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

W.P.No.2060 of 2017
Shaukat Ali Mughal
Versus
Mrs. Parveen Habib and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	27.07.2017	**Malik Jamil Akhtar, Advocate for the petitioner , Mr. Sibtain Ali Shah, Advocate for respondent No.1.**

Through the instant writ petition, the petitioner, Shaukat Ali Mughal, impugns the judgment and decree dated 24.05.2017, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby, the petitioner's appeal against the order and decree dated 15.03.2017, passed by the Court of the learned Rent Controller, Islamabad was dismissed. Vide the said order and decree dated 15.03.2017, the learned Rent Controller, Islamabad, allowed respondent No.1's petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("I.R.R.O.") and directed the petitioner to vacate Shop No.6, Awan Plaza, G-8 Markaz, Islamabad ("the rented premises"), within a period of thirty days.

2. The record shows that on 17.03.2010, a lease agreement was executed between Habib-ur-Rehman (landlord) and Shaukat Ali Mughal (tenant), whereby the rented premises were leased for a period of two years i.e. from 01.12.2010 to 31.01.2012. Clause–1 of said lease agreement provided that in case the parties agree to extend the lease period, "*a fresh revised lease agreement would be executed with mutual consent of both the parties on new terms and conditions*".

3. On 01.09.2015, respondent No.1 (Mrs. Parveen Habib, wife of Habib-ur-Rehman) filed an eviction petition under Section 17 of the I.R.R.O. against the petitioner. The grounds taken in the said eviction petition were (i) expiry of the lease agreement, and (ii) respondent No.1's personal bonafide need for the rented premises. The petitioner contested the said eviction petition by filing a written reply. The position taken by the petitioner that the term of the lease period was extended by an oral agreement between the parties, and that respondent No.1 had been receiving the rent even after the expiry of the initial lease period. Furthermore, it was pleaded that the eviction petition had been filed in order to get "unlimited rent" from the petitioner. After the framing of issues, respondent No.1 entered into witness box as A.W-1, whereas the petitioner gave evidence as R.W-1 and produced an *Iqrarnama* dated 07.05.2015, as Ex.R-2. This document is a lease agreement executed between the petitioner and Waseem Afzal, who had been appointed by respondent No.1 as her attorney on 04.03.2015.

4. Vide order and decree dated 15.03.2017, the learned Rent Controller allowed respondent No.1's eviction petition, and directed the petitioner to vacate the rented premises within a period of thirty days. The petitioner's appeal against the said order and decree dated 15.03.2017, was dismissed by the learned appellate Court, vide judgment and decree dated 24.05.2017. The said concurrent judgments of the learned Courts below have been impugned by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner submitted that the learned appellate Court had not given issue-wise findings; that respondent No.1 had

other properties which she could utilize for her own personal bonafide need; that even otherwise, respondent No.1's ground of personal bonafide need in her eviction petition, was not genuine; that respondent No.1 had contradicted herself by deposing that the rented premises were required for her daughter; that the petitioner had not committed any default in the payment of rent; that the petitioner had been regularly deposited rent in the Court; and that expiry of the lease agreement is not one of the grounds on which the petitioner can be evicted from the rented premises under Section 17 of the I.R.R.O.

6. Learned counsel for the petitioner further submitted that on 04.03.2015, respondent No.1 had executed a special power of attorney authorizing Waseem Afzal to rent out respondent No.1's properties, including the rented premises; that Waseem Afzal in exercise of his power under the said special power of attorney, executed a lease agreement with the petitioner, whereby the rented premises were leased to the petitioner until 06.05.2022; and that even if respondent No.1 wants the rented premises (which are commercial in nature) for her own personal need, she cannot evict the petitioner, because the said lease agreement has not expired. Learned counsel prayed for the writ petition to be allowed and for the impugned judgments and decrees passed by the learned Courts below to be set-aside.

7. On the other hand, learned counsel for respondent No.1 submitted that the impugned judgments and decrees do not suffer from any jurisdictional error or from any non-reading or misreading of evidence; that the *Iqrarnama* produced by the petitioner as Ex.R-2 is a sham document; that the petitioner has made no

reference to the said *Iqrarnama* in his written reply filed before the learned Rent Controller; that the petitioner could not adduce evidence beyond his pleadings; that after respondent No.1 filed the eviction petition, the said *Iqrarnama* was allegedly executed between the petitioner and Waseem Afzal; that no permission was taken from respondent No.1 for the execution of the said *Iqrarnama;* and that the learned Courts below have correctly discarded the said *Iqrarnama.* Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 4 above, and need not be reiterated.

9. The relationship of landlord and tenant between respondent No.1 and the petitioner, respectively, is admitted. The vital question that needs to be determined in these proceedings is whether a valid lease agreement is in existence on the basis of which the petitioner can continue occupying the rented premises until 2022. It is not disputed that respondent No.1 filed the eviction petition on 01.09.2015. In this eviction petition, it was explicitly pleaded that the lease agreement with the petitioner had expired. The petitioner in his written reply filed before the Court of the learned Rent Controller pleaded that the lease agreement had been orally extended. At this stage, it is pertinent to reproduce herein below paragraph-2 of the petitioner's written reply:-

> *"2. That the Para No.2 is accepted to the extent of Rent and agreement, actually and factually the material fact has been malafidely concealed by the Petitioner that the same agreement was*

extended orally and this fact is proved by the conduct of the Petitioner as she is continuously receiving the rent".

