

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT

Ch. Muhammad Ibrahim Zia, J.
Raja Saeed Akram Khan, J.

Civil Appeal No. 19 of 2016
Civil Misc. No. 04 of 2016
(PLA Filed on 06.01.2016)

Rizwan Akram son of Muhammad Akram resident of House No. 111-112 Sector C-2, Mirpur, tenant of shops No. 174/175 situated in Sector E-4, Mirpur City.

.... APPELLANT

VERSUS

1. Afzal Bibi wife of Mohammad Lal, resident of House No. 62, Sector E-1, Mirpur City through Muhammad Lal son of Ghulam Nabi, her attorney, House No. 62-E-1, Mirpur.
2. District Judge with powers of Appellate Authority-Rent Controller, Mirpur.
3. Senior Civil Judge, Mirpur with the powers of Rent Controller, Mirpur.

.... RESPONDENTS

(On appeal from the judgment of the High Court dated 13.11.2015 in Writ Petition No. 270/2015)

(Application for Interim Relief)

FOR THE APPELLANT: Sardar Muhammad Razaq Khan, Advocate.

FOR RESPONDENT NO. 1: Raja Inamullah Khan, Advocate.

Date of hearing: 25.01.2017

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— The captioned appeal by leave of the Court arises out of the judgment of the High Court dated 13.11.2015, whereby the writ petition filed by the appellant, herein, has been dismissed in limine.

2. The facts necessary for disposal of this appeal are that respondent No. 1, herein, filed an application for ejectment and recovery of rent against the appellant, herein, in the Court of Senior Civil Judge, Mirpur empowered as Rent Controller on 21.05.2009. It was alleged that according to the rent agreement dated 01.02.2009 attested on 04.02.2009, the appellant, herein, got two shops on rent at the rate of Rs.4000/- per month for a period of two years and

started running the business in the name of Rizwan Traders. The agreement was executed on behalf of the respondent by her husband, Muhammad Lal. It was prayed that the the appellant-tenant defaulted by violating the terms and conditions of agreement, therefore, he may be ordered to vacate the shops and hand over the possession of the same to her. The trial Court while accepting the application ordered the appellant to hand over the possession of the rented shops to the respondent within two months. He was also ordered to pay the outstanding rent from 01.01.2009 till the date of judgment at the rate of Rs.4000/- per month. The findings of the Rent Controller were concurred by the appellate Authority i.e., District Rent Controller vide judgment and decree dated 20.05.2015. The writ petition preferred by the appellant stood dismissed in limine through the impugned judgment, hence this appeal by leave of the Court.

3. Sardar Muhammad Razaq Khan, Advocate, the learned counsel for the appellant narrated the factual propositions involved in this case and

seriously objected to the impugned judgments on the ground that the Courts below have failed to properly appreciate the proposition regarding relationship of the landlord and the tenant. Same like, the pendency of the suit in the civil Court regarding the title of the property and its effect upon the instant proceedings has also not been considered. He further elaborated his arguments and submitted that there is no agreement of tenancy and in absence of same the proceedings under Rent Restriction Act, 1986 are without lawful authority. The Rent Controller as well as the appellate Authority have not acted in accordance with law and failed to properly appreciate the material brought on record, therefore, while accepting this appeal and setting-aside the impugned judgments, the application filed by the respondent be dismissed.

4. Conversely, Raja Inamullah Khan, Advocate, the learned counsel for respondent No. 1 forcefully defended the impugned judgments and submitted that the Rent Restriction Act, 1986 is a special law. All the propositions raised in the arguments were

subject-matter of the issues framed in the proceedings before the Rent Controller. Both the parties produced the evidence and on the basis of proper appreciation of the evidence all the legal and factual propositions have been determined and resolved by the Rent Controller. The arguments advanced are misconceived and contrary to the pleadings and evidence. The relationship of landlord and the tenant is admitted by the appellant in Court's statement, the pleadings and application. So far as the question of pendency of civil suit is concerned, it has nothing to do with the tenancy. Even otherwise, this proposition was also raised before the Rent Controller and specific issue No. 3 was framed. The findings have been recorded on issue No. 3 which have attained finality. The findings recorded by the Rent Controller have been concurred with by the learned District Judge, appellate Authority, vide judgment dated 20.05.2015. The judgments of the Rent Controller as well as the appellate Authority are well reasoned and based upon proper appreciation of evidence. The default in payment of the rent has

been admitted by the appellant in his statement. Same like, the execution of the tenancy agreement is also admitted. Thus, on questions of facts the concurrently recorded findings of facts by the competent Court cannot be called in question in writ jurisdiction. The writ petition filed in the High Court has been rightly dismissed in limine. According to the statutory provisions and enunciated principle of law, the writ petition can only be filed if there is any violation of law, lack of jurisdiction or question of law, whereas, in the instant case no such proposition is involved. The proceedings have been competently conducted by the Rent Controller. The findings have been recorded on the basis of proper appreciation of evidence which have been concurred by the appellate Court. Neither there is any question of lack of jurisdiction nor violation of law or principle of law, thus, the appellant failed to make out any valid ground for interference. The High Court has rightly dismissed the writ petition in limine, therefore, this appeal has no substance and the same is liable to be dismissed. The whole litigation is based upon mala-

fide just to prolong the litigation for ill-gotten gains which amounts to misuse the process of law and the Courts.

5. We have heard the learned counsel for the parties and gone through the record made available. The points agitated on behalf of the appellant in the arguments were already subject-matter of the proceedings, specially, the specific issues have been framed on these propositions. The parties have been provided with an opportunity of producing evidence in support of their respective stands. The factual propositions of relationship between landlord and the tenant, default in payment of the rent etc. have been admitted by the appellant himself in his pleadings and statement, thus, the Rent Controller not only on the basis of appreciation of other evidence brought on record but also on the basis of statement of the appellant which amounts to admission, has recorded the findings of facts quite in accordance with law. All the propositions have been once again attended in detail by the appellate Court while disposing of the appeal filed by the appellant. The examination of the

judgments of the Rent Controller and the appellate Court clearly reveals that both the Courts have applied judicial mind, properly appreciated the record and evidence and recorded well reasoned, speaking judgments which are consistent with the principle of law and do not suffer from any illegality or lack of jurisdiction. The appellant has failed to point out any violation of law or principle of law.

-6. The matter has been decided by the special forums under the provisions of special law made by the Legislature for speedy disposal of the matters regarding rented property and the issues related therewith. The expeditious disposal is the spirit of law. It appears from the record that almost seven years have already been passed in litigation which amounts to violation of spirit of law and purpose of the establishment of Rent Controller Court. In such like matters neither the writ jurisdiction should be exercised in routine nor the appeals should be encouraged by this Court mere for the purpose of litigation which will amount to misuse of the process of law and the Courts and defeat the very purpose of

the enforcement of Rent Restriction Act, 1986 and establishment of the special Court. The impugned judgment of the High Court is quite consistent with law and does not call for any interference. The appellant has failed to make out any valid ground for interference.

Therefore, finding no force this appeal alongwith application stands dismissed with no order as to costs.

Mirpur,
___ .01.2017

JUDGE

JUDGE