ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3822 of 2017
Muhammad Imran Abbasi
Versus.
The learned Rent Controller, etc.

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.11.2017	**Mr. Karim Nawaz Abbasi, Advocate for the petitioner**

Through the instant writ petition, the petitioner, Muhammad Imran Abbasi, impugns the order dated 23.10.2017, passed by the Court of the learned Rent Controller, Islamabad, whereby the petitioner's right to produce evidence was closed.

2. Learned counsel for the petitioner submitted that even though the impugned order dated 23.10.2017 was an interlocutory order, the same was liable to be set-aside by this Court, because it had caused grave injustice and prejudice to the petitioner; that this Court had ample jurisdiction to interfere in an interlocutory order passed by the learned Rent Controller; that since the impugned order dated 23.10.2017 was not appealable, the petitioner was left with no other remedy, but to file a writ petition against the said order before this Court; that vide order dated 09.10.2017, the learned Rent Controller had granted a last and final opportunity to the petitioner to produce evidence on 13.10.2017; that due to an inadvertent mistake, the petitioner had entered 14.10.2017 as the next date of hearing in his diary; that on 14.10.2017, the petitioner learnt that the learned Rent Controller had, vide order

dated 13.10.2017, closed the petitioner's right to produce evidence; that the petitioner was prompt in filing an application for the recall of the order dated 13.10.2017; that vide impugned order dated 23.10.2017, the petitioner's said application was dismissed by the learned Rent Controller. Learned counsel for the petitioner prayed for the impugned order dated 23.10.2017 to be set-aside and for the matter to be remanded to the learned Rent Controller with the direction to give one more opportunity to the petitioner to produce evidence. In making his submissions, learned counsel for the petitioner relied on the law laid down in the cases reported as (i) *2007 SCMR 818*, wherein it has been held that a Rent Controller, being a *persona designata* governed by a special statute has no jurisdiction to impose fine while allowing application for production of additional evidence of a party in the proceedings (ii) *2015 CLC 953*, wherein the Peshawar High Court while deciding a writ petition against an interim order passed by an Election Tribunal held that constitutional petitions can be entertained against interim orders which finally decide and interpret the law or rules and thus attained the status of final orders (iii) *2009 MLD 114*, wherein the tentative rent order passed by a Rent Controller was held by the Hon'ble High Court of Sindh to be without jurisdiction in exercise of constitutional jurisdiction under Article 199 of the Constitution, (iv) *2000 MLD 869*, wherein it was held that where objection to the jurisdiction of the learned Rent Controller was taken, such an objection should be decided by the Rent Controller in the first instance.

Furthermore, it was held that a writ petition against an order of the Rent Controller whereby such an objection was decided, was amenable to the constitutional jurisdiction of the High Court (v) *2000 YLR 604*, wherein it was held that where the relationship between landlord and tenant was denied, a writ petition against a tentative rent order was maintainable (vi) *1998 MLD 624*, wherein it was held that where an order passed by the Rent Controller is without jurisdiction, the same cannot be allowed to remain in the field, and can be struck down by the High Court in exercise of its jurisdiction under Article 199 of the Constitution, and (vii) *1985 CLC 3021*, wherein it was held that where summons were not issued to the tenant witness, the Rent Controller could not close the tenant evidence due to the witness not being available for evidence, a writ petition against an order closing the tenant's evidence was allowed by the Hon'ble Lahore High Court.

3. I have heard the contentions of the learned counsel for the petitioner and have perused the record and the case law with his able assistance.

4. The order sheet reveals that vide order dated 09.10.2017, the learned Rent Controller gave the petitioner "absolute last opportunity" for the production of evidence on 13.10.2017. On 13.10.2017, the case was called at three different times, but since the petitioner did not produce his evidence, the petitioner's right to produce evidence was closed. The matter was adjourned for arguments to 19.10.2017. On 14.10.2017, the petitioner filed an application for the recall of the said order dated

13.10.2017. The ground taken by the petitioner in this application was that the petitioner could not attend the Court on 13.10.2017 due to a mistake/ misunderstanding. Vide impugned order dated 23.10.2017, the said application was dismissed by the learned Rent Controller. The learned Rent Controller held that there is no power with the learned Rent Controller under the provisions of the Islamabad Rent Restrictions Ordinance, 2001, to review its order.

