P L D 2012 Lahore 217

Before Abdus Sattar Asghar, J

MUHAMMAD SALEEM NAWAZ---Petitioner

versus

ADDITIONAL DISTRICT JUDGE, CHISTIAN, and 2 others---Respondents

Writ Petition No. 3982 of 2010/BWP, heard on 25th January, 2012.

Punjab Rented Premises Ordinance (XXI of 2007)---

----Ss. 8, 9(b), 19(4), 22(3)---Constitution of Pakistan, Art. 199---Constitutional petition---Ejectment petition, maintainability of---Non-compliance with Ss. 8, 9(b), 19(4) and 22(3) of the Punjab Rented Premises Ordinance, 2007---Effect---Respondent's (landlord) ejectment petition was allowed by the Rent Tribunal and upheld by Appellate Court---Petitioner (tenant) assailed the orders of the court- below in the constitutional petition on the ground that the ejectment petition filed by the landlord was not maintainable in the eye of law---Validity---Before the filing of the ejectment petition, it was incumbent on the landlord to bring the tenancy in conformity with the provisions of the Punjab Rented Premises Ordinance, 2007 by depositing the 10 per cent penalty of the annual value of the rent of the premises as stipulated under Ss. 8 and 9(b) of the Punjab Rented Premises Ordinance, 2007 and to submit his affidavit and affidavits of two witnesses along with the ejectment petition under S.19(4) of the Punjab Rented Premises Ordinance, 2007---Landlord had admitted that he had not fulfilled such requirements under Ss. 8, 9(b) and 19(4) of the Ordinance before the filing of ejectment petition---Landlord had not lodged any application before the Rent Tribunal showing any "sufficient cause" or "reasonable explanation" for non-filing of such affidavits in support of the ejectment petition and for the non-depositing of the 10 percent penalty of the annual value of rent under S.19(4) of the Ordinance---Established principle of law that when the law required anything to be done in a particular manner, the same must be done accordingly and if the prescribed procedure was not followed, it would be presumed that the same had not been done in accordance with law---Departure from a clear procedure of law not sufficiently explained with reasonable cause, therefore, rendered the ejectment petition of landlord as not maintainable in the eye of law---Courts below had lost sight of such fact in the impugned orders---Orders of courts below were set aside, and the constitutional petition was allowed accordingly with the observation that the landlord may file fresh ejectment petition before the Rent Tribunal.
Khalil-ur-Rehman and another v. Dr. Manzoor Ahmed and others PLD 2011 SC 512 **fol.**
Muhammad Saleem Faiz for Petitioner.
Aejaz Ahmed Ansari for Respondent No.3.
Date of hearing: 25th January, 2012.

JUDGMENT

ABDUS SATTAR ASGHAR, J.---By virtue of this constitutional petition the petitioner has impugned the legality and propriety of the orders dated 26-1-2010 and 15-7-2010 passed by the learned Rent Tribunal and learned Additional District Judge, Chishtian, respectively, whereby petitioner's eviction from the rented property has been ordered.

2. Precise facts leading to this petition are that Manzoor Ahmad respondent No.3 filed an ejectment petition on the basis of rent agreement dated 29-9-2007 against the petitioner on 25-4-2008 before the learned Rent Tribunal, Chishtian on the grounds of default in payment of rent, subletting of the rented premises and personal need. The same was resisted by the petitioner by raising preliminary objections that relationship of land and tenant does not exist between the parties; that the ejectment petition does not fulfil the necessary requirements stipulated in the Punjab Rented Premises Ordinance, 2007; that the applicant has no cause of action and that the Rent Tribunal lacks jurisdiction to try the petition. Grounds for ejectment on merits were also resisted by the petitioner. Pursuant to the divergent pleadings of the parties, the learned Rent Tribunal framed the following issue:--
"(1) Whether respondent is tenant of applicant? OPA"

3. After recording evidence produced by the parties, learned Rent Tribunal through the impugned order dated 26-1-2010 decided the issue in favour of respondent No.3, allowed the ejectment petition and ordered the petitioner to vacate the disputed premises.

4. Petitioner being dissatisfied assailed the order of eviction before the learned Additional District Judge through appeal on the same grounds as set forth in his written reply before the Rent Tribunal. However, the learned appellate Court maintained the eviction order passed by the learned Rent Tribunal and dismissed the appeal, hence this constitutional petition on the grounds that both the orders passed by the learned Courts below are illegal, without lawful authority, of no legal effect and are liable to be set aside.

5. Learned counsel for the petitioner has argued that at the time of filing of the ejectment petition on 25-4-2008 Punjab Rented Premises Ordinance, 2007, promulgated on 16-11-2007, was holding the field, which later on was substituted with the Punjab Rented Premises Act, 2009; that the respondent failed to bring the alleged tenancy in conformity with the provisions of the Ordinance, 2007 by depositing 10% penalty of the annual value of the rent of the premises before filing an ejectment petition as stipulated under sections 8 and 9(b) of the Ordinance, 2007 and also failed to submit his affidavit and affidavits of two witnesses along with the ejectment petition as stipulated under section 19(4) of the Ordinance, 2007. Therefore, the ejectment petition was not maintainable at all and the impugned orders passed by the learned Courts below without adverting to the above noted objections, specifically raised in the written reply before the Rent Tribunal, suffer from legal infirmity and are untenable in the eye of law.

