

P L D 2011 Lahore 311

Before Nasir Saeed Sheikh, J

EHSAN ABBAS---Petitioner

Versus

KHUSH ABBAS and others---Respondents

Writ Petition No.93 of 2011, decided on 15th March, 2011.

Punjab Rented Premises Act (VII of 2009)---

----Ss. 15 & 19(4)---Constitution of Pakistan, Art.199---Constitutional petition---Eviction of tenant---Rent Tribunal rejected tenant's objection to submission of affidavits of witnesses by the landlord at a later stage---Tenant contended that use of word 'shall' in S.19(4) of the Punjab Rented Premises Act, 2009 made submission of the affidavits at the first hearing mandatory-Validity-Despite the use of word 'shall', S.19(4) of the Punjab Rented Premises Act, 2009 had to be construed as directory in nature and not mandatory---Rent Tribunal rightly rejected the objection raised by tenant---Constitutional petition was dismissed in circumstances.

Muhammad Javaid Niazi for Petitioner.

Raja Muhammad Ashraf Zameer for Respondents.

ORDER

NASIR SAEED SHEIKH, J.---Through the instant Writ Petition, an order dated 1-12-2010 passed by the learned Rent Controller, Rawalpindi has been assailed, whereby; an objection raised by the petitioner against grant of permission to the respondent to place on record, the affidavits of the witnesses to be produced by the respondent was over ruled.

2. Briefly stating the facts of the case are that the respondent Khush Abbas filed an ejectment petition before the learned Rent Tribunal, Rawalpindi on 23-11-2009. The petitioner submitted an application for leave to contest the petition, which was allowed vide order dated 15-9-2010. During the pendency of the ejectment petition, the respondent No.1 submitted affidavits of the witnesses to be produced during the trial of the ejectment petition. The present petitioner is respondent in the ejectment petition raised an objection that, as per section 19(4) of the Punjab Rented Premises Act, 2009, the affidavits being submitted by the respondent No.1 cannot be allowed to be produced at a later stage of proceedings. It was argued that it was an obligation of the respondent No. 1 to annex the same with the ejectment petition at the time of instituting the ejectment petition. This objection of the petitioner was rejected by the learned Rent Tribunal vide impugned order dated 1-12-2010. Hence this Writ Petition.

3. It is contended by the learned counsel for the petitioner that in section 19(4) of the Punjab Rented Premises Act, 2009, the word used "shall", therefore, it is a mandatory provisions of law, which requires the submission of the affidavits at the first date of hearing along with ejectment petition. The learned counsel thus has argued that the mandatory requirement of law has not been fulfilled by the respondent No.1, so, he was not entitled to submit the affidavits of the witnesses at a later stage.

4. The learned counsel for the respondent No.1 has submitted that since the provisions of section 19(4) of the Punjab Rented Premises Act, 2009 are not mandatory in nature and do not provide any consequences for non-compliance with the same, therefore, the learned Rent Tribunal was justified in allowing the respondent No.1 to place on record, the affidavits of the witnesses to be produced.

5. I have considered the arguments of the learned counsel for the parties and have gone through the record.

6. The application of petitioner for leave to contest the ejectment petition is at page-16 of the instant writ petition. The petitioner did not raise this objection in the application that the ejectment petition is defective or legally incompetent because of non-submission of the affidavits of the witnesses to be produced. The provisions of section 19(4) of the Punjab Rented Premises Act, 2009 are reproduced as under:

"If the application is for eviction of a tenant, the landlord shall submit his affidavit and affidavits of not more than two witnesses along with the eviction application."

7. Although the respondent was required to submit affidavits of the witnesses at the time of filing of application for eviction and word "shall" has been used in the said provisions, yet the said provisions can be construed as directory in nature and not mandatory. The learned Rent Tribunal has therefore rightly rejected the objection raised by the petitioner upon the production of the affidavits of the witnesses to be produced by the respondent and the petitioner would be able to cross examine these witnesses. I do not find any illegality in the impugned order dated 1-12-2010 passed by the learned Rent Tribunal. The instant Writ Petition has no force; therefore, the same is dismissed with no order as to costs.

A.R.K./E-3/L

Petition dismissed.