

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3645 of 2016

Roger Lee

Versus.

Ch. Muhammad Salman, etc.

Date of Hearing: 14.10.2016
Petitioner by: Br. Bilal Akbar Tarar, Advocate
Respondent No.1 by: Mr. Khurram Mehmood Qureshi,
Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Roger Lee, impugns the judgment dated 03.10.2016, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby, the petitioner's appeal against the order dated 20.09.2016, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order dated 20.09.2016, passed under Section 17 (9) of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO"), the learned Rent Controller struck off the petitioner right of defence; allowed respondent No.1's eviction petition, and directed the petitioner to hand over vacant possession of Unit No.03, Gol Market, Sector F-7/3, Islamabad ("the rented premises") to respondent No.1 (Ch. Muhammad Salman).

2. The record shows that on 04.03.2016, respondent No.1 filed a petition under Section 17 of the IRRO seeking the eviction of the petitioner from the rented premises. The grounds on which the said eviction petition was filed were, (1) personal bonafide need of respondent No.1 (2) expiry of the term in the lease agreement, (3) default in the payment of rent, etc. In the said petition it was *inter alia* pleaded that vide transfer letter dated 05.01.2016, the ownership of the rented premises was transferred by the Capital Development Authority in favour of respondent No.1, and that vide letter dated 01.02.2016, respondent No.1 informed the petitioner about the change in the ownership of the rented premises. Furthermore, it was pleaded that the petitioner knew about the change in the ownership of the rented premises, since November,

2015, and that is when respondent No.1 called upon the petitioner to vacate the rented premises.

3. The petitioner contested the said eviction petition by filing a written reply. Respondent No.1's assertion that the petitioner knew about the change in the ownership of the rented premises since November, 2015, was denied by the petitioner. The petitioner had asserted that the rented premises had been in his father's possession since 1975, and that rent had regularly been paid to the landlords without fail at any material stage.

4. Vide order dated 30.07.2016, passed by the learned Rent Controller, under Section 17(8) of the IRRO, the petitioner was given the following directions:-

"Therefore, in these circumstances the respondent is directed to deposit of arrears of rent @ Rs.115,561/- per month from November 2015 till July 2016 in the Court account on or before next date of hearing & to produce the receipts of the same in the Court on the next date of hearing. However, if the respondent has already deposited the above mentioned arrears in the Court account, the respondent shall produce the receipts of such deposit in the Court on the next date of hearing & the respondent need not to again deposit the arrears of rent. The respondent is further directed to deposit the future monthly rent @ Rs.115561/- per month in the Court account in advance before 15th of each month till final conclusion of the petition."

5. Vide Order dated 20.09.2016, the learned Rent Controller struck off the petitioner's defence under Section 17 (9) of the IRRO and accepted Respondent No.1's eviction petition. The petitioner's appeal against the said Order was dismissed by the learned appellate Court vide Judgment dated 03.10.2016. The said concurrent orders of the learned lower Courts have been impugned by the petition in the instant writ petition.

6. Learned counsel for the petitioner submitted that the petitioner had been regularly paying the rent to the landlords since more than the past two decades; that the petitioner came to know about the change in the ownership of the rented premises when notice dated 01.02.2016, was sent; that rent for the months of November and December 2015, had been paid directly to the previous landlords; that rent for the month of January 2016, was deposited in the Court account, in the name of the previous owner because at that time the petitioner was not aware of the change in the ownership of the rented premises; that admittedly, rent for the

months of February 2016 onwards has been deposited in the Court account in the name of respondent No.1; that prior to the filing of the eviction petition, the petitioner on 29.01.2016, filed an application before the learned Rent Controller for deposit of rent for the months of January to March 2016 because the previous owner had refused to accept the rent for the said period, and the petitioner had no notice of change in the ownership of the rented premises; that in the said application dated 29.01.2016, it was pleaded that the petitioner had paid the previous owner rent for the months of October to December, 2015 through cheque and money order; that the petitioner had showed compliance with the tentative rent order dated 22.09.2016, by depositing the rent for the months of January 2016 onwards; that there was no need to deposit the rent for the months of November and December 2015, as the same had already been paid to the previous landlords. Learned counsel for the petitioner prayed for the writ petition to be allowed, so that the petitioner could contest the eviction petition on merits.

7. On the other hand, learned counsel for respondent No.1 submitted that the tentative rent order dated 30.07.2016, passed by the learned Rent Controller, is explicit in its terms; that the petitioner was under an obligation to deposit the arrears of rent at the rate of Rs.115,561/- per month from the month of November 2015 till July 2016 in the Court account, and to produce the receipts regarding the same on the next date of hearing; that it was also ordered that if the petitioner had already deposited the said arrears of rent in the Court account, he was to produce the receipts regarding such deposit; that since the petitioner had not deposited rent for the months of November and December 2015, in the Court account, and could not produce the receipts for such payment, the learned Rent Controller, proceeded strictly in accordance with the law by striking off the petitioner's right of defense under Section 17(9) of the IRRO, and accepted the eviction petition. Learned counsel for respondent No.1 prayed for the writ petition, to be dismissed. In making his submissions, the learned counsel for respondent No.1 placed reliance on the law laid down in the cases of Najeebullah Khan Vs. Hameeda Chaudhry (2016 YLR 1538),

Muhammad Shahid Fahim Vs. Abdullah Tayyab (2016 MLD 1121), Bilal Abid Vs. District Judge West (2015 YLR 2405), George Chou Vs. Fahmida Zaidi (2015 YLR 2543), Shamshad Ali Vs. Ghulam Muhammad Chaudhry (2009 CLC 52), Roshan Habib Vs. Haji Usman (1986 CLC 1484), and Mushtaq Ahmed Kiani Vs. Bilal Umair (2009 SCMR 1008).

