

IN THE HIGH COURT OF SINDH AT KARACHI

F.R.A. NO.13/2018

Appellant : Abdul Amir Hussain,
through Mr. Rafiq Ahmed Kalwar, advocate.

Respondents : Fatima Talat Wahab and another,
through Mr. Qaim Ali Memon, advocate for
respondent No.1.

Date of hearing : 13.09.2018.

Date of order : 13.09.2018.

JUDGMENT

Salahuddin Panhwar, J: This appeals assails order dated 28.06.2018 passed by Additional Controller of Rent concerned in Rent Case No.45/2017 whereby striking off appellant's defence and directing him to vacate the rented premises.

1. Brief facts of the case are that respondent No.1/applicant filed Application under Section 17 of the Cantonment Rent Restriction Act, 1963 pleading therein that she is Owner/Landlady in respect of 2nd Floor portion of Bungalow No.S-31, Central Avenue (old Sunset boulevard), Phase-II, DHA, Karachi which was let out to the appellant/opponent vide tenancy agreement dated 15.04.2013 @ Rs.26,000/- excluding utility bills/charges etc. Per tenancy agreement, the rent is payable in advance on or before 15th day of every month with 10% increase after every year; present rate of rent is Rs.38,060/- per month only. It was claimed that appellant/opponent violated the terms of tenancy agreement and



failed to pay the rent in accordance with agreed terms and conditions of the agreement and committed willful and deliberate default in payment of rent w.e.f. June, 2016 to January, 2017, despite repeated requests and demands. The total outstanding arrear of rent from the month of June, 2016 to January, 2017 was claimed as Rs.2,76,800/- only. It was further claim that the appellant/opponent in the month of February, 2017, having committed default, paid short rent i.e an amount of Rs.50,000/- instead of Rs.3,11,400/- with regard to arrear of rent from the month of June, 2016 to February, 2017. The respondent/ applicant further claimed that the appellant/opponent again failed in paying the arrear of rent as well as current rent inspite of various demand, however in the month of April, 2017, without offering direct rent, he (appellant/opponent) himself deposited two months i.e. Rs.38,060/- each on 04.04.2017 & 05.04.2017 in the account of respondent/applicant. Thus, respondent / applicant, claiming default on part of the appellant/ opponent, filed instant ejection proceedings.

2. The appellant / opponent filed his written reply wherein admitted *tenancy* but claimed that renovation expenses were lawfully deducted and that there is no default on his part.

3. The record further shows that learned Additional Controller of Rent passed an order 11.01.2018 under section 17(8) of the Act whereby appellant/ opponent was *tentatively* directed to deposit future monthly rent @ Rs.38,060/- per month from February, 2018 onward before 5th day of each month as well to deposit arrears amount of Rs.2,61,400/- which, appellant / opponent claimed to

have deducted on account of renovation of the premises from June, 2016 to February, 2017 and Rs.1,14,180/- per month which totals Rs.3,75,580/- on or before 12.02.2018. The respondent / applicant was allowed to withdraw future monthly rent from February, 2018 onward as well as arrear amount of Rs.1,14,180/- from November, 2017 to January, 2018 (03 months) however, disputed amount of Rs.2,61,400/- was restricted to be withdrawn till final decision of the case.

4. The Respondent / applicant moved an application under Section-17(9) of the Cantonment Rent Restriction Act, 1963 on 08.02.2018, praying for striking off the defence of the appellant/opponent while claiming that appellant / opponent failed in making compliance with tentative rent deposit order. The objections were filed against such application however learned Additional Controller of Rent, having heard the parties, passed the impugned order whereby striking off the defence under section 17(9) of the Act with further direction to appellant / opponent to hand over the vacant and peaceful possession to the respondent / applicant within thirty (30) days.

6. I have heard learned counsel for the parties and perused the record.

7. Learned counsel for appellant has argued that impugned order is *harsh* one as the appellant / opponent has not failed in making compliance of the tentative order but there has been a *slight* delay which needed to be condoned as appellant / opponent *otherwise* has



good case on merits. Therefore, he prayed for setting aside of the *impugned* order.

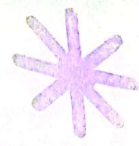
8. On the other hand, learned counsel for the respondent contended that the *tentative* order was specific yet appellant / opponent failed in making *timely* compliance of such order hence *impugned* order is not open to any exception. He lasted while praying for dismissal of appeal.

9. Heard the respective sides and carefully examined the available material.

10. In the instant matter, it is an *undeniable* position that admitted *tenancy agreement* contained no term permitting appellant / opponent to deduct *renovation* amount therefore, the learned Rent Controller committed no illegality while passing *tentative* order directing the appellant / opponent to deposit future monthly rent @ Rs.38,060/- per month from February, 2018 onward before 5th day of each month as well arrear amount of Rs.2,61,400/- (deducted by appellant / opponent in name of renovation of premises. In such *tentative* order the respondent / applicant was permitted to withdraw amount but disputed amount of Rs.2,61,400/- *however* was restricted to be withdrawn till final decision of the case.

11. It needs not be mentioned that compliance of a *tentative* order is mandatory in its nature and non-compliance thereof is directly punishable and consequence of such *failure* would be nothing short of striking off of the defence and subsequent eviction. Even one day's

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delay in making the deposit would be a **default** within its meaning and Rent Controller has no power to extend time and condone the same. Reference is made to the case of M.H. Mussadaq v. Muhammad Zafar Iqbal & another 2004 SCMR 1453 wherein it is held as:-

“10. On this aspect of the matter, the legal position is very clear. According to subsection (9) of section 17 of the Act, if the tenant fails to deposit the amount of rent before specified date, or , as the case may be, before 5th of the month, his defence shall be struck off. On its bare perusal, it is manifest that the above provisions are mandatory in nature and even one day's delay in making the deposit would be default within its meaning and Rent Controller has no power to extend time and condone the same. It is also observed that non-compliance with the tentative rent order is directly punishable and in consequence the defence of tenant can be struck off and eviction can be granted..

In the instant matter, the appellant *prima facie* failed in making compliance of such order hence the subsequent action of the Additional Controller of Rent was / is well within meaning of Section 17(9) of the Act. The appellant / opponent cannot seek any exception to his acts and omission nor could legally claim delayed deposit as **compliance** but shall be liable to face the *legal* consequence of his failure in making compliance of a *specific* direction for deposit of tentative rent / arrears on or before *specific* date.

12. In consequence of what has been discussed above, I am of the clear view that the order of the learned Additional Controller of Rent is *prima facie* not shown to be suffering from any *illegality* or *jurisdictional* error hence the instant appeal merits no consideration.

Accordingly, the appeal merited dismissal. Since demissed premises





is dwelling house therefore in the interest of justice petitioner is allowed to evict premises within two months from today. Petitioner shall pay the rent and utilities Bill's, accordingly

13. Hence vide order dated 13.09.2018 instant F.R.A. was dismissed and these are the detailed reasons thereof.

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JUDGE