

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.345 of 2016

Asad Amin

Versus.

Noor Hussain

Date of Hearing: 22.02.2016

Petitioner by: Mr. Shahzad Siddique Alvi, Advocate,

Respondent by: Mr. Habib Ullah Khan, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Asad Amin, impugns the Judgment dated 14.01.2016, passed by the Court of Additional District Judge (West), Islamabad, whereby the petitioner's appeal against the Order dated 20.11.2015, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said Order dated 20.11.2015, the Court of the learned Rent Controller had allowed respondent No.1's eviction petition by striking off the petitioner's defence and directing him to handover the vacant possession of the demised premises within a period of fifteen days.

2. The essential facts for the disposal of this petition are that on 30.05.2013, a lease agreement was executed between respondent No.1 and the petitioner, whereby the latter rented Flat No.103, 1st Floor, Akash Centre, Plot No.5-A/3, F-10 Markaz, Islamabad, for a period of two years, commencing from 01.05.2013. The monthly rent for the first year was agreed to be Rs,15,000/- whereas for the second year the same was to be increased by 10%. This was explicitly stipulated in the said lease agreement, on the basis whereof, the petitioner occupied the demised premises. Even though, the two-year lease period had expired, the petitioner, continued to occupy the demised premises.

3. On 09.04.2015, a legal notice was issued to the petitioner on behalf of respondent No.1 alleging that the petitioner had violated the terms and conditions of the lease agreement dated 30.05.2013 by becoming a rent defaulter. Furthermore, the petitioner was asked to vacate the demised premises on or before the expiry of the said lease agreement. As the petitioner ignored the said legal notice, respondent No.1 was constrained to file an eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") on 06.05.2015 before the learned Rent Controller, Islamabad. The two grounds taken in the said eviction petition were that the petitioner had become a rent defaulter as he had failed to pay the rent due to the tune of Rs.18,000/- with effect from 01.05.2014 till the filing of the said petition and that the lease agreement dated 30.05.2013 had expired. The petitioner contested the said eviction petition by filing his written reply on 28.07.2015.

4. The case of respondent No.1 was that in the second year of the tenancy, the rent was agreed to be Rs.16,500/- per month (which is 10% more than Rs.15,000/-, i.e. the monthly rent agreed for the first year of the tenancy). Until March, 2015, the petitioner continued to pay Rs.15,000/- per month instead of Rs.16,500/-, and for the months of April and May, 2015, the petitioner paid a rent at the rate of Rs.16,500/- per month.

5. Vide order dated 11.09.2015, the learned Rent Controller, directed the petitioner to pay the outstanding rent for the demised premises at the rate of Rs.1,500/- per month from May, 2014 to March, 2015 ($\text{Rs.1,500} \times 11\text{months} = \text{Rs.16,500/-}$) as well as the monthly rent from June, 2015 till September, 2015 at the rate of Rs.16,500/-. The petitioner was directed to deposit this amount in the Court and submit the receipts on the next date of hearing, which was fixed for 18.09.2015. The petitioner was also directed to deposit future rent at the rate of Rs.16,500/- before the 15th day of each month till the final disposal of the eviction petition. This order was passed by the learned Rent Controller under

Section 17(8) of the IRRO, which is reproduced herein below:-

“17(8) In proceedings under this section on the first date of hearing, or as soon thereafter as may be but before the issues are framed, the Controller shall direct the tenant to deposit in his office before a specified date all the rent due from him and also to deposit regularly, till the final decision of the case before the fifteenth day of each month, the monthly rent which subsequently becomes due, and if there be any dispute as to the amount of rent due, the Controller shall determine such amount approximately.”