5. In the case at hand, the impugned order dated 23.10.2017, is an interlocutory order. The said order is not appealable under the provisions of the IRRO. Section 21(1) of the IRRO provides that any party aggrieved by a final order of the Rent Controller may prefer an appeal to the District Judge within thirty days of the date of such an order. Section 21(2) of the IRRO explicitly provides that no appeal shall lie from an interlocutory order passed by the Rent Controller. It is perhaps for this reason that the petitioner has instituted a writ petition to challenge the said interlocutory order dated 23.10.2017. At this stage, reference to case law on the subject would be appropriate:-

(i) In the case of Saghir Ahmad Naqvi Vs. Province of Sindh reported as 1996 SCMR 1168, the Hon'ble Supreme Court of Pakistan has held that where a statute excludes a right of appeal from an interim order, the same cannot be bypassed by bringing under attack such interim orders in the constitutional jurisdiction of the High Court. Furthermore, it was held that the affected party had to wait till it

matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders.

(ii) In the case of Muhammad Taj Vs. Muhammad Younis Khilji reported as 2008 CLC 1666, the Hon'ble Islamabad High Court in paragraph 6 of the report inter-alia held as follows:-

> *"6. There is another aspect of the matter that the instant writ petition has been filed against interim order and section 21(2) of Islamabad Rent Restriction Ordinance, 2001 specifically bars any appeal against the interlocutory orders of the Rent Controller which does not dispose of the entire case before it. The intention of legislature can be gathered from the provisions of section 21(2) of the Ordinance that to avoid delay in disposal of the cases by the Rent Controller, a specific bar has been imposed to challenge the interlocutory orders passed by the Rent Controller, therefore, the petitioner cannot be allowed to circumvent the legislative intent by filing against the interim order a constitutional petition. There are numbers of judgments under West Pakistan Urban Rent Restriction Ordinance, 1959 and Cantonments Rent Restriction Act, 1963 wherein it has been held that if legislature has not made an interim order appealable, the writ petition cannot be permitted to be filed to challenge such an order."*

(iii) In the case of Jehangir Khan Jadoon Vs. Gul Nigar Manzoor, reported as 2008 CLC 547, a writ petitioner had challenged a tentative rent order passed by the Rent Controller under the provisions of the Islamabad Rent Restriction Ordinance, 2001. The Hon'ble Lahore High Court, upheld the preliminary objection that as the order impugned was interlocutory in

nature and the Rent Controller was competent to change and modify it, the same could not be challenged in the constitutional jurisdiction of the High Court. At paragraph 9 of the said report, it has been held by the Hon'ble High Court as follows:-

> ***"9. In view of the above, I am of the definite view that the impugned order was tentative in nature and has to be merged in the final order which would be appealable under Section 21 of the Islamabad Rent Restriction Ordinance, 2001, therefore, the petitioner has to wait for it to question the same before the Appellate Court. However, the impugned order is provisional in nature and is not assailable in constitutional jurisdiction of this Court. Consequently, for the foregoing reasons, the instant constitutional petition being devoid of any force is dismissed with no order as to costs."***

(iv) **In the case of <u>Sher Bahadur Vs. Civil Judge Takht Bhai reported as 2003 YLR 1722</u>, the learned Rent Controller had struck off the defence of the tenant on account of his failure to produce evidence. This order was challenged by the tenant in the constitutional jurisdiction of the Hon'ble High Court. At paragraph 22 of the said report, the Hon'ble Peshawar High Court, inter-alia held as follows:-**

> ***"22. Another aspect of the case is that the writ petitions have been filed against interlocutory/interim order dated 12.04.2002. Their Constitution petitions are not maintainable because the appeals against interim order are barred under Section 15 of the Ordinance, which clearly indicated that there was ouster clause specifically barring appeal against interim order of the Rent Controller as only final order was amenable to***

appeal. The impugned orders being interim orders are not appealable under the relevant law, in such circumstances, question would arise whether such orders could be assailed in constitutional jurisdiction? Where the law itself has not given the right of appeal against certain orders then same cannot be challenged in any other forum to gain similar object which has been barred by statute itself. It was well-settled principle that the remedy which is not directly available cannot be sought indirectly through indirect means."

