

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

F.R.A. NO.65/2016

Appellant : Muhammad Aamir Malik,

Respondents : Afshan Ateeq, &
Additional Rent Controller, Cantonment Board,
Clifton,

Mr. Muhammad Saad Siddiqui, advocate for appellant.
Mr. Abdul Aziz Abro, advocate for respondent No.1.

Date of hearing : 14.03.2018.

Date of announcement : 20.04.2018.

J U D G M E N T

This F.R.A assails order dated 24.10.2016 passed by Additional Rent Controller, Cantonment Board Clifton, Karachi, (respondent No.2) in Rent Case No.17/2015 whereby appellant was directed to vacate the premises within 60 days.

2. Brief facts of the case are that respondent No.1/applicant filed Application under Section 17 of the Cantonment Rent Restriction Act, 1963 before respondent No.2, contending that she is undisputed landlady of Office No.3, located at 1st Floor, Plot No.15-C, Sunset Boulevard, Phase-II, Pakistan Defence Officers Housing Authority, Karachi which was rented out to the appellant on monthly rental basis for a period of eleven months commencing from 01.04.2003 and ending on 28.02.2003; that in tenancy agreement it

was mutually agreed between the parties that after completion of 11 months, the said agreement will come to an end and no further renewal shall be made after its expiry date and that renewal for another period of 11 Months shall be effective with mutual consent of both the parties and with increased rent at the rate of 10% as per Clause 2. It was stated that appellant/opponent deliberately stopped payment of rent and no rent was paid for two years from March, 2013, which comes to total default of an amount of Rs.6,48,214/- (Rs.25,723/- each month after increment of 10% from the month of March, 2013 till March, 2014 an amount of Rs.3,08,676/- and Rs.28,295/- each month after increment of 10% from the month of March, 2014 till March, 2015 an amount of Rs.3,39,295/-) thus the appellant/opponent had willfully committed default in payment of agreed monthly rent, hence respondent No.1 sought ejectment of appellant/opponent.

3. Case of appellant is as, was before the Court below, that parties entered into tenancy agreement for 11 months however he denied that there was understanding that no further extension will be made; it was pleaded that father of the respondent No.1/applicant himself requested to induct the opponent in the demised premises, whereas the appellant/opponent was interested to purchase the premises, as such it was settled in clause 10 that the respondent No.1 landlady shall first get consent of the appellant/tenant, if the landlady wishes to sell the premises; that from time to time on mutual consent rate of rent was enhanced and lastly it was enhanced to Rs.18,000/- and thereafter the respondent No.1/applicant or her

representatives never demanded increase of rent nor sent any notice for increase nor any notice for default or requirement of premises for her personal use; that he has paid monthly rent upto 31st June, 2014 in cash, duly obtaining receipts issued by father of the respondent No.1/applicant and sometime by person authorized by her father as father of the landlady and her brother Mr. Atif Ateeq always dealt with matters relating to the premises; that thereafter the appellant/opponent tried to pay rent of July, 2014 but respondent No.1's father refused to accept the same on one pretext or the other; that later on the appellant/opponent sent money order dated 24.07.2014 for two months' rent i.e. July and August, 2014 @ Rs.18,000/- per month but was refused to be accepted; hence he deposited monthly rent from July, 2014 to May, 2015 in the Court of 3rd Senior Civil Judge Karachi South in M.R.C No.777/2014 and thereafter depositing monthly rent from June, 2015 onwards before respondent No.2.

4. Earlier appellant had filed CP No.S-767/2016 against order dated 18.04.2016 passed by respondent No.2 whereby tentative rent assessed was directed to be deposited, however, that petition was dismissed as not pressed on 09.03.2017 after order for eviction was assailed through instant F.R.A.

5. In compliance of order dated 06.03.2018 respondent No.1 submitted her affidavit-cum-statement that she has no other commercial property except the demised premises that is subject matter of this appeal.

