JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No171 of 2017
Ch. Naseer Ahmed and another
Versus
The Rent Controller and others

Date of Hearing:	26.04.2017
Appellants by:	Mr. Shehryar Tariq, Advocate
Respondents No.2 to 5 by:	Messrs Shahzada Naeem Bokhari and Ijaz Janjua, Advocates.

MIANGUL HASSAN AURANGZEB.J- Through the instant Intra Court Appeal, the appellant, Ch. Naseer Ahmed and his wife, Mrs. Nusrat Naseer, impugn the judgment dated 10.04.2017, passed by the learned Single Judge-in-Chambers, whereby writ petition No.302/2017, instituted by the appellants, was dismissed. Through the said writ petition, the appellants had impugned the order dated 23.01.2017, passed by the Court of the Rent Controller, Islamabad, whereby the appellants' application under Section 34 of the Arbitration Act, 1940 ("the 1940 Act"), was dismissed.

2. The facts essential for the disposal of this appeal are that on 01.01.2006, respondents No.2 to 5 (landlords) and the appellants (tenants) entered into a lease agreement. As per the recitals of the said lease agreement, respondents No.2 to 5 and the appellants are co-owners of Plot No.8, F-10 Markaz, Islamabad, which has been divided into two halves. One half of the said plot (towards the mosque) belongs to respondents No.2 to 5, whereas the other half (towards the petrol pump) belongs to the appellants. The lease agreement is with respect to that portion of the Plot No.8, which is owned by respondents No.2 to 5, and which measures 100 x 200 feet i.e. 2222.22 square yards ("the rented premises"). The initial lease period was agreed to be 10 years commencing from 01.10.2006. The lease agreement was extendable with the mutual consent of the parties.

3. On 01.12.2016, respondents No.2 to 5 instituted a petition under section 17 of the Islamabad Rent Restriction Ordinance,

2001 ("IRRO"), seeking the appellants' eviction from the rented premises. The primary ground taken by respondents No.2 to 5 in their eviction petition was the expiry of the lease agreement. On 02.01.2017, the appellants filed an application under Section 34 of the 1940 Act, praying for the legal proceedings pending before the learned Rent Controller to be stayed on the basis of an arbitration clause contained in the lease agreement. The appellants had also sought a direction to respondents No.2 to 5 to settle the dispute arising from the lease agreement in accordance with the arbitration clause contained therein.

4. Respondents No.2 to 5 contested the said application by filing a written reply. In the said reply, it was *inter-alia* pleaded that the learned Rent Controller did not have the jurisdiction to stay the proceedings instituted by respondents No.2 to 5. Vide order dated 23.01.2017, the learned Rent Controller dismissed the appellants' application under Section 34 of the 1940 Act. The learned Rent Controller *inter-alia* held that a Rent Controller, being a *persona designata* acts in a *quasi judicial* capacity and not as a Court, therefore, it had no authority to stay the eviction proceeding under Section 34 of the 1940 Act. Furthermore, it was held that the incorporation of an arbitration clause in the lease agreement did not oust the jurisdiction of the Rent Controller to proceed with the eviction petition.

5. The said order dated 23.01.2017, was challenged by the appellants before this Court in W.P.No.302/2017. Vide judgment dated 10.04.2017, the said writ petition was dismissed by the learned Single Judge-in-Chambers. It was *inter-alia* held that the IRRO, being a special law, regulates the relationship between landlords and tenants with respect to rented premises to the exclusion of any other law. The said judgment dated 10.04.2017, has been impugned by the appellants in the instant Intra Court Appeal.

