

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

F.R.A No. 03 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For Katcha Peshi.
2. For hearing of C.M.A 1603/2016

Date of hearing: 17.11.2016.

Date of judgment: 30.11.2016.

Appellant: Through Mr. Wasiullah M.Y Pandhyani,
Advocate

Respondent No.1: Through Mr. Nouman Raja Khan, Advocate.

Respondent No.2: Through Mr. Muhammad Aslam Bhatti,
Advocate

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J U D G M E N T

MUHAMMAD FAISAL KAMAL ALAM, J:- This is a First Rent Appeal, preferred against the order dated 29.07.2016, whereby, defence of the present Appellant, who was Opponent No.1 in the Rent Case No.01 of 2016, has been struck off, as he failed to comply with the Tentative Rent Order dated 13.05.2016 (passed earlier).

2. Relevant facts for deciding the present Appeal are that according to Appellant, although his father (Dr. Muhabbat Ali Qureshi) was inducted as tenant by the present Respondent No.1-Mst. Zubaida Bai (Landlady), but, after the death of his father, the present Appellant renewed the tenancy and also entered into a partnership agreement with the present Respondent No.2 (Dr. Iftikhar Iqbal), so that the Clinic established by the above named deceased father of present Appellant should continue.

3. The demised premises is the ground floor of a multistoried building built on a commercial Plot, having Survey No.41/113, Soldier Bazar, Saddar Cantonment Area, Hyderabad. Altogether, the entire building has three storeys but the present dispute is only with regard to ground floor, which according to present Respondent No.1(Landlady) was rented out to the above named [late] Muhabbat Ali Qureshi at the monthly rent of Rs.8,000/- (Rupees Eight Thousand Only) in terms of the Tenancy Agreement dated 01.07.2000.

4. As per the stance of landlady/Respondent No.1 mentioned in her Rent Application No.01 of 2016, which is available at Page-19, she has rented out the demised premises to the Appellant after the death of her father on 28.06.2014 at the rate of Rs.70,000/- (Rupees Seventy Thousand Only) per month with the option to increase the rent annually.

6. As per Paragraphs-7 and 9 of the said Rent Application, the present Appellant has defaulted in payment of rental from May, 2015 and had also sublet the demised premises to the present Respondent No.2.

7. Mr. Wasiullah M.Y Pandhyani, learned counsel for the Appellant has vehemently argued that the impugned order suffers from material irregularity, as earlier Tentative Rent Order was passed without taking into consideration the plea of the present Appellant, that he ceased to be a tenant after the possession was taken over by the present Respondent No.2 and it is the latter (RespondentNo.2), who is liable to pay the rent and not the present Appellant.

8. According to learned counsel for the Appellant, the Tentative Rent Order was also passed by non-reading Section-27 of the

Cantonment Rent Restriction Act, (11 of 1963) [Cantonment Rent Law].It would be advantageous to reproduce the Section-27 of the Cantonment Rent Law herein below:-

**“27. Procedure and power of Controller.____
No order under Sections 7, 8, 13, 15, 17 or 19 of this Act shall be made by the Controller except after holding an inquiry.”**

9. He further submits that since the tenancy has been denied, therefore, an inquiry was necessary before passing of above referred Tentative Rent Order and the subsequent impugned order. In support of his arguments, he has referred the Written Statement of Appellant to the above Rent Application as well as the Statement of Accounts filed in the above rent proceedings in rebuttal to the Statement of Accounts filed by present Respondent No.1 (Landlady). He further referred to the Plaint of Ist Class Suit No.637 of 2015, pending adjudication in the Court of Ist Senior Civil Judge, Hyderabad, filed by the present Appellant against the Respondent No.2, wherein, inter alia, the present Appellant has pleaded that since July, 2015, the present Respondent No.2 is in possession of the above demised premises and the present Appellant has been illegally dispossessed from the above demised premises, where he was running a Clinic. He has relied upon the reported decision of this Court reported in 2001 YLR Page-1224 (Maqsood Ali Khan Versus Muhammad Tehsin Khan).

10. Mr. Nouman Raja Khan, learned counsel for the Respondent No.1 (Landlady) while controverting the above contentions of Appellant's side, has referred to the Written Statement of the present Appellant, filed in the above rent proceedings, in which, he has made admissions in his Paragraph-1 and has admitted the corresponding Paragraphs-1 to 6 of the Rent Application, which relate to, inter alia, relationship of landlady and tenant between the parties hereto as well

as the amount of monthly rent. It has been further argued by the counsel for the landlady (Mst. Zubaida Bai) that the above mentioned suit proceedings between the present Appellant and Respondent No.2 is collusive in nature and sole object of such proceeding is to deprive the landlady/Respondent No.1 from use and enjoyment of the above premises as well as its rental income. While defending the impugned order, he has relied upon reported case of Hon'ble Apex Court-PLD 2005 Supreme Court Page-34.