6. Learned counsel for appellant while emphasizing clause 10 of the tenancy agreement contended that appellant was interested to purchase the demised premises and for that reason it was agreed that the landlady will be bound to first get consent of the appellant before selling the premises; as regard to increase in rent, it was argued that from time to time on mutual consent the rate of rent was enhanced and lastly it was Rs.18,000/- and thereafter respondent No.1 never demanded increase of rent nor sent any such notice, that even no notice for default or requirement of the demised premises for to personal need was ever served upon him; it was argued that appellant has paid monthly rent upto 31st June, 2014 in cash against which receipts were issued by father of respondent No.1 and sometime by person authorized by her father as her father and brother always dealt with matters relating to the premises; that thereafter appellant triad to pay rent for the month of July, 2014 but respondent No.1's father refused to accept the same hence money order dated 24.07.2014 for the rent of July and August, 2014 @ Rs.18,000/- per month was sent but same was also refused to be accepted; hence he filed MRC and had deposited rents from July, 2014 to May, 2015 in that MRC and continued to deposit the rent from June 2015 onwards before respondent No.2. It was argued that respondent No.2 failed to appreciate that appellant produced receipt of monthly rent duly signed which were never rebutted by respondent No.1.; this is a case of misreading and non-reading of acts available on record as well misinterpretation of law; that impugned order dated 18.10.2016 and order 24.10.2016 are not sustainable in law hence liable to be set aside.

7. Learned counsel for respondent No.1 contended that tenancy agreement was only for 11 months and renewal if any was to be made with mutual consent of both the parties with increased rent at the rate of 10% after completion of eleven months as per Clause 2 of the said agreement; that the tenancy agreement has expired with rent of Rs.12,000/- per month; that the appellant deliberately defaulted in payment of rents for two years from March, 2013 which default comes to an amount of Rs.6,48,214/- thus on this ground alone he was liable to be ejected from the demised premises hence the orders passed by the Court below are just and proper and in accordance with law. He has relied upon 2014 CLC 1756 and 2001 SCMR 2020.

8. Heard the respective sides and carefully examined the available material.

9. At the outset, I would attend the *plea* of appellant, raised with reference to the clause-10 of the agreement, that since appellant was interested to purchase the demised premises hence for this reason it was agreed that the landlady will be bound to first get consent of the appellant before selling the premises. Such *plea* is entirely misconceived if it comes to rent *proceedings*. This is for *two* simple reason i.e in such like proceedings the question of *sale* cannot be adjudicated and that the moment the tenant admits to have been put into possession of *premises* under a written *tenancy* he would not have any liberty to subsequently deny relationship of 'landlord and tenant' and consequences, arising out of such *tenancy* unless any subsequent agreement is enforced through course of law. Even

otherwise, such *clause*, if any, would never prejudice the rights of the *owner*. In the instant matter, though the appellant took such *plea* yet has not pleaded that respondent No.1 has sold or selling the premises to any body therefore, such *plea* was of no legal weight in instant matter. The conclusion is under the guidance provided by the case of Mst. Zarina Khan v. Mst. Farzana Shoib (2017 SCMR 330) wherein it is held as:-

“8. From the perusal of material available on record, it is evident that the possession of the rented premise was handed over to the respondent under a written agreement of tenancy executed between the parties on 11.1.2011 for a period of six months and she also paid advance rent for three months to the petitioner. In such circumstances, mere expiry of six months tenancy period has not *ipso factor* terminated the relationship of landlord and tenant between the parties, as even after the expiry of such period, respondent’s status as regards possession of rented premises remained that of the tenant. As a consequence of this settled legal position, as long as the other agreement of sale was not specifically performed between the parties or enforced through Court proceedings, her status as regards possession of the rented premises remained that of a tenant.”

In the instant matter, it is an *undeniable* position that appellant / tenant was put into possession of the premises under tenancy *agreement* which does include the clause of *mandatory* requirement of renewal of *tenancy* with 10% increase in *rent* therefore, even after *expiry* of rent period the parties would be governed by such *agreement* unless they enter into another agreement having different intention (s). In the present case, it is a matter of record that there has not been any further *tenancy* agreement hence even after expiry of agreed period of 11 months, the parties would stand governed by

specifically detailed terms (*intentions*) therefore, the learned Rent Controller committed no illegality while passing *tentative* order as:-

“This court on 18.04.2016 passed tentative rent deposit order wherein the opponent was tentatively directed to deposit future monthly rent @Rs.26,353/- per month **by 10% increase from May, 2016 onward** in the Court of Additional Controller of Rent, Clifton Cantonment before 5th day of each month (the increase in rent will continue as per clause-1 of tenancy agreement dated 1st April, 2003 **till final decision of the case**). The opponent was also directed to deposit arrear amount of Rs.5,93,021/- for the period i.e. Rs.2,57,400/- for the period from March, 2013 to March, 2014 (13 months) @ Rs. 19,800/- per month **by 10% increase, Rs.2,61,360/-** for the period from April, 2014 to March, 2015 (12 months) @ Rs.21,780/-, Rs.47,916 for the period from April 2015 to May, 2015 (02 months) @ Rs.23,958/- per month, and differential amount of Rs.65,538/- for the period from June, 2015 to April, 2016 (11 months) @ Rs.5958/- per month on or before 18.05.2016. The amount of Rs.1.98,000/- deposited by the opponent in MRC No.49/2015 was transferred in the instant rent case. The disputed amount of Rs.3,22,740/- from March, 2013 to June, 2014, which opponent claimed to have paid to the applicant in cash was left to be decided at final stage..”

From above, order it is quite clear and obvious that the Rent Controller had confined tentative order with reference to '**10 % increase**' which *term* even is not disputed by appellant by referring or placing any other *tenancy* agreement on record even by father and brother of the respondent no.1 who *otherwise* are not signatory of *tenancy* agreement as '**landlord**'. Not only this, but the learned Rent Controller had *categorically* made it clear that such *deposit* was subject to final determination hence no *harm* was likely to fall upon the appellant in making compliance of such *tentative* order which *otherwise* is mandatory in its nature and non-compliance thereof is directly punishable and in consequence the defence of tenant can be struck off and eviction follows. Reference is made to the case of **M.H.**

Mussadaq v. Muhammad Zafar Iqbal & another (2004 SCMR

1453) wherein it is held as:-

“10. On this aspect of the matter, the legal position is very clear. According to subsection (9) of section 17 of the Act, if the tenant fails to deposit the amount of rent before specified date, or , as the case may be, before 5th of the month, his defence shall be struck off. On its bare perusal, it is manifest that the above provisions are mandatory in nature and even one day’s delay in making the deposit would be default within its meaning and Rent Controller has no power to extend time and condone the same. **It is also observed that non-compliance with the tentative rent order is directly punishable and in consequence the defence of tenant can be struck off and eviction can be granted...**”

In the instant matter, the appellant *prima facie* failed in making compliance of such *order* hence the subsequent action of the Rent Controller was / is well within meaning of Section 17(9) of the Act. Reference in this regard may well be made to the case of Mst. Zainra Khan supra wherein it is held as:-

“9. We may observe that it is not a rule of thumb that wherever a person inducted in the rented premises subsequently denies his / her status as tenant, the Rent Controller is bound to first frame point for determination / issue to this effect and decide it before passing a rent order to secure the interest of the landlord during the pendency of such proceedings. **More so, as such rent order will be tentative in nature and subject to final adjudication.** The Rent Controller was, thus, fully justified in passing the rent order in terms of section 17(8) and consequent order of striking off the defence **under section 17(9) of the Cantonments Rent Restriction Act, 1963, due to its admitted non-compliance.**”

10. In consequence of what has been discussed above, I am of the clear view that the order of the learned Rent Controller is not

shown to be suffering from any *illegality* or *jurisdictional* error hence the instant petition merits no consideration. Accordingly, the instant appeal is hereby dismissed.

Imran/PA

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