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

W.P.No.1565 of 2016
Aftab Ahmed Cheema
Versus
Haji Mehboob ur Rehman & others

Date of Hearing: 30.05.2016
Petitioner by: Raja Aamir Shehzad, Advocate
Respondent No.1 by: Mr. Asim Shahbaz Malik, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Aftab Ahmed Cheema, impugns the judgment dated 07.04.2016, passed by the Court of learned Additional District Judge (West), Islamabad, whereby the petitioner's appeal against the Order dated 07.03.2016, passed by the Court of learned Rent Controller Islamabad (West) was dismissed. Vide the said order dated 07.03.2016, the learned Rent Controller, had allowed respondent No.1's eviction petition by striking off the petitioner's defence under Section 17(9) of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") and directed the petitioner to vacate Shop No.7-B, Ground Floor, Plot No.1-H, Noon Plaza, F-10 Markaz Islamabad ("the rented premises") within a period of fifteen days.

2. The facts essential for the disposal of this petition are that on 08.09.2014, a lease agreement was executed between the petitioner and respondent No.1, whereby the petitioner leased the rented premises for a period of one year commencing from 01.10.2014. The monthly rent was agreed to be Rs.55,000/-. This monthly rent would be increased by 10 % annually. Even though, the lease period provided in the said lease agreement had expired, the petitioner continued to occupy the rented premises.

3. On 31.07.2015, respondent No.1 instituted an eviction petition under Section 17 of the IRRO against the petitioner before the Court of learned Rent Controller Islamabad. The grounds taken in the eviction petition were as follows:-

> *"a. That the respondent has become a habitual rent defaulter as he has utterly failed to pay the due rents @ 55,000/- P.M of the premises w.e.f. January 2015 till date i.e. 31.07.2015.*

b. That even the rent paid by the respondent uptill December 2014 has always been paid with due delay and in piece meal which is also a violation of the terms of the lease agreement. This fact is very much evident from the bank deposit receipts attached herewith in account No.3225, MCB, F-10 Markaz, Islamabad.

c. That the lease agreement has already been terminated on verbal terms and also vide legal notice dated 25.04.2015 for the reasons mentioned therein.

d. That the respondent has failed to handover the vacant possession of the premises after the termination of the lease agreement.

e. The respondent has violated terms 1, 2, 3, 7 and 12 of the lease agreement mentioned in the covenants with the lessor.

f. That the respondent has also violated the terms of the compromise deed dated 12.12.2013 attached herewith.

g. That the petitioner now requires the premises for his own and family/personal bonafide use and to start their own business.

h. That the respondent has also defaulted in payment of utility bills i.e. electricity etc."

4. The petitioner contested the said eviction petition by filing his written reply on 18.12.2015. On 20.01.2016, the learned Rent Controller, passed an order under Section 17(8) of the IRRO fixing the tentative rent and directing the petitioner to deposit the same. The operative part of the said order dated 20.01.2016 is reproduced herein below:-

"..... Hence, respondent is hereby directed to deposit the rent in court from the month of January 2015 to September 2015 @ Rs.55,000/- per month and from October 2015 to January 2016 @ Rs.60500/- per month and submits receipts on next date of hearing. Respondent is further directed to keep on depositing the future rent @ Rs.60500/- per month before 15th of each month in advance till final conclusion of the petition...."

5. The consequences of non-compliance with an order / direction under Section 17(8) of the IRRO are provided in Section 17(9) of the IRRO, which is reproduced herein below:-

"17(9) If the tenant fails 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." (emphasis added)

6. As the petitioner failed to show compliance with the direction of the learned Rent Controller, respondent No.1 filed an application praying for striking off the petitioner's defence under Section 17 of the IRRO. The petitioner resisted this application by

filing his written reply. In this reply, the petitioner took the position that a substantial amount had been paid as rent to respondent No.1 for the "suit properties", and that a compromise had been effected between the petitioner and respondent No.1. Vide order dated 07.03.2016, the learned Rent Controller, struck off the petitioner's defense and accepted the eviction petition. Against the said order dated 07.03.2016, the petitioner preferred an appeal under Section 21 of the IRRO before the Court of the learned Additional District Judge, Islamabad. The grounds taken by the petitioner in the said appeal were that on 26.01.2016, a compromise had taken place between the contesting parties, whereunder the possession of Unit No.7 was handed over to respondent No.1. The other grounds of appeal are all general in nature.

7. Vide judgment dated 07.04.2016, the learned appellate court concurred with the decision of the learned Rent Controller and dismissed the petitioner's appeal with the direction to handover possession of the rented premises to respondent No.1 within a period of ten days.