6. Learned counsel for the appellants submitted that the concurrent orders passed by the learned Single Judge-in-Chambers as well as the learned Rent Controller, are not in accordance with the law; that admittedly the lease agreement

dated 01.01.2006 contained an arbitration clause providing for the disputes between the parties to the said agreement to be referred to Arbitration; that the dispute as to whether the appellants can remain in occupation of the rented premises beyond 30.09.2016, is to be resolved in accordance with the dispute resolution mechanism enshrined in the said lease agreement; that an application under Section 34 of the 1940 Act can be filed to stay "any legal proceedings" including the proceedings before the learned Rent Controller; that it is not necessary for an application under Section 34 of the 1940 Act, to be filed only before a "Court"; that proceedings before a *quasi* judicial tribunal can also be stayed under Section 34 of the 1940 Act; that the appellants filed the application under Section 34 of the 1940 Act before filing a reply to the eviction petition, and before taking any "step in the proceedings"; that the lease agreement dated 01.01.2006, expressly provides that the appellants were co-owners of the rented premises; that the mere fact that the lease agreement dated 01.01.2006, had expired did not mean that the disputes between the parties to the said agreement arising from and related to the terms of the said agreement, could not be resolved in accordance with the arbitration clause contained in the said lease agreement; and that the appellants had already filed an application under Section 20 of the 1940 Act, praying for the disputes arising from and related to the said lease agreement to be referred to arbitration.

7. In support of his contention that no embargo could be placed on the learned Rent Controller from invoking and applying the beneficial provisions of the Code of Civil Procedure, 1908, learned counsel for the appellants placed reliance on the law laid down in the cases of Suhail Printing Press Vs. Aley Eba Zaidi (2005 SCMR 882), Saeed Pervaiz Vs. Masood Hassan (2008 SCMR 568) and Arif Hayat Vs. Sher Muhammad (2015 CLC 1383). Learned counsel for the appellants prayed for the impugned judgment dated 10.04.2017 passed by this Court, as well as the order dated 23.01.2017, passed by the learned Rent Controller,

to be set aside. In making his submissions, learned counsel for the appellants also placed reliance on the following case law:-

(i) Muhammad Ibrahim Vs. Irshad Begum (PLD 2002 SC 720). In this case, the petitioner had filed a suit for specific performance of an agreement. The respondent, claiming to be a subsequent vendee of the suit property, filed an application under the rent restriction law for the eviction of the petitioner. The learned Civil Court (also exercising the powers of Rent Controller), vide consolidated judgment and decree dismissed the petitioner's suit and passed an order of his eviction. The petitioner preferred an appeal to the Court of the learned District Judge, who referred the matter to the Arbitrators. The respondent's objection petition to the arbitration awards was accepted by the learned District Judge, whose orders were maintained by the Hon'ble Lahore High Court and the Hon'ble Supreme Court.

(ii) Government of Sindh Vs. Delhi Anglo Arabic College and School (2009 SCMR 315). In this case, the Hon'ble High Court of Sindh had decreed the respondents' suit for injunction, possession, compensation, recovery of arrears of rent etc. The petitioner assailed the decree *inter alia* on the ground that the lease agreement between the parties contained an arbitration clause providing for disputes between the parties to the said agreement to be referred to arbitration. The Hon'ble Supreme Court observed that the petitioner had not raised an objection to the maintainability of the suit on the ground that the lease agreement had provided for disputes between the parties to the said agreement to be referred to arbitration. Consequently, the judgment and decree passed by the Hon'ble High Court was upheld.

(iii) Nizam Din Vs. Niamat Bibi (1985 CLC 98). In this case, it was *inter alia* held that no legal bar existed in the West Pakistan Urban Rent Restriction Ordinance, 1959, against the parties to the eviction proceedings before the learned

Rent Controller from agreeing to have the case decided on the basis of a statement of a third person acting as a referee. Furthermore, it was held that an agreement between a landlord and a tenant that the matter in dispute between them could be decided in accordance with the statement of a third person was in the nature of a contract, which could not be retracted from without the Court's permission.

