

JUDGMENT SHEET

**PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)**

W.P. No. 2634-P/2022

JUDGMENT

Date of hearing: **22.08.2022**

*Petitioner: by Mr. Muhammad Irshad Mohmand,
Advocate.*

*Respondents: by Mr. Ahmad Saleem Khan,
Advocate.*



SHAHID KHAN, J- This order is directed to dispose of the subject petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 of Nadeem Khan (hereinafter petitioner/tenant) against Maqbali Khan Khalil (landlord) & 02 others (now the respondents).

2. Respondent No.1, Maqbali Khan Khalil (landlord) approached the learned Rent Controller for vacation of the demised premises, a residential unit, House No.18, Sector K-4, Phase-III, Hayatabad, Peshawar, u/s 13 of West Pakistan Urban Rent Restriction Ordinance, 1959 against petitioner Nadeem Khan (tenant) on the ground of default, personal need & change its status to be used for commercial purposes instead of residential.


3. The petitioner/tenant was summoned by the learned Rent Controller, on his appearance the claim of the respondent/landlord was contested by filing his written reply, wherein, raising various legal as well as factual objections. During the course of proceedings before the learned Rent Controller an application was filed by the petitioner/tenant for extension of time to deposit the rent due, in installments, it was contested by the respondent/landlord and after hearing the parties through their counsel, the learned Rent Controller vide order dated **18.11.2021** struck off the right of defence of the petitioner/tenant and allow the ejection petition.

4. Feeling aggrieved therefrom, petitioner/tenant approached the learned appellate Court for appropriate remedy through an appeal but it was also dismissed vide judgment dated **31.03.2022**. Feeling aggrieved, the petitioner/tenant approached this Court by filing the instant writ petition with the following prayer;

“It is, therefore, humbly prayed that on acceptance of this Writ petition the impugned judgments & decree of both the learned Courts below dated 31.03.2022 & 18.11.2021 be set aside to the extent of alleged disputed rent between the parties for the period of October, 2020 to October 2021 or in alternate the Respondent No.1 be

directed to establish his claim before the competent Court of law.”

Learned counsel for the parties, heard.



5. Perusal of record reveals that the relationship between the parties in respect of the demised premises as landlord & tenant is not disputed at all, however, the respondent/landlord being claimed that the petitioner/tenant is willful defaulter and even has not complied with the order of the learned Rent Controller dated 06.10.2021, to tender/pay/deposit in Court the rent arrears since October, 2020 till October 2021 (13 months) before the 15th of October, 2021, therefore, defence of the petitioner/tenant was struck off followed by ejection of the petitioner/tenant in respect of the demised premises.

6. Learned counsel for the petitioner/tenant that the rent agreement in respect of the demised premises between the petitioner/tenant and respondent/landlord was executed at their free will and consent. Added, initially monthly rent was fixed as Rs:90,000/- (Ninety thousand), however, it was enhanced as Rs:1,22,000/-. Added, the rent has been regularly paid without any delay and claim of the respondent/landlord is unjust & uncalled for. Also added, the claim pertaining to the personal use is not tangible on the ground that the respondent/landlord does

have a residential unit in the vicinity and intended to eject the petitioner/tenant followed by rent out the premises at a high rate of rent. Concluded, the impugned order of the learned Rent Controller, followed by the learned appellate Court pertaining to the ejection of the petitioner/tenant on the ground of default is unjust & uncalled for and on acceptance of the petition in hands needs to be set aside.



7. Learned counsel for the respondent/landlord argued that the learned Rent Controller after furnishing respective pleadings by the parties, petitioner/tenant & respondent/landlord vide order dated 20.09.2021 followed by fixation of tentative rent arrears to the effect that since October, 2020 till October, 2021, Rs:15,86,000/- as rent arrears has to be paid/tendered/deposit by the petitioner/tenant up to May, 2021 coupled with future rent to be deposited with Civil Nazir. The written request of the petitioner/tenant for extension of time to pay/tender the rent arrears was out rightly rejected followed by struck off of defence on the ground of noncompliance of the order of the Court pertaining to pay/tender/deposit the rent arrears. The learned Rent Controller has exercise its jurisdiction in accordance with law and does not suffers from any illegality or irregularity, misuse of jurisdiction or non-reading of evidence, as such, based on proper appraisal

of evidence and law on subject, therefore, does not needs any interference at all.

8. Close perusal of the record in view of the due assistance of the learned counsel for the parties would transpire that the relationship of tenant & landlord in view of agreement so executed between the parties is not denied at all, however, the agreed period of an year w.e.f. 01.01.2020 to 30.12.2020 has been expired. The learned Rent Controller vide order No.10 dated 06.10.2021, in view of the pleadings of the parties observed that outstanding rent arrears for the last thirteen (13) months since October 2020 to October 2021 @ Rs:1,22,000/- (One lac twenty-two thousand per month), net in the sum of Rs:15,86,000/- (fifteen lac and eighty six thousand) for thirteen months shall be paid/tendered/deposited with the Civil Nazir before 15th October, 2021. Likewise, monthly rent at the same rate shall be paid/deposited before the 15th of each month w.e.f. October, 2021.

9. The petitioner/tenant failed to complied with the subject tentative rent arrears order, as such, the learned Rent Controller vide order dated 18.11.2021 exercised its jurisdiction within the meaning of Section 13 (6), West Pakistan Rent Restriction Ordinance, 1959 with the conclusion that the petitioner/tenant being has

committed willful default, as such, his defence was struck off followed by order of eviction.

10. The learned appellate Court agreed with the observations, remarks & conclusion of the learned Rent Controller and regretted the appeal against the eviction order of the learned Rent Controller.

11. It obliged the petitioner to approach this Court through subject petition for appropriate remedy.

12. There is no denial of the relation of tenant & landlord between the parties coupled with a fact that at the first instance, after furnishing, their respective pleadings by the parties (Ejectment petition & Reply), the allegations of the respondent/landlord regarding the default of monthly rent on part of the petitioner in respect of the demised premises were highlighted and the respondent/tenant in his reply denied the same. Likewise, the learned Rent Controller vide order # 10 dated 06.10.2021, highlighted the rent arrears for a period of 13 months w.e.f. October, 2020 to October, 2021 @ Rs:1,22,000/- followed by direction to the petitioner/tenant to tender/deposit with the Civil Nazir before 15th October, 2021. Likewise, the petitioner/tenant shall also regularly tender monthly rent before the 15th day of the next month with Civil Nazir.

13. There is no denial at all, that the petitioner/tenant has not complied with the subject order for deposit of the tentative rent arrears coupled with the deposit of regular monthly rent by the petitioner/tenant and on this score alone the learned Rent Controller exercised his jurisdiction u/s 13 of West Pakistan Urban Rent Restriction Ordinance, 1959 followed by ejection of the petitioner/tenant in respect of the demised premises accordingly.

14. The peculiar facts & circumstances coupled with the eviction order of the learned Rent Controller so substantiated by the order of the learned appellate Court, prima facie based on proper appraisal of facts & circumstances in view of the tentative assessment of the rent arrears coupled with the prima facie willful default on part of the petitioner/tenant.

15. In view of the above discussion, the subject Writ Petition is found divested of any force, as such, *dismissed* accordingly.

ANNOUNCED
Dt: 22.08.2022


JUDGE