

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

WP No. 2051-P of 2019

Aslam Khan
Versus
Fawad Akhtar

JUDGMENT

Date of hearing.	13.05.2019
Petitioner (tenant) by:	Mr. Mehar Gul, advocate.
Respondent (Landlord) by:	Mr. Muhammad Zafar Tahirkheli, advocate.

QAISER RASHID KHAN, J:-. The petitioner-tenant has called in question the judgment and order dated 20.03.2019 of the learned appellate court (ADJ-XV), Peshawar whereby his appeal was dismissed and the judgment and order dated 25.09.2018 of the learned Rent Controller-II, Peshawar whereby the eviction petition of the respondent-landlord has been allowed on the ground of expiry of the rent agreement was upheld.

2. The epitome of the petition is that the respondent-landlord filed a petition against the petitioner-tenant for his eviction from shop No. 1, Fawad Market Gulshan Bazar, Illaqa Gari Khana, Peshawar City mainly on the ground that although the rent agreement was for one year with effect from

01.08.2011 to 31.07.2012 for a monthly rent of Rs. 4400/- but the latter is not ready to execute fresh rent deed and has continued paying rent at the rate of Rs.6500/- per month till January, 2016 and thereafter defaulted in payment of rent.

3. On being put to notice, the respondent-tenant appeared before the learned trial court and contested the petition by filing his written reply wherein he denied the claim of the petitioner-landlord and in view of the divergent pleadings of the parties, the learned Rent Controller, Peshawar framed as many as three issues including the relief.

4. Both the parties produced their respective evidence and after hearing the learned counsel for the parties, the learned Rent Controller-II, Peshawar vide judgment and order dated 25.09.2018 allowed the petition on the ground of expiry of rent agreement and directed the petitioner-tenant to vacate the demised premises within a month. The said judgment and order was in turn assailed before the learned appellate court in appeal where too, the petitioner could not succeed and his appeal was dismissed by the learned ADJ-XV, Peshawar vide judgment and order dated 20.03.2019 and hence the present petition.

5. The learned counsel for the petitioner contends that the petitioner is regularly paying the rent and willing to execute fresh rent agreement and that the original rent agreement remained in the field with the consent of both the parties. He further contends that the petitioner has deposited the entire rent amount and has never defaulted in payment of rent.

The learned counsel for the respondent-landlord opposes such contentions of the learned counsel for the petitioner-tenant and defends the impugned judgments and orders of both the learned courts below on almost the same grounds as detailed therein.

6. Arguments heard and the available record perused.

7. The relationship of tenant and landlord is not denied by the petitioner-tenant and the latter has been occupying the demised premises on the strength of an agreement (Ex.PW-1/4). The said agreement was for one year commencing from 01.08.2011 to 31.07.2012 and thereafter as per own stance of the respondent-landlord, the petitioner-tenant used to pay monthly rent at the enhanced rate of Rs. 6500/-till January, 2016. The same for all purposes shows that the petitioner-tenant after the expiry of rent agreement had continuously paid

the monthly rent without any objection from the respondent-landlord and thus, that the latter was impliedly satisfied from the rent so paid to him. In these circumstances, the doctrine of “acceptance by silence” would certainly appear to be applicable in case in hand as the respondent-landlord accepted the increase in rent by his silence and continued performance of the rent agreement. Reliance placed on *PLD 1975 Supreme Court 193*.

8. It was on 21.10.2017, when the respondent-landlord instituted an eviction petition on the grounds of expiry of rent agreement, default in the payment of rent with effect from February 2016 as well as the recovery of arrears. However, he has not produced any convincing and confidence inspiring evidence to substantiate that in fact the petitioner-tenant has defaulted in the payment of rent. The respondent-landlord had for all intents and purposes accepted the increased rent from the petitioner-tenant for almost 4 long years and as such could not retract from such position. In view of the implied and tacit approval of the respondent-landlord to accept the increased rent from the petitioner-tenant for a period of about four years and that too, in the absence of any written rent deed confers the status of a statutory tenant upon the petitioner-tenant during the intervening period. Accordingly, it does not


lie in the mouth of the respondent-landlord to term the stay of the petitioner-tenant in the rented premises to be without any statutory backing. Reliance placed on **2011 CLC 1498**.

9. For the foregoing reasons, this court is of the view that both the learned courts below have not properly appreciated the material available on the record and the respective evidence of the parties while passing the impugned judgments and orders and are thus not sustainable in the eye of law.

10. Accordingly, this petition is admitted and allowed, the impugned findings of both the learned courts below are set aside and resultantly the eviction petition of the respondent-landlord stands dismissed with no order as to costs.

Announced.
13.05.2019

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SENIOR PUISNE JUDGE

Mr. Justice Qaiser Rashid Khan (SB)