JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.636 of 2016
Muhammad Umar Farooq
Versus
Muhammad Ameen Chughtai and others

Date of Hearing: 24.01.2017
Petitioner by: Raja Muhammad Aleem Khan Abbasi, Advocate
Respondent No.1 by: Sardar Anzar Iqbal Khan, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Umar Farooq, impugns the judgment dated 09.02.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the order dated 07.12.2015, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order dated 07.12.2015, the learned Rent Controller, allowed respondent No.1's eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") and directed the petitioner to vacate Shop No.2, Ground Floor, Chughtai Plaza, Plot No.35, Fazl-ul-Haq Road, Blue Area, Islamabad ("the rented premises") within a period of thirty days.

2. The record shows that on 11.05.2009, the petitioner and respondent No.1 entered into a lease agreement, whereby the rented premises were leased to the petitioner for a period of two years commencing from 01.01.2009 and terminating on 31.12.2010. On 20.11.2013, respondent No.1 filed an eviction petition under Section 17 of the IRRO seeking the petitioner's eviction from the rented premises. 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 in order to establish the business of a wedding hall. The petitioner contested the said eviction petition by filing a written reply. The position taken by the petitioner was that the lease period had been extended up to 2020 subject to the

condition of a 20% increase in rent after 2016. Furthermore, it was pleaded that the establishment of a wedding hall at the rented premises was not permissible under the law. From the divergent pleadings, the learned Rent Controller, framed the following issues:-

"1. Whether the respondent is liable for ejectment on the ground mentioned in the instant petition? OPA
2. Whether the claim of petitioner is false and frivolous therefore, petition is liable to be dismissed? OPR
3. Whether petitioner has no cause of action and locus standi to file the instant petition? OPR
4. Whether petitioner has come to the court with clean hands? OPR
5. Whether the petition is not maintainable in its present form? OPR
6. Relief."

3. Respondent No.1 appeared as A.W.1; Wasim Ahmad Chughtai as A.W.2. and; Abdullah as A.W.3. The petitioner appeared as R.W.1. Vide order dated 07.12.2015, the learned Rent Controller gave issue-wise findings and allowed the eviction petition. On 09.02.2016, the petitioner's appeal against the said order dated 07.12.2015, was dismissed by the learned Appellate Court. The said concurrent findings of the learned Courts below have been impugned by the petitioner in the instant writ petition.

4. Raja Muhammad Aleem Khan Abbasi, Advocate, learned counsel for the petitioner submitted that respondent No1's eviction petition was allowed on two grounds i.e. (i) respondent No.1's personal bonafide need for the rented premises, and (ii) expiry of the lease agreement; that expiry of the lease agreement is not one of the grounds on which a tenant can be evicted under the provisions of the IRRO; that the term "tenant" has been defined in Section 2(j) of the IRRO; that even if the lease period expires, the tenant/occupant of the rented premises will be deemed to be a tenant holding over; that the expiry of the lease has been expressly made a ground for the eviction of a tenant under the provisions of the Punjab Rented Properties Act, 2009; that earlier under the provisions of the West Pakistan Urban Rent Restrictions Ordinance, 1959, expiry of the lease agreement was not a ground on which a tenant could be evicted; and that

Section 17 of the IRRO is in *pari materia* to Section 13 of the West Pakistan Urban Rent Restrictions Ordinance, 1959. In making his submissions, the learned counsel for the petitioner placed reliance on the cases of Abdul Hameed Talib Vs. Additional District Judge Lahore (PLD 2013 SC 775), Zarina Khawaja Vs. Agha Mahboob Shah, (PLD 1988 SC 190), Munawar Sultana Vs. Additional District Judge, Islamabad (2005 CLC 1119), and Zulfiqar Ahmad Vs. Nisar Baig, Additional District Judge Islamabad (2010 YLR 1521).