6. In purported compliance with the said order dated 11.09.2015, the petitioner only deposited an amount of Rs.66,000/- (i.e. the rent for the months of June, 2015 to September, 2015), whereas he failed to submit the receipt for the outstanding rent of Rs.16,500/- (i.e. Rs.1,500/- per month from May, 2014 to March, 2015). As the petitioner did not deposit the arrears in rent from May, 2014 to March, 2015 at the rate of Rs.1,500/- per month, the petitioner was held to have become a defaulter in the payment of the rental amount. Consequently, vide order dated 20.11.2015, the learned Rent Controller, struck off the petitioner's defence and accepted the eviction petition in terms of Section 17(9) of the IRRO, which is reproduced herein below:-

“17(9) If the tenant fail to deposit the amount of rent before the specified date or, as the case may be, before the fifteenth day of the month, his application if he is an applicant shall be dismissed or his defense, if he is a respondent, shall be struck off, and the landlord shall be put in possession of the building without any further proceedings.”

7. As mentioned above, the petitioner was directed to vacate the demised premises within a period of fifteen days. Against the said order dated 20.11.2015, the petitioner preferred an appeal under Section 21 of the IRRO before the Court of learned Additional District Judge, Islamabad. The grounds taken by the petitioner in his appeal were that the order dated 20.11.2015, passed by the learned Rent Controller was very blunt, arbitrary and passed without application of a judicious mind; that the learned Rent Controller did not issue a show cause notice to the

petitioner before striking off his defence and; that a reasonable opportunity of defence had not been provided to the petitioner.

8. Vide judgment dated 14.01.2016, the learned Appellate Court concurred with the decision of the learned Rent Controller, and dismissed the petitioner's appeal with the direction to forthwith handover the vacant possession of the demised premises to the respondent.

9. The concurrent orders of the learned Courts below have been impugned in this writ petition. The grounds taken by the petitioner in the instant petition are a verbatim a reproduction of the grounds that were taken by him in the appeal before the Appellate Court.

10. Learned counsel for the petitioner drew my attention to clause 13 of the lease agreement dated 30.05.2013, which provides that the minor repairs will be made by the lessee, whereas the responsibility for the major repairs will be on the lessor. Taking refuge behind this clause, the learned counsel for the petitioner submitted that the lessee/petitioner had expended an amount on the maintenance of the demised premises which amount was to be adjusted against the rent; that after the adjustment in the said terms, the petitioner cannot be held to have become a defaulter. He further submitted that as issues had been framed by the learned Rent Controller, the petitioner's defence could not have been struck off and the eviction petition should have been subjected to a full fledged trial. Additionally, it was submitted that the petitioner should have been given an opportunity to adduce evidence during a trial with respect to the amounts expended by him on the demised premises. He was of the view that as the alleged default in the payment of rent was only for one month, this should not have been considered as a valid ground for evicting the petitioner.

11. The learned counsel for respondent No.1 submitted that as the rent during the second year of the tenancy was to be enhanced to Rs.16,500/- per month and as the

petitioner did not pay the enhanced amount until March, 2015, he had become a defaulter and was liable to be evicted from the demised premises. He further submitted that at no material stage had any permission been sought from respondent No.1 by the petitioner to expend any amount on the repairs or maintenance of the demised premises; that the petitioner could not rely on clause 6 of the said lease agreement and unilaterally adjust the amount expended on maintenance (if any). Additionally, it is submitted that the concurrent orders passed by the courts below were strictly in accordance with the law and there was no occasion for this Court, in its constitutional jurisdiction, to interfere with them.

12. I have heard the arguments of the learned counsel for the parties and perused the record with their able assistance.

13. The order dated 11.09.2015, passed by the learned Rent Controller unequivocally obligated the petitioner to pay an amount of Rs.66,000/- (being the rent for the months of June 2015 to September, 2015 at the rate of Rs.16,500/- per month) plus an amount of Rs.16,500/- (being the outstanding amount in the rent from May, 2014 to March, 2015 at the rate of Rs.1,500 per month). In the second year of the tenancy, the petitioner was under an obligation to pay monthly rent at the rate of Rs.16,500/-, but from May, 2014 to March, 2015, he had paid rent at the rate of Rs.15,000/- per month. The accumulated outstanding amount of rent for a period of these eleven months came to Rs.16,500/-. Although, the petitioner paid Rs.66,000/-, but he did not pay Rs.16,500/-. This prompted respondent No.1 to file an application on 15.10.2015 before the learned Rent Controller praying for the petitioner's defence to be struck off on account of the said default. Consequently, vide order dated 20.11.2015, the petitioner's defence was struck off under Section 17(9) of IRRO and he was directed to handover vacant possession of the demised premises within fifteen days. I find that the order dated 20.11.2015, passed by the learned Rent

