

Judgment sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present**

**Mr. Justice Muhammad Jaffer Raza**

**First Rent Appeal No. 07 of 2025**

Mrs. Farah Shoukat..... Appellant

Versus

Mr. Khursheed Inamulah..... Respondent

Date of hearing : 30.04.2025.

Date of judgment : 29.05.2025.

Mr. Naeem Suleman, Advocate for the Appellant.

Mr. Wasim Ahmed Memon, Advocate for the Respondent.

**J U D G E M E N T**

**MUHAMMAD JAFFER RAZA-J**: The instant First Rent Appeal has been filed by the Appellant under Section 24 of the Cantonment Rent Restriction Act, 1963 (“Act”). The Appellant in the instant appeal is aggrieved with the order dated 26.12.2024 passed in Rent Case No.31/2022 filed by the Respondent, wherein the rent application was allowed and the Appellant was directed to vacate the tenement in question.

2. Learned counsel for the Appellant has contended that the Rent Case was filed primarily on three grounds namely, (i) sub-letting, (ii) default and (iii) personal bonafide use. Learned counsel for the Appellant has stated that neither of the grounds have been proved by the Respondent and the Appellant is not liable to be evicted from the tenement in question. With regard to sub-letting, learned counsel has submitted that the learned Rent Controller has dismissed the rent application and no appeal has been filed by the Respondent. However, the learned Rent Controller has given findings in the affirmative in reference to the remaining grounds. Learned counsel has further submitted that no ground for personal need

of the Respondent has been made out. He lastly submitted that the Appellant did not commit any default and even if there is default on part of the Appellant, this court has the jurisdiction to condone the same. He prayed that the instant appeal ought to be allowed and the Rent Case is liable to be dismissed.

3. Conversely learned counsel for the Respondent has argued that he is the owner of the tenement in question and the relationship between the parties, which commenced in the year 1995, is not denied. He has further contended that the Respondent filed the above noted Rent Case on the grounds already revealed by the learned counsel for the Appellant. He has further stated that he has filed cross-appeal against the Impugned Order as his ground for subletting was disallowed by the learned controller. He has further argued that his application ought to have been allowed on all three grounds. Learned counsel has further contended that the Appellant has abandoned the tenement and the same has been occupied by one Nisar Ahmed Khan. He has further argued that even if the sub-letting is not proved the Respondent is entitled for possession of the tenement in question, as the ground of default has very categorically been admitted by the Appellant during his cross-examination. He has further stated that personal bonafide need of the Respondent has been very unequivocally made out during the cross-examination of the Respondent.

4. I have heard both the learned counsels and perused the record. It is evident that the above-mentioned Rent Case was filed on three grounds i.e. sub-letting, default and personal bonafide need. However, ejectment was allowed on two grounds which shall be dealt with separately, vide instant judgment. The third ground of subletting shall only be adjudicated upon, if the instant appeal is allowed on the two grounds mentioned above.

### **DEFAULT**

5. It is the case of the Respondent that the Appellant has admittedly committed default in payment of rent. Relevant part of the cross-examination of the Appellant is reproduced as under: -

*“It is correct to suggest that money order exhibited with my affidavit in evidence is dated 28.10.2020. It is correct to suggest that the opponent has deposited the rent amount in Court on 7th December 2020 after more than 7 months. It is incorrect to suggest that the opponent was avoiding to pay the rent amount as such she has deposited after 7 months. It is correct to suggest that the rent amount for the month of July, 2019 was paid on 15.08.2019 i.e. after lapse of 45 days. Similarly, the rent amount for the month of November, 2019 was paid on 12<sup>th</sup> December, 2019 after more than 42 days. It is incorrect to suggest that the opponent is habitual in paying rent amount late. Voluntarily says that the opponent used to pay advance rent to the applicant for 4-months.” (Emphasis added)*

6. The perusal of the cross examination of the Respondent is also imperative at this juncture, wherein certain suggestions made by the counsel for the Appellant, are detrimental to her case.

*“I have mentioned in my Affidavit-in-Evidence that the rent amount has been deposited after committing default. It is correct to suggest that I received the rent amount after the years 2019. Voluntarily says that the rent amount was not paid after July, 2019. It is incorrect to suggest that the rent amount was not paid because I was not available. It is incorrect to suggest that I and my wife were not available to receive rent in Karachi.”*

7. It is evident, upon perusal of the cross examinations reproduced above that default has been admitted by the Appellant. Further, I have also noted that the Appellant failed to exhibit the money order which was stated to be sent to the Respondent. Therefore, I concur with the findings of the learned Rent Controller and hold that the Appellant is liable to be ejected from the tenement in question on the ground of default.