5. Learned counsel for the petitioner further submitted that under proviso (b) to Section 17(4) of the IRRO, the landlord of a commercial property seeking eviction of the tenant on the ground of his personal *bonafide* need for such premises, can apply to the Rent Controller only after the expiry of the lease period; that since the lease agreement between the petitioner and respondent No.1 was valid and subsisting, the respondent No.1 could not seek the petitioner's eviction from the rented premises on the ground of personal *bonafide* need; that respondent No.1 failed to prove the ground of personal bonafide need, because the original lease agreement was not exhibited during the evidence. He further submitted that the original owner of the rented premises namely, Haji Abdul Kareem died during the pendency of the eviction petition; that the original owner of the rented premises died on 30.09.2014, whereas the eviction petition was filed on 21.11.2013; that the eviction petitioner namely, Muhammad Amin Chughtai, was Haji Abdul Kareem's son and attorney; that the personal bonafide need for the rented premises could only be that of the landlord's, and the same could not devolve on his legal heirs; that the ground of personal bonafide need was taken by the father, and not the son; that with the death of the father, the ground of personal bonafide need stood extinguished; that the eviction petitioner was doing business in the United Kingdom and therefore, could not require the rented premises for his bonafide need; that the rented premises are located in the Blue Area where the establishment of a wedding hall is not permissible under the 1968 Regulations;

that the establishment of a wedding hall at the rented premises would constitute 'non-conforming use' which was not permissible under the law; that respondent No.1 did not obtain an N.O.C. from the CDA for the establishment of a wedding hall at the rented premises. In making these submission, the learned counsel for the petitioner placed reliance on the law laid down in the cases of Ch. Akbar Hussain Vs. Mrs. Zehra Bai (2002 SCMR 789), Rehan Ahmed Vs. Mrs. Nadra Israr (PLD 2012 Sindh 203), and F.B. Davis Vs. Mrs. Shakar Khano Bai (1986 MLD 1342).

6. Learned counsel for the petitioner further submitted that the preamble of the IRRO shows that for the provisions of the IRRO to apply, there must exists the relationship of landlord and tenant between the parties before the learned Rent Controller; that in the proceedings before the learned Rent Controller, the original lease agreement was not exhibited; that a copy of the lease agreement was produced before the learned Rent Controller; that the provisions of the *Qanun-e-Shahadat* Order, 1984 are applicable before the learned Rent Controller; that under Article 79 of the *Qanun-e-Shahadat* Order, 1984, any document creating a financial liability has to be signed by two attesting witnesses; that Article 75 of the *Qanun-e-Shahadat* Order, 1984, provides for the circumstances in which secondary evidence can be led; that the requirements of the said law, were not satisfied when a photocopy of the lease agreement was tendered in evidence; that a photocopy of the alleged lease agreement dated 11.05.2009 was produced as a 'Mark', which cannot be read in evidence; that the procedure required for the production of secondary evidence contemplated by Article 75 of the *Qanun-e-Shahadat* Order, 1984 was not adopted by the learned Rent Controller; that even otherwise, the said lease agreement was signed by only one witness; that the alleged lease agreement was not produced by respondent No.1, but was produced by his counsel; that the mechanism for tendering a document in evidence has been provided in Articles 72 to 78 of the *Qanun-e-Shahadat* Order, 1984; that respondent No.1/eviction petitioner was not able to establish the existence of

a lease between the petitioner and respondent No.1; that respondent No.1 was not able to prove the existence of a lease agreement; that the mere tendering of a copy of the document in evidence does not mean that the same has been proved; that the primary document was required to be produced under Article 74 of the *Qanun-e-Shahadat* Order, 1984;that as per the law laid down in the case of Fakhar-ud-Din Vs. Mst. Mansab Bibi (2004 SCMR 711), the onus is on the landlord/eviction petitioner to establish the existence of the lease agreement; that the evidence produced by respondent No.1 does not fulfill the requirement for establishing a valid lease. In making these submissions, the learned counsel for the petitioner placed reliance on the law laid down in the cases of Mst. Hameeda Begum Vs. Mst. Irshad Begum (2007 SCMR 996), Hyderabad Development Authority Vs. Abdul Majeed (PLD 2002 SC 84), Abdul Rehman Vs. Zia-ul-Haque Makhdoom (2012 SCMR 954). Learned counsel for the petitioner prayed for the concurrent orders passed by the learned Courts below to be set aside.