Controller, is strictly in accordance with the statute and the law laid down by the Superior Courts in the following cases:-

- (i) In the case of Mushtaq Ahmad Kiani Vs. Bilal Umair, reported 2009 SCMR 1008, the tenant was directed, under Section 17(8) of the IRRO to deposit rent on or before a specified date. As the tenant failed to comply with a direction of the learned Rent Controller, his defence was struck off and the eviction petition was allowed. The Hon'ble Supreme Court held that the provision of Section 17(9) of the IRRO was mandatory, and where the tenant does not deposit the rent in compliance with an order passed under Section 17(8) of the IRRO, the learned Rent Controller was left with no discretion except to order the ejectment of the tenant without further proceedings.
- (ii) In the case of Bilal Abid Vs. District Judge (West) Islamabad reported as 2015 YLR 2405, this Court has not even condoned a delay of two days in the deposit of rent in compliance with Section 17(8) of the IRRO. On account of such delay in the deposit of rent, the tenant was held to have become a defaulter and liable to be evicted from the rented premises under Section 17(9) of the IRRO.
- (iii) In the case of Shamshad Ali Vs. Ghulam Muhammad Chaudhry reported as 2009 CLC 52, this Court held that the learned Rent Controller was fully competent under the law to pass the ejectment order and strike off the defence of the tenant in case of non compliance of an order passed under Section 17(8) of the IRRO. In the said case, the Islamabad High Court dismissed a writ petition against an appellate order, whereby the appeal against the eviction order passed by the learned Rent Controller under Section 17(9) of the IRRO, was dismissed. This is what also happened in the case of Hassan Ali Khan Vs. Additional District Judge Islamabad, reported as 2003 CLC 1819.

- (iv) In the case of Major (R) Shakil-ud-Din Ahmad Vs. Addl. District Judge, Islamabad, reported as 2007 CLC 601, it has been held at paragraph 5 of the said judgment as follows:-

“5. In the instant case the facts are very simple. The relationship of landlord and tenant between the parties is admitted, therefore, on 13-6-2006 the learned Rent Controller correctly passed an order in exercise of jurisdiction under section 17(8) of the Islamabad Rent Restriction Ordinance, 2001 directing the petitioner to deposit the past rent and fixed the case for 28-6-2006 for production of proof of the rent deposited. The petitioner did not challenge the jurisdiction of the Rent Controller at the time of passing the order under section 17(8) of the Ordinance, but he moved an application on the said date for extension of time of 15 days for payment of rent instead of depositing the same. Since the petitioner violated the order dated 13-6-2006 passed by the Rent Controller under section 17(8) of the Islamabad Rent Restriction Ordinance and did not deposit the rent as ordered by the Court, therefore, the Rent Controller had no option except to strike off the defence of the petitioner and passed the order of ejectment in exercise of the jurisdiction under section 17(9) of the Ordinance. In the case reported as *Zikar Muhammad v. Mrs. Arifa Sabir* and another 2000 SCMR 1328, where the Rent Controller had struck off defence of the tenant and ordered him to hand over the vacant possession of premises to landlord and the High Court holding that there was no good cause or reasonable explanation for delay/negligence in payment of rent by the tenant dismissed the appeal, the Honourable Supreme Court while interpreting the provisions of section 13(6) of the West Pakistan Urban Rent Restriction Ordinance (VI of 1959), which are pari materia of section 17(8) of the Islamabad Rent Restriction Ordinance, 2001 (IV of 2001), has ruled that, "High Court having rightly concluded that defence of the tenant was rightly struck off by the Court below, no valid ground existed for interference in the order of High Court" and refused leave to appeal."

