

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.998/2016
Atiq-ur-Rehman
Versus.
Najma Tabassum & others

Date of Hearing:	15.04.2016
Petitioner by:	Mr. Zahid Mehmood Raja, Advocate,
Respondent No.1 by:	Ch. Naeem Ali Gujjar, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant Writ Petition, the petitioner, Muhammad Atiq-ur-Rehman, impugns the Order dated 22.02.2016, whereby the Court of learned Rent Controller, (West), Islamabad, closed the petitioner's right to file a written reply to respondent No.1's eviction petition.

2. The facts essential for the disposal of the instant petition are that, on 24.03.2015, respondent No.1 (Najma Tabassum) filed an eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO"), against the petitioner seeking the latter's eviction from House No.655, Main Double Road, Sector G10/1, Islamabad ("the rented premises"). The grounds on which the said eviction petition was filed were (i) default in the payment of rent, (ii) personal bona fide need of the landlord, (iii) expiry in the period of the lease agreement, and (iv) violation of the terms of the lease agreement. Although, summons were issued to the petitioner but he did not appear before the learned Rent Controller and the matter was adjourned on more than ten occasions. As service of process could not be effected on the petitioner through ordinary means, the learned Rent Controller on 13.07.2015 ordered that the petitioner be summoned through a proclamation in the newspaper Daily SAMMA. On 27.07.2015, the petitioner was proceeded against *ex-*

parte. On 04.09.2015, the *ex-parte* evidence of respondent No.1 was recorded. On 08.09.2015, respondent No.1 closed her oral and documentary evidence, and on 12.09.2015, the learned Rent Controller accepted the eviction petition *ex-parte*. Apparently, the petitioner filed an appeal against the said order dated 12.09.2015. The petitioner's appeal was allowed and the matter was remanded to the Court of the learned Rent Controller. In the post-remand proceedings, the petitioner sought an adjournment on nine occasions so as to enable him to file a reply to the eviction petition. Vide Order dated 12.02.2016, the learned Rent Controller imposed costs on the petitioner and warned him that in the event the reply was not filed on 18.02.2016, his right to file a written reply will be closed. On 18.02.2016 yet another opportunity was given to the petitioner to file the written reply. By 22.02.2016, the learned Rent Controller had enough, and he closed the petitioner's right to file a written reply and adjourned the matter to 01.03.2016 for respondent No.1's evidence. It is the said order dated 22.02.2016, which has been challenged by the petitioner in the instant writ petition. This order is reproduced herein below:-

"Clerk counsel for respondent request for adjournment on the grounds that written reply could not be prepared, therefore, an opportunity may be granted. Perusal of order sheet reveals that many opportunities have been granted to respondent for filing of written reply and today the case is fixed for filing of written reply and payment of cost with one opportunity. However, neither the cost has been paid nor written reply has been filed, therefore, further adjournment in this regard cannot be granted, hence, respondent right to submit written reply is closed. Now to come up for petitioner's evidence on 01-03-2016."

3. Learned counsel for the petitioner submitted that the learned Rent Controller acted with undue haste in closing the petitioner's right to file the written reply; that the learned Rent Controller should have waited till the close of working hours before imposing a penal measure

on the petitioner; that there is no provision in the IRRO which empowers the learned Rent Controller to close the petitioner's right to file a written reply to an eviction petition; that the only provision in the IRRO which empowers the learned Rent Controller to strike off the right of defence is Section 17 (9) of the IRRO, which can only be invoked when the respondent does not comply with a tentative rent order passed under Section 17 (8) of the IRRO; that the proceedings before the learned Rent Controller are *quasi*-judicial in nature and the provisions of the Code of Civil Procedure, 1908, are not strictly applicable thereto; and that the impugned order dated 22.02.2016 was not in accordance with the law and was liable to be set aside. In making his submissions, the learned counsel for the petitioner placed reliance on the cases of Muhammad Farooq Vs. Abdul Waheed Siddiqui and others reported as 2014 SCMR 630, Shaft Muhammad Vs. Muzaffar-ud-Din reported as 1990 SCMR 530, and Khadim Mohy-ud-Din and another Vs. Ch. Rehmat Ali Nagra and another reported as PLD 1965 SC 459.

