters totally redundant. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercise to defeat or bypass the purpose of a validly enacted statutory provision”.*

13. For the foregoing reasons, the instant petition being devoid of merit is hereby **dismissed**. The learned Rent Controller is directed to dispose of the eviction petition as expeditiously as possible in accordance with law.

~~(Ghulam Azam Qambrani)~~  
Judge

Announced in Open Court, on this 28<sup>th</sup> day of July, 2020.

~~Judge~~

Rana M. Iqbal