

2017 Y L R Note 354

[Lahore]

Before Muhammad Farrukh Irfan Khan, J

RAZIA KHANUM---Appellant

Versus

GHULAM NABI BHATTI---Respondent

S.A.O. No. 141 of 2010, decided on 25th September, 2014.

(a) Punjab Rented Premises Act (VII of 2009)---

---S. 15---Application for eviction of tenant---Denial of tenancy by tenant--
-Framing of issues---Effect---Principle of approbate and reprobate---
Applicability---Landlord filed ejection petition along with recovery of
rent as arrears before Rent Controller---Firstly, tenant denied
relationship tenancy but during pendency of eviction petition, he handed
over keys of demised premises---Rent Controller allowed the application
and directed tenant to pay arrears of rent---Appeal was preferred against
order of Rent Controller after gap of seven months that was allowed and
case was remanded with direction to frame issues and record evidence---
Validity---When a tenant had refused relationship of tenancy which was
proved to be otherwise from record then general inference would be
drawn that he had not paid the rent and there would be no need to
determine same through evidence. Landlord could not be permitted to
plead payment of rent on principle of approbate and reprobate---High
Court allowed second appeal in circumstances. [Paras. 5, 8 & 9 of the
judgment]

Haji Abdul Hameed v. Ch. Muhammad Islam 1983 CLC 970 and
Muhammad Ismail v. Israr Ahmad PLD 1964 Lah. 648 rel.

(b) Punjab Rented Premises Act (VII of 2009)---

---S. 28--- Appeal--- Limitation---Condonation of delay---Tenant preferred
appeal after lapse of seven months in contravention of prescribed time of
one month---No application to condone delay was attached with the
appeal but Appellate court below entertained it without condoning
delay---Effect---Delay of each and every day was to be explained and after
lapse of period of limitation, right had been accrued in favour of
landlord that could not be taken whimsically---Appeal was barred by
time and same was liable to be dismissed. [Para. 6 of the judgment]

Ahmad Hassan Khan and Mehr M. Iqbal for Appellant.

Asghar Ali Hashmi for Respondent.

ORDER

MUHAMMAD FARRUKH IRFAN KHAN, J.---Respondent's appeal against the order of the learned Rent Controller dated 03.02.2007 whereby he was directed to pay arrears of rent was accepted by the learned First Appellate Court through impugned judgment dated 17.06.2010 and the matter was remanded to the learned Rent Tribunal with direction to frame issue regarding arrears of rent, record the evidence of the parties thereupon and then decide the same afresh. Being aggrieved with the said judgment the appellant has filed instant second appeal.

2. Learned counsels for appellant submits that impugned judgment of the learned lower Appellate Court suffers from material illegalities and irregularities; that appeal of respondent was badly barred by time but the learned Appellate Court without determining the question of limitation proceeded to decide appeal on merits; that firstly respondent denied relationship of landlord and tenant between the parties but during the pendency of eviction petition, he handed over the keys of demised premises; that it is settled principle of law that where relationship of landlord and tenant is denied by a party but proved contrary, there is no need to frame issue and the learned Rent Tribunal is bound to pass final order which includes arrears of rent; that denial of relationship of landlord and tenant and subsequent admission leads to the conclusion that respondent did not pay any rent; that once a relationship of landlord and tenant is denied, the person who denies so is precluded from pleading and leading evidence with regard to default; that the order of the learned Rent Controller was well reasoned which has illegally been set-aside by the learned Appellate Court on self assumed reasons which are devoid of any legal backing.

3. Conversely, learned counsel for respondent submits that impugned judgment is well reasoned; that no doubt respondent admitted existence of relationship of landlord and tenant but in no manner it can be presumed that he is defaulter in payment of rent; that question of default is intricate question of fact which can only be determined after recording of the evidence of the parties; that the learned Appellate Court has rightly remanded the matter to the learned Rent Controller and no occasion arises for this Court to intervene with the same in second appeal.

4. Arguments heard. Record perused.

5. Record shows that the learned Rent Controller passed final order on 03.02.2007. According to section-15 of the West Pakistan Rent Restriction Ordinance, 1959 appeal could be filed within thirty days of passing of such order, whereas, the respondent filed, appeal on 25.09.2007 i.e. after a delay of more than six months. It is very strange that despite the fact that the appeal was not accompanied with any application for condonation of delay, the learned Appellate Court entertained the appeal and that too without condoning such a delay. There is no explanation as to the fact that why the respondent remained silent for such a substantial time when he was not satisfied with the order of the learned Rent Tribunal. The appellant waited for expiry of period of appeal and then filed execution petition wherein on 14.09.2007 the respondent undertook to pay the arrears of rent but thereafter instead of honouring his commitment filed a time barred appeal. It is settled proposition of law that delay of each and every day is to be explained. After elapse of period of limitation a right has accrued in favour of the appellant which cannot be taken away in such a whimsical manner. The appeal of the respondent was miserably barred by time and no sufficient reason was available on record to condone such a delay as such the same was liable to be dismissed on this single score alone.

6. Even on merits, respondent has no case in his favour. Firstly, he denied relationship of landlord and tenant between the parties, then during the pendency of ejectment petition, while accepting such relation handed over keys of demised premises. It is settled principle of law that when a tenant refuses relationship of landlord and tenant which otherwise is proved from the record then general inference is that he must have not paid the rent and there is no need for determination of the same through recordal of evidence. Reliance is placed on case reported as Haji Abdul Hameed v. Ch. Muhammad Islam (1983 CLC 970) wherein it has been laid down as under:-

"The tenant cannot be permitted to adopt two stands that are diagonally opposite to each other. If he does not acknowledge the other party to the litigation as his landlord, he cannot in the same breath raise a plea of having paid the rent arrears to the said party. As the provisions of the Civil Procedure Code are inapplicable in rent cases, it is not permissible to raise inconsistent pleas in such cases, particularly the pleas of above kind which are destructive to each other. Once the relationship of landlord and tenant is denied, such denial on the part of the tenant would raise a presumption against him, that he must not have paid the rent to the other party and further enquiry about the payment of the rent would not be called for."

7. Similarly, in case reported as Muhammad Ismail v. Israr Ahmad (PLD 1964 Lahore 648) it has been observed as under:--

"The risk of adopting a false plea of this kind by a tenant is manifest. For example, in an action for eviction for non-payment of rent the tenant will be precluded from pleading and leading evidence to the effect that he was not in default as the pleas that he was not a tenant under the petitioner and that he had been paying rent to him on due dates, will be mutually destructive."

8. In view of above, I am of the considered view that since the respondent denied relationship of landlord and tenant which was later on admitted by him, he cannot be permitted to plead payment of rent on the well established principle of approbate and reprobate. The conclusion of the learned First Appellate Court that for determination of arrears of rent recordal of evidence is necessary thus being contrary to law cannot be allowed to remain intact.

9. Resultantly, this appeal is allowed as a consequence whereof impugned order of the learned First Appellate Court dated 17.06.2010 is set aside and that of the learned Rent Controller dated 03.02.2007 is restored. No order as to costs.

MM/R-10/L Appeal allowed.

