

IN THE HIGH COURT OF SINDH, KARACHI

First Rent Appeal No.04 of 2004

Date	Order with signature of Judge
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Hearing of case :

1. For hearing of CMA No.1535/2005 :
2. For hearing of main case :

**Date of hearing : 23.02.2018.**

**Date of announcement : 22.05.2018.**

Mr. Sohail H. K. Rana, Advocate for the Appellant.

Mr. Nadeem Kamaruddin, Advocate for the Respondents.

**KAUSAR SULTANA HUSSAIN, J.** - This is an appeal under Section 24 of Cantonment Rent Restrictions Act, 1963, preferred against the order dated 30.12.2003 passed by the Additional Controller of Rents, Clifton Cantonment, Karachi in Rent Case No. 12 of 1999 (Re-Rubina and others V/s Anthony Joseph) whereby the appellant was ordered to vacate and hand over the possession of demised premises to respondents within 60 days of the order.

2. Brief, stated eviction application was instituted by the respondents against the appellant for ejectment of the appellant from the one Residential Flat located first floor of building situated on plot bearing Survey No. 29, Commissariat Lines, Dolly Khata, Karachi Cantonment. It was alleged that the appellant is not paying monthly rent to the respondents or Rent Controller w.e.f. September, 1997 till filing of the rent application and an amount of Rs.389,117/- outstanding against him, being Rs.5,400/- (arrears of rent from September, 1997 to August 1999) at the monthly rent of Rs.225/-), Rs.113,139/- (water conservancy and fire tax dues of 1997), Rs.114,346/- (water, conservancy and fire tax dues of 1998), Rs.76,232/- (water, conservancy and fire tax dues till August 1999 @ Rs.9525/- per month), Rs.30,000/- (maintenance/security 1998), and Rs.20,000/- (maintenance/ security till August 1999). It was further alleged that despite persistent demands of aforesaid charges made to the appellant, he has been giving lame excuses and neglecting to pay the same and in this connection a legal notice dated 01.08.1999 was also issued, but of no avail, as such, committed wilful default, liable to be evicted. It was further stated that the Cantonment Board, vide letter dated 17.07.1996 issued to the respondents, declared the building as dangerous and asked for removal thereof.

3. The appellant resisted the matter by filing his written statement wherein challenged relationship of landlord and tenant between him and respondents. It was alleged that he is tenant of Dr. Sher Bano in respect of the premises in question. According to the appellant neither any receipt of rent ever issued by the respondents, nor any terms/conditions were settled. It was further alleged that he never remained defaulter in payment of monthly rent and regularly paid the same and relied on last rent receipt as annexure-"A", therefore, he started depositing the monthly rent in the name of owner Dr. Sher Bano in MRC No. 11 of 1999. It was further asserted that no any facility of water and conversancy available in the premises in question, nor other so called facility of maintenance/security etc attached thereto. It was alleged that eviction application filed with malafide intention and counter blast to Civil Suit No. 117 of 1998, filed by the appellant.

4. The learned Additional Controller of Rents on the basis of the pleadings of the parties framed the following issues :

- i. Whether the opponent has defaulted in the payment of rent?
- ii. Whether disputed premises has been declared dangerous by Karachi Cantonment Board under Order 126 of the Cantonment Act, 1924?
- iii. Relief?

5. As per record, the respondents got filed affidavit in evidence of their attorney namely Kamardin Khaliqdina, but the appellant's side neither cross-examined the said attorney, nor led his cross evidence despite having number of opportunities. Thereafter, the learned Rent Controller, Karachi Cantonment, allowed eviction application, vide order dated 30.12.2003. Being aggrieved, the appellant has preferred instant appeal.

