

**2002 C L C 1206**

**[Peshawar]**

**Before Shah Jehan Khan and Abdur Rauf Khan Lughmani, JJ**

**ABDUL MAJEED---Petitioner**

**versus**

**IFTIKHAR AHMAD and 5 others---Respondents**

Writ Petitions Nos. 155, 156 and 172 of 2001, decided on 27th March, 2002.

**(a) West Pakistan Urban Rent Restriction Ordinance (V of 1959)---**

---S. 13---Civil Procedure Code (V of 1908), Preamble ---Ejectment proceedings---Provisions of Civil Procedure Code, 1908---Applicability-Though the provisions of C.P.C. are not entirely applicable to the proceedings under West Pakistan Urban Rent Restriction Ordinance, 1959, yet the Courts dealing with the eviction petition have to follow C.P.C. as far as possible.

**(b) Constitution of Pakistan (1973)---**

---Art. 199---Constitutional petition---Finding of facts-2- Interference of High Court in Constitutional jurisdiction---Scope---Failure to discuss the evidence of the parties by lower forum, High Court could interfere in the matter under its Constitutional jurisdiction---Where the Lower Appellate Court without discussing the facts available on record and without giving reasons for his findings and without applying his judicious mind passed the judgment, such judgment was arbitrary and without lawful authority which was set aside by High Court.

**(c) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)---**

---S. 13---Constitutipn of Pakistan (1973), Art.199---Constitutional petition ---Ejectment of tenant---Finding of facts---Interference by High Court in Constitutional jurisdiction---Rent Controller dismissed the ejectment petition whereas the Appellate Court allowed the same---Plea raised by the tenant was that the Appellate Court had set aside the order passed by the Rent Controller without discussing the evidence available on record---Validity---Appellate Court while accepting the appeal of the landlord had not applied its judicious mind to the facts and circumstances of the case by not discussing the evidence led by the parties, such judgment was set aside---Matter was remanded to the Appellate Court for deciding the appeal afresh---Constitutional petition was allowed in circumstances.

1998 CLC 1839 and 1984 CLC 938 ref.

Khalid-ur-Rehman Qureshi for Petitioner.

Sardar Aman Khan for Respondents.

Date of hearing: 27th March, 2002.

## **JUDGMENT**

**SHAH JEHAN KHAN, J.**--- Writ Petitions Nos. 155 of 2001, 156 of 2001 and 172 of 2001 are filed by various tenants petitioners against common landlords as respondents in all the three writ petitions and are disposed of by this common order.

2. The respondents brothers inter se in their capacity as landlords have filed three separate eviction petitions against the petitioners in the three writ petitions on the ground of default in payment of rent and personal need. Applications formed files Nos.8/RC, 9/RC, and 10/RC of 1997. The applications were contested by the petitioners tenants mainly challenging the bona fide of respondents landlords for eviction of the suit shops. The learned Rent Controller framed 14 issues including the relief and both the, parties were allowed to adduce evidence in support of their respective contentions. In the conclusion of the trial the Rent Controller after discussing each and every issue dismissed the applications of respondents for eviction of the suit shop with costs vide his judgment, dated 25-5-2000. Since the petitioners tenants were depositing the tentatively assessed monthly rent at the rate of Rs.800 which was found to be Rs.600 per month for each shop and the exceeding amount of Rs.200 per month deposited in Court was directed to be adjusted towards the future rent.

3. The respondents landlords feeling aggrieved from the judgment of the Rent Controller preferred separate appeals in the Court of District Judge, Haripur, which were accepted vide impugned judgment, dated 27-4-2001.'

4. We heard the learned counsel for the parties and perused the record.

5. The learned counsel for the petitioners mainly attacked the impugned judgment of Additional District Judge, Haripur, on the ground that without applying his judicious mind to the facts and circumstances of the case and without discussing evidence of the parties merely by reproducing a portion of the statement of petitioner tenant which is against the prescribed procedure and relied on 1998 CLC 1839 and 1984 CLC 938.

6. While refuting the contentions of the learned counsel for the petitioners the learned counsel for the respondents /landlords supported the impugned judgment of Appellate Court and maintained that bona fide of the respondents/landlords was not only proved through evidence of the applicants but also by admission made by the petitioners/tenants in their statements before the Court. Further submitted that the procedure laid down in the C.P.C. is not strictly applicable to the proceedings under Urban Rent Restriction Ordinance, 1959.

7. Though, the Civil Procedure Code is not strictly applicable to the proceedings under West Pakistan Rent Restriction Ordinance, 1959 but the Courts dealing with the petition for eviction has to follow C.P.C. as possible. In the cited judgments at the Bar it is laid down that the hierarchy under West Pakistan Rent Restriction Ordinance, 1959 shall apply its judicious mind to

the facts and circumstances of the case for which evidence is led by the parties is required to be discussed and, thereafter a conclusion is to be drawn. Failing to discuss the evidence of the parties the High Court can interfere in the matter under its Constitutional jurisdiction. On the face of 'record the impugned judgment of Appellate Court suffers from illegality in the sense that without, discussing the facts available on record and without giving reasons for hi findings and without applying his judicious mind the impugned judgment was delivered which makes the impugned judgment arbitrary and without lawful authority. The case of petitioners tenants from the very beginning is that the ejectment petitions filed by the respondents/landlords are lacking bona fide requirement. The respondents landlords have produced Akhtar Nawaz, Clerk from Taxation Department, Haripur as their own witness who was examined as P.W.3. In his statement he has categorically stated that the respondents landlords are owning other shops in the same vicinity where the shops in questions are situated and shops Nos.2335, 2338 and 2345 were vacant. If the respondents landlords with intent to improve their business and use the shops in occupation of the petitioners/tenants for selling the flour grinded in their flour mills on a fair price, they could easily use the said vacant shops. This evidence of the respondents landlords and other evidence of the parties were neither discussed nor taken into consideration while reversing the finding of the Rent Controller through his impugned judgment.

8. In view of the above we find that while accepting the appeals of the respondents through the impugned judgment the learned Additional District Judge has not applied his judicious mind to the facts and circumstances of the case by not discussing the evidence led by the parties which makes the impugned judgment as without lawful authority, which is hereby set aside and the matter is remanded back to the Appellate Court with the direction to rewrite the judgment afresh after discussing the evidence of the parties, recording reasons and after applying his judicious mind. Costs shall follow the events.

Q.M.H./M.A.K./475/P

**Petition allowed.**