

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

F.R.A. No. 05 of 2004

Appellant : Muhammad Muzaffar Alvi, through
M/s. Muhammad Ali Jan and Muhammad
Aslam, Advocates.

Respondent : Mian Khursheed Inamullah,
through Mr. Iftikhar Javed Qazi, Advocate.

Date of hearing : 22.02.2017 & 27.03.2017
Date of order : 27.03.2017

ORDER.

ZAFAR AHMED RAJPUT, J:- This F.R.A. is directed against the order dated 14.02.2004, whereby the learned Additional Controller Rents, Clifton Cantonment, Karachi dismissed application under Section 17(6) of the Cantonment Rent Restriction Act, 1963 (“**the Act of 1963**”), being Rent Case No. 77 of 2003 filed by the appellant / opponent / tenant against the respondent / applicant / landlord, holding the same non-maintainable.

2. Briefly stated, the facts of the case are that an ejectment order was passed against the appellant in Rent Case No. 27 of 1998 by the Additional Rent Controller, Clifton Cantonment, Karachi1 on 7.04.1999 in respect of Flat No.1, first floor, constructed over Plot No. 104-C, Commercial Area “B” Market, Defence Housing Authority, Karachi (hereinafter referred to as the “**demised premises**”). Against that order, the appellant filed F.R.A. No. 351 of 1991 before this Court, which was subsequently withdrawn him and he vacated the demised premises and handed over its possession to the respondent on 12.04.2000. Thereafter, the appellant on 19.07.2003 filed an application under Section 17(6) of the Act of 1963, for the restoration of

the possession of the demised premises on the ground that the possession of the demised premises was handed over to the respondent for his personal bonafide need in rent case No. 27 of 1998, but the same was lying vacant since 12.04.2000. The learned Rent Controller, vide order dated 14.02.2004 dismissed the said Application and it is against the said order that the instant F.R.A. has been maintained by the appellant.

3. Heard the learned counsel for the appellant and respondent as well as perused the material available on record.

4. There is no denial to the fact that the rent case bearing No. 27 of 1998 was not disposed of on merit but infact the defence of the appellant was struck off under Section 17(9) of the Act of 1963 for non-compliance of tentative rent order and therefore, the ejectment order was passed under Section 17(9) of the Act of 1963 and in this regard the learned Rent Controller has rightly held that the appellant could have applied for restoration of possession if the ejectment order would have been passed by the Court under Section 17(5) of the Act of 1963.

5. The learned counsel to the appellant has failed to point out any illegality in the impugned order; therefore, this F.R.A. being misconceived and devoid of any merit is dismissed accordingly, with no order as to costs.

6. Above are the reasons of my short order dated 27. 03 2017

JUDGE

Athar Zai