

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No.S-266 of 2004

DATE ORDER WITH SIGNATURES OF JUDGE(S)

For hearing of Main Case

20.10.2016

Syed Fazal-ur-Rehman, Advocate for the petitioner
Mr. Zafar Iqbal Dutt, Advocate for respondent No.1

Heard at length. The contentious point is solely that after the expiry of the rent agreement on 30.05.2001, the tenant did not make payment of rent for the months of June, July, August and September, 2001 (which fact has been admitted and reproduced in the impugned judgment at typed page-4) being the basis of this admitted default, the impugned judgment has been passed, wherein the ejectment on the ground of default is upheld. Learned counsel for the petitioner at length argued his case and contended that the appellate Court failed to appreciate that default was technically created by the landlord, who was out of country from 16th June, 2001 to 24th July, 2001.

Per counsel, it was agreed between the landlord and tenant that fresh agreement commencing from June, 2001 onwards would be entered into between the parties at enhanced rent. When posed with the question again and again that while the onus lies on the shoulders of the tenant to prove that he made all efforts to pay the rent, what prudent steps did he take in the period of June, July, August and September, 2001 for the payment of the rent when the landlord admittedly had returned to the country on 24.07.2001, couple with the fact that the shop of the landlord is next door of the tenant, which means he was aware when the landlord was

returned. The learned counsel took refuge under Section 15(2(ii) by submitting that having the earlier rent agreement expired on 30.5.2001, he became a statutory tenant, since there was an absence of any agreement between the parties and he was not required to pay rent for the next sixty days.

When asked to satisfy this Court as when an agreement is expired and not renewed, would that amount to an absence of an agreement under above referred clause, the learned counsel could not satisfy the Court. To me, the very essence of “absence of any agreement” as envisaged under the said clause is to address those tenancies for which no written agreement is at hand, and not the case where rent agreement just expired on previous month.

Coming to the judgment impugned, which is based on the admission of the tenant that default was made, the appellate Court in my view after applying its judicial mind and after perusing the various precedents (reproduced between Pages No. 4 to 7) rightly came to the conclusion that default was made.

Being bound by 2001 SCMR 338, I do not see any constitutional possibility in the present rent to intervene into the judgment passed in the F.R.A. The present constitutional petition accordingly has no merit and is dismissed with no orders as to costs.

JUDGE