

# IN THE HIGH COURT OF SINDH AT KARACHI

FRA No. 02 OF 2015

Appellant : M/s United Bank Ltd, through Mr. Abdul Haleem Siddiqui, Advocate.

Respondent : Lt. Cdr.(R) Mian Mohammad, through Mr. Zafar Iqbal Dutt, Advocate.

Date of hearing : 06.08.2018

## ORDER

**YOUSUF ALI SAYEED. J--** In terms of this appeal under Section 24(1) of the Cantonments Rent Restrictions Act, 1963 (the “**Act**”), the Appellant has assailed the Order made on 27.11.2014 by the learned Controller of Rent (Faisal Cantt), Karachi (the “**Impugned Judgment**”) in Rent Case No.11 of 2013, whereby the Application filed by the Respondent No.1 under Section 17 of the Act was allowed on the ground of personal bona fide need as well as default in payment of rent, and the Appellant was directed to vacate the premises taken by it on rent on the ground and mezzanine floors of Commercial Building No.19, Block No.10/A, at Improvement Scheme No.24, Karachi (the “**Subject Property**”) within a period of 30 days.

2. Assailing the Impugned Order, learned Counsel for the Appellant firstly contended that the learned Controller of Rent (Faisal Cantt) had no jurisdiction in the matter as the Subject Property falls within an urban area, hence the relationship inter se the parties in relation to the tenancy was governed under the Sindh Rented Premises Ordinance, 1979. However, no material was placed on record to support such assertion, and such plea was apparently never raised in the Rent Case and is also conspicuously absent from the grounds raised in the Memo of Appeal.

3. On the contrary, the only plea taken in respect of the point of jurisdiction by way of an Application moved for stay of the proceedings was that one of the clauses of the Rent Agreement executed between the parties on 26.06.2007 provided for arbitration, which was dismissed vide Order dated 24.04.2014. As such, the plea presently being taken is not only unsubstantiated but is apparently an afterthought, hence does not merit further consideration.
  
4. Turning to the merit of the Impugned Judgment, it was submitted by learned counsel for the Appellant that the learned Rent Controller had erred in determining the ground of personal need and the point of default in payment of rent. In this regard, it was submitted that the Respondent No.1 had failed to properly make out a case of bona fide personal need in as much as he had stated that the Subject Property was required by him for the purpose of establishing a general store, but had failed to demonstrate relevant business experience or availability of requisite funds or any relevant groundwork in terms of supply or personnel contracts. Furthermore, it was submitted that the Appellant's tenancy over the Subject Property dated back to the year 1995 and had been renewed by mutual agreement from time to time. It was submitted that the last formal Rent Agreement executed between the Appellant and Respondent No.1 that of 26.06.2007, and provided for a tenancy of three years, commencing from 28.02.2007, and on lapse of this period on 27.02.2010, the tenancy was renewed through exchange of correspondence for a further period of three years on the same terms and conditions. He submitted that the Agreement of 26.06.2007 contained a provision that precluded any claim to possession being advanced on the ground of personal need, and invited attention to Clause-7 thereof, which states as follows:

“The lessee on payment of the monthly rent and observance of the terms hereinabove stated shall be entitled to remain in occupation and use the demised premises without and let or hindrance by the lessor and persons claiming through the lessor and the lessor in continuation of the lease and tenancy shall not claim the premises for person requirement and or on any other ground whatsoever”.

He submitted that a claim for possession on the ground of personal need could not have been advanced in the face of such a provision.

5. On the point of the finding of the learned Rent Controller as to default in payment of rent for the months of March, April and May 2013, learned counsel for the Appellant submitted that when the period of tenancy had lapsed on 28.02.2013, the Appellant had engaged in negotiations with the Respondent No.1 towards a further renewal thereof and such negotiations had been underway *inter se* the Appellant’s representatives and the Respondent No.1 over the alleged period of default. It was contended that as such negotiations also entailed the question of enhancement of rent, and it was anticipated that a positive response would be forthcoming as to renewal of the tenancy, payment of rent was kept in abeyance, but when negotiation broke down a lump sum was paid on 15.05.2013 covering the earlier period. He referred to certain E-mails correspondence exchanged between December 2012 and April 2013. He submitted that in the light of the foregoing, the learned Rent Controller had erred in arriving the determination in favour of the Respondent No.1 on the point of default in payment of rent, and prayed that the impugned Judgment be set aside.

6. Conversely, learned Counsel for the Respondent, whilst addressed the point of Clause 7 of the Agreement of 26.06.2007 stated that the same was only applicable during subsistence of such agreement. He pointed out that the initial period of three years had lapsed on 27.02.2010 and the like period of renewal in turn came to an end on 28.02.2013, prior to which the Respondent No.1 had already informed the Appellant in writing on 14.12.2012 that he had no intention to renew the tenancy thereafter. He submitted that the Respondent No.1 had been clear and consistent on the point that the Subject Property was required for personal need and had never conveyed any impression that there would be a further renewal of the tenancy.
  
7. Having considered the arguments and examined the Impugned Judgment in juxtaposition with the material on record, it is apparent that the evidence of the Respondent No.1 has remained consistent in support of the contention of personal need. Clause 7 of the Agreement between the Appellant and Respondent No.1 can at best be held to have been applicable during the agreed period of tenancy and cannot be interpreted so as to indefinitely preclude a claim of personal need, as such an interpretation would serve to completely undermine the rights attached to ownership. The further argument that the Respondent No.1 had not supported his claim of personal need with material to demonstrate his ability to execute his plan of setting up an independent business is untenable, as the law does not impose so onerous a burden on a landlord in order for him to establish his case in support of such a plea. In the cases reported as Iqbal Book Depot v. Khateeb Ahmed 2001 SCMR 1197 and as Pakistan Institute of International Affairs v. Naveed Merchant & others 2012 SCMR 1498, the Honourable Supreme Court has held that a landlord's statement on oath that is consistent with the averment of need stated in the ejectment application would be sufficient for acceptance of the ejectment application when the same remains unshaken under cross-examination or through contradictory evidence.

8. Furthermore, on the point of default, it is apparent from the very case advanced on behalf of the Appellant that there had admittedly been a failure to pay rent within time for the months of March, April and May 2013, and the contention as to negotiations being underway does not serve to condone the delay. The correspondence relied upon does not serve to support the contention advanced on behalf of the Appellant that there was a likelihood of renewal and even otherwise does not explain how the Appellant could arrogate to itself the right to unilaterally withhold payment of rent.
  
9. Under the given circumstances, it is manifest that the issues of personal need and default arising for consideration before the learned Rent Controller have been properly addressed and the determination on these aspects in the Impugned Judgment is well founded.
  
10. As such, no case for interference stands made out. The Appeal, being without merit, fails and is dismissed accordingly, with no order as to cost

JUDGE

Talib