(iv) Infologix (Pvt.) Ltd. Vs. Abdul Aziz Ghafoor Khan (2005 MLD 1287). In this case, it was *inter alia* held by the Hon'ble Lahore High Court that proceedings before the Rent Controller could not be stayed under Section 34 of the 1940 Act, since the rent deed, on the basis of which the ejectment proceedings were instituted, did not contain an arbitration clause.

(v) Yezdiar Homi Kaikobad Vs. Ferozsons Limited (2005 YLR 783). In this case, the Hon'ble Lahore High Court set aside the order of the learned Rent Controller referring the matter to arbitration. The reason why the said order of the learned Rent Controller was set aside was because the respondent in the eviction petition had not filed an application under Section 34 of the 1940 at the initial stage of the ejectment proceedings before the learned Rent Controller.

(vi) Rashid Hussain Vs. Soofi Abdul Hameed (2008 MLD 1531). In this case, the tenancy agreement contained an arbitration clause. Since the tenant had submitted to the jurisdiction of the learned Rent Controller by filing a written reply to the eviction petition, and by leading evidence, he was held to have lost the right to seek a reference of the dispute to arbitration.

(vii) Infospan (private) limited Vs. M/s Telecom Foundation (2017 CLC 131). In this case, the tenant in the proceedings before the learned Rent Controller had sought a number of adjournments for filing a written reply to the eviction petition filed by the landlord. The lease agreement

between the parties contained an arbitration clause. This Court upheld the order passed by the learned Rent Controller dismissing the tenant's application under Section 34 of the 1940 Act, on the ground that the same had been filed after the proceedings had been adjourned on six occasions for filing of a written statement.

8. On the other hand, learned counsel for respondents No.2 to 5 submitted that the appellants could be evicted from the rented premises only through proceedings instituted under the provisions of the IRRO; that in terms of Section 4 of the IRRO, the provisions of the IRRO have an overriding effect notwithstanding anything contained in any other law (including the 1940 Act) or any instrument or document (including an arbitration agreement); that the Court of the learned Rent Controller has the exclusive jurisdiction to entertain petitions for the eviction of tenants in accordance with the provisions of the IRRO; that in terms of Section 17(1) of the IRRO, a tenant in possession of the rented premises cannot be evicted therefrom except in accordance with Section 17 of the IRRO; that the grounds on which a tenant can be evicted from the rented premises are set out in sub-sections (2) to (9) of Section 17 of the IRRO; that a party cannot contract out of the protection provided by the various provisions of the IRRO; and that statutory provisions cannot yield to provisions contained in a contract.

9. Furthermore, it was submitted that in an intra court appeal against the order dated 10.04.2017, passed by the learned Single Judge-in-Chambers was not maintainable, because an order dismissing an application under Section 34 of the 1940 Act, is appealable under Section 39 of the 1940 Act; and that since a remedy of an appeal against the order dated 23.01.2017, passed by the learned Rent Controller, was provided by law, an intra court appeal would be barred in terms of the proviso to Section 3 of the Law Reforms Ordinance, 1973. The learned counsel for respondents No.2 to 5 prayed for the appeal to be dismissed. In support of his contentions, learned counsel for respondents No.2 to 5 placed reliance on the following case law:-

(i) Commissioner of Income Tax Vs. Sakina Karim (1979 CLC 644). In this case, the Hon'ble Lahore High Court *inter alia* held as follows:-

> *"There is, thus, no manner of doubt that a tenant cannot be ejected except in accordance with the provisions of section 13, and since these provisions do not permit a Rent Controller to order or disallow ejectment of a tenant in terms of an award given in pursuance of an arbitration agreement, clause 12 of the agreement of tenancy relied upon by the appellant is of no consequence. Even if the respondent had referred the matter in dispute to arbitration before it was brought before the learned Rent Controller and had obtained an award in his favour and also a decree in pursuance of the award, it would not have affected the ejectment proceedings taken out against him because, according to subsection (1) of section 13 of the Ordinance, a tenant cannot be evicted in terms of a decree whether passed before or after the coming into force of the Ordinance. By incorporating the word 'otherwise' in subsection (1) the framers of law made it amply clear that a tenant shall not be ejected in any manner except the one provided in section 13. In this view of the matter, the learned Rent Controller was not right in staying the ejectment proceedings on the basis of the arbitration clause relied upon by the he appellant."*

