

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Khawaja M. Nasim
Mr. Justice Raza Ali Khan

CIVIL APPEAL No. 120 OF 2020

(Against the Judgment dated
31.10.2019 passed by the High
Court, in Writ Petition No. 1075 of
2018.

Arshad Rafique Abbasi s/o Muhammad Rafique Abbasi
r/o Jalalabad, Tehsil and District Muzaffarabad, Azad
Kashmir.

...Petitioner

VERSUS

1. Syed Sadiq Hussain Shah s/o Shabir Hussain
Gillani r/o Jalalabad, Tehsil and District
Muzaffarabad, Azad Kashmir.
2. Rent Controller Muzaffarabad, Azad Jammu &
Kashmir.

...Respondents

3. Khurram Saddique Butt s/o Muhammad
Saddique Butt r/o Narrul, Tehsil and District
Muzaffarabad, Azad Kashmir.
4. Senor Superintendent Police, Muzaffarabad.

...Proforma-Respondents

Appearances:

For the Appellant:

Mr. Fazal Mehmood
Baig, Advocate.

For Respondents:

Syed Zulqarnain Raza
Naqvi, Advocate.

Date of hearing:

04.05.2023

JUDGMENT

Raza Ali Khan, J:- Impugned herein is the judgment dated 31.10.2019, rendered by the learned High Court in Writ petition No. 1075/2018, whereby the writ petition filed by real respondent No.1, herein, has been accepted.

2. The brief facts forming the background of the captioned appeal are that the appellant, herein, filed an application before the Rent Controller alleging therein that he rented three shops for four years from respondents No.1, herein, through an agreement dated 01.05.2017. It was alleged that respondent No.1 tried to deprive the appellant, herein, from the shops. The appellant, herein, also submitted a stay order application along with his application under section 14 of the Azad Jammu & Kashmir Rent Restriction Act, 1986. Respondent No.1, herein, filed objections on the said application. At the same time respondent No.1, herein, also filed an application for dismissal of the appellant's application, whereby, he raised some serious legal points regarding jurisdiction of the Court of Rent Controller. The Rent Controller after necessary proceedings, vide order dated 28.05.2018 accepted the application of the petitioner, herein and ordered for one-year confirmation of status quo and rejected the application of respondents No.1 for dismissal of the application. Respondent No.1, herein, feeling dissatisfied from the order dated 28.05.2018 filed a writ petition before the learned High Court. The learned High

Court after necessary proceedings while setting aside the order dated 28.05.2018 of the Rent Controller, accepted the writ petition vide impugned judgment dated 31.10.2019.

3. Mr. Fazal Mehmood Baig, Advocate, the learned counsel for the appellant after narration of the necessary facts submitted that the impugned judgment of the learned High Court is against the statutory provisions of law as well as the principle of law laid down by this Court in a number of cases. He argued that the Rent Controller is a special tribunal, which conducts the proceedings under the special law within the jurisdiction and neither violation of law has been committed nor there is any lack of jurisdiction but despite this, the learned High Court fell in error of law while quashing the order of the Rent Controller. He further argued that the appellant, herein, also filed a writ petition titled 'Arshad Rafique Abbasi vs. Rent controller Muzaffarabad & others' before the learned High Court, which was subjudice before it at the time of passing the impugned judgment, therefore, the impugned judgment has been handed down in derogation of law, hence, the same is liable to be set aside. He further argued that the impugned judgment has been passed without hearing the appellant against the settled principle of law; that "no one can be condemned unheard", therefore, on this score too, the impugned judgment is not maintainable.

4. Conversely, Syed Zulqarnain Raza Naqvi, Advocate, the learned counsel for the respondents opposed the arguments advanced by the learned counsel for the appellant and stated that the Rent Controller conducted proceedings in sheer violation of

statutory provisions and passed an illegal order which has rightly been set-aside by the learned High Court. He further argued that the appellant never remained serious throughout the proceedings before the learned High Court. He argued that before admission of the writ petition, the appellant, herein, was summoned to file comments but despite service of notice he deliberately and intentionally did not make sure his appearance, hence, the learned High Court has committed no illegality while delivering the impugned judgment. He further argued that the writ petition stated to be filed and subjudice before the learned High Court at the time of impugned judgment had been dismissed vide order dated 06.03.2019 for want of prosecution. He added that the respondent had never entered into any rent agreement with the appellant rather the appellant purchased stamp paper and prepared a fake and forged agreement in his name and against this act of the appellant the respondent has approached the proper forum, wherein the proceedings are under progress. The learned Advocate contended that the appellant has failed to point out any illegality or legal infirmity in the impugned judgment, therefore, the appeal filed by him may be dismissed.

