

IN THE HIGH COURT OF SINDH AT KARACHI

**Present:
Mr. Justice Muhammad Shafi Siddiqui**

C.P. No. S-971 of 2020

Habib Bank Limited
Versus
Mst. Neelofar Anwar & others

Date of Hearing: 24.03.2021 and 20.04.2021

Petitioner: Through Mr. Rajender Kumar Chhabria
Advocate

Respondents No.1 to 5: Through Mr. Naeem Suleman Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Respondents initiated eviction proceedings by filing Rent Case No.846 of 2019 along with an application under section 16(1) of Sindh Rented Premises Ordinance, 1979. The dispute for the purposes of present controversy triggered when a tentative rent order dated 21.10.2019 was passed by the Rent Controller and was not complied with by the petitioner, as alleged, which ended up in striking of defence of the petitioner in terms of order dated 31.01.2020.

2. Brief facts of the case are that the petitioner was inducted in the premises by virtue of a lease agreement which though was executed in the month of September 2016 but having effective date as 01.05.2016. The lease period was of six years. The initial first period was of three years and second period was renewable at the option with an agreed enhancement at 25%. Initially an amount of Rs.41,40,000/- was deposited by tenant with previous landlady. The rate of rent for the initial period of three years was fixed at Rs.230,000/- and the understanding was that half of the monthly rent would be contributed from the aforesaid advance amount (Rs.41,40,000/-) and rest of the half

amount of the month would be paid by depositing in accounts of then landlady who was Mrs. Shafaida Jan (Shafida Jan) wife of Haji Muhammad Akram Khan Awan. The rent was being deposited in her account which was jointly operated along with one Neelofar Awan, respondent No.1.

3. In February 2019 a notice under section 18 of Sindh Rented Premises Ordinance, 1979 was served upon the petitioner by respondent/new landlords for the change of ownership which was admitted by the petitioner. Petitioner also claimed to have replied this notice under section 18 of ibid Ordinance by virtue of reply letter dated 08.06.2019.

4. The tentative rent order was passed, as stated above, on 21.10.2019 for the months of March, April, May and June 2019 (arrears). Since initial period of three years was ended on 30.04.2019, therefore, for the month of March and April the rent was ordered to be deposited at the rate of Rs.230,000/- whereas for May and June 2019 it was ordered to be deposited at the rate of Rs.287,500/- per month with further direction to deposit future rent at the same enhanced rate on or before 10th of each calendar month.

5. By the time the order was passed, a Misc. Rent Case No.923 of 2019 has already been filed for deposit of rent w.e.f. July 2019 onwards. The first challan/entry of the COC was of 04.10.2019 for an amount of Rs.550,850 followed by two entries of 17.10.2019 of Rs.550,835/- and 550,850/-.

6. Rent Controller struck off the defence of petitioner that tentative rent order was not followed whereas the order was slightly modified by appellate Court that the tentative rent order should have been passed w.e.f May/June 2019 and to this extent appellate Court maintained that

order of striking off defence was lawful as amount was deposited on 11.11.2019 after more than 15 days and a delay of six days observed.

7. I have heard the learned counsel and perused the record.

8. First period of lease was ended on 30.04.2019. Precisely the leased period is as under:-

- i) 01.05.2016 to 30.04.2019 and
- ii) 01.05.2019 to 30.04.2022

In February 2019 notice was served by new set of owners/landlords and received by petitioner. It was replied belatedly on 08.06.2019. By 27th. February, petitioner knew about change of ownership and it kept on depositing amount in the account of previous landlady as argued and as statement of account reveals.

9. MRC No.923 of 2019 was then filed where first entry of deposit is shown as 04.10.2019 and later two entries of 17.10.2019. By then an amount of Rs.16,52,535/- was seen to be available in the said ledger. On 21.10.2019 tentative rent order was passed for the period i.e. March, April, May and June 2019 and rent of future months excluding July to November 2019 as it was claimed and shown to have been deposited in MRC No.923 of 2019.

10. The rent for the months of March to June 2019 was rightly ordered to be deposited in Court vide tentative rent order as despite service of notice, it was deposited in the name of previous landlady which was not a lawful tender in the personal account of landlady. In my view the tentative rent order of Rent Controller was lawful. At the most half of the amount for the months of March and April could said to have already been paid to previous landlady. However, this could have been objected only after following the mandate of the order and not by violating it. It is but a tentative rent order subject to adjustment at the

conclusion of trial, but defiance had rightly seen the effect in terms of Section 16(2) of Sindh Rented Premises Ordinance, 1979. The order was passed after considering the defence of petitioner.

11. Even if the rent of May and June be taken in to consideration, it was deposited in Court on 11.11.2019 which deposit was beyond 15 days and precisely deposited on 21st day of the order against the requirement of 15 days. The delay is not condonable under the law. Even the rent for the month of January 2020 was deposited on 12.02.2020 in terms of ledger.

12. According to petitioner the amount in MRC pertains to a period of July 2019 to November 2019. The rent of December 2019 was deposited in Rent Case on 11.11.2019 along with arrears as per tentative rent order.

13. Hence in view of above I am of the view that tentative rent order should have been complied and for the period of March and April, the tenant/petitioner could have asked for adjustment of half of the rent but this was only possible after compliance and not after defiance. The rent of May/June 2020 was also not deposited in time. I do not find any portion of the order to be unlawful and hence the principle that since some portion of the order is not lawful, entire order is to be set aside, is not applicable here.

14. In view of the above, I am of the view that petitioner committed defiance of tentative rent order and has committed default in payment of rent and hence the defence was rightly struck off. Accordingly, instant petition is dismissed along with pending applications.

Dated: 05.05.2021

Judge