6. The learned counsel for the appellant has contended that despite the fact that no evidence was led by the appellant, the respondents were required to prove their strength and not to take adverting of weakness of rivalry. He has argued that learned Rent Controller permitted contrary to law and passed an illegal order without appreciating the fact that respondents failed to produce a single documentary evidence showing that ever dealt with appellant in respect of tenancy of the premises in question. He has further argued that outstanding amount in respect of monthly rent allegedly shown in ejectment application itself flagrant at the face of it. It was further argued that learned Rent Controller failed to apply its judicial mind and merely on the basis of absence of the appellant, passed an ex-parte eviction order, which is not sustainable in the eyes of law.

7. The learned counsel for the respondents, while supporting the impugned order, has contended that the version of the respondents on Oath went unchallenged and un-rebuttal as the appellant not only failed or getting the attorney of the respondents cross examined, but also failed to lead evidence. He has stated that as per settled law, if statement of landlord on Oath, not controverted, the presumption would be acceptance, thereof by the rivalry. Learned counsel while pointing out aforesaid case diary insisted that despite the fact that the appellant was given so much latitude by the learned Rent Controller, he did not avail the same and the intention of the appellant was only to protract the matter.

8. After hearing arguments of both the sides and perusal of record it reveals that after filing ejectment application by the respondents against the appellant he although submitted his written statement in that Rent Case No.12/1999 wherein he has denied the relationship between the applicant/landlord and opponent/tenant as landlord and tenant and the alleged fact of declaring of building standing on Survey No.29, Commissariat Lines, Dolly Khata as dangerous by the Karachi Cantonment Board, but he did not contest the matter by cross-examining the respondent's attorney or filing his own affidavit-in-evidence in order to rebut the contents of ejectment application and in support of the contents of his own written statement. The appellant claims in his written statement that on refusal to receive the rent by the owner Dr. Sher Bano he sent rent through money order and then started to deposit the monthly rent in the Court of learned Senior Civil Judge, Karachi when the respondent did not accept the rent through money order, but unfortunately the appellant inspite of availing ample opportunities did not cross-examine the respondent's attorney. The learned Rent Controller has specifically mentioned in its order that at first occasion the appellant has availed 24 dates for cross-examination of respondent's attorney and after closing his side when on his request the learned Rent Controller again allowed him to cross-examine the respondent's attorney, he availed 29 more opportunities for same purpose. It is also on record that appellant remained failed to submit his own affidavit-in-evidence. The attitude of the appellant/tenant in the case, pending before the learned Rent Controller Karachi shows that he was deliberately avoiding to contest the matter, which caused indefinite delay in deciding the matter. The appellant/tenant found to be indolent during entire proceedings before learned Rent Controller. It has also come on record through an application of the intervener that before filing Rent Case bearing No.12/1999 the demised premises had already been sold out by the respondents to the intervener which was leased out in his name on 03.12.2003 in result of decree obtained by him through Court by filing a

Civil Suits bearing Nos.1285 & 1286 of 1999 against the respondents. The attorney of the respondents has submitted his counter affidavit to this application of the intervener, wherein he has raised no objection if the intervener being new owner of the demised premises be impleaded as respondent of present F.R.A. The said intervener being new owner has also informed to this Court by filing his statement that since the building in question was declared as dangerous by the Cantonment Executive Officer vide his notice under order 126 of the Cantonment Act, 1984 bearing No.KCB 29/CL/2342 dated 05<sup>th</sup> December, 1996 all the tenants including the present appellant/tenant had been directed in the said notice to vacate forthwith, the appellant after receiving notice has vacated the tenement and non is living therein. He further stated that on 24.01.2009 the building partly collapsed whereas on 31.03.2010 the structure of the same completely collapsed/fell down. I do not find any reason to reopen the said chapter which has already been closed as the appellant during the entire proceedings of the Rent Case before learned Rent Controller remained indolent and even while proceedings before this Court he himself did not inform this Court that he had left the demised premises and even the learned counsel for the appellant did not bring this fact on record, hence I dismiss this First Rent Appeal No.04/2004, having no merits with no orders as to cost.

Karachi,  
Dated: 22.05.2018:

**J U D G E**

Faheem/PA