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

W.P. No.1442 of 2017
Muhammad Iqbal Aziz
Versus
Additional District Judge, Islamabad and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	28.07.2017	**Nemo for the petitioner,** **Mr. Khurram Mehmood Qureshi, Advocate for respondent No.2.**

Since neither the petitioner nor the learned counsel for the petitioner tendered appearance, I propose to dispose of this petition after going through the available record.

2. On 18.04.2017, Mr. Imran Feroze Malik, Advocate had tendered appearance on the petitioner's behalf. It was unequivocally undertaken on behalf of the petitioner that the rented premises (i.e. Shop No.04-A, Half Basement, Lower Ground Floor of Fazal Arcade, Plot No.16, F-11 Markaz, Islamabad) would be vacated by 18.07.2017. In view of the said undertaking, I issued notice to the landlord/respondent No.1 and ordered that till the next date of hearing (i.e. 04.05.2017), the petitioner should not be dispossessed from the rented premises.

3. On 04.05.2017, Mr. Imran Feroze Malik, Advocate, tendered appearance for the petitioner, whereas Mr. Khurram Mahmood Qureshi, Advocate, appeared for respondent No.2. After the learned counsel for respondent No.2 agreed that the petitioner should be given time till 18.04.2017, to vacate the rented premises, the matter was adjourned to 20.07.2017, for intimation regarding the

handing over of the peaceful possession of the rented premises to respondent No.2.

4. On 20.07.2017, learned counsel for respondent No.2 informed the Court that the petitioner had breached his undertaking and had not vacated the rented premises. Learned counsel for the petitioner did not even bother to tender appearance. This Court vacated the interim relief granted on 18.04.2017, and adjourned the matter to 28.07.2017, with the direction to the petitioner to appear in person before this Court on the said date.

5. Today i.e. 28.07.2017, neither the petitioner nor his counsel tendered appearance. It is well settled that an undertaking given to the Court by a party or his counsel has exactly the same force as an order made or an injunction granted by the Court. A party that gives an undertaking to the Court is bound to fulfill the same. If a party breaches his undertaking given to the Court, he places himself in a perilous situation, and exposes himself to an action for contempt of Court. In the case of Kishwar Sultan Jehan Begum Vs. Aslam Awais (PLD 1976 Lahore 580), it has been held as follows:-

> *"2. An undertaking given to the Court by a party or his counsel has exactly the same force as an order made or an injunction granted by a Court; once an undertaking is given in the Court by a party or on his behalf by his counsel he becomes bound to fulfil the same. After the Court has sanctioned a particular course of action or inaction according to the statement of a party, the party places himself in a perilous situation if later he commits a breach of his undertaking, and such a conduct on his part amounts to contempt of Court. In Chaturbhujdas Parmanandas v. Natvarlal Tribhovandas (134 1 C 1165) it was held that if an undertaking is given and is duly recorded in the order of the Court, its breach is punishable as contempt of Court. If a lawyer is acting in*

his capacity as counsel for a party and gives an under taking, it is open to the Court to enforce the same even if it was given gratuitously. An undertaking can be enforced even though the lawyer's conduct involves no misconduct. Hamilton, J., observed in United Mining & Finance Corporation Ltd. v. Becher (1902) 2 K B 296) that the jurisdiction may be invoked not only to secure honestly, in its moral sense, in Court officers, but also to secure the "proper and professional observation of undertakings professionally given". He added: "The conduct which is required of solicitors is to this extent perhaps raised to a higher standard than the conduct required of ordinary men, in that it is subject to the special control which a Court exercises over officers so that in certain cases they may be called upon summarily to perform their undertakings, even where the contention that they are not liable to perform them is entirely free from any taint of moral misconduct." It is also no justification that such an officer was not bound by the undertaking because he was not served with the order containing the undertaking. In re: Galwandzed Tank Manufacturers' Association's Agreement (1965) 2 All E R 1003) Megaw, P., said: "We would, however, emphasise that a company which has given an undertaking to the Court must be treated as having failed lamentably and inexcusably in its elementary duty if it fails to take adequate and continuing steps to ensure, through its responsible officers, that those officers themselves, and anyone to whom they may delegate the handling of matters which fall within the scope of the undertaking, do not forget or misunderstand or overlook the obligations imposed by such undertakings." If a person, bound by an undertaking, acts in violation of the same, though on the pretext that his action was backed by some legal advice, he renders himself liable for action. In re: Agreement of Mileage Conference Group of the Tyre Manufacturers' Conference Ltd. ((1966) 2 All E R 849) certain tyre manufacturers had given an undertaking inter alia not to operate a certain scheme which the Restrictive Practices Court had declared contrary to public interest. A new scheme was devised and operated which was held to be a breach of the undertaking. The companies argued, however, that since they had relied upon legal advice that the new scheme would not amount to a breach of their undertaking, they could not be said to have committed contempt because the breach had not been contumacious. The Court held that although reliance on legal

