JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No.364 of 2025

Advance Learner Academy

Versus

Additional District & Sessions Judge, Islamabad-West & others

Petitioner by:	Dr. Qasim Haroon Naqvi, Advocate.
Respondents No.3 & 4 by:	Rana Abdul Hafeez, Advocate.
Date of Decision:	**17.03.2025.**

INAAM AMEEN MINHAS, J:- Through this writ petition, the petitioner has assailed the order dated 19.10.2024, passed by the learned Rent Controller, Islamabad-West and the judgment dated 18.12.2024, passed by the learned Additional District Judge, Islamabad-West, whereby right of the petitioner to produce evidence was closed concurrently.

2. The facts, in brief, are that respondents No.3 & 4 filed an ejectment petition u/s 17 of the Islamabad Rent Restrictions Ordinance, 2001 for eviction of the petitioner from House No.46, Bazar Road presently Begum Sarfraz Road G-6/4, Islamabad. The petitioner appeared before the Court and filed her written reply. The issues were framed and evidence of respondents No.3 & 4 was recorded. The petitioner availed numerous opportunities to produce her evidence, therefore, the learned Rent Controller while granting last opportunity

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imposed cost of Rs.5000/- vide order dated 20.07.2024, which was assailed and the learned Appellate Court vide order dated 10.10.2024 while setting aside the order directed the petitioner to produce entire evidence on 19.10.2024 before the learned Rent Controller, failing which the learned Rent Controller would be at liberty to proceed in accordance with law. The petitioner could not produce evidence on the given date, therefore, right of the petitioner to produce evidence was closed on 19.10.2024, against which the petitioner preferred an appeal, which was dismissed vide impugned judgment, hence, this petition.

3. The learned counsel for the petitioner contended that the impugned order and the judgment are against the law and facts of the case; that there was no specific direction by the learned Appellate Court with regard to last opportunity or absolute last opportunity or warning rather simple words were used that in case of failure to produce the evidence, the learned Rent Controller would be at liberty to proceed in accordance with law and as such the learned Rent Controller was not justified to close right of the petitioner to produce her evidence; that in Civil Petition No.264-P/2010 vide judgment dated 28.06.2021, the Honourable Supreme Court interpreted order XVII, Rule 3, CPC and clarified the words last opportunity as well as forthwith in their true perspective that to decide the suit forthwith does not mean to decide or dismiss the suit there and then; that absence of objection to an adjournment to other side, such adjournment would be deemed to be a routine adjournment and would not call for invocation of provision of order XVII, Rule 3, CPC; that since witness/attorney of the petitioner

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was present before the Court, whose signatures are present on the margin of the order sheet and he was ready to make his statement through an affidavit but despite that the learned Rent Controller closed the right of the petitioner to produce her evidence; that the petitioner also filed an application for dismissal of the ejectment petition but the learned Rent Controller did not opt to decide the said application; that learned Appellate Court erroneously relied upon *Moon Enterpriser CNG Station, Rawalpindi vs. Sui Northern Gas Pipelines Limited through GM, Rawalpindi and another*, (2020 SCMR 300) while dismissing the appeal; that the impugned order and judgment have been passed in slipshod manner. In support of his arguments the learned counsel for the petitioner relied upon *Syed Tahir Hussain Mehmoodi and others vs. Agha Syed Liaqat Ali and others*, (2014 SCMR 637), *Ghaulam Rasool vs. Rai Ghulam Mustafa and others*, (1993 SCMR 2026), *Muhammad Umer vs. Muhammad Qasim and another*, (1991 SCMR 1232) and *Mst. Imtiaz Begum vs. Mst. Sultan Jan and others*, (2008 SCMR 1259).

4. Conversely, the learned counsel for respondents No.3 and 4 contended that the learned Appellate Court gave a clear direction to the petitioner to record her evidence on a specific date but the petitioner failed to produce her evidence on such date and there was no justification to give her further opportunity to produce her evidence; that the learned Rent Controller as well as the learned Appellate Court have passed the impugned order and judgment in accordance with law. The learned counsel for respondents No.3 and 4 in support of his

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arguments relied upon *Duniya Gul and another vs. Niaz Muhammad and others*, (PLD 2024 SC 672) and *Moon Enterpriser CNG Station, Rawalpindi vs. Sui Northern Gas Pipelines Limited through GM, Rawalpindi and another*, (2020 SCMR 300).

5. I have heard arguments of the learned counsel for the parties and perused the record with their able assistance.

6. Perusal of the record reveals that on 11.03.2024 after recording evidence of respondents No.3 & 4, the petitioner was directed to produce her evidence on 21.03.2024. On 21.03.2024 the learned counsel for the petitioner sought an adjournment, therefore, last opportunity was given and the matter was adjourned to 02.04.2024. On 02.04.2024 again the learned counsel for the petitioner sought an adjournment, therefore, last opportunity was granted and the matter was adjourned to 06.04.2024. On 06.04.2024 once again the learned counsel for the petitioner sought an adjournment, which was allowed with the warning that in case of failure right of the petitioner to produce her evidence will be closed and the matter was adjourned to 27.04.2024. On 27.04.2024 the learned Presiding Officer was on leave and the matter was fixed for 11.05.2024. On 11.05.2024 an adjournment was sought on behalf of respondents No.3 & 4 and the matter was adjourned to 02.07.2024. On 02.07.2024 the learned Presiding Officer was on leave, therefore, matter was fixed for 20.07.2024. On 20.07.2024 a request for adjournment was made on behalf of the petitioner. The witness/attorney was present but the learned counsel for the petitioner was not present, therefore, the matter was adjourned for the last time

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with cost of Rs.5000/-. As such the petitioner on four dates failed to produce her evidence.

7. The petitioner assailed the order dated 20.07.2024 in appeal, wherein cost of Rs.5000/- was imposed on her. Respondents No.3 & 4 did not raise objection, therefore, the appeal was allowed and order of the imposing cost was set aside vide order dated 10.10.2024 with the direction to the petitioner to produce her entire evidence on 19.10.2024 before the learned Rent Controller, failing which the learned Rent Controller would be at liberty to proceed in accordance with law. On 19.10.2024, witness/attorney of the petitioner was present before the learned Rent Controller and his signatures were also obtained on the margin of the order sheet but the petitioner instead of producing evidence moved an application for rejection of the ejectment petition and sought an opportunity for production of evidence. Furthermore, in rent matters evidence of a witness is to be recorded through an affidavit but the witness/attorney of the petitioner did not file his affidavit. These factors clearly indicate that the petitioner failed to produce her entire evidence on the date given by the learned Appellate Court. The learned Appellate Court very clearly directed the petitioner to produce her entire evidence on a specific date. Mere presence of the witness/attorney of the petitioner before the Court coupled with moving of application for rejection of ejectment petition and seeking of opportunity for production of her evidence does not make sense that the petitioner was ready for recording of her evidence. Moreover, at the time of passing of the direction by the learned Appellate Court the

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petitioner never agitated that she should be given two or three dates of hearing to produce her entire evidence rather that order was a consent order. The learned Rent Controller cannot go beyond the direction of the Appellate Court and in failure of the petitioner to produce her evidence, the learned Rent Controller was left with no option but to close right of the petitioner to produce her evidence.

8. The contention of the learned counsel for the petitioner that the petitioner should have been given last or absolute last opportunity or warning by the leaned Rent Controller before passing of the impugned order is misconceived as the learned Appellate Court while giving direction to the petitioner to produce her entire evidence on a specific date observed that the petitioner despite availing four opportunities could not be able to produce her evidence. Moreover, before imposing cost upon the petitioner, she was given last opportunity twice, even a warning was issued. The learned Appellate Court rightly relied upon *Moon Enterpriser CNG Station, Rawalpindi vs. Sui Northern Gas Pipelines Limited through GM, Rawalpindi and another*, (2020 SCMR 300) and dismissed the appeal of the petitioner.

9. The judgments relied upon by the learned counsel for the petitioner are distinguishable from the present case as in those cases there was no direction by the Appellate Court to any of the parties to produce evidence on a specific date.

10. In view of the above discussion, I am of the view that both the Courts below have passed the impugned order and judgment in accordance with law. No illegality or infirmity has been found in the

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impugned order and judgment of the Courts below. Resultantly, the instant petition is **dismissed** being devoid of merits.

(INAAM AMEEN MINHAS)
JUDGE

R.Anjam

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