(ii) Abdul Wahid Vs. Ghulam Muhammad (1984 MLD 1198). In this case, the Hon'ble High Court of Sindh *inter alia* held as follows:-

> *"The provisions of Urban Rent Restriction Ordinance, provide a procedure for ejectment of a tenant and do not recognize ejectment by referring the dispute to Arbitrators. Any award made granting ejectment cannot be enforced but it can be used as a corroborative piece of evidence. The relationship between the parties has been established and there being no substantial evidence to prove that the rent was regularly paid by the appellant he was rightly held to be a defaulter."*

(iii) Nuricon Union (Pvt.) Ltd. Vs. Muhammad Nasar Sajjad (2005 CLC 882). In this case, the order passed by the learned Rent Controller turning down the petitioner's application under Section 34 of the 1940 Act, was assailed in a writ petition before the Hon'ble Lahore High Court. The Hon'ble High Court dismissed the writ petition holding that the Rent Controller acted in a *quasi-judicial* capacity and not as a Civil Court. In paragraph 4 of the said report, it was held as follows: -

> ***"4. The admitted position on the record is that writ petitioner has not filed an application under section 34 of the Arbitration Act (X of 1940), in Civil Court but he has filed a petition before the learned Rent Controller which is not the Civil Court in the case of (1) Khadim Mohihuddin and (2) Mrs. S. Mehmood v. (1) Ch. Rehmat Ali Nagra and (2) Mst. Aziz Begum PLD 1965 SC 459 while interpreting the provisions of West Pakistan Urban Rent Restriction Ordinance (VI of 1959) it has been ruled that Rent Controller acts in Quasi-Judicial Capacity and not as a Court as such this writ petition having no merits is dismissed in limine."***

(iv) Muhammad Khalid Vs. Muhammad Naeem (PLD 2012 Lahore 490). In this case, the Hon'ble High Court upheld an order passed by the learned Rent Controller refusing to consolidate proceedings for eviction of a tenant, and proceedings for making an arbitration award into a rule of Court. In paragraphs 10 and 11 of the said report, it was held as follows:-

> ***"10. The proceedings under Arbitration Act, 1940 are to be taken up by Civil Court while ejectment petition is to be decided by the Rent Controller a persona designata under the provisions of West Pakistan Urban Rent restriction Ordinance, 1959. These two jurisdictions are entirely different. Pleadings, issues, evidence, and other material in both the matters being different ought to be decided independently and separately.***
>
> ***11. In our judicial system, a Civil Judge has been assigned different jurisdictions e.g. the power of Rent Controller under the Rent Laws, to act a s Family Judge under the Family Laws, to act as Guardian Judge under the Guardians and Wards Act, to exercise powers as Magistrate under the provisions of Cr.P.C. etc. but that does not mean that while he is exercising different jurisdictions, all the proceedings before him can be amalgamated. In the case in hand, although the Presiding Officer was the same who was acting as Rent Controller, as also the Civil Judge but in one he is a persona designata and exercising quasi judicial jurisdiction whereas with regard to other one he was acting as a Civil Judge under the Code of Civil Procedure. Neither two jurisdictions nor the proceedings under two entirely different laws can be consolidated or amalgamated. In this case by now the tenant is succeeded in avoiding the verdict of Rent Controller in ejectment petition on a plea of consolidation of the proceedings of such ejectment petition with that of an arbitration proceeding which is not permissible and practicable under the law."***

10. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant

appeal are set out in sufficient detail in paragraphs No.2 to 5 above and need not be recapitulated.

