

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2171/2013
Jahangir Hussain
Versus
Neghat Rehmat and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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08.10.2019	Mr. Manzoor Hussain, Advocate for the petitioner. Ms. Nazia Bibi, Advocate for respondent No.1.
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Through the instant writ petition, the petitioner, Jahangir Hussain, impugns the judgment dated 15.03.2013 passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the order dated 02.02.2012 passed by the Court of the learned Rent Controller, Islamabad was dismissed. Vide the said order dated 02.02.2012, the learned Rent Controller dismissed the eviction petition filed by the petitioner under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("I.R.R.O") seeking respondent No.1's eviction from Shops No.1 to 5, Bavel Plaza on Plot No.13-B, Markaz G-9, Islamabad ("the rented premises").

2. Learned counsel for the petitioner submitted that the petitioner is the co-owner of the rented premises; that the petitioner's share is 1/5th in the rented premises; that respondent No.1 is in occupation of the rented premises as a tenant; that at no material stage, has the petitioner received rent from respondent No.1; that there is no rent agreement executed between the petitioner and respondent No.1; that on 08.09.2010, a rent agreement was executed between respondent No.2 (Mrs. Fayyaz Begum) and respondent No.1 (Neghat Rehman); and that as per the transfer/allotment letter dated 11.06.1983 issued by the C.D.A.,

respondent No.2's husband, Ashiq Hussain, is a co-sharer of the rented premises.

3. Learned counsel further submitted that it is well settled that co-sharer is competent to file an eviction petition against a tenant; that the owner of the premises is included in the definition of the word "*landlord*" in Section 2(g) of the I.R.R.O.; that the learned Courts below concurrently erred by holding that there does not exist a relationship of landlord and tenant between the petitioner and respondent No.1; that the learned Rent Controller dismissed the eviction petition without the recording of evidence; that when the order dated 02.02.2012 was passed by the learned Rent Controller, the validity of the lease agreement dated 08.09.2010 had not expired; and that presently validity of the said agreement stands expired. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the concurrent orders/judgments passed by the learned Courts below to be set-aside.

4. On the other hand, learned counsel for respondent No.1 submitted that respondent No.1 is not the petitioner's tenant; that a relationship of landlord and tenant does not exist between the petitioner and respondent No.1; that respondent No.1 has regularly been paying rent to respondent No.2 with whom the lease agreement dated 08.09.2010 was executed; that the learned Courts below correctly held that the petitioner was at liberty to resolve his disputes with the co-owner of the rented premises before the Civil Court; and that the concurrent orders / judgments passed by the learned Courts below do not suffer from any jurisdictional infirmity. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

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

6. According to the transfer/allotment letter dated 11.06.1983 issued by the Estate Management Directorate of C.D.A., the petitioner is one of the five co-owners of the rented premises. Ashiq Hussain is also amongst the co-owners. Ashiq Hussain's wife, Mrs. Fayyaz Begum (respondent No.2), entered into lease agreement dated 08.09.2010 with respondent No.1. Through the said lease agreement, the rented premises have been given on rent to respondent No.1 for a period of two years, i.e. 31.08.2012.

7. On 25.07.2011, the petitioner filed a petition under Section 17 of the I.R.R.O. seeking respondent No.1's eviction from the rented premises. The grounds taken in the said eviction petition were (i) default in the payment of rent, and (ii) the petitioner's *bonafide* need for the rented premises. In the said eviction petition, it was pleaded *inter alia* that respondent No.1 had not paid 1/5th of the rent to the petitioner.

8. Respondent No.1 contested the said eviction petition by filing a written reply. In the said written reply, the position taken by respondent No.1 was that the lease agreement executed with respondent No.2 was valid till 31.08.2012. It was also pleaded that no relationship of landlord and tenant existed between the petitioner and respondent No.1, and that the eviction petition had been filed with the purpose to increase the rent.

9. Vide order dated 02.02.2012, the learned Rent Controller dismissed the eviction petition on the grounds that the petitioner had not been able to prove that respondent No.1 had committed default in

the payment of rent, and that the lease agreement had not expired.

