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**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**MULTAN BENCH, MULTAN**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.3289 of 2018.**

(Muhammad Yousaf and others versus. Falak Sher Khan and others)

**J U D G M E N T**

Date of hearing.	09.04.2018
Petitioners by	Mr. Khalid Masood Ghani, Advocate
Respondents by	Mr. Sagheer Ahmad Bhatti, Advocate

**IBAD-UR-REHMAN LODHI J.:-** With the consent of learned counsel for the parties, the hearing of this petition is being treated as *pacca* one.

2. The present petitioners were respondents in an ejectment petition filed against them by the respondents herein before the learned Special Judge (Rent) at Burewala. The petitioners were granted leave to contest the ejectment petition and thereafter, trial in the ejectment petition proceeded further. On 30.01.2018, the learned Special Judge (Rent) passed the following order:-

کونسل سائل حاضر۔ منجانب مسؤل علیہم کوئی حاضر نہ آیا ہے اور نہ ہی شہادت پیش کی ہے۔ متعدد مواقع دیئے گئے مزید موقع دینا قرین انصاف نہ ہے لہذا مسؤل علیہم کا شہادت کا حق کلوز کیا جاتا ہے۔ حسب استدعا کونسل سائل مثل ملتوی ہو کر برائے دستاویزی شہادت مسؤل علیہم بتقرر  
02.02.2018 پیش ہو۔

3. Learned counsel for the petitioners has submitted that since already alongwith the petition for leave to contest the ejectment petition, the present petitioners in addition to their own affidavits in evidence have also produced the affidavits of their witnesses, which were made part of record of the learned Special Judge (Rent), therefore, there was

no occasion with the learned Rent Tribunal to order the closure of evidence of the petitioners, which even otherwise was not a recognized phenomenon in scheme of law as introduced through The Punjab Rented Premises Act, 2009 (hereinafter to be referred as Act).

4. Learned counsel for the respondents herein has not seriously opposed the petition by simply making usual statement to provide one opportunity to the petitioners for production of their complete evidence.

5. Provision of one opportunity to produce evidence is not a sufficient and relevant answer to the proposition raised in this petition. It in fact requires some detailed probe.

Unlike a regular civil suit, in trial of a petition filed under Section 19 of the Act, a landlord seeking eviction of the tenant is under an obligation in view of Section 19(4) of the Act to submit his own affidavit in support of the application, as also affidavits of not more than two witnesses alongwith the eviction application. In the similar manner, a respondent in the ejection petition, who is required to file a petition for leave to contest, is also under an obligation to file his own affidavit and if desired, affidavits of not more than two witnesses in view of Section 22(3) of the Act.

Provisions of Section 25(2) of the Act further provide that the Rent Tribunal shall treat an affidavit filed by a party as “*evidence*” and after treating such affidavit as evidence, may, of its own motion, order the attendance of deponent for cross-examination and shall, if so requested by a party, direct production of the deponent for cross-examination.

Such procedure of recording of evidence provided in the Act is altogether different than one provided in The Code of Civil Procedure, 1908 for trial of a regular civil suit. In view of provision of Order XVII Rule 3 C.P.C., where any party to a suit to whom time has been granted,

fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith. Such process is not available to a Rent Tribunal performing functions under the Act particularly in presence of Section 34 of the Act, which provides that the provisions of Qanun-e-Shahadat Order, 1984 and the Code of Civil Procedure, 1908 shall not apply to the proceedings under this Act before a Rent Tribunal.

After reading the above provisions of law jointly, what emerges is that in proceedings to be conducted by the Rent Tribunal under the Act, there is no concept of closure of evidence of any party for the reasons that evidence in the shape of affidavits is already available before such Tribunal either with the application filed by a landlord under Section 19 or with a petition for leave to contest filed under Section 22 of the Act and also that Section 34 of the Act bars the applicability of the provisions of C.P.C. to the proceedings under the Act before a Rent Tribunal. After treating such affidavits as 'evidence', the Rent Tribunal of its own motion is required to order the attendance of deponent for cross-examination on such referred affidavits or at the request of a party direct production of the deponent for the same purposes.

6. In the present case, the learned Special Judge Rent has proceeded to close the right of the petitioners to produce evidence, which is an alien subject to the scheme of law provided under the Act and thus, the order impugned herein is an order, which has no legal sanction and thus is not sustainable and is set aside as such.

7. Resultantly, by **allowing** this Constitutional petition, it is directed that the learned Rent Tribunal may, of its own motion, call the deponents and if it is requested by a party, then mandatorily direct the

production of deponents of the affidavits for the purposes of cross-examination.

Approved for reporting.

**Judge**

**Judge**

*\*Haider Shah\**