7. On the other hand, Sardar Anzar Iqbal, Advocate, learned counsel for respondent No.1, submitted that the concurrent judgments of the learned Courts below do not suffer from any jurisdictional infirmity. He further submitted that as per the law laid down by the Honourable Supreme Court in the case of Qaiser Javed Malik Vs. Pervaiz Hameed (2009 SCMR 846), the expiry of a lease agreement is valid ground on which the eviction of a tenant can be sought; that the said judgment is with respect to the IRRO, and till date there is no judgment to the contrary rendered by the Hon'ble Supreme Court; that the said judgment is binding on this Court in terms of Article 189 of the Constitution; that this Court in the cases of Farrukh Zia Vs. Mst. Bushra Begum (2013 CLC 1077), and Ghulam Abbas Vs. Additional Sessions Judge (West) Islamabad (2015 MLD 1740), has held that expiry of the lease was one of the grounds under IRRO for seeking the eviction of a tenant; that respondent No.1 had not extended the validity of the lease agreement beyond 2010 expressly or verbally; and that since the lease agreement had expired,

respondent No.1 could seek the petitioner's eviction from the rented premises.

8. Learned counsel for respondent No.1 further submitted that respondent No.1 had established his bona fide need for the rented premises; that the execution of the lease agreement dated 11.05.2009 has been admitted by the petitioner in his written reply; that after admitting the execution of the said lease agreement, the petitioner cannot raise objections to the same; and that the petitioner was abusing the process of the Court to perpetuate his occupation of the rented premises. Learned counsel prayed for the writ petition to be dismissed.

9. I have heard the contentions of the learned counsel for the contesting parties, and perused the record with their able assistance. The facts leading to the filing of the instant writ petition have been set out in sufficient detail in paragraphs 2 to 3 above and need not be recapitulated.

10. I first propose to deal with the petitioner's contention that the execution of the lease agreement between the petitioner and respondent No.1 has not been proved. Respondent No.1's pleading in the eviction petition that the lease agreement dated 11.05.2009 has been executed between the petitioner and respondent No.1, was admitted by respondent No.1 in his written reply filed before the learned Rent Controller. In this regard, the pleadings of the contesting parties are reproduced herein below:-

Paragraph-2 of the eviction petition	Paragraph-2 of the written reply
2. That petitioner entered into lease agreement with the respondent regarding Shop No.2, Ground Floor, Chughtai Plaza, Plot No.35, situated at Fazal-e-Haq Road, Blue Area, Islamabad, vide lease agreement dated May 11, 2009, w.e.f 1-01-2009 to 31.1.2010 at the monthly rent of Rs.30,000/- per month thereafter the rent was increased @20% and now the prevailing rent is Rs.48,000/- per month. It is worth to mention here that after the said lease agreement the	2. That the contents of para under reply are denied being incorrect false and frivolous. It is further stated that the lease agreement dated 11-05-2009 was executed between the petitioner and respondent and same was extended in terms of the lease agreement which fact is evident from the contents of this para and amounts to admission on the part of the petitioner. The operative part of agreement is reproduced as follows:

respondent has bifurcated the other shop/adjacent shop i.e. shop No.3 and converted the same in the shop No.2 by removing the center wall. (hereinafter called the suit premises).	"a fresh agreement shall be made between the parties by mutual undertstanding after increasing the rent @ 20%." That according to contents of para under reply, prevailing rent is Rs.48,000 per month and this fact is evidencing that the petitioner is admitting himself the extension of the lease agreement with the mutual understanding up to 2016 and negating the version of the petitioner as referred in para 6 ground for eviction. It is settled principle of law that no one can take hot and cold in the same breath. However infact the petitioner entered into lease agreement with respect to suit shop upto 2020 subject to the condition of 20% increment in rent after 2016. The admission on the part of the petitioner alone liable the dismissal of the eviction petition. The eviction petition is vague with respect to the shops. Hence does not attract the provision of IRRO 2001.

11. On account of the petitioner's admission regarding the execution of the lease agreement dated 11.05.2009 in his written reply, I do not feel the need of delving into the controversy as to whether respondent No.1 had proved the execution of the lease agreement. The petitioner, in his written reply filed before the learned Rent Controller, had also not denied his entry into the rented premises in his capacity as a tenant. Therefore, the subsequent volte-face taken by the petitioner by asserting that since the execution of the lease agreement had not been proved, there does not exist a relationship of a landlord and tenant between respondent No.1 and the petitioner respectively, is a clear departure from the petitioner's pleadings, and therefore, not tenable. Such a contradictory stance disentitles the petitioner from discretionary relief in the equitable jurisdiction of this Court under Article 199 of the Constitution.