5. We have heard the arguments of the learned counsel for the parties and examined the record made available along with the impugned judgment. Leave in the case was granted to see as to whether in view of the provisions of Azad Jammu & Kashmir Rent Restriction Act, 1986, proceedings conducted by the Rent Controller can be challenged in the writ jurisdiction and the High Court has rightly exercised extra ordinary jurisdiction or not. The claim of the petitioner, herein, before the learned Rent Controller was that an

agreement between him and proforma respondent No.3, herein, was executed with the consent of Syed Sadiq Hussain Shah, respondent, herein, whereby the disputed shops were given to him on rent and the period mentioned in the agreement shall come to an end on 30th April, 2021. It was further stated that respondent No.1, herein, is bent upon getting the shops vacated before the fixed time period, therefore, he may be restrained from interference in the shops till the completion of the agreement. Respondent No.1, herein, also filed an application before the Rent Controller stating therein that he rented out three shops to Khurram Saddique Butt, vide an agreement and the period fixed in the agreement has been expired in March, 2018 and Khurram Saddique Butt without his consent entered into an agreement with the petitioner, herein, illegally and unlawfully and in this regard he has lodged an F.I.R. against him. The Rent Controller after hearing the parties dismissed the application filed by respondent No.1, herein, whereas, on the application filed by the petitioner, herein, issued stay order vide order dated 28.05.2018. The order dated 28.05.2018 was assailed by the respondent No.1, herein, before the learned High Court by filing a writ petition. The learned High Court while accepting the writ petition has set aside the order dated 28.05.2018 passed by the learned Rent Controller.

6. The argument of the learned counsel for the petitioner that the learned High Court has passed the impugned judgment without providing an opportunity of being heard to the petitioner, herein, against the principle of natural justice, hence, the same is liable to be set aside, is devoid of any force because the respondent has annexed with the appeal a copy of

order dated 21.10.2019 passed by the learned High Court, whereby the petitioner, herein was proceeded ex-parte. A perusal of this order reveals that the petitioner, herein, despite service of notices and availing various opportunities neither appeared before the Court nor filed written statement. For better appreciation the order dated 21.10.2019 is reproduced as under:-

“ORDER:

In spite of service of notices, nobody appeared on behalf of the respondents and despite availing various opportunities, they have not filed the written statement, therefore, they are proceeded ex-parte. Ex-parte arguments heard. Judgment reserved.

Muzaffarabad
21.10.2019

JUDGE”

It was enjoined upon the petitioner, herein, to make sure his appearance before the Court after service and defend the order passed in his favour by the Rent Controller. The petitioner has also not assigned any reason in the grounds of appeal before this Court as to why he could not pursue his case before the High Court. The petitioner, herein has been negligent and indolent in pursuing his case and an indolent or negligent person cannot claim any benefit from the Courts of law. It is a celebrated principle that law helps those who are vigilant and careful enough to look after their interests and does not help those who sleep over their rights and are indolent to seek the redressal of their grievances as has been held in the case reported as AJ&K University v. Mir Alam and 43 others (2002 SCR 292). The relevant portion of the cited judgment is reproduced as under:-

“...The respondents, according to their own version, when came to know about the non-inclusion of their names in the list of

appellants, they duly filed an application before the High Court for impleading them in the line of appellants but their application was dismissed by the same Bench of the High Court vide order dated 4.12.2000. After this order the respondents slept over the matter and did not challenge the said order by filing an appeal before the Supreme Court. It is a celebrated principle that law helps those who are vigilant and careful enough to look after their interests and does not help those who sleep over their rights and are indolent to seek the redressal of their grievances.”

Even otherwise, from the record, no document on behalf of the petitioner appears to have been brought on record which shows that Syed Sadiq Hussain Shah (the owner of the shops) has authorized his tenant, Khurram Saddique Butt to further sublet the disputed shops to any person. When there is no agreement between landlord and the petitioner-respondent and the shops are also proved to be in possession of other person newly entered into agreement dated 28.03.2018, the application filed by the petitioner, herein, before the learned Rent Controller appears to have been filed incompetently as before resorting to Court of law, the petitioner, herein, had to prove his relation with the landlord as tenant.

7. After juxtaposed perusal of the impugned judgment of the learned High Court and the record, we are unable to persuade ourselves to arrive at any conclusion different from the one recorded by the learned High Court. The appellant has failed to convince us that there was any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment of the High Court, that may furnish basis for acceptance of appeal. The impugned judgment of the High Court is well reasoned, based on appreciation of

the facts and record, hence, the same warrants no interference by this Court.

The result of the above discussion is that finding no force in this appeal, it is hereby dismissed with no order as to costs.

JUDGE

JUDGE

Muzaffarabad,
05.05.2023