10. The petitioner's appeal against the said order dated 02.02.2012 was dismissed by the Court of the learned Additional District Judge, Islamabad, vide judgment dated 15.03.2013. In the said judgment, it was held that a relationship of landlord and tenant does not exist between the petitioner and respondent No.1, and that the learned Rent Controller had correctly directed the petitioner to approach the Civil Court for resolving his dispute.

11. The observation in the appellate judgment dated 15.03.2013 that *"the learned Rent Controller has rightly directed the appellant to approach Civil Court for resolving their dispute"* appears to be based on misreading of the record since the order dated 02.02.2012 passed by the learned Rent Controller contains no such direction. In fact the learned Rent Controller had not dismissed the petitioner's eviction petition on the ground that there did not exist a relationship of landlord and tenant between the petitioner and respondent No.1 but on the grounds that respondent No.1 had not defaulted in the payment of rent, and that the lease agreement had not expired.

12. It is well settled that a co-owner of the rented premises has a right to file an eviction petition. Reference in this regard may be made to the law laid down in the cases of Daood Khan Vs. Sultan Muhammad (PLD 2019 Quetta 113), Bahadar Khan Vs. Abdul Khaliq (2018 MLD 298), Abdul Hussain Tehirally Vs. Additional District Judge (2016 CLC 1024), Dr. Masooma Hasan Vs. Muhammad Hafeez (2015 MLD 1755), Muhammad Esa Godil Vs. Mst. Sitara Jamil (2014 YLR 1901) and Mst. Rehana Hafeez Vs. Muhammad Ali (2014 CLC 1242).

13. Learned counsel for the petitioner was correct in his submission that owner of the premises is included in the meaning of the word “*landlord*” as defined in Section 2(g) of the I.R.R.O. Respondent No.1 does not deny the fact that in terms of C.D.A.’s letter dated 11.06.1983, the petitioner was one of the five co-owners of the rented premises. Respondent No.1 also does not deny her status of a tenant in occupation of the rented premises. However, respondent No.1 asserts that since the rent agreement dated 08.09.2010 was not entered with the petitioner but another co-owner, the relationship of landlord and tenant does not exist between the petitioner and respondent No.1. This assertion of respondent No.1 found favour with the learned appellate Court.

14. I find the ground on which the learned Appellate Court dismissed the petitioner’s appeal to be in derogation of the law laid down in the case of Asmat Ullah Vs. Amanullah Khan (1991 MLD 20), whereby it has been held that mere execution of a deed by one of the co-owners would not by itself deprive the remaining co-owners of their legal right which accrued through operation of law. In the said case, the lease agreement dated 16.02.1984 had been executed between the tenant and one of the co-owners but the other co-owners were held entitled to file an eviction petition. In the said case, it was also held that since the co-owner with whom the rent agreement had not been executed came within the definition of the word “*landlord*”, it would not be proper to describe such a co-owner to be a stranger or merely a brother of the landlord. Furthermore, it was held that the eviction petition instituted by such a co-owner was undoubtedly maintainable. Since the author of the said judgment rose to grace the

Hon'ble Supreme Court, the ratio in the said judgment deserves respect and reverence.

15. One of the grounds on which the eviction petition was filed by the petitioner was his personal *bonafide* need for the rented premises. In the case of Ashiq Ali Vs. Naeem-ur-Rehman Tahir (1996 MLD 1131), it was held *inter alia* that the personal *bonafide* need of one of the landlords can be a valid ground for filing an application for the eviction of the tenant.

16. It may also be mentioned that the learned Rent Controller dismissed the petitioner's eviction petition without recording of evidence on the question as to whether the petitioner had been paid rent for the rented premises. A tenant is bound to pay the landlords rent in proportion to their respective shares in the rented premises unless the landlords have authorized one amongst them or a third party/attorney to receive rent.

17. In view of the above, the instant petition is allowed. The concurrent orders/judgments passed by the learned Courts below are set-aside. The matter is remanded to the Court of the learned Rent Controller to decide the petitioner's eviction petition in accordance with the law and the observations made herein. Since the eviction petition was filed as far back as 2011, it is expected that the same would be decided expeditiously. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**

Approved for Reporting