

2010 Y L R 1042

[Lahore]

Before Nasir Saeed Sheikh, J

Syed KHURSHEED ALAM---Petitioner

Versus

RENT CONTROLLER/CIVIL JUDGE, RAWALPINDI and another---Respondents

Writ Petition No.2663 of 2009, decided on 16th October, 2009.

West Pakistan Urban Rent Restriction Ordinance (VI of 1959)---

---S. 13---Constitution of Pakistan (1973), Art.199--- Constitutional petition---Ejectment--- Failure of tenant to produce evidence---Closing the right to produce evidence---Landlord completed his evidence in proof of his claim and tenant was called upon to produce his evidence; but he failed to produce the same despite about forty opportunities were given to him---Rent Controller closed the right of the tenant/petitioner to produce evidence and fixed case for final arguments---Validity---High Court while exercising its constitutional jurisdiction under Art.199 of the Constitution had to see the competency of the constitutional petition as well as the pointing out of some illegality in the order challenged in the petition---Counsel for the petitioner had not been able to point out any illegality in the impugned order, whereby the right to produce evidence by the petitioner was closed by the Rent Controller after giving numerous opportunities to him---Order of Rent Controller, could not be interfered with, in circumstances.

2003 YLR 1722; 2006 YLR 841 and PLD 1995 Lah. 392 ref.

Iqbal Ahmad Dhudhi for Petitioner.

Sana Ullah Zahid for Respondent No.2.

Date of hearing: 16th October, 2009.

JUDGMENT

NASIR SAEED SHEIKH, J.---The petitioner in this case is a tenant in property bearing House No.A/102-1, Satellite Town, Rawalpindi which was leased out to him by respondent No.2 vide written lease agreement dated 3-6-1995. An ejectment petition under section 13 of Punjab Rent Restriction Ordinance was instituted on 4-1-2003 against the petitioner by respondent No.2 before the learned Rent Controller Rawalpindi in which present petitioner

submitted a written statement dated 20-5-2003 contesting the said application. Learned Rent Controller framed the following issues:-

1. Whether the respondent has committed default in the payment of rent? OPD
2. Whether the respondent has impaired the value of the rented premises through addition/alteration without consent of the petitioner? OPA
3. Whether the petitioner is in need of the property for his personal use bonafidely? OPA
4. Whether the petition is liable to be accepted? OPA
5. Whether the petition is not maintainable in its present form? OPA
6. Whether the petitioner has no cause of action to file the instant petition? OPR
7. Whether the petitioner is estopped to file this petition to his words and conduct? OPR
8. Relief.

The parties were directed to produce their evidence by the learned Rent Controller Rawalpindi. Respondent No.2 landlord completed his evidence and in January 2007 the Rent Controller called upon the petitioner tenant to produce his evidence. During all this period only R.W-1 was produced by the petitioner tenant in his evidence and numerous opportunities were allowed to him to complete his evidence but in spite of all this the evidence was not completed by the petitioner tenant. It was 10th of September 2009 when the case was adjourned with the consent of the parties giving final opportunity to the petitioner tenant to produce evidence on 17-9-2009. It is on 17-9-2009 again no evidence was produced before the Rent Controller and only an Accountant of the petitioner tenant was in attendance. It was stated on behalf of the petitioner tenant that the learned counsel who was to appear in this Court was not available because he was sitting in Aitekaf. Learned Rent Controller closed the right of the petitioner tenant to produce evidence and the case was fixed for final arguments. This order dated, 17-9-2009 closing the evidence of the petitioner tenant has been assailed through this writ petition.

2. A notice was issued to respondent No.2 landlord through an order dated 30-9-2009 and the learned 'counsel for respondent No.2 has rendered appearance.

3. Learned counsel for the petitioner contends that only one opportunity be given to the petitioner to produce evidence. Learned counsel for respondent No.2 has opposed the present writ petition by contending that forty opportunities were given to the petitioner tenant to produce his evidence before the Rent Controller out of which ten opportunities were given as the last opportunity and the petitioner tenant did not care for completing his evidence. It was then submitted by the learned counsel for the respondent No.2 that oral assertion of the petitioner tenant that his learned counsel was not available on the date without any affidavit

from the learned counsel for the petitioner tenant being placed on the record of the case does not carry any value. It was further contended by the learned counsel for the respondent No.2 that instant writ petition is not competent as it is against an interlocutory order of learned Rent Controller and he has relied upon the following judgments in support of his contentions 2003 YLR 1722 DB, 2006 YLR 841 and PLD 1995 Lah. 392.

4. I have heard the learned counsel for the parties and perused the record annexed with this writ petition. Learned counsel for the petitioner could not point out any illegality in the impugned order dated 17-9-2009 passed by the learned Rent Controller. Learned counsel for the petitioner could not controvert the statement of learned counsel for respondent No.2 that in this case forty opportunities were provided to the petitioner-tenant to produce and complete his evidence and during this entire period only one R.W.1 was produced before the Rent Controller on behalf of the petitioner tenant. Learned counsel for the respondent No.2 further opposed the grant of one opportunity to the petitioner on compassionate ground. While exercising the jurisdiction under Article 199 of the Constitution I have to see the competency of the writ petition as well as the pointing out of some illegality in the order challenged in the writ petition. Learned counsel for the petitioner has not been able to point out any illegality in the impugned order dated 17-9-2009 whereby the right to produce evidence by the petitioner tenant was closed by the learned Rent Controller after giving numerous opportunities to him. The case law produced by the learned counsel for respondent No.2 further strengthens the proposition that the order passed by the learned Rent Controller dated 17-9-2009 is an interlocutory order and writ is not competent against such an order.

5. In view of all above this Court does not feel it as an appropriate case to interfere with in the order dated 17-9-2009 passed by the learned Rent Controller. The instant writ petition being incompetent is therefore, dismissed with no order as to costs.

H.B.T./K-11/L

Petition dismissed.