11. The essential question that needs to be determined is whether the learned Rent Controller was correct in dismissing the appellants' application under Section 34 of the 1940 Act, and consequently refusing to stay the eviction proceedings instituted by respondents No.2 to 5 for the eviction of the appellants from the rented premises. The execution of the lease agreement dated 01.01.2006 between the appellants and respondents No.2 to 5 is admitted. It is also admitted that after a lapse of ten years of the effective date of the said lease agreement, a fresh lease agreement was not executed between the said parties. The lease agreement dated 01.01.2006 contained an arbitration clause providing for the disputes between the appellants and respondents No.2 to 5 to be settled by arbitration. It is also not in dispute that disputes and differences arose between the appellants and respondents No.2 to 5 resulting in filing of an eviction petition under Section 17 of the IRRO by the latter before the learned Rent Controller.

12. In order to determine whether the learned Rent Controller had exclusive jurisdiction to decide an eviction petition instituted by a landlord against a tenant, the scheme of the IRRO will have to be appreciated. The preamble of the IRRO provides that it was expedient to regulate the relations between the landlords and tenants of rented premises in the Islamabad Capital Territory and to provide of matters ancillary thereto or connected therewith. Section 4 of the IRRO provides that the provisions of the IRRO shall have effect notwithstanding anything contained in any other law for the time being in force, or in any instrument or document. Section 7(1) of the IRRO obligates the Federal Government to appoint one or more Rent Controllers for the urban area of the Islamabad Capital Territory. Section 7(3) of the IRRO provides that an application under the IRRO shall be filed before the Rent Controller having jurisdiction over the area where the building or rented land, in respect of which the application is made, is situated. Although there is no express

provision in the IRRO regarding ouster of jurisdiction of the Civil Court or a domestic forum, Section 17(1) of the IRRO mandates that a tenant in possession of a building or rented land shall not be evicted therefrom except in accordance with Section 17 of the IRRO. Section 17(2) of the IRRO *inter-alia* provides that a landlord who seeks to evict his tenant shall apply to the Rent Controller for a direction in that behalf.

13. Normally, the word "shall" *prima facie* ought to be considered as mandatory but the Court is to ascertain the real intention of the legislature by an examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. Since Section 4 of the IRRO gives the provisions of the IRRO (including Section 17(2) of the IRRO) effect notwithstanding anything contained in any other law for the time being in force, or in any instrument or document, the provisions of Section 17(2) of the IRRO can safely be termed as mandatory by virtue of the employment of the word "shall" in the said provision. A non-obstante clause, like the one in Section 4 of the IRRO, is generally used in a statute with a view to give the statute an overriding effect in case of conflict with any other law. Sections 4, 7(3) and 17(1) and (2) of the IRRO, read conjointly, vest the Rent Controller with exclusive jurisdiction over petitions by landlords for the eviction of tenants from rented premises within the territorial limits of the Rent Controller. These provisions as well as the other provisions of the IRRO are a self contained code, regulating the relationships of landlords and tenants, creating special rights and liabilities, and, providing for determination of such rights and liabilities by a special tribunal i.e. the Rent Controller. The clear and explicit intendment of the legislature is that the tribunals constituted under the IRRO should decide all questions relating to the special rights and liabilities created by the IRRO. Consequently, there is an implied bar on the Civil Court or any other forum to assume jurisdiction on matters pertaining to the eviction of tenant by a landlord. Since a Civil Court has no jurisdiction to try an eviction petition

by operation of the aforementioned provisions of the IRRO, by analogy, no petition for eviction can be maintained before the arbitrator also.

14. Parties competent to execute contracts are at liberty to enter into arbitration agreements for the resolution of their contractual disputes. But when there is a special statute (such as the IRRO) covering the field of a particular dispute (such as the eviction of a tenant), the provisions of the special statute alone have to be invoked and the dispute cannot be referred to any other mode of adjudication. Rent Controller proceedings are special proceedings insofar as the eviction of a tenant, fixation of fair rent of a building etc., are concerned and, therefore, the special statute (in this case, the IRRO) alone will apply.