10. The petitioner took a departure from his pleadings by deposing on oath that a lease agreement had been executed which entitle him to remain in occupation of the rented premises until 06.05.2022. The petitioner's case is that since respondent No.1, through a special power of attorney authorized Waseem Afzal to rent out the demise premises, and since Waseem Afzal executed a lease agreement with the petitioner with respect to the rented premises, respondent No.1 could not seek the petitioner's eviction from the rented premises prematurely. Since, the eviction petition was filed prior to the execution of the lease agreement between the petitioner and Waseem Afzal, respondent No.1 cannot seek to non-suit the petitioner on this ground only. Since an eviction petition had already been instituted by respondent No.1, the execution of the lease agreement by Waseem Afzal was an act to the detriment of respondent No.1. Therefore, it was incumbent upon Waseem Afzal to have taken express permission from respondent No.1 before taking a step which could be to her disadvantage given the fact that she had already instituted an eviction petition. The said power of attorney was neither coupled with interest, nor was the same irrevocable. Therefore, the attorney/Waseem Afzal could not take a step to respondent No.1's detriment under the said power of attorney. It does not appeal to reason that respondent No.1 after instituting an eviction petition against the petitioner authorized someone to execute a lease agreement with the petitioner. Therefore, the *Iqrarnama* executed between the petitioner and Waseem Afzal

cannot be termed as a lease agreement binding respondent No.1.

11. Even otherwise, the petitioner has disentitled himself from relief in the discretionary jurisdiction of this Court because of taking a contradictory stance before the learned Rent Controller. After pleading that the lease agreement had been orally extended, the petitioner took the position that a written lease agreement was executed with respondent No.1 through her attorney. In the case of Shahid Chanzib Vs. C.D.A. (2017 YLR 411), I have had the occasion to hold as follows:-

> ***"16. In the proceedings under Article 19 of the Constitution, which is an extra ordinary constitutional jurisdiction, the conduct of the litigant plays an important role. Where a petitioner does not come with clean hands or the Court finds that he is not a bona fide petitioner or where his conduct is dubious, the Court may decline to go into the merits of the matter".***

12. As regards the contention of the learned counsel for the petitioner that the rented premises could not be subjected to use by respondent No.1's children because they were abroad, suffice it to say that respondent No.1 in her evidence has categorically deposed that her daughter will be returning to Pakistan with the intention of establishing her clinic in the rented premises. The learned Courts below correct in holding that respondent No.1's married daughter would fall within the category of her family members. It is well-settled that it is the landlord's unfettered choice as to which of his properties he/she puts to his/her personal use. It does not lie in the mouth of the tenant to say that the landlord should use any other of his properties for his personal use. Even the Rent Controller does not have the authority to determine the property which the landlord should

put to his own personal use. A landlord is not even required to mention in the eviction petition or in his evidence, the nature of business he wants to carry out at the rented premises. In the case of Pakistan Institute of International Affairs Vs. Naveed Merchant (2012 SCMR 1498), it has been held that the choice lies with the landlord to select any of the tenement for his personal need and for this purpose the tenant has no *locus standi* to give advice to the landlord to use alternate accommodation. In the case of S.M. Nooruddin Vs. Saga Printers (1998 SCMR 2119), it has been observed that a landlord has a complete option to choose from one of the several tenements occupied by tenants for his personal requirement and the discretion is not assailable, except in the rarest cases of bad faith. Furthermore, this Court, in the case of Javaid Ahmed Vs. Muhammad Imran Malik (PLD 2011 Islamabad 30), it has been held as follows:-

> *"11. Now adverting to the contention that respondents Nos.1 and 2 are owners of other shop, suffice it to say that it is settled law that it is the prerogative of the landlord to choose premises for his personal need and no discretion in respect thereof can be given to the landlord and in this respect reliance is placed upon the case of Malik Muhammad Ramzan v. Messrs General Iron Stores and another* ***(1995 SCMR 1125)****, wherein it has been held that "landlord" would have privilege to choose anyone of his properties for self-use, considered by him suitable for his requirement, provided his need was not tainted with mala fide. Further in the case National Tubewell Construction Corporation Ltd. v. Tariq Rahim (Advocate) and another* ***(NLR 1991 Civil 366)****, it has been observed that it is for landlord to choose and make a choice as to which of his properties is suitable to meet his needs/requirements and tenant cannot dictate to landlord that he should occupy this property or that property or that he should move for eviction against this tenant or that tenant."*

13. Under Section 17(5) of the IRRO, the Rent Controller has to satisfy himself about the *bonafides* of the landlord's claim regarding his requirement for his own occupation of the rented premises in good faith. The learned Courts below happen to be concurrently satisfied as to the eviction petitioners' *bonafides* regarding the said claim. There is no convincing material before me to doubt the satisfaction of the learned Courts below as to the eviction petitioners' *bonafides*. In the event, the rented premises are not occupied by the eviction petitioner or by any of their family members, Section 17(6) of the IRRO gives ample protection to the petitioner. For ready reference the said Section 17(6) is reproduced herein below:-

> *"17(6). Where the landlord who has obtained possession of a building in pursuance of a building in pursuance of an order made under subsection (5) does not himself, or where possession of the building or rented land has been obtained for any member of his family such member dies to, occupy the building or rented land within one month of the date of obtaining or rented land within one month of the date of obtaining its possession, or having obtained possession relates it within six months of the said date to any person other than the tenant, the tenant may apply to the Controller for an order directing that the possession of such building be restored to him and the Controller may make an order accordingly."*

14. By reason of the above, I do not find any illegality or jurisdictional irregularity committed the learned Courts below in giving concurrent findings against the petitioner. Resultantly, this writ petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham Majid*

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