8. I 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 writ petition have been set out in sufficient detail in paragraphs 2 to 5 above, and need not be recapitulated.

9. It is not disputed that rent for the month of January 2016 had been deposited in the Court. Although, it was deposited in the name of the previous landlords, it was nevertheless deposited. There would be no legal impediment in this amount being paid to respondent No.1 as the same is secured with the Court. To have expected, the petitioner withdraw this amount from the court account, and re-deposit in the name of respondent No.1, is, in my view, too hyper-technical, and the petitioner could not have been non-suited due to this.

10. As regards the payment of rent for the months of November and December 2015, the contesting parties are at variance whether or not the petitioner, in November 2015, had knowledge about the change in the ownership of the rented premises. Respondent No.1 in his eviction petition, had *inter alia* pleaded that the Capital Development Authority, vide transfer letter dated 05.01.2016, had transferred the ownership of the rented premises in favour of respondent No.1, and that on 01.02.2016, the petitioner was served with the notice as regards the change in the ownership of the rented premises. In this view of the matter, whether or not the petitioner, in November 2015, knew about the change in the ownership of the rented premises, is a dispute which is to be resolved after recording of evidence.

11. Section 19 of the IRRO *inter alia* provides that where the ownership of building or rented land in the possession of a tenant has been transferred by way of sale, gift, inheritance or any other

mode or manner, whatsoever, the new owner shall send an intimation of such transfer in writing by registered post to the tenant of such building or rented land. Pleadings in paragraph-9 of respondent No.1's eviction petition show that compliance with the requirements of Section 19 IRRO was made by respondent No.1 by issuing the notice dated 01.02.2016. Section 17(8) of the IRRO mandates that the Rent Controller shall direct the tenant to deposit in his office "the rent due from him". By directing the petitioner to deposit rent for the months of November and December 2015, (when the rented premises had not been transferred to Respondent No.1), the learned Rent Controller, proceeded under an assumption that rent for the said period had not been paid by the petitioner to the previous landlords. In making such a direction under Section 17(8) of the IRRO, the learned Rent Controller, seems to have lost sight of the fact that the petitioner had, on 29.01.2016, filed an application for the deposit of rent for the months of January to March 2016, wherein, it was explicitly pleaded that rent for the months of October to December 2015, had been paid to the previous landlords through cheque No.30904583, dated 15.10.2015, for Rs.243,778/- and Rs.102,903/- through money order dated 15.10.2015. As regards the contention of the learned counsel for respondent No.1 that through a cheque was not a valid mode for the payment of rent, I am of the view, that it remains to be seen during the trial whether the previous landlords come forward and testify that the petitioner had not paid rent for the months of November and December 2015.

12. In this view of the matter, I feel that it was not lawful for the Rent Controller to have subjected the petitioner to the penal measure of striking off his defence, and accepting respondent No.1's eviction petition simply because the petitioner did not deposit in the court account rent for the months of November and December 2015. This is moreso, when admittedly the Capital Development Authority transferred the ownership of the rented premises to respondent No.1 on 05.01.2016, and the petitioner was informed about the same in terms of Section 19 of the IRRO, vide notice dated 01.02.2016. Respondent No.1 could not, by any stretch

of imagination, claim to be paid rent for the period when he had not even become the owner of the rented premises.

13. There is not cavil with the view expressed in the judgments cited by the learned counsel for Respondent No.1 that the directions contained in the order of the Rent Controller passed under Section 17(8) of the IRRO, have to be strictly complied with by the tenant. However, a tentative rent order under Section 17(8) of the IRRO has to be for "the rent due" from the tenant. It would be for respondent No.1, during the trial to establish that the petitioner had not paid rent for the months of November and December 2015 to the previous landlords.

14. In view of the above, I do not find the impugned orders dated 03.10.2016, and 20.09.2016, passed by the Courts of the Additional District Judge Islamabad, and the learned Rent Controller, respectively to be sustainable. Therefore, the same are set aside with no order as to costs. The learned Rent Controller shall decide the eviction petition expeditiously and preferably within the period stipulated in Section 25(3) of the IRRO, and bearing in mind the guidelines set out in the judgment dated 29.06.2016, passed by this Court in W.P.No.1761/2016 titled "Muhammad Akbar Chohan Vs. Rent Controller, Islamabad etc".

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

Qamar Khan*

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Approve For Reporting.