14. As mentioned above, the learned counsel for the petitioner submitted that the petitioner had expended amounts on the maintenance of the demised premises, and that the said amounts ought to be adjusted against the outstanding rent. In the written reply filed by the petitioner before the learned Rent Controller, the petitioner opted not

to plead the factum of any amount expended on the maintenance of the demised premises. This ground he took for the first time in his memo of appeal. It is by now well settled that a point of fact not taken in the pleadings before the original court, cannot be taken for the first time in the appeal. Reliance in this regard may be placed on the law laid down by the Superior Courts in the cases of Safdar Ali Vs. Muhammad Malik reported as 1995 CLC 1751, Shamsher Ali Khan Vs. Sher Ali Khan reported as 1989 SCMR 828, Roshan Akhtar Vs. Muhammad Boota reported as 2000 SCMR 1845, Punjab Road Transport Board Vs. Abdul Wahid reported as PLD 1980 Lahore 584, and Muhammad Boota Vs. Basharat Ali reported as 2014 CLD 63.

15. Even otherwise, any amount that the petitioner may have spent unilaterally on the maintenance of the demised premises or carrying out any repairs thereon without the express permission of respondent No.1, cannot be adjusted against the rent which was payable by the petitioner to respondent No.1. Unless a lease agreement explicitly provides for a mechanism for the adjustment of the amount expended by a tenant on repairs or maintenance of the demised premises against the rent, a tenant does not have a right to withhold the payment of rent on the plea of having carried out repairs or maintenance works. The benefit of such repairs or maintenance would go along with the property to the advantage of the landlord, who need not pay any compensation therefor to the tenant.

16. In the event, the demised premises are in need of repair or maintenance and the landlord refuses to carry out the same. Section 15 of the IRRO provides a mode and mechanism for repairs to be carried out by a tenant on the demised premises, and the amount expended on the same to be deducted from the rent payable to the landlord. Section 15 of the IRRO is reproduced herein below:-

15. "Failure by landlord to make necessary repairs. --- If a landlord fails to keep a building in state of reasonable repair, or to make such repair thereto, not being structural

alteration as may, from time to time, be necessary, it shall be competent for the Controller to direct, on application by the tenant, and after such inquiry as the Controller may think necessary that such repairs may be made by the tenant and the cost thereof may be deducted from the rent payable by him:

Provided that nothing in this section shall enable the tenant to spend on repairs any amount in a year exceeding the rent of the building for two months unless the Controller, after making necessary inquiry, is satisfied that such repairs are essential to render the building fit for occupation:

Provided further that where, under the terms of the agreement of tenancy a tenant is authorized to make repairs at the expense of the landlord no application under this Section shall be necessary:

Provided also that the amount to be deducted from the rent payable on account of repairs in a year shall not exceed the amount of two months rent.

Explanation.-- For the purpose of this Section, a building shall be deemed to be in a state of reasonable repair when ---

- i. All floors, walls pillars, arches and roofs are sound and watertight;
- ii. All doors and windows are intact, properly painted or oiled and provided with proper hooks or bolts or other necessary fastenings;
- iii. All rooms, out-houses and appurtenant buildings are properly colour-washed or white-washed; and
- iv. All electric, water, gas and sanitary fitting, if any are properly maintained and are safe, sound and without leakage."

17. Now at no material stage did the petitioner apply to the learned Rent Controller under Section 15 of the IRRO for a direction to the petitioner to carry out the repairs on the demised premises and deduct the amount from the rent payable to respondent No.1. It is also settled law that a thing required by law to be done in a particular manner must be done in that manner or not at all. Reference in this regard may be made to the law laid down by the superior courts in the cases of Noorul Hassan and others Vs. Federation of Pakistan reported as PLD 1956 SC 331 and Khalid Saeed Vs. Shamim Rizvan and others reported as 2003 SCMR 1505.