8. The concurrent orders of the learned courts below have been impugned in this writ petition. The grounds taken in the instant writ petition are more or less the same as the grounds taken by him in the appeal before the appellate court.

9. Learned counsel for the petitioner submitted that on 26.01.2016, an out of court settlement had taken place between the petitioner and respondent No.1; that the petitioner had deposited the following amounts in the bank account of respondent No.1:-

i) Rs.2,00,000/- on 04.01.2016,
ii) Rs.80,000/- on 06.01.2016,
iii) Rs.69,000/- on 07.01.2016,
iv) Rs.17,000/- on 11.01.2016,
v) Rs.20,000/- on 11.01.2016,
vi) Rs.11,000/- on 13.01.2016, and
vii) Rs.3,000/- on 12.02.2016

10. Learned counsel for the petitioner further submitted that above-mentioned amounts had already been paid by the petitioner to respondent No.1, there was no reason to pay any further

amount after the learned Rent Controller, passed the Order dated 20.01.2016 under Section 17(8) of the IRRO.

11. On the other hand, learned counsel for respondent No.1 submitted that compromise dated 26.01.2016, was only with respect to the premises on the Mezzanine Floor in the same building and had nothing to do with the rented premises; that the petitioner had paid the amounts mentioned above as rent in fulfillment of his obligations under the compromise; and that the rented premises (i.e. Shop No.7-B) is not mentioned in the said compromise; that the petitioner is taking a contradictory stance by submitting that the above mentioned amounts are paid only with respect to Shop No.7-A (which is the subject matter of W.P.No.1564/2016), and then he claims to have paid the said amount only with respect to Shop No.7-B (which is the subject matter of the instant petition).

12. I have heard the arguments of the learned counsel for the contesting parties and have perused the record with their able assistance.

13. Perusal of the Order dated 20.01.2016, passed by the learned Rent Controller shows that the petitioner had been directed to deposit rent in the Court from January 2015 to September 2015 at the rate of Rs.55,000/- per month, and from October 2015 to January 2016 at the rate of Rs.60,500/- per month and submit receipts on the next date of hearing, which was fixed for 26.01.2016. The petitioner had also been directed to keep on depositing future rent at the rate of Rs.60,500/- per month before the 15th of each month in advance till the conclusion of the proceedings before the learned Rent Controller. The learned Rent Controller had specified the date by which the petitioner was required to show compliance with the tentative rent order passed under Section 17(8) of the IRRO. As the petitioner failed to comply with the direction of the learned Rent Controller by 26.01.2016, the learned Rent Controller, on the application of respondent No.1, passed the order dated 07.03.2016 under Section 17(9) of the IRRO. Hence, the learned Rent Controller was justified in striking off the petitioner's defense and accepting the eviction petition.

14. Perusal of the compromise dated 26.01.2016 shows that it is only with respect to premises on the Mezzanine Floor of the building in which the rented premises are located. It is not disputed that the rented premises are located on the ground floor of the building. The petitioner claims that the amounts mentioned in paragraphs 9 above, were paid as rent for the rented premises. On the other hand, the petitioner claims that the same payments were made with respect to Shop No.7-A in the same building. Even if, it is assumed for the sake of argument that the said amounts were paid by the petitioner prior to the passing of the tentative rent order, this, did not absolve the petitioner from showing compliance with the said order. Hence, I find that the order dated 07.03.2016, passed by the learned Rent Controller to be strictly in accordance with the provisions of the IRRO 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."*

15. Section 17(9) of the IRRO clearly provides that if the tenant fails to deposit the amount of rent before the specified date, his

defence shall be struck off and the landlord shall be put in possession of the rented premises without any further proceedings. The term, "the landlord shall be put in possession of the building without any further proceedings" employed in Section 17(9) of the IRRO has to be given effect to in letter and spirit. Therefore, after passing an order under Section 17(8) of the IRRO, the learned Rent Controller has only to see whether the directions contained in such an order have been complied with within the date stipulated therein. If the tenant fails to show compliance with such a direction, it is incumbent upon the learned Rent Controller not just to strike off the tenant's defence but to put the landlord in possession of the rented premises straight away. Section 17(9) of the IRRO does not contemplate an inquiry to be held after the tenant fails to show compliance with a specific direction contained in an order under Section 17 (8) of the IRRO. The requirement of an inquiry under Section 24 of the IRRO has to be read with Section 17(2) of the IRRO, which requires the Rent Controller to give a tenant a reasonable opportunity of showing cause against an application under Section 17 of the IRRO. Once the learned Rent Controller satisfies himself as to the non-compliance by the tenant with the direction contained in the order under Section 17(8) of the IRRO, the tenant is not entitled to any further indulgence. In the result, I find no merit in this petition, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

Qamar Khan*

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