## **PERSONAL NEED**

8. In this respect it is necessary to reproduce the contents of the affidavit-in-evidence filed by the Respondent. The same read as under: -

*“That after my retirement I have returned to Pakistan last year. After taking some time out from work and exploring different options in the market, I have now decided to do the same property related to business along with my wife. As such I require the subject rented premises for my personal need. The other shop is in possession of the tenant under a subsisting and valid rent agreement, whereas the rent agreement with the opponent has expired..... It is submitted that since I am a retired person and more than 60 years of age and cannot do a job, as such I genuinely require the subject rented premises to start my own business.”*

9. In this respect learned counsel for the Appellant has relied upon the proviso of Section 17(4)(b) of the Act. The same is reproduced below: -

*“17(4)(b) in the case of a commercial building, if-*

*(i) he requires it in good faith for his own use; and*

*(ii) he is not occupying in the Cantonment area concerned or in any local area in the vicinity thereof in which such building is situated for the purposes of his business any other such building suitable for his needs at the time; and*

*(iii) he has not vacated such a building in the said area or vicinity without sufficient cause after the commencement of this Act:*

*Provided further that when the landlord has obtained possession of a residential or a commercial building under the provisions of sub-clause (a) or sub-clause (b) he shall not be entitled to apply again for the possession of any other building under that sub-clause, unless the building of which he had previously taken possession has become unsuitable for his needs:*

10. Learned counsel for the Appellant has argued that the case of the Respondent is hit by the second proviso of the above noted Section for the reason that the same has been admitted by him in his cross examination which is reproduced below: -

*“It is correct to suggest that I got vacated one of the shop from plot No. 104-C. B Commercial Area, DHA Phase-II. Karachi which is comprised of ground plus two on personal ground. It is correct to suggest that I did not use it for my personal use. Voluntarily says that the decision was made in the year 2002 thereafter the tenant filed an appeal which was decided after a period of 15 years. However, in the meanwhile I got a job in the USA as such I had to go there. It is correct to suggest that I rented out the said shop.”*

11. To delineate on the contention of the Appellant’s counsel I have examined the rent application filed by the Respondent. A perusal of paragraph No.5 of said application reveals that the Respondent candidly disclosed filing of the previous rent case against another tenant. It has also been disclosed that the said rent case was filed in the year 1998 and eventually disposed of in the year 2017. During this period the Respondent secured a job in the USA. It is noteworthy that the tenant in the previous rent case was also evicted on the ground of alteration and sub-letting, in addition to personal need. The Respondent therefore had no option but to rent out the said tenement to another tenant. Currently, the Respondent, as has been

disclosed by his learned counsel, does not have any other tenement which is suitable for his needs. At this juncture it will be relevant to refer to Section 17 (5) and (6) which provides a mechanism for the tenement to be restored in favour of the tenant in case the landlord doesn't occupy the same, within one month of ejection. The same is reproduced below: -

*“(5) The Controller shall, if he is satisfied that the claim of the landlord under sub-section (4) is bona fide make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not satisfied he shall make an order rejecting the application:*

*Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time so as not to exceed three months in aggregate.*

*(6) Where the landlord who has obtained possession of a building in pursuance of an order made under sub-section (5), does not himself or where possession of the building has been obtained for any member of his family, such member does not occupy the building within one month of the date of obtaining its possession, the tenant who had been evicted may apply to the Controller for an order directing that the possession of such building be restored to him and the Controller may thereon make an order accordingly.”*

12. The said provision was deliberated upon in the case of **Haider Ali Ravjani** **Versus Gulzar Feroz**<sup>1</sup> wherein it was held as under: -

*“10. Perusal of record of the proceedings before the trial court, reveals that the landlord advanced different reasons at various stages of the case, however all such reasons were directed to personal bona fide use or personal requirement. Mere technicalities do not infringe his right of personal use as all varied reasons given by the landlord are based on personal needs. Anyhow if the appellant/applicant does not want to use the premises for personal need in one month time period as provided in Section 17(6) of the Cantonments Rent Restriction Act, 1963, possession could be reverted to tenant.”*

13. The accountability mechanism provided for in the sections noted above, ensures that the requirement of personal need of the landlord is genuine. Failure to occupy within the time stipulated can entitle to tenant to regain possession of the tenement. Further, the filing of the earlier rent case will not affect the plea of the Respondent, as the case was filed over two decades ago and thereafter the circumstances of the Respondent altered considerably. Additionally, he remained

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<sup>1</sup>2019 M L D 1625

consistent is his averments and reiterated his requirement for personal need, which was unshaken and unrebutted during cross examination. Deeper perusal of the examination reveals that not a single suggestion was put to the Respondent regarding his personal need. The primary line of examination was the filing of the earlier rent case in an attempt to bring the case of the Respondent within the proviso noted above.

14. What is further imperative to note, is that the Appellant has been unable to establish that the Respondent currently, or at the time of filing the rent case, had another property in his possession which is suitable for his needs. The Respondent therefore was the sole judge in respect of such suitability and that burden was discharged when the Respondent entered the witness box and reiterated his personal need. Further, the suitability of any tenement will only come into play once it is established that there is another tenement. The Respondent has specifically pleaded that there is no other premises in his possession and neither has this contention been rebutted by the Appellant. In that respect, it is held that the Respondent has been able to make out a case for the Appellant to be ejected on the ground of personal bona fide need.

15. In light of what has been held above and the premise of the present adjudication as outlined in paragraph number 4 of the instant judgment; I do not consider it necessary to adjudicate the ground of subletting.

16. No case of interference has been made out and the instant appeal is consequently dismissed with no order as to cost.

JUDGE

Nadeem Qureshi "PA"