(v) **In the case of Iqbal Ahmed Vs. Muhammad Nasir reported as 2016 MLD 624, the Hon'ble High Court of Sindh, after referring to Section 21 of the Sindh Rented Premises Ordinance, 1979, which prohibits an appeal against an interim order passed by a Rent Controller, held at paragraph 8 of the said report as follows:-**

"8. A perusal of the above provisions of law clearly indicates that the legislature has specifically prohibited filing of an appeal against interim order. Thus, I am of the view that the legislature did not intend to make the interim order challengeable . Interim order is to merge in the final verdict which shall be appealable and going against that arrangement by exercising writ jurisdiction would not be proper because in that case the object of legislature shall be frustrated. This dictum is laid down in the case of Mrs. SyedaTahiraMubashar (supra) and Abdul Farooq and another Vs. Maqsood Ahmed and another, reported as 2015 CLC 363."

(vi) **In the case of Abdul Farooque Vs. Maqsood Ahmed reported as 2015 CLC 663, the landlord had moved an application for recovery of arrears of rent in an eviction petition, which application was accepted and a tentative rent order**

was passed by the Rent Controller. The contention of the tenant was that the Rent Controller could not, without framing and deciding a preliminary issue with regard to the existence of a relationship of landlord and tenant, pass a tentative rent order. The Hon'ble High Court of Sindh at paragraph 9 of the report inter-alia held as follows:-

> *"The impugned tentative rent order of the learned Rent Controller is interlocutory/interim in nature and the same is even not appealable under the Ordinance, 1979. No order has yet been passed by the learned Rent Controller under Section 16(2) of the Ordinance, 1979. The provision of appeal has been provided under Section 21 of the Ordinance, 1979 by the legislature against the final order of the Rent Controller. The petitioners will have opportunity to file the appeal if the final order goes against them and they can raise the afore-stated ground too. Therefore, the instant constitutional petition is not maintainable against an interlocutory/interim order of Rent Controller. The reason being that if constitutional petition were to be entertained, the very purpose of Section 21of the Ordinance, 1979 would be defeated. Reliance can be placed in this regard on the case of Mst. Seema Begum Vs. Muhammad Ishaq and others (PLD 2009 SC 45)."*

6. Law to this effect has also been laid down in the cases of Abdul Majid Khan Vs. Rent Controller, Civil Judge, Gujranawala reported as 1997 CLC 1822, Mahmood-ul-Hassan Vs. Special Judge, Rent Tribunal, Lodhran reported as 2010 CLC 1590, and Muhammad SaghirAbbasi Vs. District Rent Controller reported as 2015 MLD 417.

7. The principles distilled from the aforesaid judgments and the observations made therein, are as follows:-

As Section 21(2) of IRRO expressly bars a right of appeal from an interim order passed by a Rent Controller, the same cannot be circumvented by challenging such an interim order in the constitutional jurisdiction of the High Court. A party aggrieved by such an interim order has to wait until a Rent Controller passes a final order and then to challenge it under Section 21(1) of the IRRO before the Court of the learned District Judge. The purpose behind barring an appeal against an interim order of the Rent Controller is to avoid delays in disposal of the cases by the Rent Controller. An interim order merges into the final verdict which is appealable under Section 21(1) ibid. In an appeal against the final verdict, the interim order can also be subjected to challenge.

8. However, it is my view that exceptional circumstances which could justify invoking the jurisdiction of the High Court under Article 199 of the Constitution would be when the order or action assailed was palpably without jurisdiction, malafide, void or *coram-non-judice*. The order impugned in this petition is clearly interlocutory in nature and does not dispose of the entire case before the learned Rent Controller. The impugned order is neither without jurisdiction, nor malafide, void or *coram-non-judice*.

9. The order dated 23.10.2017 being purely interlocutory in nature could not be subjected to challenge by filing a constitutional petition

before this Court as it would amount to defeating the legislative intent behind Section 21(2) of the IRRO. In view of the law laid down by the superior courts, I am not inclined to interfere in the interlocutory order dated 23.10.2017, passed by the learned Rent Controller.

10. Since the relationship of landlord and tenant between the petitioner and respondent No.2 has not been denied in the case at hand, and since the impugned order dated 23.10.2017 has not been challenged as void, without jurisdiction or *coram non judice*, the case law relied upon by the learned counsel for the petitioner is distinguishable. There will be nothing preventing the petitioner from challenging the said order dated 23.10.2017 in the appeal against the final order of the learned Rent Controller in the event the eviction petition is decided against the petitioner.

11. For the foregoing reasons, the instant writ petition, being devoid of merits, is dismissed in limine, with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*

Uploaded By: Zulqarnain Shah