4. On the other hand, learned counsel for respondent No.1 defended the impugned order dated 22.02.2016 by contending that the same was passed strictly in accordance with the law; that the order sheet of the proceedings before the learned Rent Controller reveals that there was a concerted effort on the part of the petitioner to protract the proceedings; that the petitioner was a member of the bar and should have vacated the rented premises upon expiry of the lease period; and that the writ petition instituted by the petitioner was not maintainable. In making his submissions, the learned counsel for the petitioner placed reliance on the case of Mst. Bashir Begum Vs. Syed Ijaz Hussain reported as PLD 1995 Lahore 392.

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

6. I propose, first to deal with the contention of the learned counsel for the petitioner that the provisions of C.P.C. are not applicable to proceedings before the learned Rent Controller. In the case of Mian Sher Bahadur and another Vs. Civil Judge Takht Bhai and another reported as 2003 YLR 1722, the learned Rent Controller resorted to the provisions of Order XVII, Rule 3 C.P.C. and struck off the tenant's defence on account of his failure to produce evidence. The contention of the writ petitioners before the Hon'ble Peshawar High Court, that as the provisions of C.P.C. were not applicable to the proceedings before a Rent Controller the provisions of Order XVII, Rule 3 C.P.C. could not have been invoked, was addressed in the following terms:-

“14. The argument of the learned counsel for the petitioners that there is no provision in the Ordinance to strike off the defence of petitioners for non-production of evidence also has no force. Perusal of subsection (2) of section 13 of the Ordinance shows that the Rent Controller on receipt of eviction application from the landlord is to provide a "reasonable opportunity" to tenant to show cause against the application made by the landlord against him and on his satisfaction, he can pass eviction order. "Reasonable opportunity" is not susceptible of any precise definition and "reasonableness" has to be judged in the light of facts of each case. Generally speaking, "reasonable opportunity" will mean that no material should be used against a party without affording him the opportunity to offer explanation and to rebut it by evidence relied upon by him; to produce evidence on the relevant issues, and to, cross-examine the witnesses of his/her adversary, The question that arises in this case is as to whether "reasonable opportunity" was provided by the learned Rent Controller to the petitioners if so what would be the consequences of non-availing the said opportunity by the petitioners. Answer to this question is available in the various order-sheets of the learned Rent Controller. ...”

7. Section 17(2) of IRRO provides for a “reasonable opportunity” to be given to a tenant to show cause against

the eviction petition. The narration of events prior to the passing of the impugned order shows that reasonable opportunity was undoubtedly given by the learned Rent Controller to the petitioner to file the written reply. In fact, the learned Rent Controller had been most magnanimous in granting nine opportunities to the petitioner to file the written reply to the eviction petition. Hence, I find the argument of the learned counsel for the petitioner that the provisions of C.P.C. are not at all applicable to the proceedings before the Rent Controller to be misconceived. I am of the view that the provisions of C.P.C. are not strictly applicable to the proceeding under IRRO nevertheless the Rent Controller has discretion to follow and apply them if he deems necessary especially in the absence of any provision in IRRO to the contrary. Reference in this regard may be made to the following precedents:-

(a) In the case of Ayub Khan and another Vs. Fazal Haq and others, reported as PLD 1976 SC 422, it has been held as follows:-

“And even with regard to the hearing of an eviction application, it was clarified that the Controller could dispose it of by an inquiry in which he was not bound “by any particular procedure”. As the Rent Controller is not bound by the Civil Procedure Code, the question of procedure and especially the procedure for effecting service on defendant is within his exclusive discretion, therefore, he would be entitled, in the exercise of his discretion, to follow the equitable principles of the Civil Procedure Code. Similarly, he would be free not to follow the technical provisions of the Code. But the converse does not follow, and because he has the discretion not to follow the provisions of the Civil Procedure Code, it does not mean that he has been divested of the discretion to follow the Civil Procedure Code when he considers it necessary so to do.”

