

JUDGMENT

SAEED MUSHTAQ ABBASI----Petitioner

versus

ABDUL RAUF SABIR and 2 others----Respondents

Writ Petition No.2261 of 2015

ATHAR MINALLAH, J.---The petitioner has assailed judgments and decrees dated 26-06-2015 and 29-04-2015 passed by the learned Additional District Judge and the learned Rent Controller respectively.

2. The facts, in brief, are that the respondent No.1, who is the 'Landlord' of Al-Hateem Palace Plaza, Main Faizabad Road, Sector I-8/4, Islamabad, had filed an eviction petition before the learned Rent Controller Islamabad under section 17 of the Islamabad Rent Restriction Ordinance, 2001 (hereinafter referred to as the 'Ordinance'). The learned Rent Controller, vide order dated 15-01-2015, fixed the tentative rent at the rate of Rs.100,000/- per month with 25% increase. Two further directions were made to the petitioner, firstly to pay/deposit the arrears of rent from September 2014 till the date of hearing i.e. 15-01-2015, and specified the date for payment thereof as on or before the next date of hearing i.e. 31-01-2015 and, secondly, to deposit/pay the rent for each subsequent month at the same rate before the 15th of each month till the final decision of the petition. The petitioner paid/deposited the arrears of rent according to the tentative rent fixed by the learned Rent Controller. The subsequent month after the date specified for payment of arrears was February. The rent for the month of February was paid by the petitioner on 25-02-2015. The respondent filed an application asserting that the petitioner had not submitted receipts in respect of payment of rent for the month of February before the 15th day thereof. The learned Rent Controller, vide order dated 29-04-2015, allowed the ejectment petition on the ground that the petitioner had violated the order dated 15-01-2015 by failing to deposit the rent due for the month of February before the fifteenth thereof. The petitioner filed an appeal under the Ordinance before the learned Additional District Judge (West), Islamabad and the same was dismissed vide the impugned order dated 26-06-2015, hence the instant petition.

3. The learned counsel for the petitioner has contended that; the learned Rent Controller and the learned Additional District Judge have misinterpreted subsection (8) of section 17, particularly the expression 'rent due'; the said expression envisages that the rent becomes due on the last date of the month, and the petitioner had deposited the rent for the month of February 2015 in advance i.e. on 25-02-2015; the learned Rent Controller, as well as the appellate Court, did not properly consider the record; the impugned orders have caused a miscarriage of justice; the impugned orders have been passed on hypothetical presumptions; the impugned orders are not tenable in law and, therefore, liable to be set aside.

4. The learned counsel for the respondent No.1 has argued that; the learned Rent Controller and the learned appellate Court have passed well reasoned orders; the concurrent findings cannot be disturbed as there has been no misreading or non-reading; the learned Rent Controller, vide order dated 15-01-2015, had passed specific directions i.e. to deposit the rent before the 15th of each month till the final conclusion of the petition; the petitioner is a habitual defaulter and had deliberately violated the directions passed by the learned Rent Controller, vide order dated 15-01-2015; the provisions of subsection (9) of section 17 are mandatory; reliance has been placed on the case of 'Mushtaq Ahmed Kiani v. Bilal Umair and others' [2009 SCMR 1008].

5. The learned counsel have been heard and the record perused with their able assistance.

6. It is not denied that vide order dated 15-01-2015 the learned Rent Controller, in exercise of powers vested under section 17(8) of the Ordinance, had fixed the tentative rent at the rate of Rs.100,000/- per month. Two directions were made in respect of the petitioner i.e. firstly to deposit/pay the arrears from September, 2014 till the date of hearing, which was 15-01-2015 and, secondly to pay/deposit the rent for each subsequent month before the 15th of the relevant month. The date for payment and deposit of the arrears was specified as the next date of hearing, which was 31-01-2015, and the tentative rent was also fixed pursuant to powers vested under section 17(8) of the Ordinance. Admittedly, the petitioner deposited the arrears of rent, which included the rent for the month of January, before the specified date, and submitted the receipts before the learned Rent Controller. The subsequent month to the date specified for payment of arrears was February and pursuant to the order dated 15-01-2015, the rent was to be paid before the fifteenth day thereof i.e. 15-02-2015. Admittedly, the rent of the said month was paid on 25-02-2015 instead of being paid before the fifteenth day.

7. The main argument of the learned counsel for the petitioner relates to the interpretation of the expression 'rent due' used in subsection (8) of section 17. He has vociferously contended that both the respective impugned orders have been passed by misinterpreting the said provision. In this regard he has explained that the rent for a month becomes 'due' after the last date of the relevant month. According to him, the rent for the month of February would become due after the last date thereof and in terms of section 17(8) is, therefore, required to be paid before the fifteenth of the next month i.e. March. In this regard he has laid stress on the phrase 'the monthly rent which subsequently becomes due' used in section 17(8) of the Ordinance. As the question raised is regarding the interpretation of subsection (8) of section 17 of the Ordinance, therefore, the same is reproduced as 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.

