

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2414/2017
Syed Usman Khalid
Versus
Atta Muhammad 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. Tahir Mehmood Abbasi, Advocate for the petitioner, Mian Tahir Iqbal, Advocate for respondent No.1.	
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Through the instant writ petition, the petitioner (Syed Usman Khalid), impugns the judgment and decree dated 08.05.2017 passed by the Court of the learned Additional District Judge, Islamabad, whereby the appeal filed by respondent No.1 (Atta Muhammad) against the order dated 30.11.2015 passed by the Court of the learned Rent Controller, Islamabad was allowed and the eviction petition filed by respondent No.1 seeking the petitioner's eviction from Shop/Office No.8, First Floor, Shaukat SPA, Super Market, Makaz F-6, Islamabad ("the rented premises") was allowed. Vide the said order dated 30.11.2015, the learned Rent Controller had dismissed the eviction petition filed by respondent No.1.

2. The learned Rent Controller had dismissed respondent No.1's eviction petition *inter-alia* on the ground that the lease agreement was valid till 03.03.2017, and since the rented premises were in a commercial building, therefore, the ground of personal *bonafide* need was not available to respondent No.1 during the subsistence of the tenancy period under the first *proviso* to Section 17(4)(b) of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO").

3. It may also be mentioned that earlier vide judgment dated 20.01.2016, the learned Appellate Court had allowed respondent No.1's appeal and passed an eviction order due to non-deposit of tentative rent in time. Writ petition No.372/2016 filed by the petitioner against the said judgment dated 20.01.2016 was allowed by this Court vide judgment dated 03.04.2017 and the matter was remanded to the learned Appellate Court for deciding respondent No.1's appeal afresh. In the said judgment dated 03.04.2017, this Court had observed that since the lease agreement between the petitioner and respondent No.1 had expired during the pendency of the said writ petition, and since respondent No.1 was seeking to evict the petitioner from a commercial property, the learned Appellate Court could reconsider respondent No.1's plea regarding his *bonafide* need for the rented premises.

4. Vide impugned judgment and decree dated 08.05.2017 the learned Appellate Court allowed respondent No.1's appeal and the eviction petition primarily on the ground that the lease agreement between the petitioner and respondent No.1 had expired. The said judgment and decree has been assailed by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner submitted that since the lease agreement between the petitioner and respondent No.1 expired during the pendency of Writ petition No.372/2016, respondent No.1 could file a fresh eviction petition against the petitioner and take the ground of expiry of the lease agreement in such a petition; and that the Appellate Court could not allow the eviction petition on the ground that the lease agreement between the said parties had expired

since the ground of the expiry of the lease agreement was not taken by respondent No.1 in his eviction petition. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as 1980 CLC 2021, PLD 1964 SC 106 and PLD 1978 SC 220.

6. On the other hand, learned counsel for respondent No.1 submitted that it is an admitted position that the lease agreement dated 20.01.2011, executed between the petitioner and Syed Zahid Hussain Kazmi had a validity period of six years and the same expired on 03.03.2017; that the expiry of a lease agreement is one of the grounds on which a tenant can be evicted from the rented premises; that the mere fact that the lease agreement expired during the pendency of Writ petition No.372/2016 did not prevent the Appellate Court from allowing the eviction petition on the said ground in the post-remand proceedings; that the sole ground on which respondent No.1's plea of personal *bonafide* need did not find favour with the learned Rent Controller was that at the time when respondent No.1's eviction petition was decided, the lease agreement was still subsisting and the same was with respect to a commercial property; and that now that the lease agreement has expired, the petitioner cannot continue to remain in possession of the rented premises. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

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

8. In the case at hand, the tenancy between the petitioner and respondent No.1 was for a specified period i.e. from 01.01.2011 to 03.03.2017. Since the rented premises is a commercial property, the landlord was not entitled, prior to the expiry of the lease period, to apply for the petitioner's eviction on the ground of the landlord's personal *bonafide* need for the rented premises. This is by virtue of the *proviso* to Section 17(4)(b) of the IRRO which is reproduced herein below:-

"(4) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession,

a)

b) in the case of a commercial building or rented land, if he requires it in good faith for his own use or for the use of any member of his family:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this subsection before the expiry of such period."

9. In the case of Arshad Ali Vs. Mst. Zubaidah Bibi (2008 SCMR 1457), the Hon'ble Supreme Court of Pakistan, while interpreting the first *proviso* to Section 13(3)(ii)(c) of the West Pakistan Urban Rent Restriction Ordinance, 1959 which is in *pari materia* to the first *proviso* to Section 17(4)(b) of the IRRO, held as follows:-

"Under the law, even in the presence of dire personal need of the landlord, he was debarred from filing the ejectment petition before the expiry of the period of lease fixed in the agreement ..."

10. In view of the above, the learned Rent Controller was correct in holding that the ground of personal *bonafide* need of the landlord for the rented premises during the subsistence of the lease was not available to the landlord/respondents No.1. However, since lease agreement expired during the pendency of writ

petition No.372/2016, it is my view that in the post-remand proceedings, the learned Appellate Court could pass an eviction order on the ground of respondent No.1's personal *bonafide* need coupled with the expiry of the lease agreement.

11. As regards the contention of the learned counsel for the petitioner that since the validity of the lease period expired during the pendency of writ petition No.372/2016, respondent No.1 should have filed a fresh eviction petition on the ground of expiry of the lease agreement, I find the said contention to be hyper technical in nature, and not strong enough to interfere with the eviction order passed by the learned Appellate Court or to relegate the parties to a fresh round of litigation on such a technical ground. This would not be in the interests of justice. In holding so, I derive guidance from the law laid down in the case of Fazal Muhammad Vs. Muhammad Shafi (1983 CLC 261).