(b) In the case of Muhammad Saleh Vs. Muhammad Shafi, reported as 1982 SCMR 33, it has been held as follows:-

“The first of the above-noted two contentions has no merit. The learned counsel himself admitted that although the provisions of C.P.C. are not applicable in

terms to the proceedings under the West Pakistan Urban Rent Restriction Ordinance yet the Rent Controller may, in his discretion, follow and apply them if he considers it necessary to do so. (See PLD 1976 SC 422), and that in any case the principles thereof are applicable to proceedings under the said Ordinance.”

(c) In the case of Mrs. Sadiq Vs. Syed Intekhab Hyder Abedi, reported as 1983 CLC 1623, it was held as follows:-

“Although Code of Civil Procedure as a whole is not made applicable to the rent proceedings under the Sindh Urban Rent Restriction Ordinance yet the broad principles contained therein unless in conflict with the provisions of the Ordinance or otherwise are against the spirit of the Ordinance, can usefully be pressed into service.”

(d) In the case of Abdur Rauf Vs. Nawab Ali and 3 others, reported as PLD 1986 Karachi 117, it has been held as follows:-

“No doubt the provisions of Civil Procedure Code are not applicable to the proceedings under the Rented Premises Ordinance, 1979, but the fundamental principles of Civil Procedure Code govern the procedure before a Rent Controller in the absence of any specific provisions to the contrary order of the said Ordinance.”

(e) In the case of Abdul Karim Vs. Muhammad Ismail and another, reported as PLD 1987 Lahore 298, it has been held as follows:-

“No doubt, provisions of Civil Procedure Code are not in terms applicable to the proceedings under the Rent Restriction Ordinance. Rent Controller, however, may in his discretion, follow and apply them to meet the ends of justice particularly where the provisions of Ordinance are silent.”

8. Now, Sub-sections (1) and (2) of Section 21 of IRRO are reproduced herein below:-

“21. Appeal. (1) Any party aggrieved by a final order of the Controller made under this Ordinance may, within thirty days of the date of such order, prefer an appeal to the District Judge.

(2) No appeal shall lie from an interlocutory order passed by the Controller.”

9. The impugned order dated 22.02.2016 is an interlocutory order, which was not appealable under the provisions of the IRRO. Section 21(1) of the IRRO provides

that any party aggrieved by a final order of the Rent Controller may prefer an appeal to the District Judge within thirty days of the date of such an order. Section 21(2) explicitly provides that no appeal shall lie from an interlocutory order passed by the Rent Controller. It is perhaps for this reason that the petitioner has instituted a writ petition to challenge the said interlocutory order passed by the learned Rent Controller.

10. As reference to case law, at this stage, would be apposite:-

(i) In the case of Saghir Ahmad Naqvi Vs. Province of Sindh reported as 1996 SCMR 1168, the Hon'ble Supreme Court of Pakistan has held that where a statute excludes a right of appeal from an interim order, the same cannot be bypassed by bringing under attack such interim orders in the constitutional jurisdiction of the High Court. Furthermore, it was held that the affected party had to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders.

