

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE YAHYA AFRIDI

AFR

Civil Petitions Nos.805-L TO 812-L AND 814-L OF 2019.

(Against the consolidated order dated 20.2.2019 passed by the Lahore High Court in WP No. 246503, 254424-25, 254408, 254428, 254415, 254418, 254421 & 254411 of 2018)

Haji Muhammad Latif

Petitioner (In all cases)

Versus

**Muhammad Sharif & another
Muhammad Aslam & another
Shamim Akhtar & another
Muhammad Riaz & another
Zahida Bibi & another
Ghulam Mustafa & another
Maqbool Kamboh & another
Rehmat Ali @ Kala Changar etc.
Ghulam Qadir & another**

Respondents (In CP 805-L/19)
Respondents (In CP 806-L/19)
Respondents (In CP 807-L/19)
Respondents (In CP 808-L/19)
Respondents (In CP 809-L/19)
Respondents (In CP 810-L/19)
Respondents (In CP 811-L/19)
Respondents (In CP 812-L/19)
Respondents (In CP 814-L/19)

For the Petitioner(s) : Mr. Nadeem ud Din Malik, ASC

For the Respondent(1) : Pirzada Mamoon Rashid, ASC (VL-Lhr).

Date of Hearing : 09.03.2021

ORDER

Sajjad Ali Shah, J.- The petitioners seek leave of this Court to file appeals against a common order of the Lahore High Court dismissing all the petitions by holding the impugned order of the Rent Controller as interim whereby the Rent Controller though declined to grant leave to defend the ejectment petitions but directed the petitioner to adduce evidence and granted respondents' right to cross examine.

2 Briefly, the petitioner filed nine ejectment petitions against his different tenants *inter alia*, on the ground of default, the respondents having been served, filed applications seeking leave to defend the ejectment proceedings. The learned Rent Controller, after hearing the parties, through a common order declined to grant leave to

the tenants to defend the ejectment petitions but fixed all the case for production of supporting evidence of the land-lord and awarded the respondents/tenants a right to cross examine the land lord and his witnesses. This order of the Rent Controller was challenged by the petitioner/land-lord before the Lahore High Court by filing writ petitions asserting the order to be in violation of law, however, the petitions were dismissed again through a common impugned order by holding the order of the Rent Controller as interim and, therefore, not assailable.

3. Learned ASC for the petitioner while inviting our attention to sub-Section 6 of Section 22 of the Punjab Rented Premises Act 2009 (hereinafter referred to as "the Act, 2009"), contends that the law provides that in cases where leave to contest is refused or the respondent has failed to file application for leave to contest within the stipulated time, the Rent Tribunal shall pass the final order. Further submits that the Rent Controller after declining the leave to contest could not have directed the petitioner/land-lord to produce supporting evidence and to grant opportunity to the respondent-tenants to cross examine the witnesses, so produced. Per counsel, the law clearly provides that once the Rent Tribunal refuses to grant leave, it shall pass final orders, therefore, the order of the Rent Controller directing the production of supporting evidence and granting opportunity to the tenant to cross examine, was in violation of Section 22(6) of the Act, 2009 and the High Court, instead of taking note of such illegality dismissed the petition by holding that the order was interim and the law did not provide a remedy against the interim order.

4. On the other hand, learned counsel for the respondents vehemently contended that the subject order was in the nature of an

interim order and Section 28(2) of the Act, 2009 clearly bars appeal against the interlocutory order of the Rent Tribunal, to support his contention reliance was placed on the judgment of this Court in the case of President All Pakistan Women Association Peshawar Cantt. vs. Muhammad Akbar Awan (2020 SCMR 260).

5. We have heard the learned counsel for the respective parties, perused the record and the relevant provisions of the Act, 2009.

6. There is no cavil to the proposition that sub-Section 2 of Section 28 of the Act, 2009 bars filing of appeal against an interim order and there are also no two views that in cases where a statute specifically bars the remedy of appeal against an interim order then such statutory command ordinarily should not be circumvented by allowing parties to invoke writ jurisdiction. However, in the instant case what escaped from the notice of the High Court was as to whether the Rent Controller after declining leave to the tenant to contest the ejectment application could direct the land-lord to adduce evidence and allow the tenant to cross examine the land-lord specially when the provision of sub-Section 6 of Section 22 of the Act, 2009 specifically provide that in case where the leave to contest is refused or the respondent has failed to file application for leave to contest within the stipulated time, the rent Tribunal shall pass the final order. This being a mandatory provision with the consequences spelled leaves no option for the Rent Controller but to pass final order. However, it is to be noted that the language employed in Section 22(6) by using the words "final order" instead of "ejectment order", leaves room for the Rent Controller to apply his judicial mind before passing a final order as

required under the circumstances of each case may it be ejectment of a tenant or otherwise.

7. It appears that the Rent Controller being oblivious of such command proceeded with the matter as if exercising ordinary civil jurisdiction ordained under the Code of Civil Procedure where even after debarring the defendant to file written statement by declaring him *ex parte*, the plaintiff can be asked to adduce evidence and the defendant can be provided with opportunity to cross examine. It is to be noted that the powers conferred on the Rent Controller under sub-Section 6 of Section 22 of the Act, 2009 are more akin to the provisions of Order XXXVII Rule 2 CPC which provide that on default of defendant in obtaining leave to defend, the plaintiff shall be entitled to a decree. Likewise, in cases where a tenant is declined leave to contest, the Rent Controller is left with no option but to pass a final order.

8. In the circumstances, ^{for} these petitions ^{are for} converted into appeal and ^{for} are allowed. The Rent Controller is directed to decide the ejectment petitions through a final order in terms of the provisions of Section 22(6) of the Act, 2009.

Judge

Judge

Judge

Islamabad
09.03.2021

A. Rehman

| Not Approved For Reporting