12. It is an admitted position that the lease agreement between the petitioner and respondent No.1 has expired on 03.03.2017. One of the grounds under Section 17 of the IRRO on which a tenant can be evicted from the rented premises is an infringement by the tenant of the terms and conditions on which the rented premises are held. As mentioned above, the parties had agreed for the lease period to be until 03.03.2017. By not vacating the rented premises after expiry of the said lease agreement, the petitioner infringed an essential term/condition on which the rented premises were held, and therefore rendered himself liable to be evicted from the rented premises. The mere fact that respondent No.1 had been accepting rent at an enhanced rate from the petitioner beyond 03.03.2017 would not condone

the petitioner's infringement of the abovementioned essential term/condition of the lease agreement.

13. This question has been definitively answered in the judgment dated 22.01.2016, passed by this Court in writ petition No.854/2015 titled "Muhammad Mushtaq Vs. Muhammad Zubair etc." wherein, after reproducing Section 17(1) & (2) of the IRRO, it has been held in paragraph 8 as follows:-

"The bare reading of the provision of law shows that where the tenant infringes any condition on which the building or rented land is held by the tenant that is a ground for eviction. In the lease agreement where it is specifically provided that the lease shall expire on a specific date and the tenant on the referred date fails to deliver the vacant possession of the demised property the same may be considered as a breach of condition of the lease agreement. In this behalf landlord is required to prove that it was a condition on which the property was leased out to the tenant that on expiry of the lease agreement possession of the property shall be handed over to him; whether the lease agreement is in writing or oral or even where after the expiry of written lease agreement the parties continue the arrangement through oral agreement the condition regarding the expiry of the lease may provide to the landlord a ground for eviction if it is proved that intention of the parties was to the effect. Learned counsel for petitioner during the course of arguments referred to the definition of tenant as provided in Section 2 (J) of 2001 Ordinance which provides that the tenant includes any person which continues to be in possession or occupation after termination of tenancy. Similarly in Section 6 of the Ordinance, it is provided that no tenancy shall be valid beyond such period as the landlord and tenant may by mutual agreement fix before or after commencement of the Ordinance. The effect of the referred provisions alongwith Section 17 (2)(ii)(b) ibid is that even after expiry of the lease agreement the tenant continues to qualify as a tenant, however, there has to be a specific expiry date of the lease agreement and in case of failure by the tenant to deliver possession of the property in question to the landlord then the same may amount to breach of condition of tenancy. The Honourable Supreme Court in case titled Qaiser Javed Malik Vs Pervez Hameed (2009 SCMR 846) held that

*the plain reading of Section 6 of the Ordinance commencing with the use of word "subject to the provision of Section 17" signifies that the provision of Section 17 continues to apply as a ground for eviction of the tenant. It was observed by the Apex Court that Section 6 of the Ordinance is in addition to the grounds for eviction and is available exclusively with respect to the property situated within territorial limit where provision of the Ordinance apply. The Honourable Supreme Court in the referred judgment held that after expiry of lease the tenant is not entitled to retain possession of the rented property and can be evicted on the basis thereof. The referred decision of the Honourable Supreme Court is binding on this court. Under Sub Section 1 to Section 17 of the Ordinance a tenant in possession of the building or rented land shall not be evicted from the same except in accordance with provisions of the section. The bare reading of the referred provision shows that the grounds on which the eviction application can be filed by the landlord are provided in Section 17 and though there is no ground for eviction on the basis of expiry of lease agreement, however, it is reiterated that the effect of Section 6 of the Ordinance read with Section 17 (2)(ii)(b) *ibid* is that a tenant may be evicted if he fails to deliver the possession of the property after expiry of the lease agreement."*

The said judgment of this Court has recently been upheld by the Hon'ble Supreme Court in the case of Waqar Zafar Bakhtawari Vs. Haji Mazhar Hussain Shah (PLD 2018 SC 81). In the said judgment, the Hon'ble Supreme Court, after making reference to Section 6 of the IRRO, held as follows:-

*"11. Thus, as per the clear mandate of Section 6 *ibid*, such a tenancy shall come to an end after the expiry of the term of tenancy and if thereafter the tenant holds such a property without the consent of the landlord, it shall be a clear violation and the infringement of the condition of the tenancy, on which the property was held by him, because the condition of tenancy is for a particular period of time either by the terms stipulated in the tenancy agreement or by the afflux of time, which is specified in Section 6 (*ibid*.) itself."*

Furthermore, after making reference to Section 17(2)(ii)(b) of the IRRO, it was held as follows:-

“Therefore, applying the above said definition to the expression “subject to” a tenant, who holds the property beyond the term of tenancy, under Section 17(2)(ii)(b) of the Ordinance, 2001 shall be evicted from the premises which is held on the condition for holding it for a specific period of time if he continues to occupy the rented property beyond such period without the “written consent” of the landlord. Eviction of the tenant thus will be on the grounds of violation of the term of tenancy which will be seen as a condition of the tenancy agreement.”

In conclusion, it was held as follows:-

“Thus, we conclude that as after expiration of the tenancy period, a tenant, though can continue to hold over the possession of the rented premises, but his tenancy is rendered invalid, in that, it has come to an end and if there is no express consent of the landlord to extend the tenancy period the tenant shall be guilty of having infringed the conditions of tenancy, rendering him liable to be evicted under Section 17(2)(ii)(b) of the Ordinance, 2001.”

14. Since the written lease agreement between the petitioner and respondent No.1 has long expired, the learned Appellate Court below was correct in allowing respondent No.1's eviction petition on the grounds of expiry of the written lease agreement and personal *bonafide* need.

15. For the foregoing reasons, I am of the view that the learned Appellate Court correctly allowed respondent No.1's eviction petition. Resultantly, this writ petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE


Sultan*