

**IN THE SUPREME APPELLATE COURT GILGIT-  
BALTISTAN  
GILGIT.  
CPLA No. 23/2012.**

**Before:**

**Mr. Justice Rana Muhammad Arshad Khan, Chief Judge  
Mr. Justice Raja Jala Uddin, Judge.  
Mr. Justice Muzaffar Ali, Judge.**

1. Fida hussain son of Dinar Baig Shopkeeper fine paints  
hardwear store Raja Bazar Gilgit.
2. Haji Sher Ali Shah son of Lal Badshah Shopkeeper new  
fine cloths house.
3. Haji Mirza Muhammad Shopkeeper Bata Mubarak Shoes  
Copmany.

**(Petitioners)**

**VERSUS**

1. Raja Tahir Abbas. 2. Raja Manzoor Abbas 3. Raja Zaheer  
Abbas sons of Raja Wazir Abbas residents of Amphary  
Tehsil and District Gilgit.

**(Respondents/Defendants)**

**PETITION FOR LEAVE TO APPEAL UNDER  
ARTICLE 60 OF GILGIT-BALTISTAN  
(EMPOWERMENTS & SELF GOVERNANCE)  
ORDER, 2009 AGAINST THE JUDGMENT/ORDER  
DATED 14.06.2012 PASSED BY SINGLE BENCH  
CHIEF COURT IN CSA NO. 08/2012.**

**Present:**

Mir Ikhlaq Hussain, Advocate for the petitioner.  
Mr. Ali Khan, Advocate for the Respondents.  
Mr. Rehmat Ali, AOR.

**DATE OF HEARING: 20.08.2013**

**JUDGMENT**

This petition for leave to appeal has been preferred against the Judgment dated 14.06.2012 passed by the learned single Judge of the Chief Court

Gilgit-Baltistan whereby, the appeal against the Judgment dated 30.10.2010 passed by the learned Additional District Judge, Gilgit was upheld.

The facts in brief as gleaned out from the record are that the respondents/petitioners instituted a rent petition under Section 13 of West Pakistan Rent Restriction Ordinance, 1959 on 6<sup>th</sup> April 2004 against the petitioners/respondents in the Court of Rent Controller/Civil Judge 1<sup>st</sup> class Gilgit for ejection from the shops in question against the petitioners/respondents in respect of property as detailed in main application on account of default towards the payment of rent. It was averred in the application to the effect that the property in question i.e. Shops Nos. 4,5 and 6 located in Raja Bazar Gilgit City which was previously under the ownership of Jafar Khan the predecessor of the respondent herein. After the sad demise of Jafar Khan property in question fell in the ownership of respondents through Mutation number 15783 sanctioned on 08-12-2001 as mentioned in the application. On account of the change of ownership, notice under the law, were given to the respondents and they were also required to

pay rent at the prevailing market value, whereas, the respondents adopted dilly-dally attitude thus necessitating the ejectment of the petitioners from property subject matter of the proceedings.

The petitioners/respondents however controverted the averments made in the ejectment application by raising certain legal objections and they also refuted the claim of respondents/applicants on the ground that they could not be ejected from the property as Jaffer Khan the predecessor in interest of the respondents had entered into an agreement with them on 06.06.1972 to the effect that the petitioners cannot be ejected as the disputed shops as per agreement were reconstructed by the petitioner herein and the predecessor of the respondents shall keep on receiving the rent of these shops per month. It was suggested that in view of agreement entered into by the predecessor of respondents/applications, they had got no legal and ethical ground to bring a lis against the petitioners and the respondents herein are only entitle to receive the rent at the rate of Rs. 60/- per shop on monthly basis.

The learned Rent Controller during the course of proceedings vide order dated 20.04.2005 determined the fair rent and directed the petitioners to deposit the same before 15<sup>th</sup> of each month. The petitioners, however, could not comply with the orders passed by the learned Rent Controller on 20-04-2005 and rendered themselves as willful defaulters. The learned Rent Controller vide order dated 08-06-2009 accepted the ejectment petition and struck off the defence of the petitioners herein and the respondents/applicants were orders to be put into possession.

The petitioners herein feeling aggrieved called in question the order dated 08-06-2009 through civil first appeal before the learned District Judge Gilgit. After hearing the parties, the learned District Judge Gilgit vide judgment dated 30-10-2010 modified the order of the learned Rent Controller and directed the petitioners/respondents to fix rent in accordance with prevalent market value. It was directed further that if the present petitioners failed to comply with the orders then respondents would be at liberty to make endeavor for ejectment. The petitioners then filed civil second

Appeal before the Chief Court Gilgit-Baltistan however, the same was dismissed vide judgment dated 14-06-2012 which is under impeachment in the instant Civil Petition for leave to appeal.

It is been argued by the learned counsel of the petitioners, inter alia, that judgment in question is of arbitrary in nature as the same was passed in oblivion of law of the land as well as facts on the record. The Chief Court as well as lower Courts failed to keep in mind the crucial fact in original agreement, it was to be noted that it was agreed upon in the year 1972 between the landlord and the tenant that in case of reconstruction of the shops in dispute they would be only liable to pay monthly rent of Rs. 60/- only per month. It is argued strenuously that no default, however, was made by the petitioners and the findings of the Courts below on this aspect are nothing but reflection of hasty attitude. The petitioners argued further that the judgments of the lower Courts are merely based on conjectures and as such least permissible at law.

