

**JUDGMENT SHEET.**

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

**Writ Petition No.1217 of 2015**

***Ghulam Abbas***

***Vs.***

***Additional Sessions Judge (West), Islamabad & two others.***

***Petitioner's by: Mir Aurangzeb, Advocate.***

***Respondents by: Mohammad Sajjad Abbasi, Advocate.***

***Date of hearing: 04.08.2015.***

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**AAMER FAROOQ, J.-** Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (**the Constitution**) the petitioner has assailed judgement dated 26.03.2015 passed by the learned Additional District Judge (West), Islamabad whereby his appeal against judgement dated 19.11.2014 was dismissed.

**02.** The facts leading to filing of the instant petition are that the petitioner obtained on rent property comprising Shop No.4, situated in Plaza built on plot No.26, civic centre, G-6 Markaz, Islamabad (**the Property**) vide lease agreement dated 01.03.2005 for a period of one year. Respondent No.3 filed an eviction application against the petitioner with respect to the property on the ground that the same is required for reconstruction and that

the petitioner has defaulted in payment of rent with respect to the months of August & September, 2012. The petition was resisted by the petitioner, however, the same was allowed by respondent No.2 vide judgement dated 19.11.2014. The appeal filed by the petitioner was dismissed by respondent No.1 vide judgement dated 26.05.2015.

**03.** The learned counsel for the petitioner, inter alia, submitted that the petition was filed by respondent No.3 primarily on the grounds that the petitioner has defaulted in payment of rent for the months of August & September, 2012 and that the property is required for reconstruction. It was further contended that the findings of the courts below are not in accordance with law. In this behalf the learned counsel submitted that under the lease agreement default in payment of rent could have been deducted from the security amount of Rs.3,00,000/- paid to the landlord at the time of execution of the lease agreement. Reliance was placed by the learned counsel on case titled “Kazi Karamat Hussain vs. Ali Mohammad”(1986 SCMR 441). The learned counsel further argued that even the findings on the issue of property required for reconstruction are not tenable inasmuch as under section 17 of Islamabad Rent Restriction Ordinance, 2001 (**the Ordinance**) the condition for requiring property for reconstruction should be reasonable and made in good faith as well as the property should have been required for bonafide use; since there was no submission in the eviction application regarding personal bonafide use, therefore, the sole ground of requiring the property for reconstruction was not tenable. Reliance was placed on case titled

“Abdullah Baloch vs. Adam Ali” (PLD 1961 SC 28). The learned counsel further pointed out that though ground of expiry of lease agreement was not taken by respondent No.3 in application for eviction, however, the Courts below have passed eviction order on the basis that lease agreement has expired, therefore, the petitioner is not entitled to retain possession of the property. In this behalf the learned counsel has submitted that expiry of the lease is not a ground for seeking eviction under section 17 of the Ordinance and has placed reliance on orders passed by Hon’ble Supreme Court of Pakistan in C.P. No.1065/2013 and C.P. No.1681/2015.

**04.** The learned counsel for respondent No.3, inter alia, submitted that the landlord/respondent No.3 has duly proved that he required the property for reconstruction in good faith and has also tendered in evidence the plan sanctioned by the competent authority, therefore, the findings of the Courts below have no factual and legal infirmity and cannot be set aside in the constitution petition. It was further contended that the case law relied upon by the learned counsel for the petitioner in case of requiring the rented premises for reconstruction is not tenable inasmuch as respondent No.3 has duly proved that the property is required reasonably and in good faith for reconstruction. It was further submitted that in the proceedings before respondent No.2 it transpired that the petitioner has not paid rent for a period of about ten (10) months and since the current rent is Rs.52,600/-, therefore, the question of deduction from security amount did not arise inasmuch as even after deduction the petitioner would have

still been a defaulter for a period of about four (4) months. The learned counsel admitted that expiry of the lease was not a ground for seeking eviction of the petitioner, however, Courts below observed that since lease has expired, therefore, the petitioner is not entitled to retain possession of the same.