6. On the other hand, learned counsel for respondent No.3 has argued that the objections raised by the petitioner are of technical and directory nature and are curable in the interest of justice; that eviction orders passed by the learned Courts below are based on salutary findings after recording the evidence on factual controversy regarding relationship of landlord and tenant between the parties.

7. I have given patient hearing to the learned counsel for the parties and have perused the record.

8. Before proceeding further, I would like to reproduce sections 8, 9(b) and 19(4) of the Rented Premises Ordinance, 2007, for ready reference, which reads below:--

"Sec.8. Existing tenancy.---An existing landlord and tenant shall as soon as possible but not later than two years from the date of coming into force of this Ordinance, bring the tenancy in conformity with the provisions of this Ordinance."

"Sec.9. Effect of non-compliance.---If a tenancy does not conform to the provisions of this Ordinance, the Rent Tribunal shall not entertain an application under this Ordinance:-

(a) ..

(b) on behalf of the landlord, unless he deposits a fine equivalent to ten per cent of the annual value of the rent of the premises in the Government treasury.
(c) "
"Sec.19(4) 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."

9. There is no cavil to the proposition that at the time of filing of the eviction application by respondent No.3 alleging himself as landlord of the rented premises on the basis of rent agreement dated 29-9-2007, Punjab Rented Premises Ordinance, 2007 promulgated on 16-11-2007, was holding the field, therefore, before filing an ejectment petition it was incumbent upon respondent No.3 to bring the tenancy in conformity of the provisions of the Ordinance, 2007 by depositing 10% penalty of the annual value of the rent of the premises as stipulated under sections 8 and 9(b) of the Ordinance, 2007 and to submit his affidavit and affidavits of two witnesses along with the ejectment petition as stipulated under section 19(4) of the Ordinance, 2007. It is frankly admitted by the learned counsel for respondent No.3 that he has not fulfilled the requirements of sections 8, 9(b) and 19(4) of the Ordinance, 2007 before filing the ejectment petition.

10. It will be expedient to note that an identical stipulation is also imposed upon a tenant in the provisions of section 22(3) of the Ordinance ibid, which reads below:--

"Sec.22(3). An application for leave to contest shall be in the form of a written reply stating grounds on which the leave is sought and shall be accompanied by an affidavit

of the respondent, copy of all relevant documents in his possession and, if desired, affidavits of not more than two witnesses."

11. A controversy as regards the effect of non-filing of the affidavit in terms of section 22(3) of the Ordinance has already been settled by the Hon'ble Supreme Court in the case titled Khalil-ur-Rehman and another v. Dr. Manzoor Ahmed and others (PLD 2011 SC 512) [Supreme Court of Pakistan], as under:--

"The second part of the section commands that the application should be accompanied by the affidavit of the respondent. As it is an express requirement of the law, and it is settled by now that where the law requires an act to be done or performed in a particular manner it has to be accordingly done/performed and not otherwise, besides, it is also the rule of law that where an application/pleading should be supported by an affidavit under a statutory provision which is not filed, such application shall not be maintainable. However, the defect in this behalf is curable, but only in those cases where a 'sufficient cause' and 'reasonable explanation' is propounded by the respondent for not filing his affidavit along with the leave application, otherwise such defect should not be permitted to be cured by the Tribunal as a matter of course or routine; to this extent the provisions are mandatory."

Keeping in view the above quoted dictum of the apex Court and the fact that respondent No.3 has never lodged any application before the Rent Tribunal showing any 'sufficient cause' or 'reasonable explanation' for non-filing of affidavit in support of the eviction petition, the same will be deemed as not maintainable.

12. Besides above respondent No.3 has also not furnished any 'sufficient cause' or 'reasonable explanation' for non-depositing 10% penalty of the annual value of the rent of the premises as stipulated under section 19(4) of the Ordinance. It is an established principle of law that when law requires a thing to be done in a particular manner the same must be done accordingly and if prescribed procedure is not followed, it will be presumed that the same has not been done in accordance with law. A departure from a clear procedure of law not sufficiently explained with reasonable cause, therefore, render the ejectment petition not maintainable in the eye of law. In this case learned Rent Tribunal as well as the learned Additional District Judge while passing the impugned orders have lost sight of the fact that eviction application lodged by respondent No.3 is not legally maintainable, therefore, both the impugned orders are not tenable in the eye of law.

13. For the above discussion and reasons, this writ petition is allowed and both the impugned orders suffering from legal infirmities are set aside. However, respondent No.3 may file a fresh eviction petition before the Rent Tribunal, in accordance with law.

K.M.Z./M-43/L Petition allowed.

;