

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

C.R.No.211/2019

Abid Hussain

**Versus**

**Muhammad Yaqoob Khan**

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.10.2019	<b>Raja Faisal Younas, Advocate for the petitioner, Sardar Arshad Mahmood Khan, Advocate for the respondent.</b>

Through the instant civil revision petition, the petitioner, Abid Hussain, impugns the judgment and decree dated 04.05.2019 passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the judgment and decree dated 27.03.2019 was dismissed. Vide the said judgment and decree dated 27.03.2019, the learned Civil Court had allowed the respondents' suit for possession through ejectment and recovery of arrears of rent along with *mense* profit.

2. Learned counsel for the petitioner submitted that in view of the special law, i.e. the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") the learned Civil Court had no jurisdiction to adjudicate upon the matter; that the property which is the subject matter of the eviction petition lay within the areas to which the provisions of the IRRO have been extended; and that since the suit property is located in the urban area of Zone-IV, the IRRO is applicable to it in terms of the notification dated 15.03.2018 issued by the Federal Government.

3. Learned counsel for the petitioner further submitted that a landlord could not seek a tenant's eviction from the rent premises by taking the plea of default in the payment of rent as well as personal *bonafide* need; that the respondent

could not claim any *mense* profit if the suit was to be treated as a rent petition; and that the petitioner had spent a huge amount on the renovation of the shop with the consent of the respondent. Learned counsel for the petitioner prayed for the revision 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 the respondent submitted that the concurrent orders/judgments passed by the learned Courts below do not suffer from any legal or jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court; that the property in question is located in the area to which the provisions of the IRRO do not apply; that Ghouri Garden has neither been approved as a housing scheme by the C.D.A. nor has it being declared as an urban area; and that the respondent did not adduce any evidence to the said effect. Learned counsel for the respondent prayed for the revision 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. The vital question that needs to be determined as to whether the property given on rent by the respondent to the petitioner is located within the area to which the provisions of the IRRO have been made applicable. The admitted position is that the said property is located in Rajput Plaza, Ghouri Garden, Tehsil and District Islamabad. It is also an admitted position that Ghouri Garden is situated in Zone-IV, Islamabad ("the rented premises"). It is not the petitioner's case that in term of the notification No. S.R.O. 83(KE)/2002, dated 01.08.2002, issued by the Federal

Government in exercise of the powers conferred by Section 2(k) of the IRRO, the said property is located within the urban area to which the provisions of the IRRO have been made applicable. The petitioner's case is that the provisions of the IRRO are applicable in the case at hand by virtue of notification No. S.R.O. 1/2/97-ICT-II, dated 15.03.2018, issued by the Federal Government under Section 1(2) of the IRRO which provides that the IRRO shall extend to such urban area of the Islamabad Capital Territory and shall apply to such buildings and rented lands as the Federal Government may, by notification in the official Gazette, specify. In the said notification, the following areas have been specified to which the provisions of the IRRO have been made applicable:-

- “(a) areas within urban limits of the Islamabad Capital Territory in Zones I, II & V;*
- (b) housing schemes approved and demarcated as such by the Capital Development Authority in accordance with the Islamabad Capital Territory (Zoning) Regulations, 1992;*
- (c) area declared as urban areas by the Capital Development Authority with the approval of the Federal Government in accordance with the Capital Development Authority Ordinance, 1960 (XXIII of 1960).”*

7. Now it is an admitted position that the property in question falls in Zone-IV, Islamabad. There is nothing on the record to show that Ghouri Garden is a housing scheme approved and demarcated as such by the Capital Development Authority (“C.D.A.”) in accordance with the Islamabad Capital Territory, Zoning Regulations, 1992. There is also nothing on the record to show that the area where the rented premises are situated was declared as urban area by the C.D.A. with the approval of the Federal Government. It was incumbent upon the petitioner to have adduced evidence to prove that Ghouri Garden

was a housing scheme approved and demarcated as such by the C.D.A. The respondent had appeared as DW.1, and his evidence is silent on this question. Therefore, I am of the view that the respondent did not discharge the burden of proving that the rented premises were within the area to which the IRRO had been made applicable by virtue of the said notification dated 15.03.2018.

8. As regards the renovation alleged to have been carried out on the rented premises, there is nothing on the record to show that such renovations were carried out with the petitioner's consent and understanding that the lease period would be beyond the term expressly agreed between the parties. The law does not prohibit a landlord from taking the plea of default in the payment of rent as well as the personal *bonafide* need for the property in an eviction petition or a suit for possession of the rented premises.

9. Since I have been given no reason to interfere with the orders/judgments passed by the learned Courts below. Therefore, the instant revision petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

*Sultan\**