

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**W.P. No.4272/2020**

Riaz Hussain

*versus*

Rent Controller (West), Islamabad & 3 others

Petitioner by: Mr. Khurram Mahmood Qureshi, Advocate.

Respondents By: Mr. Muhammad Wajid Hussain Mughal,  
Advocate.

Dates of Decision: 17.09.2020.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioner has called in question the order of the learned Rent Controller, dated 24.09.2019, together with order of the learned Additional District Judge, dated 02.11.2019, whereby eviction petition filed by Bashir Ahmad (Respondent No.4) has concurrently been allowed.

2. Brief facts referred in the instant writ petition are that petitioner entered into a lease agreement, dated 15.12.2015, with one Shamsher Ali Bahadur (Special Attorney) of the then owner namely Mrs. Rahat Shamsher with regard to Shop No.11, Plot No.3-D, Haideri Plaza, Sector I-9 Markaz, Islamabad (suit/subject premises), however Basheer Ahmad (Respondent No.4) purchased the said subject premises from Mrs. Rahat Shamsher on 21.12.2017. Later on, Respondent No.4 (landlord) filed eviction petition against the petitioner on the grounds of personal bonafide need and default in payment of rent. Both the parties contested the said petition with their pro and contra evidence, on the basis of which the learned Rent Controller vide impugned order dated 24.09.2019 accepted the eviction petition against the petitioner. Feeling aggrieved thereto, the petitioner preferred an appeal, however same was dismissed vide impugned order dated 02.11.2019. Hence, instant writ petition.

3. Learned counsel for petitioner contends that since Respondent No.4/landlord had already entered into agreement for purchase of subject premises, he could not seek eviction of petitioner on the ground of personal bonafide need, as such, Respondent No.4 has many other vacant commercial properties adjacent to the subject premises; that petitioner has been depositing rent in the Court account and never committed default in payment of monthly rent; that both the Courts below have not considered the facts available on record and law on the subject while passing the impugned orders, which are not sustainable in the eyes of law and liable to be set-aside with the result that eviction petition of Respondent No.4 may be dismissed.

4. Conversely, learned counsel for respondent No.3 (son of respondent No.4) opposed the filing of instant writ petition on the grounds that petitioner has defaulted in payment of rent as he did not pay the enhanced rent as per lease agreement; that notice of change of ownership was given to the petitioner; that the petitioner had violated the terms and conditions of the lease agreement, as such, subject premises are required to Respondent No.3 for personal bonafide need, even otherwise, both the Courts below have rightly adjudicated upon the matter and passed the impugned orders holding a concurrent view, which are liable to be maintained.

5. Arguments heard, record perused.

6. Perusal of record reveals that Basheer Ahmad (respondent No.4) had filed an eviction petition in terms of Section 17 of the Islamabad Rent Restriction Ordinance, 2001 against petitioner for his eviction from Shop No.11, Plot No.3-D, Haideri Plaza, Sector I-9 Markaz, Islamabad on the grounds of personal bonafide need and default of rent for the months of January and February, 2018.

7. The petitioner/tenant has taken a categorical stance that no personal bonafide need is highlighted by respondent No.3 nor has the default been proved in

any manner, but both the forums below have allowed the eviction petition beyond the settled principles of law.

8. I have gone through the evidence with able assistance of learned counsel for parties and it has been observed that relationship between the parties being landlord and tenant is admitted together with the fact that lease agreement has already been expired, which was executed with previous landlord. Though the expiry of lease is not a specific ground of eviction raised by respondent No.3, however under Section 17(2)(ii)(b) of the IRRO, 2001, violation of terms and conditions of agreement was one of the grounds for seeking eviction of the tenant and there the lease agreement provided for expiry of lease and despite the same if tenant failed to handover possession then tenant would considered to have violated the terms and conditions of said agreement. Reliance is placed upon 2009 SCMR 846 (Qaiser Javed Malik Vs. Pervez Hameed) and 2015 MLD 1740 (Ghulam Abbas Vs. ASJ (West), Islamabad).

9. The evidence further reflects that the respondent while appearing as RW-1 acknowledged that:

"یہ درست ہے کہ Exh.R3 کے مطابق مسول علیہ نے جنوری فروری کا کرایہ عدالت میں جمع کرایا ہے۔"

The said admission though confirms the stance of petitioner, but on the other hand the petitioner has collectively deposited the rent at increased rate through bank challan on 11.11.2019 for the months of January to November, 2018 and January to October, 2019, which clearly establishes that petitioner has defaulted in payment of rent as he has not deposited the enhanced rent. Reliance is placed upon 2018 YLR 703 (Malik Muhammad Ramzan Sabir Vs. Mst. Shahina Akhtar), whereby it was held that arrears of rent becoming due as a result of increase of rent under Section 10 of the IRRO, 2001 was deemed to be rent due under Section 17(2)(i) of the IRRO, 2001.

10. The bona fide need of the landlord/respondent No.4 could not be undermined on mere statement of the tenant, who is not best judge to determine this factor as it is prerogative and choice of the landlord to seek eviction of a property, especially when it has not been denied by the petitioner side that the remaining portion of the complete unit is lying vacant for a quite long period. This aspect shows that the landlord has some other plans due to which he has not leased out other attached portion of leased property.

11. In view of above reasons, the concurrent findings of the facts recorded by the forums below could not be disturbed or interfered with by this Court in exercise of jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 unless same are suffering from jurisdictional or legal infirmity, which is not the case in hand, therefore, instant writ petition is misconceived and same is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.