

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT, BANNU BENCH.  
(Judicial Department)

W.P No.351-B of 2019.

Gul Sher Abat Khan  
Vs  
Mumtaz Ali Khan & others.

**JUDGMENT**

Date of hearing                      22.4.2019

Appellant-Petitioner :    **By Mr. Sawal Nazir Khan, Advocate.**

Respondent(s):                      \_\_\_\_\_

\_\_\_\_\_

**MUHAMMAD NASIR MAHFOOZ, J.---** The petitioner through instant writ petition has invoked the constitutional jurisdiction of this Court, praying that:-

- “ i) To set aside the impugned judgment, order and decree dated 08.03.2019, passed by learned Additional District Judge-II, Bannu, in rent appeal No.01/Nim of 2019, to the extent of the petitioner; and to upheld and maintain the judgment, order and decree dated 02.9.2010, passed by learned Civil Judge-VIII/Rent Controller, Bannu*
- ii) As well as to set aside the impugned order dated 08.3.2019, to the extent of rejecting the application of the petitioner, to make registry Wasiqa No.189 and 190, dated 28.02.2019, as part and parcel of record.”*

2. Brief facts of the case are that respondents Mumtaz Ali Khan and 02 others have filed ejectment petition against the petitioner and proforma respondent No.2 under section 13 of the Khyber Pakhtunkhwa Rent Restriction Ordinance, 1959 for the eviction of the respondents from the shop bearing survey No.121/6 situated at Chowk Bazar Bannu and for the recovery of rent since November, 2001 till April 2004 @ of Rs.7000/- per month. The respondents have claimed that respondent No.1 has committed default in payment of monthly rent and they require the suit shop for their personal need.

3. This case was twice remanded by this Court firstly on 24.7.2017 and secondly on 10.01.2019, when the judgment of learned appellate Court was set aside for non-compliance of Order 41 Rule 31 CPC and the case was remanded back to it for decision afresh. Thereafter, the learned appellate Court in compliance of above order of this Court, accepted the appeal with direction to petitioner to vacate the premises within the span of 03 months and also to make payment from November, 2011 till date of eviction @ Rs.4000/- per month with annual increase of 10%. Hence, the instant writ petition.

4. I have heard the arguments of learned counsel for the parties and perused the record.

5. Landlords/ respondents instituted ejectment petition on 20.4.2004 under section 13 of the Khyber Pakhtunkhwa Rent Restriction Ordinance, 1959, on the ground of default in rent and personal use. It is immaterial for decision of ejectment petition to refer to dispute of any ownership and once relationship of landlord and tenant exists, rent controller can proceed with the trial. Learned counsel for petitioner, inter alia, stressed that petitioner has purchased part of suit property on the basis of registered deed No.190 dated 28.02.2019 which is in fact a withdrawal of any encumbrance relating to some part of suit property in possession of petitioner/tenant. In para No.4 of his written statement petitioner/tenant has asserted his possession as mortgagee for an amount of Rs.782000/- from respondent No.2 in panel of proforma respondents. No other ground is urged therein.

6. Learned counsel for the petitioner was asked to show any receipt of rent last deposited by petitioner, he could not refer to any receipt but admitted that he has denied relationship of landlord and tenant. Twice the subject matter of this case reached this Court, first in Writ Petition No.93-B of

2011 decided on 24.7.2017 when the order of remand passed by learned appellate Court was set aside and remanded to him to decide the same himself. Second time in Writ Petition No.998-B of 2017 decided on 10.01.2019 when the judgment of learned appellate Court was set aside for non-compliance of Order 41 rule 31 CPC, hence the impugned order was passed now assailed in the instant writ petition. The proceedings of ejectment petition has kept the respondents at loggerheads from the last fifteen years on trivial grounds, and notwithstanding, the ground for personal need, petitioner has never cared to deposit monthly rent at any stage, whatsoever.

7. Under section 13(6) of the Khyber Pakhtunkhwa Rent Restriction Ordinance, 1959, after receiving written reply rent controller shall pass an order for deposit of tentative rent by the tenant but if the tenant makes default in the compliance of such order his defence shall be struck off and the landlord shall be put into possession without further proceedings. No record relating to such order for deposit of rent has been annexed with the instant writ petition, perhaps, to avoid any consequences. Respondent No.1 appeared as RW-4 as special

attorney and admitted in examination-in-chief that respondent No.1/landlord offered him to have the suit shop on tenancy of Rs. 5 lac security so he paid Rs. 60,000/- to proforma respondent. In cross-examination he deposed to the effect of payment of rent through receipt Ex.RW4/1 and one Muhammad Anwar Khan stood as surety in between the parties. From all the assertions made in his statement, a conclusion can be easily drawn that relationship of landlord and tenant exists between the parties and petitioner has dragged the respondents/landlords in unnecessary litigation on the oral pretext of being co-sharer.

8. It also requires to be mentioned that the case of petitioner falls within the purview of Article 115 of Qanun-e-Shahadat Order that estops a tenant from denying title of a landlord once he enters into possession as such.

9. Learned counsel for the petitioner wanted to take utmost benefit of judgment reported as PLD-2009-SC-71 but this case has got distinguishing features. Petitioner has availed complete opportunity of defence and exhausted all the available remedies to keep the matter lingering on. Upshot of

my above findings are that, the instant writ petition is  
dismissed in *LIMINE*.

**Announced.**  
*22.4.2019*

***JUDGE***

*Ihsan\** (S.B) Hon'ble Mr. Justice Muhammad Nasir Mahfooz