15. Clause 8 of the said lease agreement is reproduced herein below:-

> ***"8. That in case of a dispute between both the parties shall depute one representative each as arbitrators to solve and settle the dispute. In case of disagreement between arbitrators the matter shall be referred to referees, (1) Mr. Mian Muhammad Arkam NIC No.61101-5150940-1, (2) Mr. Chaudhary Muhammad Arif NIC No.61101-1971453-1, or their alternatives. Both the parties will be bound to accept the decision of the referees."***

16. Even though clause 8 of the lease agreement dated 01.01.2006 provides that *"in case of a dispute between both the parties"*, a dispute has to be understood as a dispute other than the one contemplated under the IRRO. Such a construction of the agreement alone would advance the cause of justice and the intention of the legislature. Even otherwise the parties by an agreement cannot be permitted to contract out of the legislative mandate which requires certain kinds of disputes to be settled by a special forum created under the provisions of the IRRO. Therefore, the arbitration agreement in clause 8 of the lease agreement, cannot be recognized to the extent of the agreement to refer eviction disputes to arbitration. Furthermore, since no tenant can be evicted from rented premises in the area to which the provisions of IRRO apply or extend, except in accordance with Section 17 of the IRRO, no useful purpose would be served

even if the issue of eviction is agreed to be referred to arbitration.

17. Assuming that the matter regarding appellant's eviction from the rented premises is referred to arbitration and an award is rendered by the arbitral tribunal for the appellant's eviction from the rented premises, the question that crops up in the mind is whether such an award can be enforced by the Rent Controller. I would say no. Neither can an arbitration award be filed before the Rent Controller under Section 14 of the 1940 Act, nor can the Rent Controller pass a judgment and decree in terms of the award under Section 17 of the 1940 Act. This is because a Rent Controller is not a "Court" as defined in Section 2 (c) of the 1940 Act. Section 23 of the IRRO *inter alia* provides that every order made under Section 17 *"shall be executed by the Controller"* as if it were a decree of a Civil Court. Therefore, a Rent Controller can enforce an eviction order passed under Section 17 of the IRRO, but not an eviction order passed by any domestic forum.

18. In addition to the case law cited by the learned counsel for respondents No.2 to 5, which is clearly applicable to the case at hand, reference may be made to the following case law:-

(i) In the case of Hakim Vs. Tassadaq Hussain Shah (PLD 2007 Lahore 261), it has been held as follows:-

> ***"7. In the first category of the express bar of the civil courts, reference can be made to section 172 of the Land Revenue Act, 1967 or section 25 of the Displaced Persons (Land Settlement) Act, 1958, which unambiguously and expressly command that the jurisdiction of the civil Courts is barred to take the cognizance of the matters, which under the above special laws, have been conferred upon the special forums. Para.27 of the M.L.R. No.64 also falls within the category of the express bar of the jurisdiction. However, if one has to look for the bar of jurisdiction of the Civil Court on the rule of "implication", the Punjab Rent Restriction Ordinance, 1959 is an example, which does not contain any express provision for the ouster of jurisdiction, but under this special law, exclusive jurisdiction has been conferred upon the rent controller to decide the matters referred to in the law vis-a-vis the landlord and the tenant about the properties falling within the purview of the Ordinance.***
>
> ***Thus, for applying the rule of implied bar, it has to be seen that where a special tribunal or a public body is created by or under the authority of an Act of the Legislature for***

the purpose of determining rights which are the creation of the Act, then the jurisdiction of that tribunal or of that body is exclusive and the jurisdiction of the Civil Court is barred."

The learned author Judge of the said judgment rose to grace the Hon'ble Supreme Court. Therefore, the judgment is to be shown reverence and respect.

