JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 4135 of 2021

Muhammad Iqbal Qureshi

Versus

Learned Rent Controller, Islamabad-West, etc.

Date of Hearing:-	:	07.03.2022
Petitioner by:-	:	Waqas Ahmed Abbasi, Advocate.
Respondent by:-	:	Muhammad Binyamin, Advocate.

ARBAB MUHAMMAD TAHIR, J: The instant Writ Petition impugns the order dated 16.11.2021, passed by the Civil Judge/Rent Controller, Islamabad (West), whereby application under Section 12(2) of the CPC filed by the petitioner was dismissed.

2. Precisely the facts encompassing the present petition are that on 02.07.2021, respondent No.2 (*Mst. Bushra Attique*) filed an ejectment petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("**Ordinance, 2001**") against the petitioner/tenant (*Muhammad Iqbal Qureshi*) seeking eviction from *Office No.5, Second Floor, Abbas Centre, Plot No. 87-W, Blue Area, Islamabad* ('**rented premises**'), on the ground of rent default, personal bonafide need and breach of lease agreement. The petition was taken up on the same day by the Rent Controller, Islamabad (West) and notices were directed to be issued through the registered Post A.D., TCS, Courier Service, as well as affixation and the next date of hearing was fixed for 12.07.2021. On the date fixed, there was no appearance on behalf of the petitioner, despite service of notices, therefore, he was proceeded against ex-parte and the petition was then fixed for ex-parte evidence on 27.07.2021.

3. On 27.07.2021, respondent No. 2 got recorded her statement as AW-1 and testified the contents of affidavit Exh. A/1. In addition, tendered lease agreement Exh. A/2, OSR couriers receipt Exh. A/3, Legal Notice Mark-A, and bank statement Exh. A/4 in evidence. The learned counsel for the respondent No. 2 in documentary evidence tendered copy of sale deed/proof of ownership Exh. A/5. After recording the evidence, the matter was adjourned to 29.07.2021, whereafter hearing the arguments on behalf of the petitioner, the

petition was allowed ex-parte with direction to the petitioner to vacate the rented premises immediately.

4. On 12.10.2021, petitioner filed application under Section 12(2) CPC for setting aside ex-parte judgment and decree ibid on the grounds of *fraud, misrepresentation and without notice,* whereupon notice was issued to the respondent No. 2. The respondent No. 2 filed her response on 20.10.2021. The matter was then adjourned to 29.10.2021, 12.11.2021 and lastly on 16.11.2021 when after hearing arguments, the Rent Controller/Civil Judge, Islamabad (West) dismissed the application vide order dated 16.11.2021, being impugned through the instant writ petition.

5. Learned counsel for the petitioner argued that as per terms & conditions, lease agreement is to be extended after expiry of lease period as word 'shall' had been used in the relevant clause; that neither the report was exhibited nor Process Server was examined to testify the said report and that the allegation of default is without any substance as petitioner had been and is paying monthly rent, receipts whereof have been made part of record. Learned counsel further argued that impugned order, being against the spirit of natural justice and contrary to law on the subject is liable to be set aside. Learned counsel placed reliance upon case laws reported as ***2010 SCMR 1071, 2013 CLC 963, 1995 CLC 315, 2017 MLD 567, 2005 CLC 1119, 2010 YLR 1521 and 2012 CLC 1973.***

6. On the other hand, learned counsel for respondent No.2 resisted the above submissions, *inter alia,* contending that the term of lease agreement has already expired; that petitioner deliberately avoided to appear just to linger on the matter; that the course adopted by the learned Court is in accordance with law and facts of the instant case, therefore, petition is liable to be dismissed.

7. Heard, record examined.

8. The relationship of landlord and tenant pursuant to agreement (Exh.A2) is an admitted fact, therefore, it is mandatory to go through the relevant clauses of the lease agreement particularly in the light of assertions put-forth by the learned counsel for the petitioner.

9. As per lease agreement (Exh.A2), petitioner had obtained the rented premises on lease from the respondent No.2 for a period of two years w.e.f. 15.09.2019 to 14.09.2021. It was stipulated in the agreement that after the expiry of two years, the parties by *mutual understanding* shall make fresh agreement while in case of any breach,

the tenant shall be vacated and the possession shall be handed over to the owner. In terms of clause 3, in case the owner intends to get vacate the rented premises, shall serve the tenant *one month's notice*.

10. The perusal of above clauses clearly shows that the agreement by itself does not bind the parties to enter into fresh agreement by operation of any of its clause rather it was made subject to mutual understanding of the parties, therefore, the contention that the parties were bound to renew the agreement as word 'shall' had been used in the relevant clause, is result of misconception as 'shall' is to be read in conjunction with the words "'*mutual understanding*' and not in isolation. The pre-requisite in respect of issuance of one month's notice had also been complied by the respondent No.2 as reveals through copy of Notice (Mark-A) and Courier Receipt (Exh. A3).

