

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**W.P No.358-M/2022**

**Muhammad Rahman V. Muhammad Ayub and others.**

**Present:** Mr. Aurangzeb, Advocate for petitioner.  
Mr. Hamid Ullah Khan, Advocate for Respondents  
No.1 & 2.

Date of hearing: 11.10.2024

**JUDGMENT**

**MUHAMMAD NAEEM ANWAR, J.**-Through instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Muhammad Rahman, the petitioner has impugned the order of the learned Additional District Judge-II, Swat dated 28.01.2022, whereby his appeal against partial acceptance of ejectment application filed by him vide order dated 21.06.2021 of learned Rent Controller (Civil Judge-V, Swat), was dismissed.

2. Brief facts giving rise to this petition are that the petitioner has filed an application for ejectment of the respondents No.1 & 2 (tenants) before the learned Rent Controller, Swat from the constructed shop situated in Main Bazar Chowk Mingora Swat, with a prayer for recovery of outstanding rent w.e.f. 2016 till decision of the application @ Rs.50,000/- per month. He contended that the rent agreement with BATA Shoe Company has already been expired in the year 2016, however, after expiry of the rent agreement, the respondents (tenants) have retained the shop by locking it as some articles were still laying therein; that they have not paid rent after the expiry of the agreement; that since, no

agreement exists between them for a further period, therefore, they (the tenants) are required to hand over the vacant possession of the shop along with outstanding rent. Being served with a notice, the respondents appeared before the learned Rent Controller and alleged in their written reply that possession of the rented shop has been handed over to the petitioner; that the agreement has been expired in the year 2016; that they had paid all the utility bills, as such, the petition for their eviction and arrears of the rent is not maintainable. In view of the divergent pleadings of the parties, the learned Rent Controller framed issues, which for the determination of the controversy, are reproduced as under:

1. Whether the petitioner has got any cause of action?
2. Whether this court has got jurisdiction petition to entertain the present petition?
3. Whether the present petition is time barred?
4. Whether the present petition is not maintainable on the of mis-joinder and non-joinder of necessary parties?
5. Whether rent agreement between the parties has been expired in the year 2016 and the respondents are not ready to renew the same?
6. Whether the respondents have evicted the suit shop in the year 2016 and have handed over the possession of the same to petitioner?
7. Whether the petitioner is entitled to recovery of outstanding rent since 2016 @ Rs. 50,000/- per month?
8. Whether the petitioner has filed the instant petition with mala fide intention in order to get financial gains from the respondents?
9. Whether the petitioner is entitled to the decree as prayed for? Relief?

Issues were framed on 03.12.2020 and the proceedings were adjourned for 23.12.2020 when the respondents did not

appear and hence were proceeded ex-parte. The ex-parte evidence of the petitioner/ landlord was recorded and thereafter, the learned Rent Controller through its order dated **21.06.2021** allowed the application to the extent of ejectment, however, it was held that the petitioner could not prove the factum of outstanding arrears against the respondents, as such, his plea for recovery of outstanding rent was dismissed. Feeling aggrieved, he filed a rent appeal but it was dismissed on **28.10.2022**, with the observation that the appellant/ petitioner waited for a long four years to approach to the learned trial Court through his application and neither he could prove the factum of outstanding rent nor filed the application within time, as such, the application to that extent was rightly turned down by the learned Rent Controller. Against the order of the learned appellate Court as well as of the learned Rent Controller to the extent of the dismissal of the application of the petitioner for recovery of arrears against the respondents No.1 & 2, he has filed the instant petition wherein notices were issued and respondents No.1 & 2 are before the Court.

3. Learned counsel for the petitioner contended that in view of the divergent pleadings of the parties, issues were framed, however, when they absented themselves, the petitioner was directed to prove his case, as such, he entered into the witness-box as PW-1; and that his affidavit **Ex.PW1/1** was relied upon by him, wherein all the facts of the eviction application were reproduced; that his statement was recorded before the Court on oath and same went un-rebutted. He further contended that that the evidence to the

extent of the outstanding rent against the respondents has not been rebutted by them and the petitioner was not cross examined, as such, his deposition as PW-1 shall be deemed to have been admitted by the respondents. He added that though it was the sole statement of the petitioner/ landlord but since the respondents were not before the Court, as such, the sole statement of the petitioner was required for determination of the issues and hence the petitioner was entitled for the decree pertaining to the recovery of the outstanding rent. In support of his submissions, he placed reliance on the cases of "Messrs F.K Irani and Co. Vs. Begum Feroze" (1996 SCMR 1178), "Miss Akhtar Qureshi Vs. Nisar Ahmad" (2002 SCMR 1292), "Juma Sher Vs. Sabz Ali" (1997 SCMR 1062), and "Mian Muhammad Fareed Vs. Khalid Wadood" (2021 CLC 1093).

