

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 3192/2019.

Mst. Qamar ul Nisa

Versus

Ch. Muhammad Asghar Shahid, etc.

Petitioner by: Hafiz Asif Ali Tamboli, Advocate.

Respondent No.1 by: Mr. Ghulam Qasim Bhatti, Advocate.

Date of Decision: 19.02.2020.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has assailed the order dated 24.07.2019, passed by learned Rent Controller (West), Islamabad, whereby eviction petition filed by respondent No.1 was allowed in terms of Section 17(9) of IRRO, 2001 as well as judgment dated 12.09.2019, passed by Additional District Judge (West), Islamabad, whereby appeal filed by petitioner against the order of learned Rent Controller was dismissed.

2. Learned counsel for the petitioner contends that petitioner is tenant in flat No.1, Street No.32, Block 90, I & T Centre, G-9, Islamabad, which was owned by respondent No.1, who filed eviction petition and learned Rent Controller has passed the tentative rent order in terms of Section 17(8) of IRRO, 2001 on 09.07.2019 with direction to the petitioner for production of receipts of deposited rent; that on 16.07.2019 petitioner was directed to submit the details of deposited rent for four months period w.e.f. April 2019 to July 2019 @ Rs.12,000/- per month which has been produced by the petitioner/tenant (receipt of money orders dispatched to respondent No.1 vide receipt No.1107, 1236, 4169, 1490 respectively), however, the same have been disowned by respondent landlord, therefore, petitioner was directed to deposit the rent in the Court; that petitioner

tenant in this case has sought some time for deposit of the rent but the same was not granted despite the fact that petitioner lady was in her native village due to summer vacations of school; that learned Rent Controller as well as Appellate Court has not considered the administrative difficulties of the petitioner, who has transmitted the rent through money orders to respondent No.1, which was not received by him and after return of said money orders, petitioner has requested the Court to allow her to deposit the same in the Court with condonation of time due to her administrative difficulties but all these facts have not been considered by the Courts below and final order U/S 17(9) of IRRO, 2001 has been passed; that due rent has been deposited in the Court and petitioner is not a defaulter in any manner.

3. Conversely, learned counsel for respondent No.1 contends that although at this point of time due rent has been paid but non-compliance of tentative rent order in terms of Section 17(8) of IRRO 2001 is apparent and no exception could be taken in favour of petitioner who has admitted that she has not deposited the rent within time despite direction of the learned Rent Controller; that learned Rent Controller has no jurisdiction to extend time for deposit of rent under the law; that tenancy between landlord and tenant was on the basis of oral agreement and the same has expired.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner is tenant in flat No.1, Street No.32, Block 90, I&T Centre, G-9/1, Islamabad against the monthly rent of Rs.12,000/- through an oral lease, however, landlord filed eviction petition on the basis of expiry of lease, default in rent and personal bonafide need which was contested by the petitioner and learned Rent Controller has passed a tentative rent order dated 09.07.2019 with direction to the petitioner in the following manner:-

"In the interest of justice, matter is adjourned till 16.07.2019 with the direction to produce rent deposit receipts @ Rs.10,000/- from April 2019 till date, failing which it will be treated a default on part of respondent and

the matter shall be decided forthwith in the light of ratio set in the judgment cited as 2019 MLD 590. Adjourned to 16.07.2019 for production of rent deposit receipts."

6. On 16.07.2019 petitioner tenant has produced the receipts bearing No.1107, 1236, 4169 & 1490 with contention that rent @ Rs.12,000/- per month was transmitted to landlord/respondent No. 1 through money orders which was not accepted by respondent but contends that rent was not delivered. Learned Rent Controller after hearing the parties passed the order dated 16.07.2019 in the following manner:-

Further respondent shall continue to deposit Rs.12000/- per month in the court account on or before 15th of each coming month as future monthly rent. However, it is made clear that in case, the matter will require pro and contra evidence, the due rent shall finally be determined and adjusted. It is also argued by counsel for the petitioner that there existed oral tenancy only, which the petitioner is not willing to extend; there is no opposing plea to the argument, thus counsel for respondent is directed to argue positively on the next of hearing why the petition should not be decided summarily merely on the ground of expiry of tenancy. Adjourned to 24.07.2019 for production of receipts showing the deposit of due rent and argument on the existence/inexistence of oral tenancy.

7. Despite the above referred two continuous order petitioner has failed to pay due rent for four months as a result whereof impugned order dated 24.07.2019 was passed U/S 17(9) of IRRO, 2001 due to non-compliance of tentative rent order and eviction petition was allowed.

8. The petitioner feeling aggrieved with the same, challenged the order of eviction in appeal before the learned Additional District Judge (West), Islamabad, who has also dismissed the same vide judgment dated 12.09.2019.

9. Keeping in view the above background, I have gone through the record and it has been observed that petitioner has initially transmitted the rent through money orders as per her claim and she has produced money order receipts but the said rent has not been received by respondent who has denied the delivery of

rent, therefore, learned Rent Controller, Islamabad has again given an opportunity to the petitioner to deposit the rent by passing the direction that "Further respondent shall continue to deposit Rs.12000/- per month in the court account on or before 15th of each coming month as future monthly rent." The said portion of order has not been complied with till order dated 25.09.2019 passed by this Court in the instant petition, this continuous default is apparent on record and as such no explanation is available as to why rent was not deposited in time. The provision U/S 17(9) of IRRO, 2001 was mandatory, the consequence of non-deposit or non-compliance of order of Rent Controller having been given in Section 17(9) of the Ordinance, no discretion was left with the Rent Controller except to order ejectment of the tenant without further proceedings. Reliance is placed upon 2009 SCMR 1008 (Mushtaq Ahmad Kiani Vs. Bilal Umair and others).

10. Even otherwise, mere obtaining of money order slips after deposit of the same for onward submission does not prove delivery of rent to the landlord unless the amount has been received by the landlord, although in this case petitioner has acknowledged the fact that rent so deposited through money orders in the name of respondent/landlord was not received by him and the same was deposited by her in Court account in compliance of interim order dated 25.09.2019, passed by this Court, hence, there is no other view except that the petitioner has not complied with order of learned Rent Controller and deposited the due rent with delay of four months without any lawful justification. The serious effort for deposit of rent is missing at the part of petitioner/tenant and such conduct could not be condoned by any stretch of imagination, even delay of one day is not justifiable whereas in this case delay of four months is apparent on record.

11. In view of said contention the petitioner has failed to justify her plea. Instant writ petition is misconceived and the same is hereby dismissed.

However, petitioner is directed to vacate the lease premises within period of 30 days subject to deposit of rent.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid