ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.980 of 2016
Hayat Ullah Barki
VERSUS.
Additional District Judge, West, Islamabad & others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.03.2016	**Rana Nazim Khan Manj, Advocate for the petitioner**

Through the instant writ petition, the petitioner, Hadayat Ullah Barki, impugns the judgment dated 12.02.2016, passed by the Court of Additional District Judge (West), Islamabad, whereby the petitioner's appeal against the order dated 04.01.2016, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order dated 04.01.2016, the learned Rent Controller, had allowed the respondent No.3's eviction petition by striking off the petitioner's defence under Section 17(9) of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") and directed him to vacate the rented premises within a period of fifteen days.

2. The facts essential for the disposal of this petition are that on 01.08.2012, a lease agreement was executed between the petitioner and respondent No.3 under which Shop No.19, Ground Floor, Blair Plaza, Plot No.20-B Sector G-8 Markaz, Islamabad, at a monthly rent of Rs.7500/- with a 10% increase every year. Respondent No.3 vide legal notices dated 18.03.2015 and 18.04.2015 called upon the petitioner to vacate the rented premises. As the

petitioner did not vacate the rented premises and stop paying the rent since September, 2014, respondent No.3 on 16.05.2015, filed an eviction petition under Section 17 of the IRRO before the learned Rent Controller, Islamabad. The grounds on which the said eviction petition was filed were that the lease agreement had expired on 30.07.2014; that the petitioner had become a rent defaulter since September, 2014; and that the rented shop was required by the petitioner for his personal and *bonafide* use. The petitioner contested the said eviction petition by filing a written reply on 23.11.2015. , Vide order dated 15.12.2015, the learned Rent Controller framed the issues. Furthermore, on the said date, the learned Rent Controller also passed an order under Section 17(8) of the IRRO in the following terms:-

> ***"Relationship between the parties as landlord and tenant is admitted. Learned counsel for the petitioner has submitted that according to lease agreement rate of rent was fixed as Rs.7500/- with 10% annual increase while respondent had defaulted in payment of rent since September 2014. On the other hand learned counsel for the respondent denied the default and submitted that he has paid the monthly rent @ Rs.7500/- per month to the petitioner till May 2015 and submitted the rent receipts up to May 2015. As per record rent from the month of September 2014 to May 2015 is disputed between the parties and this fact will be decided after recording pro-contra evidence of the parties and the issue cannot be decided summarily. Hence respondent is directed to deposit the monthly rent for the month of June 2015 @ Rs.8200/- and respondent is further directed to deposit the monthly rent as per lease agreement @ 8200+10%=9020/- per month from July***

2015 to December 2015 and submit the receipt on next date of hearing. Respondent is further directed to keep on depositing the future rent @ Rs.9020/- per month with 10% annual increase before 15th of each month in advance till final conclusion of the petition. Out of the divergent pleadings of the parties following issues are hereby framed."

3. On 15.12.2015, the learned Rent Controller adjourned the matter to 23.12.2015 for the submission of the receipts of the rent deposited by the petitioner. On 23.12.2015, the petitioner failed to show compliance with the order dated 15.12.2015, passed by the learned Rent Controller under Section 17(8) of the IRRO. The learned Rent Controller again adjourned the matter to 04.01.2016 so that the arrears in the rent could be deposited by the petitioner. Again on 04.01.2016, the petitioner failed to show compliance with the said order dated 15.12.2015. Therefore, the learned Rent Controller, on 04.01.2016, was constrained to pass an order under Section 17(9) of the IRRO and directed the petitioner to vacate the rented premises within a period of fifteen days. This order was assailed by the petitioner in an appeal filed under Section 21 of the IRRO before the Court of the Additional District Judge, Islamabad. Even before filing the appeal, the petitioner had not deposited the arrears in rent. It was on the direction of the appellate court that the petitioner deposited the arrears in rent. The petitioner's appeal was dismissed by the learned appellate court, vide judgment dated 12.02.2016. The concurrent orders passed by the learned lower courts have been

assailed by the petitioner in the instant writ petition.

4. Learned counsel for the petitioner submitted that the petitioner had been regular in the payment of rent ever since the execution of the lease agreement; that on the direction of the appellate court contained in the order dated 08.01.2016, the petitioner had submitted the outstanding rent from July, 2015 to February, 2016 at the rate of Rs.9,020/- per month; that the petitioner is carrying on his business at the rented premises and that his eviction would disrupt his livelihood; that the concurrent orders passed by the courts below are void, illegal, not maintainable in the eyes of law and against the law and facts of the case. He further submitted that the petitioner had paid a huge amount as goodwill to the previous tenant of the rented premises and that the petitioner shall vacate the rented premises if the said amount was refunded to him. According to the learned counsel for the petitioner, the petitioner had a very strong case on merits. Therefore, it was prayed that the writ petition be allowed and the matter remanded to the learned Rent Controller for a decision on merits.

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

6. It is an admitted position that the petitioner had not shown compliance with the Order dated 15.12.2015, passed by the learned Rent Controller under Section 17(8) of the IRRO, wherein the petitioner was unequivocally directed to deposit the rent for

the month of June, 2015 at the rate of Rs.8200/-, and furthermore, deposit the monthly rent at the rate of Rs.9020/- from July, 2015 to December, 2015, and additionally to pay the future rent before the 15th day of every month. The matter was adjourned to 23.12.2015 for the submission of the receipts of the rent, which was to be deposited by the petitioner. The petitioner admittedly did not show compliance with the order dated 15.12.2015 passed by the learned Rent Controller by submitting the required receipts on 23.12.2015. Even on 04.01.2016 the required receipts were not submitted. In such circumstances, the learned Rent Controller was left with no discretion but to pass an order under Section 17(9) of the IRRO, which is reproduced herein below:-

> *"17(9) If the tenant fail 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."*

7. I find that the order dated 04.01.2015, passed by the learned Rent Controller, is 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 2009 SCMR 1008, the tenant was directed, under Section 17(8) of the IRRO 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 IRRO was mandatory, and where the tenant does not deposit the rent in compliance with an order passed under Section 17(8) of the IRRO, 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 M.H. Mussadaq Vs. Muhammad Zafar Iqbal & another reported as 2004 SCMR 1453, it has been held as follows:-

> *10. "On this aspect of the matter, the legal position is very clear. According to subsection (9) of Section 17 of the Act, if the tenant fails to deposit the amount of rent before specified date, or, as the case may be, before 5th of the month, his defence shall be struck off. On its bare perusal, it is manifest that the above provisions are mandatory in nature and even on day's delay in making the deposit would be default within its meaning and Rent Controller has no power to extend time and condone the same."*

(iii) 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 IRRO. 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 IRRO.

(iv) 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 IRRO In the said case, the Islamabad High 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 IRRO, was dismissed. This is what also happened in the case of Hassan Ali Khan Vs. Additional District Judge Islamabad, reported as 2003 CLC 1819.

(v) 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 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."

8. As regards the contention of the learned counsel for the petitioner that he would vacate the rented premises on the condition that the goodwill amount paid by him to the previous tenant of respondent

No.3 is refunded. This is no ground on which the petitioner can continue to occupy the rented premises. Should the petitioner feel that said goodwill amount is liable to be repaid to him by the previous tenant, who is neither a party in the instant petition nor in the proceedings before the learned lower courts, he may institute appropriate proceedings against him, subject to law.

9. The petitioner knew or ought to have known the contents and import of the order dated 15.12.2015, passed by the learned Rent Controller under Section 17(8) of the IRRO. The unsavory consequences that flowed from the petitioner's non compliance with the said order are something that the petitioner has only himself to thank for. The petitioner has not been able to show that the default in showing compliance with the order passed by the learned Rent Controller under Section 17 (8) of the IRRO was unavoidable or beyond their control.

10. In the result, there is no merit in this petition and it is, accordingly dismissed in limine. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan*

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