11. On the other hand, Mr. Muhammad Aslam Bhatti learned Counsel representing the Respondent No.2 (Dr. Iftikhar Iqbal) has also denied the stance of Appellant while submitting that he has filed detailed pleading in the above mentioned suit and has highlighted the breaches committed by the present Appellant in respect of partnership business between the present Respondent No.2 and the Appellant.

12. Arguments of all the learned counsel representing the parties to the proceeding have been heard and with their able assistance the case record has been perused.

13. With regard to the arguments of Appellant's counsel that inquiry was necessary before passing the above Tentative Rent Order as envisaged under Section-27 of the above referred Cantonment Rent Law and a reference to the above cited Judgment of this Court; in my considered view this argument hardly lends any help to the case of the Appellant, as the Appellant in his Written Statement filed before the learned Rent Controller, as rightly pointed out by the counsel for Respondent No.1, has not denied the tenancy, rather accepted the relationship of tenant and a landlord / landlady, therefore, the above referred Judgment handed down in Maqsood Ali Khan case is clearly

distinguishable as the main ratio for the above Judgment is that when there is a specific dispute raised by the tenant in his Written Statement with regard to relationship of landlord and tenant then before passing a Tentative Rent Order, a determination about the relationship of landlord and tenant is necessary. What is applicable to the facts of the present case is the principle laid down by the Hon'ble Supreme Court in its above cited Judgment of Mst. Fatima Gul Versus Malik Saeed Akhtar (PLD 2005 Supreme Court 34), in which it has been held, inter alia, that Tentative Rent Order can be passed by holding a summary inquiry, which is a substantial compliance of the above Section-27 of the Cantonment Rent Law.

14 The tentative Rent Order of 13.05.2016 is available at Page-17 of the case file and perusal whereof leads to the conclusion that the same is a speaking order and was passed after taking into account the undisputed evidence available on record at that time. Thus, the said order was passed after holding a summary inquiry, which in fact is the substantial compliance of Section 27 of the Cantonment Rent Law, as held by the Hon'ble Apex Court in its above referred decision. It has been further held by the Hon'ble Apex Court while relying upon another reported Judgment-1997 SCMR Page-264, that if the tenant is given an opportunity to submit a reply to the application for striking off the defense, it is in fact an adequate opportunity given to the tenant to make out his defense.

15. To sum-up the present controversy, it is clear that on one hand admittedly the landlady (Respondent No.1) is being deprived of her right as owner to use and enjoy the demised premises and on the other hand, both the Appellant and Respondent No.2 on account of their dispute has stopped payment of rent to the Respondent No.1 and

thus the Respondent No.1 is suffering losses as she is also deprived of the rental income from the demised premises. The other undeniable fact is that the Statement of Account furnished by the present Appellant in the above Rent Case, which is available at Page-45 of the case file, the present Appellant has acknowledged that the rent of the premises for the month of April, 2015 was lastly paid and according to said Appellant the rent of May and June, 2015 should have been adjusted from the Security Deposit. This Statement of Account of the present Appellant is dated 22.04.2016 and as per these documents it is obvious that payment of monthly rent has been stopped. It is now a settled rule that Security Deposit lying with the landlord cannot be adjusted towards payment of rentals.

16. The above stance of the Appellant with regard to holding of an inquiry before passing of Tentative Rent Order has been aptly discussed and replied in another reported Judgment of this Court- 2014 MLD 1304 [Sindh] (Asif Najma Ansari Versus Mrs. Mariam Mirza and another) by holding that if evidence is recorded before passing a Tentative Rent Order by the Rent Controller then such a Tentative Rent Order will not remain tentative but it will become a final order, which itself would be violative of the statutory provisions of the above referred Cantonment Rent Law.

17. The upshot of the above is that no illegality has been committed by the learned Rent Controller and while passing the impugned order he has rightly exercised the jurisdiction vested in him and thus the impugned order dated 29.07.2006 does not necessitate any interference in the present Appeal, which, consequently, is dismissed. Parties to bear their own costs.

JUDGE

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13. With regard to the arguments of Appellant's counsel that inquiry was necessary before passing the above Tentative Rent Order as envisaged under Section-27 of the above referred Cantonment Rent Law and a reference to the above cited Judgment of this Court; in my considered view this argument hardly lends any help to the case of the Appellant, as the Appellant in his Written Statement filed before the learned Rent Controller, as rightly pointed out by the counsel for Respondent No.1, has not denied the tenancy, rather accepted the relationship of tenant and a landlord / landlady, therefore, the above referred Judgment handed down in Maqsood Ali Khan case is clearly

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The upshot of the above is that no illegality has been committed by the learned Rent Controller and while passing the impugned order he has rightly exercised the jurisdiction vested in him and thus the impugned order dated 29.07.2006 does not necessitate any interference in the present Appeal, which, consequently, is dismissed. Parties to bear their own costs.

JUDGE