4. Conversely, learned counsel for the respondents No.1 & 2 contended that the possession of the rented shop, as per the contents of their written reply, had already been handed over to the petitioner/ landlord just after expiry of the tenancy period between them, as such, no rent was outstanding against them and thus the application was rightly turned down by the learned Rent Controller. He vociferated that the application was filed in the year 2020 whereas, the agreement was expired in the year 2016, thus, no decree could be passed in favour of the petitioner and to that extent, his application was time barred. In support of his contentions, he placed reliance on the case of "Muhammad Iqbal vs. Syed Muhammad Tahir Zahoor and others" (2020 MLD 522).

5. Arguments heard and record perused.

6. Admittedly, the relation of the landlord and tenant along with the expiry of the tenancy agreement in the year 2016 has not been disputed. The moot questions in the matter were (i) as to whether the respondents were in possession of the rented shop after expiry of the tenancy; and (ii) whether the respondents/tenants have paid the rent after the expiry of the period of tenancy? It was pleaded in the written reply by the respondents that the possession of the shop has been handed over to the petitioner and in that respect, issue No.6 (whether the respondents have handed over the possession of the same to petitioner in the year 2016) was framed by the learned Rent Controller, however, the onus to prove this issue was on the respondents whereas, it was for the petitioner to prove that till institution of the application and thereafter, the respondents are in possession of the rented shop. After submission of the written reply and framing of issues, the respondents disappeared from the proceedings and in accordance with the law, they were proceeded ex-parte while Muhammad Rahman, the petitioner, appeared before the learned Rent Controller and his statement was recorded PW-1, wherein his affidavit was placed on record as **Ex.PW1/1**. He reiterated the fact that there was a rent agreement, which expired in the year 2016 but the respondents (tenants) still kept the possession of the shop with them and have not paid any rent. These three points were categorically mentioned in **Ex.PW1/1** by the petitioner, whose statement was also recorded before the Court on oath on 16.06.2021 as PW-1. This statement

was relied upon by the petitioner/ landlord and was considered by the learned Rent Controller, which resulted into decreeing his application to the extent of eviction of the respondents and the order of the learned Rent Controller has not been questioned by the respondents, thus, to that extent it has attained finality.

7. It appears from record that the learned Rent Controller has passed the decree for ejection of the respondents on 21.06.2021 and till then they were in possession of the shops whereas the tenancy expired in January 2016, however, after the expiry of the period of tenancy they have not paid the rent. It is pertinent to mention that that the contention of the respondents was that they handed over the possession on the expiry of tenancy but no evidence to that effect has been brought on record. The intriguing aspect in this respect was the execution petition which was filed by the petitioner on 25.07.2023 bearing No. 24/10 of 2023, according to which, the possession of the rented premises was handed over to the petitioner through process of executing court and the execution petition was filed being satisfied on 09.01.2024, which is clear reflection that till January 2024, the respondents were in possession of the rented premises. In view of the above, the respondents occupied the possession of the rented shop without payment of rent. As per the written reply of the respondents they have not disputed the fixation of monthly at the rate of Rs. 50,000/- per month. From the divergent pleadings of the parties an issue was framed that as to whether the petitioner (landlord) is entitled for the recovery of outstanding rent since 2016 @ Rs. 50,000/- per month? Since the

possession of the respondents over the rented premises till January 2024 has been proved on record and it has not been questioned by the respondents through the mode provided under the law and the respondents could not prove the payment of rent for the said period, in such an eventuality disentitling the landlord/petitioner from recovery of the outstanding rent at admitted rate is not only unjustified but also against the law and the findings of the learned Rent Controller that the petitioner could not prove the outstanding rent against the respondents are also against the fact because once it was proved that the respondents are in possession of the shop even after the expiry of tenancy, then it was their obligation to pay the rent at the rate admitted by them. Payment of the rent of the rented property was the duty of the tenants to justify their possession otherwise their possession was illegal, and their status would be of the trespasser because the possession of the rented premises could only be justified through payment of rent. The findings of the appellate court dismissing the appeal on the ground of limitation was also against the law in juxtaposition with the possession of the tenants.

