

Respondent No.1 has filed ejectment application against the appellant/opponent on the ground of default in payment of rent.

3. After notice/summon, the appellant/opponent filed written statement wherein he denied the relationship of landlord and tenant between him and Respondent No.1. He further contended that ex-husband of Respondent No.1/ applicant namely Ali Hassan Brohi/ Respondent No.3 was real owner of the demised shop, who is receiving rent of the demised shop, therefore, he has not committed any default in payment of rent.

4. The Rent Controller recorded evidence and after hearing the learned counsel for the parties held that there exist relationship of landlord and tenant between the parties and, therefore, by order dated **21.04.2014** allowed the rent application and directed the appellant to vacate the tenement within **45 days**. The appellant, therefore, preferred instant First Rent Appeal before this Court against the said order.

5. The record shows that the instant FRA was filed on **02.6.2014** and on the very first date i.e **04.6.2014** learned counsel for the appellant has obtained exparte order whereby the impugned order was suspended and since then this matter has always been adjourned conveniently on one pretext or the other and even counsel for the landlady has not shown any anxiety. On **12.3.2020** when this case was listed before this Court for first time, as usual learned counsel for appellant was not in attendance and the matter was adjourned for next morning. On **13.3.2020** learned counsel for the appellant was present and he again sought time, therefore, at his request the appeal was adjourned to **16.3.2020**. Again on **16.3.2020**

learned counsel for the appellant sought time and at his request matter was adjourned to next morning.

6. On **17.3.2020** record was perused and arguments of learned counsel for the parties were heard and the case was reserved for order, however, learned counsel for the appellant requested that a chance for compromise between the parties may be given. Therefore, in the order dated **17.03.2020** it was observed that the order will be passed after 10 days and in the meanwhile if compromise is filed, this case will be decided on the basis of compromise but till date no compromise has been filed. Therefore, since this case is pending in this Court for the last six years on a short point of default in payment of rent, irrespective of the conduct of both the counsel, this Court cannot further delay in deciding the appeal. Even otherwise, once the case is reserved for order it has to be decided by Judge of High Court at the most within 90 days in respectful obedience to the directions of the Hon'ble Supreme Court in the case of Messrs MFMY Industries ..Vs.. Federation of Pakistan reported in **2015 SCMR 1550**. Its relevant portion is reproduced below:-

7. I shall now turn to the hearing of the first and/or second appeals by the High Court(s), and the hearing of the cases before it in its revisional and constitutional jurisdiction. As the first appeals against decrees and mostly the constitutional cases and ICAs are heard by a Division Bench(s) of the High Courts, so as to enable the two Judges to deliberate, confabulate and compose the judgment(s), or record dissent and/or exchange draft judgments, the reasonable time for the pronouncement of judgments should be 90 days. **This time period (90 days) shall also be reasonable time for the High Courts, for the reason that Article 201 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates "Subject to Article 189, any decision of a High Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it"**. Thus

for proper enunciation of law, considerable research, brooding and pondering may be required. 90 days time in view of said Article should, therefore, also be good and adequate for the composition of the judgments by the High Court(s) in the above matters **and also in first appeal against order or second appeals, and in the cases before it in its revisional or review jurisdiction**, or any of the special jurisdictions of the High Court(s) (note: subject to the principle if the law has fixed a time for the conclusion of the proceedings and pronouncement of judgment under any special law, this has to take precedence over the 90 days).

7. Learned counsel for the appellant has attempted to wriggle out from the admitted default in payment of rent by referring to the language of legal notice and out of context statement of landlady in the evidence. On the one hand he claimed that there was no relationship between the appellant and Respondent No.1/landlady, Ulfat Shaheen and on the other hand he says that the rent has been paid by the appellant to the husband of the landlady. Such statement of the appellant is contrary to the formal alleged denial of relationship of the appellant with Respondent No.1 as tenant. Respondent No.1 has even filed title documents of the demised shop and in evidence her ownership has not been denied or disputed and the appellant has admittedly entered in the said property as tenant. The learned trial Court has found more than enough evidence to hold the appellant is guilty of default in payment of rent as prayed. The brief judgment on the point of default is reproduced below:-

“-----
-----”. The respondent in his cross-examination says “It is correct to suggest that I am tenant in the said premises”, “it is correct to suggest that I have not paid rent since March 2012, Voluntarily says that I have paid to Ali Hasan Brohi”, “it is correct to suggest that receipt dated 09.08.2012, is for rent of year 2012”, “it is correct to suggest that I have not produced rent receipt for year 2013”. Further the respondent was not even acquainted with names of witness of tenancy agreement filed by the

respondent which also shows that alleged tenancy agreement is forged one. The case of petitioner has been proven that she is the landlady and the respondent is tenant in the premises and is under obligation to pay rent to the petitioner from March 2012 to onwards. Hence it is also proved that tenant had defaulted in payment of rent. To strengthen the contention of tenant that tenant is payment rent to the Mr. Ali Hasan, he neither produce(d) Mr. Ali Hasan in court, nor produced witness of so called agreement with Mr. Ali Hasan.”

The counsel for the appellant has not referred to any evidence led by the parties which may show the proof of payment of rent to the appellant or even anybody else from 2013 and so-called receipt of rent for the year 2012 has been rightly adjudged forged as it was not proved according to the requirement of Qanun-e-Shahadat Order, 1984.

8. Beside the above, it is also admitted position from the record that the appellant has never sent rent to the landlady or her husband through money order nor deposited rent in any Miscellaneous Rent Case in Court in the name of Landlord of his own choice. Instead of paying rent to the landlady even after the filing of the rent case and its decision against him the learned counsel for the tenant in ground “K” of the instant First Rent Appeal himself has stated that *“the appellant is ready to deposit future rent as agreed in terms of tenancy agreement dated 06.01.2010 to the learned Nazir of this Hon’ble High Court till the disposal of the instant appeal”*. The appellant was able to get exparte order of suspension of eviction order dated **21.04.2014** but he has not obtained an order to fulfill his desire expressed by him in ground “K” of his memo of appeal. It means he has not paid rent to anyone since the filing of rent case. The entire amount of rent till today has remained unpaid from the date of alleged non-payment of rent and the appellant in ground “K” of appeal has in fact confessed

that he is not paying rent to anyone. The record shows that from March, 2012 to this day (10th June, 2020) for almost eight years and four months the appellant is in default of payment of rent at the rate of Rs.45,000/- per month. By now the defaulted rent amount is **Rs.45,00,000/-** (Rs.45,000 x 100 = Rs.500,000 from March, 2012 to June, 2020). And there is hardly any justification to think that such a contumacious defaulter would pay future rent.

9. In view of the above, even prima-facie case was not made out for notice to Respondent No.1/landlady and the appeal ought to have been dismissed on the first date of hearing without notice to the landlady. However, somehow or the other this case has already taken more than six years in this Court and last more than two months were on the ground that the learned counsel for the appellant wanted to enter into compromise for which he was given 10 days' time on **17.03.2020** when after hearing him on merit the appeal was reserved for orders. Consequently, the instant FRA is dismissed with directions to the appellant to instantly pay the defaulted rent amount and vacate the demised shop within **15 days** from the date of announcement of this judgment, otherwise the executing court shall issue only one formal notice to the appellant and without wasting time in the name of service of notice of execution on the appellant, the executing court on first date of hearing shall issue writ of possession with police aid and permission to break open the locks without any second notice to the appellant. Compliance report be submitted to this Court through MIT-II within ONE month from the date of filing execution.

JUDGE

Karachi, Dated:10.06.2020

Ayaz Gul