

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO.4835/2010.

FARRUKH ZIA

APPELLANT
PETITIONER

VERSUS

MST. BUSHRA BEGUM ETC.

RESPONDENT
DEFENDANT

Appeal / revision against the decree or order (as the case may be) of _____

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
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2. 24.01.2011. Sardar Tariq Mehmood, Advocate for the petitioner.
Ch. Azmat Ullah, Advocate for the respondents No.1 & 2.

Arguments heard and record persued.

The petitioner after being ejected on 28.01.2010 by the Rent Controller Islamabad, filed an appeal before the learned Additional District Judge Islamabad, which failed on 19.10.2010 and then he invoked the jurisdiction under Article 199 of the Constitution, 1973.

2. Very briefly the facts of the case, are that the respondent / landlord Nos. 1 & 2 being owners of property bearing No.96-E AK (Basement), Unit No.9, Shop No.9-B, Blue Area, Sector F-7 / G-7, Islamabad basement, ground and mezzanine floor with waranda on both the sides, filed ejectment petition u/s 17 of Islamabad Rent Restriction Ordinance, 2001 on the ground of personal bonafide use and occupation. The second ground for ejectment was expiry of lease

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agreement which was executed for one (1) year only from 01.01.2007 to 31.12.2007.

3. The petitioner / tenant contested the ejectment application on the grounds as being filed with ulterior motives, raised certain preliminary objections and also submitted that the lease deed had been extended from 01.06.2007 to 31.06.2013 for the period of five (5) years and no notice was served upon him about personal need of the landlords.

4. The learned trial court framed seven issues out of the pleadings of the parties and heard arguments after recording the evidence. Finally the learned trial court came to the conclusion that the issues No.1 and 2 are proved by the landlords as the lease has not been extended and personal bonafide use and occupation is also established by the respondents No.1 & 2. A decree for ejectment was, therefore, passed and tenant was directed to handover the vacant possession to the landlords within thirty (30) days with no order as to costs.

5. The petitioner challenged the ejectment order and decree dated 28.01.2010 before the learned District Judge, Islamabad, which was transferred to learned Additional District Judge, Islamabad, who after notice, heard the parties and maintained the order of eviction by his judgment dated 19.10.2010.

6. The present petition challenged both the orders on the ground that the learned lower courts have failed to appreciate law and facts of the case and there is misreading and non-reading of evidence.

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there is misreading and non-reading of evidence. Learned counsel further mentioned that lease agreement dated 22.10.2008 has not been considered by the lower court as well as by the Appellate Court through which lease was extended for further five years with effect from 01.06.2007.

7. The respondent Nos.1 and 2 appeared through counsel and contested the petition stating therein that no law points are involved and, therefore, writ petition under Article 199 of the Constitution is not maintainable. It is stated that this Court cannot resolve the factual controversies between the parties as the learned lower courts after fulfilling all the requirements and deeply appreciating the evidence, decided the case. It is argued that at this stage, concurrent findings cannot be interfered with. He relied upon case laws reported in 1990 SCMR 544, 2009 MLD 955, 2008 SCMR 488, 2001 SCMR 1493, 2009 YLR 2234, 2001 SCMR 577, 1996 SCMR 1178, 2009 SCMR 846 and 2003 CLC 917 which hold that the lease agreement comes to an end, if it is not extended and landlord has got every right to his property vacated for his personal bonafide use and occupation.

8. The perusal of record shows that there is no evidence to establish that any lease agreement on 22.10.2008 was executed between the parties for further period of five years with effect from 01.06.2007. Had it been so the appellant would have produced it through evidence.

9. The learned Rent Controller has rightly placed his reliance on the judgment reported in 2009 SCMR 844, wherein it was held that after expiry of term fixed by lease agreement, tenant would lose the right to continue to occupy or hold over premises. The right of landlord, in such circumstances, to seek eviction of tenant on grounds specified in Section 17 of the Ordinance would remain unaffected.

10. The evidence about the personal bonafide use and occupation has also not been successfully negated and, therefore, the learned Rent Controller had no option but to qualify the landlords for grant of eviction order.

11. The learned Appellate Court also granted an opportunity of hearing to both the parties and after perusal of record concurred with the findings of learned Rent Controller and maintained the eviction order.

12. While sitting in the writ jurisdiction, this court can dilate upon strong law points or glaring illegalities only, which are not apparent on the face of record in this case. The case laws relied upon by the learned counsel for respondent Nos.1 and 2 support their contention.

13. Viewing the above, the impugned judgments are maintained and the writ petition is dismissed with no order as to costs.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE.

Amer Baig.

APPROVED FOR REPORTING.