> ***advice might be a mitigating factor provided that it was reasonable to rely on such advice, nevertheless a contempt will still have been committed. Megaw, P., observed: "We conclude .... that the breaches of undertaking here were contempt of Court even though it were to be shown that they were things done, reasonably and despite all due care and attention, in the belief, based on legal advise, that they were not breaches." Accordingly, we would hold that breach of a party of an undertaking given to a Court by him or his counsel amounts to contempt of Court and is punishable brevi manu, and the party in contempt must wash the stain that is sticking to him by obeying the order of the Court which it may choose to make. However, before exercising such a wide jurisdiction, the Court must ensure that the undertaking was unambiguous and the breach was also clear beyond all reasonable doubt."***

6. Law to the same effect has also been laid down in the cases of Cool Industries (Pvt.) Ltd. Vs. Shafique Ahmed (2010 MLD 435), Ghulam Sarwar Vs. Allah Wasaya (2005 MLD 1552), Muhammad Gulzar Vs. Muhammad Habib (2004 PCr.LJ 1890), Ali Nawaz Chohan Vs. Mushtaq Hussain Shah (1986 P.Cr.L.J 2222), The State Vs. Rafique Ahmed Bhatti (1984 P.Cr.L.J 583), Major Riaz Ahmed Vs. Hamid Aziz Sheikh (PLD 1976 Lahore 871), and Raj Rajeswari Jiu Vs. Gati Krishna Chakrabarti (AIR 1924 Calcutta 953).

7. It bespeaks of a sorry state of affairs not just at the petitioner's end but also that of his counsel. Both these individuals have not showed any respect to the Court by not even informing the Court as to why the said undertaking was breached. The petitioner's conduct renders him unworthy of relief in the constitutional jurisdiction of this Court.

8. Nevertheless, I decide to go through the file of this case and order to dispose it of on the basis of available record. The record shows that

on 21.09.2016, respondent No.2 filed a petition under section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("I.R.R.O.") seeking the petitioner's eviction from the rented premises. The grounds taken in the said eviction petition were; (i) expiry of the lease agreement, (ii) respondent No.2's personal bonafide need for rented premises, and (iii) default in the payment of rent. The petitioner contested the said eviction petition by filing a written reply. The position taken by the petitioner that he had spent a huge amount by renovating the rented premises; that the petitioner had committed no default in the payment of rent; and that respondent No.2 had other properties which he could utilize for his own personal need.

9. Vide tentative rent order dated 08.11.2016, the learned Rent Controller directed the petitioner to deposit monthly rent at the rate of Rs.18,000/- for the months of July and August, 2016, in the Court, and submit the receipts on the next date of hearing i.e. 15.11.2016. The petitioner was also directed to deposit rent at the said date for the month of September, 2016 and produce the receipt on the next date of hearing. Furthermore, the petitioner was directed to continue depositing the tentative rent in the Court's account before the 15th of each month in advance.

10. Vide order dated 16.01.2017, the learned Rent Controller, in exercise of his powers conferred under Section 17(9) of the I.R.R.O. struck of the petitioner's defence, and directed him to vacate the rented premises within a period of ten days. In the said order, it has been observed that the petitioner had produced the

receipts showing that he had deposited rent for the months of July and August, 2016, and another month on 06.12.2016. It was also observed that the petitioner had not deposited the rent for the month of December, 2016, before 15.11.2016, as ordered in the tentative rent order.

11. The said order dated 16.01.2017, was impugned by the petitioner in an appeal before the Court of the learned Additional District Judge, Islamabad. Vide order dated 12.04.2017, the petitioner's appeal was dismissed. The learned appellate Court also observed that the petitioner had not shown compliance with the tentative rent order by depositing rent within the period stipulated in the tentative rent order. The said concurrent orders passed by the learned Courts below have been impugned by the petitioner in the instant writ petition.

12. The grounds taken by the petitioner, in his one and a half page writ petition, are that the learned Courts below had decided the eviction petition and petitioner's appeal on technicalities, and not on merit; that the petitioner had not committed any default in the payment of rent; that the impugned order was based on surmises and conjectures; and that the impugned orders are against the law and the facts. The fifth ground taken by the petitioner in his writ petition is reproduced herein below:-

> *"5. That petitioner was not aware of consequences of delay of payment in rent hence same may be neglected."*

13. I have gone through the record of this case.

14. The fifth ground taken by the petitioner in his writ petition is a clear admission of a default on his part in showing compliance with the tentative rent order. It is well settled that ignorance of the law is no defence. The learned Rent Controller, in the tentative rent order dated 08.11.2016, had directed the petitioner to deposit rent for each month in advance before the 15th of each month. The petitioner instead of depositing the rent for the month of December, 2016, by 15.11.2016, deposited the same on 06.12.2016. In this way, the petitioner did not show compliance with the tentative rent order. Therefore, I find the order dated 16.01.2017, passed by the learned Rent Controller to be strictly in accordance with the statute and the law laid down 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 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.

(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 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.

(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 parimateria 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."

15. In view of the above, this petition is dismissed with costs. The learned executing Court is expected to proceed expeditiously with the execution proceedings, and shall bear in mind the fact that the petitioner breached his undertaking before this Court.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham Majid*

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