"

8. Section 17 of the Ordinance provides for the grounds and circumstances which would render a tenant in possession to be evicted from a building or rented land. Subsection 8 of section 17 *ibid* prescribes the initial steps to be taken by the learned Rent Controller after a petition has been filed by a Landlord seeking eviction. The required steps enumerated in the said provision may be summarised as follows;

- (i) On the first date of hearing, or as soon as may be, but before the issues are framed, it is mandatory for the learned Rent Controller to direct the tenant to deposit all the rent due from him. The date for deposit of the rent is specified by the Rent Controller in this regard.
- (ii) In the context of the above direction, if there is any dispute regarding the rent, the learned Rent Controller determines the amount of rent due approximately.
- (iii) In addition to the above, the learned Rent Controller further has to direct that the tenant shall pay regularly the approximate or tentatively determined rent for each month subsequent to the date specified for depositing the payment of arrears. The statutory mandate has prescribed the payment/deposit of the rent for each month to be made before the fifteenth day of the relevant or corresponding month. Thus the rent for February has to be deposited before the fifteenth day of the said month and not before the fifteenth of March.
- (iv) Subsection (9) of section 17 of the Ordinance is couched in such language that in the eventuality that either the arrears are not deposited before the specified date, or the rent for each month following the specified date is not paid before the fifteenth day of each corresponding month, then it becomes mandatory for the learned Rent Controller to strike off the defence of the tenant and put the Landlord in possession of the property without further proceedings.

9. I am afraid that the interpretation of the learned Counsel for the petitioner is not in consonance with the language of subsection (8) of section 17 of the Ordinance. The phrase 'the monthly rent which subsequently becomes due' has nexus with the month, which would follow the specified date for payment of arrears. This may be illustrated by the facts of the instant petition. The learned Rent Controller directed the petitioner vide order dated 15-01-2015, to deposit/pay the arrears from September 2014 till the date of the said order before the 31-01-2015. This admittedly included the rent for the month of January. The rent which subsequently became due was for the month of February, and pursuant to the direction vide order dated 15-01-2015, and more importantly the legislative mandate of section 17(8), was to be paid before

the fifteenth day i.e. before 15-02-2015. The petitioner, however, deposited the rent on 25-02-2015 and thus not only violated section 17(8) but the direction of the learned Rent Controller as well. If the argument of the learned counsel for the petitioner was to be accepted then the rent for the month of January was to be paid before the fifteenth of February and thus one would have to read in section 17(8) something not provided therein. The legislative intent is absolutely clear and the rent for each month following the specified date for payment of the arrears is required to be paid before the fifteenth of the respective month, and not before the fifteenth of the next month, as has been argued by the learned counsel for the petitioner.

10. The petitioner was, therefore, under a mandatory statutory obligation to have deposited the rent for the month of February before 15-02-2015. The learned Rent Controller had, therefore, rightly passed the order under subsection (9) of section 17 of the Ordinance. There is no force in the argument of the learned counsel for the petitioner that the rent for the month of February, 2015 was to be deposited before 15-03-2015. It would be pertinent to refer to the judgment of the august Supreme Court in the case, of 'Mushtaq Ahmed Kiani v. Bilal Umair and others' [2009 SCMR 1008]. The relevant portion is as follows. -

"The consequences of non-deposit or non-compliance of the order of Rent Controller are given in subsection (9) where no discretion is left with the Rent Controller except to order the ejectment of the tenant without further proceedings. The language of subsection (9) makes the order mandatory."

11. In the case of 'Mohammad Yousaf v. Mohammad Bashir and others' [1990 SCMR 557] the delay in deposit pursuant to the direction of the learned Rent Controller under section 13(6) of the West Pakistan Urban Rent Restriction Ordinance, 1959 was of only one day. However, the apex Court observed; " As held by this Court the Rent Controller has no discretion to condone it as distinguishable from the default in payment of rent relatable to the other provision of section 13". Likewise, the august Supreme Court in another judgment titled 'Safeer Travels (Pvt.) Ltd. v. Mohammad Khalid Shafi' [PLD 2007 SC 504] affirmed the principles and law relating to 'default' on part of a tenant in complying with the directions of the learned Rent Controller in connection with payment of arrears of rent due for subsequent months. It held that it was obligatory for the Court to strike off the defence if the directions of the learned Rent Controller are not complied with. The chain of judgments of the august Supreme Court had thoroughly examined different laws but all contained similar provisions, with some variations, as in section 17(8) of the Ordinance. Reference may be made to the cases of 'Ghulam Muhammad Khan Lundkhor v. Safdar Ali' [PLD 1967 SC 530], 'Province of Punjab and others v. Muhammad Jalil-ur-Rehman' [1986 SCMR 1705], 'Muhammad Amin v. Ghulam Nabi and 2 others' [PLD 1990 SC 1201], 'Khawaja Muhammad Mughees v. Mrs. Sughra Dadi' [2001 SCMR 2020], 'M. H. Mussadaq v. Muhammad Zafar Iqbal and another' [2004 SCMR 1453].

12. In view of the above, the provisions of subsections (8) and (9) of section 17 of the Ordinance being mandatory, the learned Rent Controller rightly struck off the defence of the petitioner and had allowed the eviction petition. The learned counsel for the petitioner has not been able to point out any misreading, non-reading or misapplication of law by the learned Rent Controller or learned Additional District Judge, Islamabad. The impugned orders are well reasoned and do not suffer from any illegality nor jurisdictional error. The concurrent findings are in accordance with law and no interference is required by this Court.

13. For what has been discussed above, the instant petition is without merit and is accordingly dismissed.

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