

IN THE HIGH COURT OF SINDH, KARACHI

First Rent Appeal No. 02/2016

Appellants : Burj Bank Limited, through Mr. Behzad Haider, Advocate.

Respondent No.1 : Amir Abdul Majeed, through Mr. Ali Lakhani, Advocate

Date of hearing : 30.05.2017

Date of Judgment :

JUDGMENT

YOUSUF ALI SAYEED, J:- The instant Appeal under S.24 of the Cantonment Rent Restriction Act 1963 (the “**Act**”) pertains to Shop No. S-07, measuring 957 square feet, on the ground floor and basement Units Nos. 14, 15 and 16, measuring 936 square feet, in the building situated on Plot No. G-4, Kehkashan, Clifton, Karachi, (the “**Subject Premises**”), and calls into question the propriety of the Order dated 16.11.2015 (the “**Impugned Order**”) made by the learned Additional Controller of Rent, Clifton Cantonment, Karachi, in Rent Case Number 11 of 2014 (the “**Rent Case**”), whereby the defence of the Appellant was struck-off and the Appellant was directed to vacate the Subject Premises and hand over peaceful possession thereof to the Respondent within 60 days.

2. Briefly, the salient facts leading up to and culminating in the Impugned Order, are as follows:

- (a) That the Respondent instituted the Rent Case on the ground of bona fide personal need as well as the alleged default in payment in rent on the part of the Appellant.

- (b) The Appellant filed its Written Statement wherein it took the plea that the Lease Agreement executed by it with the predecessor in interest of the Respondent (i.e. the previous owner of the Subject Premises from whom the Respondent had purchased and succeeded to ownership) had provided that taxes, duties/levies and outgoings in respect of the Subject Premises were the obligation of the lessor, who had failed to clear the same and thus the amounts due in that regard had been settled by the Appellant, which were thus withheld from the rental payments.
- (c) On an Application filed by the Respondent under S.17(8) of the Act, the learned Rent Controller was pleased to make an Order on 05.01.2015, wherein the contention of the Appellant's counsel was noted in the following terms:
- “On the other hand, Respondent's Counsel stated that respondent has deposited the rent upto June, 2015 in this Court in MRC No.33/2014. He further stated that on request of one of previous co-owners named Mr. Muhammad Arif vide letter dated 23.07.2010, the respondent has paid the property tax of Rs.5,40,719/- as well as Rs.3,47,740/- which was responsibility of petitioners in accordance with the Clause-7(ix) of Lease Agreement dated 18th June, 2008.”
- (d) Keeping in view this submission the Appellant was nonetheless specifically directed to deposit future monthly at the rate of Rs.278,179/- per month with 10% increase from July, 2015 and onward before the 5th day of each calendar month.

- (e) On 10.09.2015 an Application was filed by the Respondent under S.17(9) of the Act, wherein it was alleged that the Order made on 05.01.2015 had been violated by the Appellant, in as much as the monthly rent had been deposited with delay and that too in a lesser amount.
- (f) The Appellant filed its Counter-Affidavit, wherein the same plea as to payment of property tax was reiterated and it was also disclosed in relation to the Respondent's plea of short payment that certain deductions had been made by the Appellant from the rental payment on account of taxes said to be recoverable and which had been deposited with the Federal Board of Revenue and the Sindh Revenue Board.
- (g) After hearing the parties on the Application under S.17(9), the Rent Case came to be disposed of in terms of the Impugned Order, on the terms aforementioned.

3. From the Impugned Order, it is apparent that the learned Rent Controller considered the submissions made on behalf of the Appellant in light of the tentative rent Order made on 05.01.2014, and then observed as follows:

“The Court Accountant submitted his report regarding rent deposit status which reflects that opponent has deposited an amount of Rs.5,84,176/- for the months of July, 2015 and August, 2015 on 06.08.2015. It also reflects that the opponent deposited rent for the month of September, 2015 @ Rs.1,51,561/- on 07.09.2015 instead of depositing the rent @ Rs.2,78,179/- before 5th day of each month. The non-compliance of tentative rent order in making deposit of rent before 5th day of each

month would be default within the meaning of section 17(9) of the Cantonment Rent Restriction Act, 1963, leaving no option but to strike off the defence of the defaulter.”

Accordingly, the learned Rent Controller proceeded to strike off the defence of the Appellant and order eviction in the aforementioned terms.

