

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

First Rent Appeal No. 31 of 2020

Date	Order with signature of Judge
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Hearing / priority :

1. For orders on CMA No.4032/2021 (Urgency) :
2. For hearing of CMA No.5133/2021 (Stay) :
3. For hearing of main case :

25.08.2021 :

Mr. Haji Abdul Rehman, advocate for the appellant a/w the appellant.

Mr. Zahid Marghoob, advocate for respondent No1.

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1. Urgency granted.

2 & 3. This First Rent Appeal has been filed by the appellant / tenant under Section 24 of the Cantonment Rent Restriction Act, 1963, against the ex-parte order dated 05.11.2020 passed by the Rent Controller, Faisal Cantonment, whereby Rent Case No.01/2020 filed by respondent No.1 / landlord for eviction of the appellant on the ground of default in payment of monthly rent was allowed and he was directed to vacate the demised premises viz. Flat No.B-43, mezzanine floor, Haroon Royal City, Phase-I, Block-17, Gulistan-e-Jauhar, Karachi, within thirty (30) days. Record shows that notices in the above eviction proceedings were issued to the appellant by the learned Rent Controller through bailiff, courier service and registered post A/D ; as the demised premises were found locked by the bailiff, the notice was pasted by him in the presence of two witnesses whereafter the photograph of the notice pasted at the demised premises was submitted by him before the learned Rent Controller along with his report ; and, as the appellant did not appear before the learned Rent Controller despite the above efforts, notice was published in newspaper viz. Urdu daily 'Nawa-e-Waqt' Karachi on 07.03.2020. After fulfilling all formalities provided in law for ensuring service upon the appellant, service was held good upon him by the learned Rent Controller vide order dated 27.08.2020, and since he did not appear nor did he file his written statement, his defence was struck off by the learned Rent Controller vide order dated 24.09.2020 with the direction that the rent case shall proceed ex-parte against him. Thereafter, affidavit-in-exparte proof was filed by respondent No.1 in his above rent case. The impugned ex-parte order was passed by the learned Rent Controller in the above background and after examining the averments and allegations made by respondent No.1 in his eviction application and the

affidavit-in-exparte proof, and by holding that there was no rebuttal thereto on record.

At the outset, a request has been made on behalf of the appellant that a reasonable time be granted to him to vacate the demised premises, which request has been opposed by learned counsel for respondent No.1. However, it was observed by the Court that the above request can be considered only if the appellant is willing to deposit the disputed arrears of rent before the learned Rent Controller. The appellant, who is present in Court, states that he is not in a position to deposit the said amount.

It is contended by learned counsel for the appellant that the rent case was filed by respondent No.1 through an attorney on the basis of a Special Power of Attorney. According to him, the rent case was filed by an unauthorized person as the aforesaid power of attorney was not executed properly by respondent No.1. However, he is unable to point out any legal defect in the said power of attorney. Be that as it may, it is well-settled that the authenticity and genuineness of a power of attorney and the powers conferred thereby to an attorney cannot be challenged by a third party and the same can be called in question only by the principal / executant of the power of attorney. Therefore, the appellant has no *locus standi* to call in question the execution of the power of attorney, which, in any event, does not appear to have any defect.

It is also contended by learned counsel for the appellant that the impugned ex-parte order is liable to be set aside as the same was passed by the learned Rent Controller without ensuring proper service upon the appellant and as such he was condemned unheard. As noted above, service upon the appellant was held good and the impugned order was passed by the learned Rent Controller after exhausting all modes of service provided in law including publication in newspaper. Therefore, the above contention cannot be accepted. No other ground has been urged nor has any infirmity or illegality been pointed out in the impugned order.

In view of the above, the instant appeal and listed application are dismissed with no order as to costs.

J U D G E