

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.4434 of 2019

Amjad Khan
Vs
Muhammad Aslam Dar & another

Date of Hearing: 07.2.2020
Petitioner By: Syed Gohar Ali Zaidi, Advocate
Respondent No.1 by: Mr. Babar Saeed Butt, Advocate

Ghulam Azam Qambrani, J: This writ petition has been directed against the order dated 5.12.2019, passed by the learned Civil Judge/Rent Controller-West, Islamabad, whereby right to file written reply of the present petitioner was struck-off.

2. Brief facts of the case are that the respondent/ Muhammad Aslam Dar filed eviction petition being owner of the house No.240 (Ground Floor & Basement) Street No.51, Sector F-10/4, Islamabad) under section 17 of the Islamabad Rent Restriction Ordinance, 2001, for eviction of the appellant Amjad Khan. During the proceedings of the ejectment petition, the right of appellant/ respondent for filing written reply was struck-off on 5.12.2019, hence this writ petition.

3. Learned counsel for the petitioner contends that the eviction petition Under the Islamabad Rent Restriction Ordinance, 2001 was filed on 17.10.2019 and wherein notices were issued to the other side for 29.10.2019 and thereafter, it was fixed on 5.11.2019. In absence of the petitioner, learned Rent Controller proceeded ex-parte against the petitioner on the said date and adjourned the matter for 14.11.2019 for ex-parte evidence, but on the very day petitioner approached the Court of learned Rent Controller by filing an application for setting aside of ex-parte order dated 05.11.2019 and on 16.11.2019, no objection was made by the respondent, therefore, said application was accepted and ex-parte order dated 05.11.2019 was re-called and the case was fixed for 22.11.2019.

Learned counsel for the petitioner led the Court to order sheet dated 22.11.2019, wherein it has been mentioned that the petitioner was hospitalized and a request was made for submission of reply to the eviction petition. The case was fixed on 03.12.2019, but due to non-appearance of counsel for petitioner, last opportunity was provided to the petitioner for filing of reply for 05.12.2019. On the said date, the petitioner filed an application for dismissal of the eviction application, which was taken on record. Without obtaining any reply on the application filed by the petitioner, learned Rent Controller struck-off the right of petitioner to file written reply vide order dated 05.12.2019. Being aggrieved and dissatisfied from the said order, the petitioner has filed the instant writ petition.

4. It was further argued that the petitioner has entered into lease agreement with the respondent in respect of House No. 240, situated at Street No.51, Sector F-10/4, Islamabad, and let out the ground portion of the said house on monthly rent of Rs 1,50,000/- w.e.f 01.09.2018 to 31.08.2020 and further contended that he is regularly paying the monthly rent, but on the last one month, due to ailment and hospitalization, he was not able to pay the rent and to file reply to the eviction petition well in time. He further contended that there were well reasoned grounds in the application filed by the petitioner for rejection of the eviction petition, but the learned Trial Court without obtaining reply from the respondent, passed the impugned order in hasty manner, without considering the fact that there is a valid rent agreement in favour of the petitioner till 31.08.2020.

5. On the other hand, learned counsel for respondent vehemently opposed the contention raised by the learned counsel for the petitioner stating that three consecutive opportunities were provided to the petitioner for filing of written reply, but he failed. When confronted, the fact of rent

agreement up-till 31.08.2020 and the fact of default of only one month in payment of rent, he conceded the same.

6. Arguments heard, record perused.

7. Admittedly, parties have entered into lease agreement with regard to the rented premises with effect from 01.09.2018 to 31.08.2020 and the respondent had received an amount of Rs.18,00,000/- from the petitioner as first one year rent in advance and that the respondent has also received an amount of Rs.150,000/- as security amount through Cheque No.19985602, dated 28.08.2018 of HBL. For the first time, the petitioner failed to deposit/pay the rent of one month. This fact is admitted on the face of record that he was hospitalized. Even otherwise filing of written reply and a right to defence is the fundamental right of the petitioner, but the record depicts that only two opportunities were granted to the petitioner and he failed to file reply due to the unavoidable circumstances mentioned above.

8. For what has been discussed above, as there is valid lease agreement executed between the parties on 28.08.2018, which is w.e.f. 01.09.2018 to 31.08.2020, in respect of the rented premises and that the petitioner was not provided with sufficient opportunity to file reply, this writ petition is accepted. The impugned order dated 05.12.2019 is hereby set aside. The case is remanded back to the learned Rent Controller with a direction to provide proper opportunity to the petitioner for filing of written reply of the eviction petition and decide the matter in accordance with law. Parties are directed to appear before the learned Rent Controller-West, Islamabad, on 21.02.2020.

~~Ghulam Azam Qambrani~~
Judge

Announced in Open Court, on this 13 day of February, 2020.

~~Ghulam Azam Qambrani~~
Judge

S.Akhtar