(ii) In the case of Natraj Studios (P) Ltd. Vs. Navrang Studios (AIR 1981 SC 537), it has been held as follows:-

"17. The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognised by a Court of law."
(Emphasis added)

(iii) In the case of Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. (AIR 2011 SC 2507), it has been held by the Supreme Court of India, as follows:-

"22. Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. The well recognized examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of

> ***conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.”***
> **(Emphasis added)**

19. The principles which may be distilled from the aforesaid judgments as well as the judgments cited by the learned counsel for respondents No.2 to 5, would be the following:-

Insofar as the question of eviction of a tenant from the rented premises to which the provisions of the IRRO apply, is concerned, the Rent Controller alone has the jurisdiction. In arbitration proceedings, the question of eviction cannot be gone into. Even if there is an arbitration clause in the lease agreement, an eviction petition seeking the eviction of the tenant from the rented premises is maintainable. A clause in the lease agreement providing for a reference of disputes between the landlord and the tenant to be referred to arbitration, is not valid insofar as the question of eviction is concerned and to that extent the agreement will not be valid. Proceedings before a Rent Controller are special proceedings, whereas arbitration proceedings have been termed as general proceedings and in such circumstances, the special proceedings will prevail over the general proceedings.

20. Therefore, we are of the considered view that the learned Rent Controller has correctly exercised his jurisdiction by holding, in effect, that the jurisdiction of the Rent Controller is not ousted due to the presence of an arbitration clause in the lease agreement between appellants and respondents No.2 to 5. We are also of the view that the respondents No.2 to 5 could not invoke the jurisdiction of any other forum other than that of the Rent Controller for filing an eviction petition against the appellants. Hence, we have no hesitation in upholding the concurrent orders passed by the learned Judge-in-Chambers and the learned Rent Controller.

21. The case law relied upon by the learned counsel for the appellants does not come to his aid. In none of the cases relied upon by the learned counsel for the appellants did the Superior Courts consider the issue as to whether an application under Section 34 of the 1940 Act seeking stay of an eviction petition filed before a Rent Controller, was maintainable.

22. Yet another reason why we feel that the writ petition instituted by the appellants merited dismissal is because the learned Rent Controller's order dated 23.01.2017 impugned by the appellants before this Court was an interlocutory order. The said order is 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) of the IRRO explicitly provides that no appeal shall lie from an interlocutory order passed by the Rent Controller. It is perhaps for this reason that the appellants have instituted a writ petition to challenge the said interlocutory order dated 23.01.2017. In the case of Atiq-ur-Rehman Vs. Najma Tabassum (2016 CLC 1905), this Court after referring to the law laid down by the Superior Courts in the cases of Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1168), Muhammad Taj Vs. Muhammad Younis Khilji (2008 CLC 1666), Jehangir Khan Jadoon Vs. Gul Nigar Manzoor (2008 CLC 547), Mian Sher Bahadur Vs. Civil Judge Takht Bhai (2003 YLR 1722), Iqbal Ahmed Vs. Muhammad Nasir (2016 MLD 624), Abdul Farooque Vs. Maqsood Ahmed (2015 CLC 663), etc., has held as follows:-

> ***"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."

23. Before parting with this judgment, it may be observed that an order passed under Section 34 of the 1940 Act is appealable under Section 39 of the 1940 Act. If the IRRO is to be treated as the law in question, an appeal against the final order of the Rent Controller can be filed under Section 21 of the IRRO. Since both the 1940 Act, and the IRRO provide for a right of appeal, this intra court appeal would not be maintainable under the proviso to Section 3 of the Law Reforms Ordinance, 1973. However, since the learned counsel for the contesting parties made submissions at length, we decided this appeal on merits as well.

24. In view of the foregoing discussion, the appeal is found to be devoid of merit and not maintainable and is liable to be dismissed and is dismissed, but in the facts and circumstances of the case, there will be no order as to costs.

(AAMER FAROOQ) JUDGE

(MIANGUL HASSAN AURANGZEB) JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*