Conversely, the counsel for the respondents has opposed the application with full force contending

that the petitioners have failed to comply with the orders passed by the learned trial Court as well as the learned appellate Court and in this view of the matter they rendered themselves defaulters and no other decision can be taken except the dismissal of the petition. The petitioners could not raise any legal point in this petition and this Court is not a fact finding Court which exercise has already been undertaken by the learned courts below and the petition in hand merits dismissal.

We have heard the arguments advanced by learned counsel for the respective parties and have also examined the record minutely with their able assistance.

At the very outset, it may be clarified that in terms of section 13(6) of West Pakistan Rent Restriction Ordinance, 1959, the Rent Controller is required to determine the fair rent on the first date of hearing, even before framing the issues. Section 13(6) of the said ordinance is reproduced below for ready reference:-

**“in proceeding under this section on the first date of hearing or as soon as possible after that date and before issues are framed, the controller shall direct the tenant to deposit all the rent due**

**from him and also to deposit regularly till the final decision of the case, before the [fifteenth] day of each month, the monthly rent due from him. If there is any dispute about the amount of rent due or the rate of rent, the controller shall determine such amount approximately and direct that the same be deposited by the tenant before a date to be fixed for the purpose. If the tenant makes default in the compliance of such an order, then if he is the petitioner, his application shall be dismissed summarily and if he is the respondent, his defence shall be struck off and the landlord put into possession of the property without taking any further proceeding in the case”.**

The position which emerges from the plain reading of the said section is that the Rent Controller is not left with any alternative except to determine fair rent as per dictates of law and this aspect cannot be left with the parties to decide with regard to the fixation of fair rent of the rented property. The scrutiny of the record is indicative of the fact that the learned Rent Controller vide order dated 20-04-2005 directed the petitioners to deposit monthly rent on or before 15<sup>th</sup> of each succeeding month. The petitioners, however, failed to comply with the direction passed by the learned rent controller. The petitioners, however, voiced their grievance to the effect that they have been depositing the rent as per direction of the court with the Reader of the Court but despite of depositing the rent, they never issued the receipts of the deposits of

the rent fixed by the court. At this stage of proceedings of the Court, the learned Rent Controller examined the reader and other member of the staff as court witnesses and thereafter, gave a definite conclusion to the effect that the petitioners had defaulted by non-depositing of the rent. In this scenario of the matter there remains no room for doubt towards default. It has consistently been observed by the Hon'ble Apex Court of Pakistan that default towards payment of rent is a fit ground for ejectment of tenants from rented premises. Reliance in this regard is placed on PLD 2003 SC 228 ***Muhammad Shraf versus Qamar Sultana*** which reads as under for ready reference:

**“ There is no dispute about the fact that entire property including the rented premises belonged to the father of the respondent and on his death, the same devolved upon his legal heirs. Above property was partitioned among the legal heirs and the shop in question fell to the share of the respondent. Admittedly, the petitioner/tenant failed to comply with the order dated 19-11-2001, of the rent Controller. He neither paid the arrears after deducting the same from the rent already deposited nor continued to deposit monthly rent already deposited nor continued to deposit monthly rent fixed at Rs. 6250 per month from January, 1999 onwards till filling of the instant rent application, thus, became a willful defaulter. Irrespective of this, he had also sublets the shop on rent to Ashoar Shah which was another factor resulting in his eviction from the said shops. The photo copy of the receipt of Rs. 4375 said to have been deposited by the petitioner was in fact produced in another rent application titled Muhammad Ashraf V. Shaheen**

**Pervaiz which deposits too was also made after the delay of more than one month”.**

The examination of the record of the case in hand transpires that the petitioner in this case had also become willful defaulter and on accounts of this, petitioners were directed to vacate the premises.

Another arrow of the arsenal of the petitioner is that the predecessors of respondents had given them assurance and main agreement contained specific provision that in case of reconstruction of the shops, they will never be called to pay rent at the markets value and that they will ever liable to be ejected. There is a celebrated principle of law that any agreement which is violative of public policy is never specifically enforceable and the clause in agreement to this extend is always voidable.

There is no denying to the fact that after the sad demise of original landlord, the respondents entered into suit property and was transferred in their name as being the legal heirs of the legacy of the predecessor owner of the demised property, the respondents never issue notices, suffice is to say that the landlord is always at liberty to excuse agreement with regard to the property to which they had become

the owner and co clog under the law of the land can be imposed. The learned Additional District Judge as well as the Chief Court remained quite lenient with the petitioners while dealing with the issue as they have given time to the petitioners to enter into fresh agreement, but the petitioners instead of setting the dispute amicably, despite of the facts that the courts below did not adopt any harsh attitude. The astonishing feature of the petitioners want to feel obliged to pay the same rent after the expiry of almost 41 years time, when the whole scenario is absolutely changed.

In this view of the matter, the finding of the Courts below are neither perverse nor arbitrary and as such never warrant any interference and no exception is required, in the circumstances of the case, to be taken at all.

In view of what has been discussed above, the case never calls for exercise of jurisdiction by this Court. The petition is misconceived and the same is dismissed. Leave to appeal is refused.

Chief Judge

Judge

Judge