**05.** The relationship of landlord and tenant between the petitioner and respondent No.3 is admitted. Respondent No.3 is seeking possession of the property under section 17 of the Ordinance on the basis of the fact that the property is required for reconstruction and necessary sanction from the competent authority has been obtained in this behalf. Respondent No.3 through documentary evidence has established that the property is required for the above mentioned purpose. In this behalf approved plan has been placed on record in evidence and the said fact also finds support from the statement by the official of the Capital Development Authority (**CDA**) appearing as summoned witness. Both the Courts below have relied upon oral as well as documentary evidence of respondent No.3 in holding that respondent No.3 has duly proved that the property is reasonably and in good faith required for reconstruction. The learned counsel for the petitioner has failed to point out any infirmity in the decisions of respondents No.1 & 2 which leads to illegality in this behalf. Moreover, the contention by the learned counsel for the petitioner that alongwith reconstruction plan there should also be demand of the property for personal bonafide need, has no substance inasmuch as under section 17 (2) of the Ordinance seeking the property on the ground of reconstruction is an

independent ground and is not linked with personal bonafide need. Moreover, under section 17(7) *ibid* where a landlord has obtained possession of a building in pursuance of an order under clause-V of subsection 2 of section 17 of the Ordinance and does not have the property demolished within four (4) months of taking over the possession or does not reconstruct the same the landlord shall be punished with imprisonment which may extend to six (6) months or with fine or both. In *Mohammad Ajmal Khan vs. Rashid Shafique* (2012 SCMR 854) the Hon'ble Supreme Court of Pakistan held that **"In our opinion, once the petitioners have obtained approval of their building plans and permission for reconstruction of building from the competent authority they were not required to get it renewed again and again till the final eviction order was passed and they were able to secure the possession only to prove their good faith"**. Similarly, in *Hanif vs. Malik Ahmed Shah* (2001 SCMR 577) the Apex Court observed that **"no restriction could be placed on the rights of the landlord regarding reconstruction as he was always entitled to improve the condition and nature of his property without any lawful reservation"**. In case titled *"Zafar Mohammad vs. Khan Ayaz Khan"* (2010 YLR 1490) this Court held that **in absence of any illegality or legal infirmity in the impugned judgement concurrently passed by the Courts below, same could not be interfered with by the High Court in exercise of its constitutional jurisdiction**. The case law relied upon by the learned counsel for the petitioner is not relevant.

**06.** The petitioner paid/deposited rent in compliance of order passed under section 17(8) by respondent No.2 for a period of ten (10) months, therefore, acknowledged the default. Moreover, since the default was for a period of ten (10) months, therefore, the rent could not have been adjusted from the security, which was to the tune of Rs.3,00,000/-(Rupees three lac only), with respondent No.3. Moreover, it has been observed by respondent No.2 that the petitioner in cross examination admitted that the rent deposited through money order was subsequently withdrawn, therefore, the same was not available for withdrawal. There is no factual or legal infirmity with respect to findings of the Courts below on the issue of default. So far as expiry of lease is concerned though the same was never agitated by respondent No.3 but the Courts below made it a ground for ordering eviction of the petitioner by placing reliance on case reported as **2009 SCMR 846**. It is pertinent to observe that even though under the Ordinance expiry of lease is not a specific ground for eviction, however, under sections 17(2) (ii) (b) violation of terms and conditions of the agreement is one of the grounds for seeking eviction and where in the lease agreement the expiry of lease is provided and despite the same the tenant fails to handover the possession he violates the terms & conditions of the agreement. In the instant case no finding is required on the referred subject as the same was never a ground for eviction by respondent No.3. It is an established principle that this Court in exercise of jurisdiction under Article 199 of the Constitution does not interfere with the concurrent findings of the Courts below unless the same suffer

from jurisdictional or legal infirmity. In the instant case the impugned judgement does not suffer from any referred legal defect.

7. For the foregoing reasons the instant petition is without merit and is dismissed.

**(AAMER FAROOQ)**  
**JUDGE**

***Approved for reporting.***

**JUDGE**

*\*Altaf Malik\**

*Uploaded By: Engr. Umer Rasheed Dar*