8. Though, learned counsel for the respondents contended that the respondents in their written reply have contended that the possession of the shop was handed over to the petitioner, thus, the learned Rent Controller and the appellate Court has rightly held the petitioner not entitled for the rent but since the respondents could not prove handing over the vacant possession of the rented shop and mere pleading of the respondents were not sufficient to prove

the transfer of possession thus, dismissal of application to the extent of outstanding rent was illegal and not sustainable in law. The pleadings itself is not evidence at all, and pleadings without evidence cannot be taken into consideration as proof of a particular fact nor the evidence without pleadings can substantiate a particular version, thus, the stance of the respondents was required to be proved/ substantiated through cogent, reliable and convincing evidence, which is lacking on the part of the respondents, hence, his submission to the extent of contents of the written reply for proof of handing over the possession of the rented premises are misconceived. Reliance in this respect is placed on the judgments reported as "Inayat Ali Shah v. Anwar Hussain" (1995 MLD 1714), "Pir Wali Khan v. Niaz Badshah" (2013 MLD 1106), "Mir Laiq Khan v. Sarfraz Jehan" (2013 MLD 1449), "Mst. Ghazala Yasmeen v. Sarfraz Khan Durrani" (2013 CLC 1406) and "Messrs Choudhary Brothers Ltd., Sialkot v. Jaranwala Central Co-operative Bank Ltd., Jaranwala" (1968 SCMR 804).

9. No doubt that there was a solitary statement of the petitioner in support of his contention, but the crucial aspect is that what he deposed has not been cross examined and, in such circumstances, whatever deposed by him has gone un rebutted. The sole statement of the landlord could be considered if it is inspiring confidence as held by the Hon'ble Supreme Court in Mesers. F.K Irani & Co' case that "statement of landlord on oath, if consistent with the application for ejection and not shaken in cross-examination or disproved in rebuttal is sufficient to prove that



requirement of landlord is bona fide. The possession of the respondents has been proved on record, they remained in possession but have not paid any rent, thus, the evidence of the PW-1 alone was sufficient to hold him entitled for the recovery of the outstanding rent. It appears from the order sheet of the learned Appellate Court dated 28.01.2022 that the respondents through their counsel Mr. Hamid Ullah Khan, Advocate appeared but even then, they have not questioned the validity of the judgment and findings of the learned Rent controller to the extent of the possession of the respondents after expiry of the tenancy period and even before this court no such petition was filed by the them which is an admission on their part for which the landlord is entitled for the outstanding rent from the date of expiry of the tenancy till January 2024 @ Rs 50,000/- per month. The petitioner appeared before the learned Rent Controller, his statement was recorded on oath and same went unrebutted, whatever was deposed by the petitioner in his examination-in-chief has not been cross-examined by the respondents. It is an established law that when a portion of a statement has not been cross examined, that is deemed to have been admitted by the other side. Reliance in this regard is also placed on the cases of **“Muhammad Akhtar Vs Mst. Manna and three other (2001 SCMR 1700) and Haji Din Muhammad through legal heirs Vs Mst. Hajira Bibi and others (PLD 2002 Peshawar). Mrs Akbar Brothers vs. M. Khalil Dar (PLD 2007 Lahore 385), Mst. Zargoan and others Vs Mst Shadana and others (2002 CLC 1539).**

10. Thus, for the reasons discussed above, the instant petition is allowed, consequently the impugned orders of the learned Courts below are set aside, the application filed by the petitioner/ landlord before the Rent Controller is allowed in toto, he is held entitled for recovery of the rent @ of Rs. 50,000/- per month from January 2016 till January 2024. No order as to cost.

Announced.  
11.10.2024

  
JUDGE

Office  
22/10/2024

Sabz Ali/\* (S.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR