

expiry of tenancy agreement which was expired on 31st January 1993 the tenancy is governed by the Rent Ordinance and not by the tenancy agreement. It is also a fact that in absence of any time fixed rent can be paid within 70 days of it become due so also after the amendment in section 15(ii) of S.R.P.O. -1979 in 2001 six months grace period is provided to the tenant. It is an admitted fact that the appellants were/are not liable to pay any property tax on behalf of the respondent and the appellants have paid a sum of Rs.5, 391/= on 29-05-1999 and a sum of Rs.12,213/= on 02-04-1997, as such the deceased father of the appellants have paid a sum of Rs.17,522/= on behalf of the respondent which is never the liability of the appellants, whereas admittedly the rate of rent is Rs.4000/= thereby said amount of Rs.17,522/= is the amount of rent for four months which comes to Rs.16000/= meaning thereby the appellants have paid excess amount than the amount for four months rent in shape of property tax and default if any can be adjusted towards the property tax already paid by the appellant. In this respect I am also fortified with the case laws reported in 1989-C.L.C.-P-1006, 1988-C.L.C.-P-272, P.L.D.-1985-Quetta-P-108, 1993-S.C.M.R.-P-200 and an unreported judgment of Honorable Supreme court of Pakistan passed in Civil Appeal No. 807-K of 1990. The case law cited by learned counsel for the respondent are praise worthy but unfortunately the facts discussed therein are quite distinguishable with the facts of instant matter as such are not applicable."

As well as it would be conducive to refer determination on the plea of default and payment of rent on point No.3 is that :

"POINT No.3.:

It is a well settled principle of law that initial burden of proof of default would be on the landlord and once the landlord or his attorney enters the witness box and denies receiving of rent due against the tenant, onus of proof than shifts to the tenant. The attorney of the applicant namely Nawar Shah while filing his affidavit-in-evidence at Ex.A/1 and entering in the witness box on oath has clearly stated that as per the tenancy agreement dated 31.03.1992 (Annexure A/1 of the ejectment application) the opponent entered into such tenancy agreement with the applicant and made himself liable under agreement to pay monthly rent of the case premises to the applicant in respect of the case premises at the rate of Rs.4000/- per month in advance on or before the 5th of every English Calendar month and the opponent paid such rent amount in rent case No.1012/2001 filed by the applicant upto the month of December 2002 and when the said case was dismissed as withdrawn the opponent did not pay or deposit rent, as per the Nazir report dated 28.09.2004 (Ex.A/5), however, the opponent filed MRC No.703/2003 in the court of VIII Rent Controller Karachi South and such MRC was granted by the court but the opponent did not deposit the rent from the month of January & February 2003 on 30.5.2003. Likewise, the opponent deposited the rent for the months of March 2003 to June 2003 on 17.7.2003, similarly he deposited rent for the months of July to October 2003 on 22.9.2003, so also rent for the months of November and December 2003 on 24.12.2003 while he deposited rent of the month of March 2004 on 25.3.2004, rent for the months of April and May 2004 on 10.07.2004, and rent for the months of June and July 2004 on 15.7.2004 as such, the opponent has committed clear willful default in the payment of rent due to such late

payment. It is an admitted position that the opponent has not denied such assertion of the applicant either in his written statement or in his affidavit in evidence that he has not deposited rent of said months after due dates and on the other hand such assertion of the applicant duly supported by documentary evidence went un-rebutted and unchallenged, however, the learned advocates of the opponent while arguing on this point has only submitted that since no fresh tenancy agreement in between the parties was executed after the first tenancy agreement which was executed in the year 1992, therefore, the opponent has become statutory tenant and he was required to deposit the rent within the period of 70 days from due date and thus according to learned advocates of the opponent the opponent has not committed default in payment of rent particularly when the opponent has been depositing rent in this case regularly. In support of his such contention the learned advocate of the opponent has relied on the following case laws.

1. 2000 CLC 1314 (Karachi)
2. 2001 YLR 442 (Karachi).

On the other hand, the learned advocate of the applicant argued that since there was written tenancy agreement in between the parties and thought fresh tenancy agreement was not executed between the parties but under the law, the terms and conditions of tenancy agreement as executed in first time in the year 1992 will still prevail by which the opponent was made liable to pay monthly rent upto 05th of every English Calendar month and the opponent in such circumstance was required to pay or deposit monthly rent within 15 days of grace period i.e. by 25th of every English Calendar month but admittedly the opponent had not deposited such monthly rent within due date but he deposited the same with the delay of two or three months without any cause, therefore, according to the learned advocate of the applicant, the opponent has committed willful default in the payment of monthly rents. The learned advocate of the applicant in support of his such contentions has also relied upon the following case laws:-

1. 1998 MLD 137 (Karachi)
2. PLD 2006 Karachi 658.
3. 1987 CLC 216 (Karachi)

I have given my due consideration to the arguments advanced by the learned counsel of both parties and perused relevant record. It is an admitted position that the opponent despite opportunities as afforded by this court neither appeared nor he offered himself for his cross examination in support of his claim as he made in his written statement or in his affidavit-in-evidence nor he rebutted the averments made in para No.7 to 13 of the instant rent application as well as in para No.6 to 13 of the affidavit in evidence, therefore such assertion of the applicant has gone unchallenged and un-rebutted. Moreover, the nazir report Ex.A/5 has also not been disputed by the opponent, therefore, in such circumstances of this particular case I hold that the opponent has committed willful default in payment of monthly rent as alleged by the applicant. I am also in agreement with the submissions made by the learned advocate of the applicant on the point while I find no wright in the arguments of the learned advocate of the opponent and the case laws as referred to above by him are also not applicable to the case, therefore, I decide point No.3 in the affirmative."

Perusal of both the judgments in juxtaposition it is pertinent to mention here that Nazir`s report which reflects payments made in MRC were not disputed by the Opponent. Such MRC as described shows payment not on monthly basis but on different times, hence, Rent Controller rightly allowed eviction application.

Accordingly, the impugned judgment is hereby set aside and the judgment of learned Trial Court is maintained, however, the Petitioner shall evict the premises within three [3] months from today.

Instant petition stands dismissed alongwith listed application.

This order shall be communicated to the Trial Court.

Mush/-

J U D G E