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

W.P. No.2495 of 2017
Muhammad Jamil
Versus
Additional District and Sessions Judge and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	06.07.2017	**Mir Afzal Malik, Advocate for the petitioner.**

Through the instant writ petition, the petitioner, Muhammad Jamil, impugns the judgment and decree dated 05.06.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the order and decree dated 19.04.2017, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order and decree dated 19.04.2017, the learned Rent Controller allowed respondent No.3's eviction petition by striking off the petitioner's right of defence under Section 17(9) of the Islamabad Rent Restrictions Ordinance, 2001 ("IRRO").

2. The facts essential for the disposal of this petition are that on 07.01.2017, respondent No.3/landlord filed a petition under Section 17 of the IRRO seeking the petitioner's eviction from House No.34, Main Double Road, Sector F-7/3, Islamabad ("the rented premises"). The grounds taken in the said eviction petition were; (i) default in the payment of rent for a period of eight months, and (ii) personal bonafide need of respondent No.3. The petitioner contested the said eviction petition by filing a written reply. The position taken by the petitioner was that the

lease agreement between the petitioner and respondent No.3 was valid until 28.02.2025. Furthermore, it was pleaded that respondent No.3 had spent Rs.10 Million on the renovation of the rented premises, and Rs.2,428,400/- on account of purchase of the furniture. Allegations of forgery was also made by the petitioner against respondent No.3.

3. Vide order dated 29.03.2017, the learned Rent Controller fixed Rs.100,000/- as the tentative monthly rent for the rented premises, and directed the petitioner to deposit the arrears of rent from August 2016 till February 2017 in the Court's account on or before the next date of hearing (i.e.12.04.2017). Furthermore, the petitioner was directed to produce the receipts regarding the deposit of tentative rent in the Court on the said date. Since the petitioner did not deposit the tentative rent for the period between August 2016 and February 2017, the learned Rent Controller, vide the impugned order and decree dated 19.04.2017, struck off the petitioner's right of defence and allowed respondent No.3's eviction petition. Furthermore, the petitioner was directed to forthwith vacate the rented premises. The petitioner's appeal against said order and decree dated 19.04.2017 was dismissed by the learned appellate Court by judgment and decree dated 05.06.2017. The said concurrent judgments of the learned Courts below have been impugned by the petitioner in the instant writ petition.

4. Learned counsel for the petitioner submitted that respondent No.3, in his

eviction petition, did not specifically plead the months for which the rent was claimed to be unpaid; that the learned Rent Controller erred by fixing the tentative rent at the rate of Rs.100,000/- per month and directing the petitioner to pay rent at the said rate for the period between August 2016 to February 2017; that the lease agreement between the petitioner and respondent No.3 was valid until 2025; that the petitioner had spent huge amount of money on renovating the rented premises; and that after the tentative rent was fixed by the learned Rent Controller, the petitioner did not deposit the arrears in rent in the Court, but produce receipts of the rent issued by respondent No.3. Learned counsel for the petitioner prayed for the concurrent judgments passed by the learned Courts below to be set-aside. He relied on the judgment in the case of Asad Brothers Vs. Ibadat Yar Khan (1991 SCMR 986), in support of his contention that it was not uncommon for a writ petition to be allowed against an eviction order passed due to the non-compliance with a tentative rent order.

5. I have heard the contentions of the learned counsel for the petitioner, and have perused the record with his able assistance. The facts leading to the filing of this petition have been set out in sufficient detail in paragraphs 2 to 3 above, and need not be recapitulated.

6. It is an admitted position that the petitioner did not show compliance with the tentative rent order dated 29.03.2017 by depositing tentative rent in the Court at the rate of Rs.100,000/- per month for the period

between August 2016 to February 2017. The contentions of the learned for the petitioner that the petitioner had given the rent for the said period directly to respondent No.3, does not absolve the petitioner for showing compliance with the tentative rent order. The petitioner did not move an application before the learned Rent Controller taking the position that the rent for the said period had already been paid to respondent No.3. Respondent No.3 in his eviction petition had expressly pleaded that the petitioner had defaulted in the payment of rent for a period of eight months. Hence, the learned Rent Controller committed no error in directing the petitioner to deposit tentative rent at the said rate for the said period. Since the petitioner did not show compliance with the tentative rent order, the learned Rent Controller correctly invoked the provisions of Section 17 (9) of the IRRO by striking off the petitioner's defence and allowing respondent No.3's eviction petition. I find that the order and decree dated 19.04.2017, 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 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 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."

7. In the result, there is no merit in this petition and it is, accordingly, dismissed *in limine*, but in the circumstances of the case, there will be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*

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