(ii) In the case of Muhammad Taj Vs. Muhammad Younis Khilji and another reported as 2008 CLC 1666, the Hon'ble Islamabad High Court in paragraph 6 of the report *inter-alia* held as follows:-

“6. There is another aspect of the matter that the instant writ petition has been filed against interim order and Section 21(2) of Islamabad Rent Restriction Ordinance, 2001 specifically bars any appeal against the interlocutory orders of the Rent Controller which does not dispose of the entire case before it. The intention of legislature can be gathered from the provisions of Section 21(2) of the Ordinance that to avoid delay in disposal of the cases by the Rent Controller, a specific bar has been imposed to challenge the interlocutory orders passed by the Rent Controller, therefore, the petitioner cannot be allowed to circumvent the legislative intent by filing against the interim order a constitutional petition. There are numbers of judgments under West Pakistan Urban Rent Restriction Ordinance, 1959 and Cantonments Rent Restriction Act, 1963 wherein it has been held that if legislature has not made

an interim order appealable, the writ petition cannot be permitted to be filed to challenge such an order.”

(iii) In the case of Jehangir Khan Jadoon Vs. Gul Nigar Manzoor, reported as 2008 CLC 547, a writ petitioner had challenged a tentative rent order passed by the Rent Controller under the provisions of the Islamabad Rent Restriction Ordinance, 2001. The Hon'ble Lahore High Court, upheld the preliminary objection that as the order impugned was interlocutory in nature and the Rent Controller was competent to change and modify it, the same could not be challenged in the constitutional jurisdiction of the High Court. At paragraph 9 of the said Report, it has been held by the Hon'ble High Court as follows:-

“9. In view of the above, I am of the definite view that the impugned order was tentative in nature and has to be merged in the final order which would be appealable under Section 21 of the Islamabad Rent Restriction Ordinance, 2001, therefore, the petitioner has to wait for it to question the same before the Appellate Court. However, the impugned order is provisional in nature and is not assailable in constitutional jurisdiction of this Court. Consequently, for the foregoing reasons, the instant constitutional petition being devoid of any force is dismissed with no order as to costs.”

(iv) In the case of Mian Sher Bahadur and two others Vs. Civil Judge Takht Bhai and another reported as 2003 YLR 1722, the learned Rent Controller had struck off the defence of the tenant on account of his failure to produce evidence. This order was challenged by the tenant in the constitutional jurisdiction of the Hon'ble High Court. At Paragraph 22 of the said Report, the Hon'ble Peshawar High Court, *inter-alia* held as follows:-

“22. Another aspect of the case is that the writ petitions have been filed against interlocutory/interim order dated 12.04.2002. Their Constitution petitions are not maintainable because the appeals against interim order are barred under Section 15 of the Ordinance, which clearly indicated that there was ouster clause specifically barring appeal against interim order of the Rent Controller as only final order was amenable to appeal. The impugned orders being interim orders are

not appealable under the relevant law, in such circumstances, question would arise whether such orders could be assailed in constitutional jurisdiction? Where the law itself has not given the right of appeal against certain orders then same cannot be challenged in any other forum to gain similar object which has been barred by statute itself. It was well-settled principle that the remedy which is not directly available cannot be sought indirectly through indirect means."

(v) In the case of Iqbal Ahmed Vs. Muhammad Nasir reported as 2016 MLD 624, the Hon'ble High Court of Sindh, after referring to Section 21 of the Sindh Rented Premises Ordinance, 1979, which prohibits an appeal against an interim order passed by a Rent Controller, held at paragraph 8 of the said report as follows:-

"8. A perusal of the above provisions of law clearly indicates that the legislature has specifically prohibited filing of an appeal against interim order. Thus, I am of the view that the legislature did not intend to make the interim order challengeable. Interim order is to merge in the final verdict which shall be appealable and going against that arrangement by exercising writ jurisdiction would not be proper because in that case the object of legislature shall be frustrated."

