

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

FRA 35 of 2021

Samreen Afzal	Appellant
	Vs.	
Saleem Ahmed Khan & others.....		Respondents

Mr. Abdul Waheed Syal, advocate for appellant.
Respondent No.1 in person.

13.08.2024.

O R D E R

=

MUHAMMAD IQBAL KALHORO J: Respondent No.1 claiming relationship between him and the petitioner as landlord and tenant on the basis of tenancy agreement dated 05.12.2018, filed a rent case in the court of Controller of Rents, Faisal Cantonment Board against petitioner seeking her eviction from demised premises viz. Flat No.K-404, Iqra Complex, Block 17, Gulistan-e-Johar Karachi on the ground of default. Along with main case, he filed an application u/s 17 of Cantonment Rent Restriction Act, 1953 (the Act) seeking directions to the petitioner to deposit monthly rent at the rate of Rs.18,000/- per month besides arrears from July, 2018 to September, 2019, when the rent case was filed.

2. Petitioner contested the case by filing counter affidavit through her counsel. She denied the claim of the respondent No.1 to be his landlord. In written statement, she stated that she purchased subject property on the basis of an oral sale agreement from respondent No.1 against a sale consideration of Rs.29,00,000/-, out of which she has already paid Rs.24,00,000/- as earnest money. It appears that thereafter she failed to pursue the case and her side was closed. Meanwhile on application u/s 17(8) of the Act, she was directed to deposit arrears from July, 2018 to November, 2020, the date when such application was allowed, amounting to Rs.5,22,000/- and deposit future monthly rent at the rate of Rs.18,000/- per month. When she failed to comply with the order, the impugned order dated 18.03.2021 u/s 17(9) of the Act striking off her defence and directing her to handover vacant peaceful possession of the rented premises to the respondent No.1 was passed, she has filed this appeal challenging the aforesaid orders.

3. Her counsel has argued that as per application in rent case, the relationship between the petitioner and respondent No.1 as tenant and landlord arose from tenancy agreement dated 05.12.2018 but the learned trial court has awarded arrears of rent from July, 2018 till November, 2022. He has argued that this illegality is sufficient to set-aside both the orders. He has further submitted that the petitioner is not tenant of respondent No.1. She is residing in the property in

the capacity of its owner after having purchased it from respondent No.1 against consideration of Rs.29,00,000/-, has paid Rs.24,00,000/- out of which, on the basis of oral sale agreement.

4. Notwithstanding, against various queries of the court, learned counsel has failed to justify the fact of oral sale agreement between the parties or payment of Rs.24,00,000/- to respondent No.1 as claimed. It is obvious that the claim of petitioner to have purchased the property on the basis of some oral sale agreement is without any foundation. It is admitted by learned counsel that petitioner has not filed any suit for declaration to be owner of the property on the basis of such oral sale agreement. Her defence, ostensibly made to defeat case of respondent No.1 does not appeal to the common sense as it is not supported by any documentary or oral evidence. As for, argument of learned counsel that in the first order u/s 17(8) of the Act, the court has awarded arrears from July, 2018 instead of December, 2018, it appears that such observation is a typographical mistake and has no bearing on merits of the case. The petitioner could have, but did not, moved a proper application before the trial court for making necessary correction in the month, instead of making this observation as a ground of appeal.

5. He has not put forward any justification for not complying with the order directing the petitioner to deposit arrears of rent and future rent at the rate of Rs.18,000/- per month. It was a tentative order and was likely to merge into final outcome of the case, to be passed on merits of the case. Petitioner instead of complying with the court's order has chosen to file appeal agitating that she is owner of the property on the basis of oral sale agreement regarding which she has no proof. I have already observed that her counsel has failed to qualify her case with any fact establishing oral sale agreement between the parties. However, I refrain from making further observations on this fact suspecting petitioner may decide to file a suit for declaration on the basis of such oral agreement in the relevant court against respondent No.1, and my observation may be quoted as a proof against her.

6. Suffice it to say that when petitioner has failed to abide by the court's order directing her to deposit monthly rent and arrears of rent, the Controller of Rents was left with no option but to pass order u/s 17(9) of the Act. I find no illegality in the impugned orders. Accordingly, instant appeal is dismissed alongwith pending application.

These are the reasons for my short order passed today in court, whereby this appeal was dismissed.

Judge

A.K.