18. In the instant case, admittedly before carrying out the alleged repairs or maintenance neither was any request made by the petitioner to respondent No.1 nor was an application filed before the learned Rent Controller seeking his permission to carry out the repairs and deduct the costs

thereof from the rent payable to respondent No.1. All repairs and improvements carried out by the tenant on the demised premises without permission of the landlord or without resort to a direction from the learned Rent Controller under Section 15 of the IRRO, are at his own peril and cannot clamour for their reimbursement or adjustment against the rent unless the lease agreement specifically authorizes him to do so. It is apposite to refer to case law on the subject at this stage:-

- (i) In the case of Sath Girdhari Lal Vs. Marzia Bang reported as PLD 1963 Quetta 25, it was held that a tenant withholding rent for the purpose of deducting the course of repairs carried out by him on the demised premises without the permission of the Collector was liable to ejectment.
- (ii) In the case of Naim uddin Siddiqui Vs. S.M. Ahmed Habibur Rehman reported as 1983 CLC 1378, half of the rent for a certain month had not been paid but unlawfully adjusted towards repair charges incurred by the tenant without the consent of the landlord or permission of the Collector. It was held by the Hon'ble High Court of Sindh that default was clear from the circumstances and the tenant was liable to be evicted.
- (iii) In the case of Saleem J. Mufti Vs. Ghulam Sarwar Dawoodi reported as 1985 MLD 992, it was held that a tenant not seeking permission of the rent Controller for repairs etc., was not entitled to the adjustment of payments for such repairs against the rent.
- (iv) In the case of Shahjahan Begum Vs. Iqbal Jahan Begum reported as 1985 CLC 2450, it was held that the amount spent by the tenant on repairs carried out on the demised premises could not be adjusted against the rent.
- (v) In the case of Syed Abdul Jabbar Vs. Syed Mohsin Abbas reported as 1986 CLC 2007, it was held that the

cost incurred on the repairs carried out on the rented premises could only be adjusted against the rent if such repairs were made by the tenant with the permission of the Rent Controller or the consent of the landlord.

- (vi) In the case of Abdul Razaq Vs. Abdul Sattar Khan reported as 1991 MLD 326, it was held that a landlord could be directed by the Rent Controller to carry out repairs on the rented premises and to keep the same in proper shape. On the landlord's failure to carry out such repairs, the Rent Controller, on the application of the tenant, could direct that such repairs be carried out by the tenant and the costs thereof be deducted from the rent payable to the landlord. In this case, it was also held that where the landlord had permitted the tenant to carry out necessary repairs to the extent of Rs.2000/- the tenant would be entitled to adjust an amount of Rs.2000/- only towards the cost incurred by him on the repair of the rented premises.
- (vii) In the case of Bagh Ali Vs. Habib Bank Ltd reported as 1998 CLC 1205, the tenant, before carrying out the alleged repairs, neither made any request to the landlord in that respect nor approach the Rent Controller by filing an application for permission to carry out the repairs. It was held by the Hon'ble High Court of Sindh that a tenant who failed to apply to the Rent Controller for permission to carry out repairs on the rented premises, had no authority either to carry out any repairs on the rented premises or to claim an adjustment of the amount allegedly spent by him on the repairs against the rent payable.

19. Law to this effect has also been laid down in the cases of Mujtaba Ali Naqvi Vs. Noor Jahan Begum reported as 1991 MLD 1849, Shah Nawaz Faridi Vs. Sirajul Masjid reported as 1991 MLD 2568, and Abdul Rehman Vs Abdul Ghaffar reported as 2009 YLR 63.

20. In the result, there is no merit in this petition and it is, accordingly, dismissed, but in the circumstances of the case, there will be no order as to costs.

(MAINGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan*

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