(vi) In the case of Abdul Farooque and another Vs. Maqsood Ahmed and another reported as 2015 CLC 663, the landlord had moved an application for recovery of arrears of rent in an eviction petition, which application was accepted and a tentative rent order was passed by the Rent Controller. The contention of the tenant was that the Rent Controller could not, without framing and deciding a preliminary issue with regard to the existence of a relationship of landlord and tenant, pass a tentative rent order. The Hon'ble High Court of Sindh at paragraph 9 of the report *inter-alia* held as follows:-

"The impugned tentative rent order of the learned Rent Controller is interlocutory/interim in nature and the same is even not appealable under the Ordinance, 1979. No order has yet been passed by the learned Rent Controller under Section 16(2) of the Ordinance, 1979. The provision of appeal has been provided under Section 21 of the Ordinance, 1979 by the legislature against the final order of the Rent Controller. The petitioners will have opportunity to file the appeal if the final order goes

against them and they can raise the afore-stated ground too. Therefore, the instant constitutional petition is not maintainable against an interlocutory / interim order of Rent Controller. The reason being that if constitutional petition were to be entertained, the very purpose of Section 21 of the Ordinance, 1979 would be defeated. Reliance can be placed in this regard on the case of Mst. Seema Begum Vs. Muhammad Ishaq and others (PLD 2009 SC 45)."

11. Law to this effect has also been laid down in the cases of Abdul Majid Khan Vs. Rent Controller, Civil Judge, Gujranawala reported as 1997 CLC 1822. Mahmood-ul-Hassan Vs. Special Judge, Rent Tribunal, Lodhran reported as 2010 CLC 1590, and Muhammad Saghir Abbasi Vs. District Rent Controller reported as 2015 MLD 417.

12. The principles which may be distilled from the aforesaid judgments and the observations made therein, would be the following:-

13. As Section 21(2) of IRRO expressly bars a right of appeal from an interim order passed by a Rent Controller, the same cannot be circumvented by challenging such an interim order in the constitutional jurisdiction of the High Court. A party aggrieved by such an interim order has to wait until a final order is passed by a Rent Controller and then to challenge it under Section 21(1) of the IRRO before the Court of the learned District Judge. The purpose behind barring an appeal against an interim order of the Rent Controller is to avoid delays in disposal of the cases by the Rent Controller. An interim order merges into the final verdict which is appealable under Section 21(1) *ibid*. In an appeal against the final verdict, the interim order can also be subjected to challenge. However, it is my view that exceptional circumstances which could justify invoking the jurisdiction of the High Court under Article 199 of the Constitution would be when the order or action assailed was palpably without jurisdiction, *mala fide*, void or *coram non judice*.

14. One of the guidelines given by the Hon'ble Supreme Court of Pakistan in the case of Barkat Ali Vs. Muhammad Ehsan, reported as 2000 SCMR 556, as that *“appeals against interim orders of a Rent Controller and resort to Constitutional jurisdiction against orders at intermediate stages arising out of ejectment proceedings should be discouraged.”*

15. The order impugned in this petition is clearly interlocutory in nature and does not dispose of the entire case before the learned Rent Controller. The impugned order is neither without jurisdiction, nor *mala fide*, void or *coram non judice*.

16. The order dated 22.02.2016 being purely interim in nature could not be subjected to challenge by filing a constitutional petition before this Court as it would amount to defeating the legislative intent behind Section 21(2) of the IRRO. In view of the law laid down by the superior courts, I am not inclined to interfere in the order dated 22.02.2016, passed by the learned Rent Controller. A discussion on the merits of the case is, therefore, unnecessary.

17. Before parting with this Judgment, it may be observed that the eviction petition was filed more than a year ago. I see this petition and the petitioner's reluctance before the learned Rent Controller to file a written reply as attempts to protract the proceedings before the learned Rent Controller. Section 25(3) of the IRRO provides that except for sufficient reasons to be recorded in writing, the Rent Controller shall finally dispose of an application under the IRRO as expeditiously as possible, but not later than four months of the date of the first hearing after the service of summons on the respondent. The learned Rent Controller is expected to be mindful of the said mandate of the law and dispose of the eviction petition expeditiously.

18. For the foregoing reasons, the instant writ petition, being devoid of merits, is dismissed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan*

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