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

W.P. No.2796 of 2017

Mrs. Neelam Mawaaz
Versus
The learned Additional District Judge, Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	31.07.2017	**Mr. Saif-ul-Islam Sindhu, Advocate for the petitioner.**

Through the instant writ petition, the petitioner, Mrs. Neelam Mawaaz, impugns the judgment and decree dated 15.07.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby, the petitioner's appeal against the order and decree dated 19.06.2017, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order and decree dated 19.06.2017, the learned Rent Controller, Islamabad, struck off the petitioner's defence and allowed respondent No.3's eviction petition by invoking the provisions of Section 17 (9) of the Islamabad Rent Restriction Ordinance, 2001 ("I.R.R.O.").

2. The facts necessary for disposal of this petition are that on 29.03.2017, respondent No.3 (Mrs. Anjuman Zaka) instituted an eviction petition under Section 17 of the I.R.R.O. seeking the petitioner's eviction from Unit No.4, Block No.12-D, Faisal Plaza, Jinnah Super Market, Markaz F-7, Islamabad ("the rented premises"). In the said eviction petition, it was pleaded that in an earlier eviction petition instituted by respondent No.3, a compromise was arrived at on 30.05.2013, before the Court of the learned Rent Controller; and that under the terms of the said compromise, the petitioner had undertaken to vacate the rented

premises by 14.03.2017. The grounds taken by respondent No.3 in the eviction petition were (i) sublet of the rented premises by the petitioner to Mr. Tara Chand, (ii) violation of the compromise agreement between the petitioner, and respondent No.3, (iii) unauthorized construction on the rented premises. The petitioner contested the said eviction petition by filing a written reply. In the said reply, the position taken by the petitioner was that Mr. Tara Chand was the petitioner's partner and was looking after the petitioner's business in her absence. It was also pleaded that the monthly rent for the rented premises was Rs.402,627/-, and that the petitioner had not committed any default in the payment of rent since the past thirty two years.

3. Vide tentative rent order dated 02.05.2017, the learned Rent Controller, directed the petitioner to pay half the rent for the month of May, 2017, amounting to Rs.201,313/- in the Court account and submit the receipt on the next date of hearing i.e. 08.05.2017. Furthermore, the petitioner was directed to continue depositing the monthly rent from June, 2017 onwards at the rate of Rs.402,627/- before the 15th of each month in advance until the disposal of the petition.

4. The petitioner instead of depositing Rs.201,313/- in the Court account by 08.05.2017, sent a cheque in the name of Anjam Zaka on 02.05.2017. The petitioner, in her reply to respondent No.3's application under Section 17 (9) of I.R.R.O., admitted that the spelling of respondent No.3's name on the cheque was not correct, and that a new cheque had been issued in respondent No.3's favour.

5. Vide order and decree dated 19.06.2017, the learned Rent Controller, struck off the petitioner's

defence by invoking the provisions of Section 17 (9) of the I.R.R.O., and allowed respondent No.3's eviction petition. Furthermore, the petitioner was directed to vacate the rented premises within a period of ten days. The said order and decree passed by the learned Rent Controller was impugned by the petitioner in an appeal before the Court of the learned Additional district JUDGE, Islamabad vide judgment and decree dated 15.07.2017, the learned appellate Court dismissed the petitioner's appeal. The said concurrent judgments of the learned Courts below have been impugned by the petitioner in the instant writ petition.

6. Learned counsel for the petitioner submitted that the learned appellate Court had erred by holding that if the petitioner was not satisfied with the tentative rent order passed by the learned Rent Controller, she should have challenged the same before the competent forum; that no remedy of appeal or review is available under the law against the tentative rent order passed by the learned Rent Controller, under Section 17 (8) of the I.R.R.O.; that the petitioner had (prior to the time fixed by the learned Rent Controller for deposit of the tentative rent) paid respondent No.3 the tentative rent through a cheque; that the wrong spelling of respondent No.3's name on the cheque was an inadvertent mistake, and the same should have been overlooked by the learned Rent Controller; that an alternative cheque was issued by the petitioner in respondent No.3's favour; that the petitioner had occupied the rented premises as a tenant for the past thirty two years and had not committed any default in the payment of rent. Learned counsel for the petitioner prayed for the

concurrent judgments of the learned Courts below to be set aside.

7. I have heard the contentions of the learned counsels for the petitioner and have perused the record with his able assistance.

8. The facts leading to the filing of this petition have been set in sufficient detail in paragraphs 2 to 5 above, and need not be recapitulated.

9. A glance at the tentative rent order dated 02.05.2017, shows that the learned Rent Controller, directed the petitioner to pay half the rent for the month of May, 2017, amounting to Rs.201,313/- in the Court account and submit the receipt on the next date of hearing i.e. 08.05.2017. Furthermore, the petitioner was directed to continue depositing the monthly rent from June, 2017 onwards at the rate of Rs.402,627/- before the 15th of each month in advance until the disposal of the petition.

10. The admitted position is that the petitioner did not deposit Rs.201,313/- in the Court account by 08.05.2017. However, the petitioner issued a cheque in the name of Anjam Zaka on 02.05.2017. Realizing her mistake regarding the spelling of respondent No.3's name on the cheque, the petitioner apparently issued an alternative cheque. Be that as it may, the petitioner did not show compliance with the tentative rent order by depositing Rs.201,313/- in the Court account by 08.05.2017.

11. Consequently, vide order dated19.06.2017, the petitioner's defence was struck off under Section 17(9) of IRRO and he was directed to handover vacant possession of the demised premises within ten days. I find that the order dated 19.06.2017, 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<u>Hassan Ali Khan Vs. Additional District Judge Islamabad, reported as 2003 CLC 1819</u>.

(iv) In the case of <u>Major (R) Shakil-ud-Din Ahmad Vs. Addl. District Judge, Islamabad, reported as 2007 CLC 601</u>, 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. ArifaSabir 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."

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

(MAINGUL HASSAN AURANGZEB)
JUDGE

Ahtesham Majid*

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