4. Learned counsel for the Appellants contended that Impugned Order was bad in law and regurgitated the same plea that the learned Rent Controller had failed to appreciate that the Appellant had made tax payments as well as paid rental payments after deducting the withholding tax and sales tax in accordance with the applicable laws and has thus not paid lesser rental amounts. He prayed that the Impugned Order thus be set aside.

5. Learned counsel for the Respondent controverted the aforementioned submissions and contended that the course of action followed by the learned Rent Controller was just and proper, keeping in view the default on the part of the Appellants, as noted. He submitted that whilst the Respondent had acquired the Subject Premises vide Sale Deed dated 02.07.2012 the Appellant had wrongly deducted various amounts allegedly unpaid by the predecessor in interest of the Respondent, and that too, despite a clear directive of the learned Rent Controller in terms of the tentative rent Order made on 05.01.2015, which showed mala fide intent. He relied on a judgment of the Honourable Supreme Court in the case reported as Messrs Meridian Corporation (Pvt.) Ltd v. Mrs. Yasmeen Riaz 1999 SCMR 832 and submitted that the instant proceedings thus merited dismissal.

6. Having considered the arguments advanced at the bar and examined the record, it is evident that on its own showing the Appellant has admittedly made short-payments of the rental amount. Having done so, the Appellant sought to explain away its conduct on the basis of the very same issue that was agitated before the learned Rent Controller at the time when the tentative rent Order of 05.01.2015 was passed. I am of the view that in the face of a clear direction in terms of the tentative rent Order, there was no justification for the Appellant to have not complied therewith, and the failure/default on the part of the Appellant cannot be condoned on the basis of the dispute put forward. The assumption of liability, if any, by the Appellant as regards an obligation that lay with the predecessor of the Respondent, whether on account of tax or otherwise, could not serve to authorize the Appellant to arrogate to itself the right to unilaterally set-off such payment against the rent payable in terms of the specific directions encapsulated in the tentative rent Order of 05.01.2015. I am fortified in my view by the principle laid down in the case of Meridian Corporation (Supra) where it was held that a tenant who does not deposit the entire rent due in compliance with a tentative rent order would not be absolved from the penal consequences of S.17 of the Act on the ground that deductions were made on account of amount paid towards government or municipal taxes. In so holding, the Apex Court referred to its earlier judgment in the case reported as Mrs. Hazarbal Merchant and another v. Muhammad Ismail 1984 SCMR 406, where it was held as follows:

“After hearing the learned counsel at length we are inclined to agree with the concurrent finding of the two Courts below on the admitted facts of the case that the petitioners have committed default in the payment of rent due to the respondent/landlord. Without going into other controversies raised by the learned counsel it is sufficient for present purpose to mention that admittedly the petitioners did not deposit all the rent' due for a period of three years but deducted an amount of Rs. 1,409.681 claimed by them as having been paid towards Government and K. M. C. taxes in respect of the premises. In our view the petitioners were not entitled, to deduct this amount and did so at their risk and peril 'inasmuch the claim of the petitioners for refund of the amount was subject to adjudication by a competent Court or authority. The law clearly required them to deposit all the rent due in order to escape the consequence of ejection by the Rent Controller. There was, therefore, clear default established against the petitioners and the order of ejection passed against them is not open to exception. The petition, therefore, is without substance and is accordingly dismissed.”

7. Furthermore, as far as the question of deduction of sales tax is concerned, it even otherwise merits consideration that, as per the Sindh Sales Tax on Services Act, the provincial tax on the renting of immovable property is an indirect tax to be borne by the recipient of the service (i.e. the tenant) and the landlord is merely the collecting agent. As such, the landlord is required to collect the tax amount in addition to the rent and deposit such amount with the Sindh Revenue Board and the question of deduction at source does not arise. Furthermore, the tax payment receipts placed on record by the Appellant strangely indicate payment of different amounts from month to month, and when queried on this aspect learned counsel for the Appellant was unable to reconcile

or explain the discrepancy, as it to be expected that the deduction, calculated on the basis of a percentage of the monthly rent, ought to be of a uniform amount each month.

8. The delay in payment of rent for the months of July 2015 and September 2015, as noted in the Impugned Order, also remains unexplained and unaddressed.

9. In view of the foregoing I find no irregularity or illegality in the Impugned Order, and no case for interference stands made out. The instant Appeal accordingly stands dismissed, with no order as to costs.

JUDGE

Karachi
Dated _____