12. I next propose to deal with the petitioner's contention that respondent No.1 could not seek the petitioner's eviction from the

rented premises on the ground of respondent No.1's bona fide need for establishing a wedding hall at the rented premises. The petitioner's plea was that the learned Rent Controller erred by allowing the eviction petition on the ground of personal bonafide need because admittedly the rented premises are commercial premises, and the lease period had not expired. Section 17 (4) (b) and its first proviso reads as follows:-

> *"(4) A landlord may apply to the Controller for an. order directing the tenant to put the landlord in possession,*
> *a) ....*
> *b) in the case of a commercial building or rented land, if he requires it in good faith for his own use or for the use of any member of his family:*
> *Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this subsection before the expiry of such period."*

13. Suffice it to say that the lease agreement dated 11.05.2009 clearly provides that it is for a period of two years from 01.01.2009 to 31.12.2010. A copy of the lease agreement dated 11.05.2009, annexed at page-61 of this petition, shows that it had a validity period until 31.12.2010. Although the petitioner's stance is that the validity period of the lease agreement was extended, he has not brought on record any document to prove such an assertion. The position taken by the petitioner in his pleadings/written reply was that respondent No.1 had *"entered into lease agreement with respect to suit shop upto 2020"* has not been substantiated in the evidence. There is no document on record which shows that the tenancy was valid until 2020. Even though there is a provision in the said lease agreement for making a fresh lease agreement by the parties with mutual understanding, and after increasing the rent by 20%, it is an admitted position that a fresh lease agreement was not executed between the contesting parties. The petitioner's assertion as to there being an oral agreement has been denied by respondent No.1. Section 5 of the IRRO *inter-alia* provides that every agreement for letting out a building or rented land shall be made in writing. Since the petitioner was not able to prove the execution of a lease agreement for a period beyond the one

agreed in the lease agreement dated 11.05.2009, (which agreement expired on 31.12.2010), I am of the view that the ground of personal bonafide need for the rented premises could be taken by respondent No.1 for the petitioner's eviction from the rented premises.

14. The petitioner cannot be permitted to add to respondent No.1's woes by asserting that with the death of respondent No.1's father, the ground of personal bonafide need extinguishes. The lease agreement dated 11.05.2009 was admittedly executed between the petitioner and respondent No.1, and the eviction petition was also filed by respondent No.1. Respondent No.1's authority to execute the lease agreement, and to file eviction petition was not specifically questioned by the petitioner in his pleadings before the learned Rent Controller. For the petitioner now to assert that the ground of personal bonafide need has extinguished with the death of respondent No.1's father is devoid of merit.

15. Now as regards the question whether respondent No.1 could establish a wedding hall in the rented premises is concerned, this is a matter between respondent No.1 and the CDA. Furthermore, 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 respondent No.1's bonafides regarding the said claim. There is no convincing material before me to doubt the satisfaction of the learned Courts below as to respondent No.1's bonafides. In the event, the rented premises are not occupied by respondent No.1 himself or by any of his family member, 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."

16. Perusal of the eviction petition dated 20.11.2013 shows that respondent No.1/eviction petitioner had sought the petitioner's eviction from Shop No.2 in Chughtai Plaza. Respondent No.1 had also pleaded that after the execution of the lease agreement dated 11.05.2009, the petitioner bifurcated an adjacent shop (i.e. Shop No.3) and made it a part of Shop No.2 (the rented premises) by removing the center wall. The petitioner, in his written reply, admitted the execution of the lease agreement dated 11.05.2009, but asserted that the same had been extended upto 2020. The petitioner in his reply did not deny the amalgamation of the rented premises with the adjacent shop by removing the center wall. Therefore, the petitioner cannot defeat the eviction petition by demolishing the central wall between the rented premises and the adjacent shop.

17. By reason of the above, without going into the question whether the expiry of a lease is a ground under the IRRO to seek the eviction of a tenant, I am of the view that the learned Courts below correctly allowed the eviction petition on the ground of respondent No.1's bonafide need for the rented premises. Resultantly, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Sultan*

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