ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2393 of 2021
Dr. Ali Muhammad
Versus
Additional District Judge Islamabad-West and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05.07.2021	**Ch. Abdul Rehman Hur Bajwa, Advocate for the petitioner.**

Through the instant writ petition, the petitioner, Dr. Ali Muhammad, impugns the order and decree dated 28.06.2021 passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the order and decree dated 05.05.2021 passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order dated 05.05.2021, the learned Rent Controller allowed the eviction petition filed by respondent No.3 by invoking the penal provisions of Section 17(9) of the Islamabad Rent Restriction Ordinance, 2001 ("I.R.R.O.") and directed the petitioner to forthwith handover the peaceful possession of House No.51, Street No.30, Sector G-6/1-3, Islamabad ("the rented premises") to respondent No.3.

2. The record shows that on 03.09.2019, respondent No.3 filed an ejectment petition before the Court of the learned Rent Controller under Section 17 of the I.R.R.O. against the petitioner seeking the latter's eviction from the rented premises. In the said petition, it was pleaded *inter alia* that on 11.05.2012, a lease agreement was executed between the petitioner and respondent No.3; that the said lease agreement was valid up to 31.05.2014; that after July, 2019, the petitioner committed default in the

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payment of rent; that the lease agreement had expired on 31.05.2014; and that respondent No.3 requires the rented premises for his *bonafide* personal use.

3. The petitioner contested the said eviction petition by filing a written reply. In the said written reply, the petitioner denied the relationship of landlord and tenant with respondent No.3. It was also pleaded that respondent No.3 was neither the owner nor the landlord of the rented premises. The petitioner denied executing the lease agreement dated 11.05.2012.

4. Vide order dated 11.02.2020, the learned Rent Controller called upon the petitioner to deposit tentative rent at the rate of Rs.50,000/- per month with effect from October, 2019. The petitioner was also directed to deposit future rent at the same rate on or before the fifteenth day of each coming month. Furthermore, the learned Rent Controller also framed an issue on the question whether there existed a relationship of landlord and tenant between the petitioner and respondent No.3.

5. The said order dated 11.02.2020 was assailed by the petitioner before this Court in writ petition No.584/2020, which was dismissed in *limine* vide order dated 24.02.2020.

6. Since it is an admitted position that the petitioner has not shown compliance with the direction for the deposit of tentative rent order, the learned Rent Controller, vide order dated 05.05.2021, invoked the provision of Section 17(9) of the I.R.R.O. by striking of the petitioner's right of defence and allowing the eviction petition.

7. The said order dated 05.05.2021 was assailed by the petitioner in an appeal before the

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Court of the learned Additional District Judge, Islamabad. Vide order dated 28.06.2021, the said appeal was dismissed.

8. The petitioner has assailed the said concurrent orders passed by the learned Courts below in the instant writ petition.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the learned Rent Controller could not have passed a tentative rent order while framing an issue on whether there existed a relationship of landlord and tenant between the petitioner and respondent No.3; that the petitioner was under no obligation to pay rent to respondent No.3; and that the lease agreement dated 11.05.2012 was not executed by the petitioner, and therefore, not binding on him. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

10. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

11. The facts leading to the filing of the instant writ petition have been set out in sufficient detail in paragraphs 2 to 8 above, and need not be recapitulated.

12. Learned counsel for the petitioner has not been able to explain as to how the petitioner entered the rented premises, if it was not through the lease agreement dated 11.05.2012. Learned counsel for the petitioner has also not been able to explain as to whether the petitioner was in occupation of the rented premises in his capacity as an owner or as a tenant of some other person. The reply to the eviction petition is silent as to the

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date on which the petitioner entered the rented premises. No document has been brought on the record to show that the petitioner was the owner of the rented premises or that he had been put in possession of the rented premises by some other person through lawful means. In view of all these factors, I feel that the learned Rent Controller was correct in observing in his order dated 11.02.2020 that *prima facie* the petitioner's denial as to the relationship of landlord and tenant seems to be contumacious and needs to be probed.

13. After the dismissal of writ petition No.584/2020, it was obligatory for the petitioner to have shown compliance with the tentative rent order dated 11.02.2020. It is an admitted position that the petitioner has not shown compliance with the tentative rent order. The consequences of default in the failure to show compliance with a tentative rent order are provided in Section 17(9) of the I.R.R.O. which is reproduced herein below:

> ***"17(9) If the tenant fails to deposit the amount of rent before the specified date or, as the case may be, before the fifteenth day of the month, his application if he is an applicant shall be dismissed or his defense, if he is a respondent, shall be struck off, and the landlord shall be put in possession of the building without any further proceedings."***

14. Since there is an admitted default on the part of the petitioner to show compliance with the tentative rent order, I find that the concurrent orders passed by the learned Courts below to be strictly in accordance with the statute and the law laid down by the Superior Courts in the following cases:-

(i) In the case of Mushtaq Ahmad Kiani Vs. Bilal Umair, reported as 2009 SCMR 1008, the tenant was directed under Section 17(8) of

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the I.R.R.O. to deposit rent on or before a specified date. As the tenant failed to comply with a direction of the learned Rent Controller, his defence was struck off and the eviction petition was allowed. The Hon'ble Supreme Court held that the provision of Section 17(9) of the I.R.R.O. was mandatory, and where the tenant does not deposit the rent in compliance with an order passed under Section 17(8) of the I.R.R.O., the learned Rent Controller was left with no discretion except to order the ejectment of the tenant without further proceedings.