11. Adverting to the objection qua non observance of due procedure before initiating ex-parte proceedings against the petitioner, guidance is sought from the case of ***Muhammad Tariq Khan v. Kh. Muhammad Jawad Asami & others*** (**2007 SCMR 818**) wherein it had been laid down by the Hon'ble Apex Court that *the Rent Tribunal could evolve its own procedure for disposal of ejectment petition and follow the enabling provisions of the CPC and the principles contained therein*. It has also been held that *equitable principles of the CPC can be applied, however, the provisions of CPC itself in stricto senso are not applicable.* Reference can also be made to case of ***Saeed Pervaiz v. Syed Maqsood Hassan*** (**2008 SCMR 568**). *"Adverting to the next contention of the learned counsel for the petitioner that since C.P.C. was not applicable to the proceedings before the Rent Controller, therefore, petitioner's defence could not have been struck off, it may be pointed out here that though the provisions of C.P.C. in stricto senso are not applicable yet, equitable principles thereof can be applied to the rent proceedings as well, for a just cause because the Rent Controller is empowers to adopt procedure of his choice, which of course, has to be legal. Law is well-settled in this regard. The earliest decision on the point was in the case of* ***Khadim Mohyuddin v. Rehmat Ali PLD 1965 SC 459*** *wherein it was observed that though Controller was given powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence and pass orders after holding enquiry yet, he was not bound, in every case, to follow the procedure as laid down in the Code of Civil Procedure as the question of nature in inquiry is left to him. In the case of* ***Ayub Khan and another v. Fazal Haq and others***

PLD 1976 SC 422, *service on one of the parties was affected by affixation which was challenged as illegal on the ground that as the Rent Controller was not a Court, he could not have followed the procedure prescribed by the C.P.C. The contention was repelled and it was held that though the Rent Controller, in his discretion was entitled to follow the equitable principles of the C.P.C. but he was also free not to follow technical provision of the Code. In the case of* ***Muhammad Saleh v. Muhammad Shafi 1982 SCMR 33*** *which is somewhat identical to the one in hand, petitioner's defence, who was tenant in the premises, was struck off by the Rent Controller as a result of failure to deposit the arrears of rent. It was argued that since provisions of C.P.C. were not applicable under the Rent Restriction Ordinance, therefore, the Rent Controller could not have done so. The contention was found without merit on the ground that although the provisions of C.P.C. were not applicable in terms to the proceedings under the Rent Restriction Ordinance yet, the Controller was in his discretion competent to apply them if he had considered it necessary."* Guidance is also solicited from (**19832 SCMR 33), (2005 SCMR 882), (2003 YLR 1722), (PLD 2004 Lahore 501), (2005 MLD 1232).**

12. On the touchstone of the principles noted above, the proceedings conducted by the Rent Controller cannot be said to be in contravention of the law on the subject and are based on correct appreciation of the material placed on record, whereby, as per duly verified notice, personal service of the petitioner had been established through his signatures upon reverse side of said notice. The reason of forming this opinion also includes the fact that the petitioner, nowhere, either before the court of first instance or before this Court, has questioned the validity of very signatures available on the reverse side of notice. Even no argument in this regard has been advanced. The signatures of the petitioner on the notice, on the face of it, are in complete resemblance with that of the admitted document (*lease agreement Exh. A/2).*

13. Another important aspect of the matter is that admittedly lease agreement stood expired while essential prerequisite for having fresh lease agreement (*mutual understanding*) does not exists, the petitioner is vigorously asking for possession of the rented premises. The Hon'ble apex Court in the case of ***Waqar Zafar Bakhtawari and 6 others v. Haji Mazhar Hussain Shah and others*** (**PLD 2018 SC 81**) has graciously held that *as after expiration of the tenancy period, a tenant*

though can continue to hold over the possession of the rented premises, but this tenancy is rendered invalid, in that, it has come to an end and if there is no express consent of the landlord to extend the tenancy period, the tenant shall be guilty of having infringed the conditions of tenancy rendering him liable to be evicted under Section 17(2)(ii)(b) of the Ordinance, 2001.

14. In the present case, certainly, lease agreement stood expired while there is no express consent of respondent No. 2 to extend the tenancy period, therefore, case of the petitioner does fall within the purview of having infring ed the condition of tenancy and renders him liable to be evicted.

15. On the objection of summary disposal of application under section 12(2) CPC, guidance is taken from the case of case of ***Farman Ullah v. Latif-ur-Rehman*** (**2015 SCMR 1708**) wherein it had been observed, "*however if the application is resisted/contested by the decree holder, the court may frame the issues (note: if need be, because on all such applications it is not imperative to do so; or to hold the trial, as the application under section 12(2), C.P.C. can be dismissed on the basis of pleadings of the parties simpliciter as the facts of the case may warrant) on the basis of the pleadings before it.*"

16. The case law relied upon do no extend any help to the petitioner due to having distinct facts and circumstances.

17. Having examined the case from every angle, there exists no justification to interfere in the impugned order which, in the backdrop of the facts highlighted above, appear to be just and proper and does not call for any interference. Consequently, instant writ petition fails and accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open court on 17.03.2022.

JUDGE.

Approved for reporting

//*Kamran*//