(ii) In the case of Bilal Abid Vs. District Judge (West) Islamabad reported as 2015 YLR 2405, this Court has not even condoned a delay of two days in the deposit of rent in compliance with Section 17(8) of the I.R.R.O. On account of such delay in the deposit of rent, the tenant was held to have become a defaulter and liable to be evicted from the rented premises under Section 17(9) of the I.R.R.O.

(iii) In the case of Shamshad Ali Vs. Ghulam Muhammad Chaudhry reported as 2009 CLC 52, this Court held that the learned Rent Controller was fully competent under the law to pass the ejectment order and strike off the defence of the tenant in case of non compliance of an order passed under Section 17(8) of the I.R.R.O. In the said case, this Court dismissed a writ petition against an appellate order, whereby the appeal against the eviction order passed by the learned Rent Controller under Section 17(9) of the I.R.R.O., was dismissed. This is what

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also happened in the case of Hassan Ali Khan Vs. Additional District Judge Islamabad, reported as 2003 CLC 1819.

(iv) In the case of Major (R) Shakil-ud-Din Ahmad Vs. Addl. District Judge, Islamabad, reported as 2007 CLC 601, it has been held at paragraph 5 of the said judgment as follows:-

> ***"5. In the instant case the facts are very simple. The relationship of landlord and tenant between the parties is admitted, therefore, on 13-6-2006 the learned Rent Controller correctly passed an order in exercise of jurisdiction under section 17(8) of the Islamabad Rent Restriction Ordinance, 2001 directing the petitioner to deposit the past rent and fixed the case for 28-6-2006 for production of proof of the rent deposited. The petitioner did not challenge the jurisdiction of the Rent Controller at the time of passing the order under section 17(8) of the Ordinance, but he moved an application on the said date for extension of time of 15 days for payment of rent instead of depositing the same. .... Since the petitioner violated the order dated 13-6-2006 passed by the Rent Controller under section 17(8) of the Islamabad Rent Restriction Ordinance and did not deposit the rent as ordered by the Court, therefore, the Rent Controller had no option except to strike off the defence of the petitioner and passed the order of ejectment in exercise of the jurisdiction under section 17(9) of the Ordinance. In the case reported as Zikar Muhammad v. Mrs. Arifa Sabir and another 2000 SCMR 1328, where the Rent Controller had struck off defence of the tenant and ordered him to hand over the vacant possession of premises to landlord and the High Court holding that there was no good cause or reasonable explanation for delay/negligence in payment of rent by the tenant dismissed the appeal, the Honourable Supreme Court while interpreting the provisions of section 13(6) of the West Pakistan Urban Rent Restriction Ordinance (VI of 1959), which are pari materia of section 17(8) of the Islamabad Rent Restriction Ordinance, 2001 (IV of 2001), has ruled that, "High***

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Court having rightly concluded that defence of the tenant was rightly struck off by the Court below, no valid ground existed for interference in the order of High Court" and refused leave to appeal."

15. In the impugned order dated 05.05.2021, the learned Rent Controller has recorded that the petitioner had concealed the factum as to the dismissal of writ petition No.584/2020. After fixing the tentative rent, the learned Rent Controller had adjourned the matter to 25.02.2020. A copy of the order sheet of the Court of the learned Rent Controller shows that on 25.02.2020, the matter was adjourned to 04.03.2020 due to the pendency of writ petition No.584/2020 (which had infact been decided on 24.02.2020). The petitioner has concealed from this Court the order sheet of the dates between 04.03.2020 and the date prior to 05.05.2021. This is yet another contumacious act of the petitioner.

16. Since I have been given no reason to interfere with the concurrent orders passed by the learned Courts below, the instant petition is dismissed in *limine*. Since the petitioner has embroiled respondent No.3 in one-year and ten-month long wasteful and frivolous litigation before different *fora*, I impose costs of Rs.50,000/- on the petitioner with the direction to deposit the same in the government treasury and submit the deposit challan before the Deputy Registrar (Judicial) of this Court within a period of two weeks. These costs are being imposed under Section 35(1)(iii) of the Code of Civil Procedure, 1908, as amended by the Costs of Litigation Act, 2017.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**

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