

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

FRA No.46 of 2019

Date	Orders with signature of Judge(s)
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Disposed of matter

1. For orders on Nazir's report dated 13.3.2023
2. For orders on CMA No.1443/2022
3. For hearing of CMA No.4992/2022

26.9.2024

Mr. Muhammad Faisal Khan, Advocate for the appellant
 Ms. Naila Tabbasum, Advocate for the respondent

This petition was disposed of vide order dated 03.12.2019 in following terms:-

“1-3. Pursuant to and in compliance with the order dated 21.10.2019, the appellant has deposited an amount of Rs.12,50,000.00 towards arrears of rent before the Nazir of this Court on 01.11.2019. The factum of deposit of Rs.12,50,000.00 towards arrears of rent is evident from the endorsement of Nazir dated 01.11.2019.

Learned counsel for Respondents No.1 to 7, in view of deposit of the aforesaid amount submits that impugned order herein be set-aside and case be remanded back to the court of learned Additional Controller of Rents Clifton Cantonment Karachi, to decide the Rent Case No.73 of 2018 (*Ghayasuddin Ahmed s/o Col Riaz Uddin Ahmed (late) and six others vs. Rana Naeem Mehmood*), on merits within a period of sixty (60) days hereof with further direction to the Petitioner (tenant) to also deposit the future rent regularly before the Court of learned Additional Controller of Rents Clifton Cantonment, Karachi, to which learned counsel for the Petitioner herein (Tenant), also agreed and raised his no objection to the disposal of the instant F.R.A.

In view of the above, by consent, the impugned order dated 30.09.2019 (Annexure A to the FRA) is set aside and consequently, the instant FRA stands disposed of in the aforesaid agreed terms with direction to the learned Additional Controller of Rents Clifton Cantonment Karachi, to decide the Rent Case No.73 of 2018 (*Ghayasuddin Ahmed s/o Col Riaz Uddin Ahmed (late) and six others vs. Rana Naeem Mehmood*), on merits and in accordance with law within a period of sixty (60) days hereof, after affording of opportunity to the parties to led evidence in ‘pro’ and ‘contra’ of their versions/stand. In case, any default is made in respect of deposit of future rent, the Petitioner (tenant) then shall face the adverse consequences.”

Today, learned counsel for the Respondent filed a handwritten statement annexing therewith photocopy of an order dated 13.07.2021 passed by the learned Additional Controller of Rents, Clifton Cantonment, Karachi, in Rent Case No.73 of 2018, and submits that the arrears of rents deposited by the Petitioner/Tenant with the Nazir of this

Court be disbursed and or released to the Respondent, who is scheduled to leave the Country on 28.09.2024 for USA.

Conversely, learned counsel for the Petitioner submitted that CMA No.4992/2022 filed by the Petitioner seeking return of Rs.12,50,000.00 deposited as arrears of rent with the Nazir, be allowed on the ground that the said amount was paid to Mst.Zeenat widow of Jamaluddin. He prays that while dismissing the application filed by the Respondent, the Nazir be directed to return the said amount to Petitioner/tenant.

I have heard the learned counsel for the parties. Perusal of the consent order dated 03.12.2019 reveals that after deposit of Rs.12,50,000.00 as arrears of rent with the Nazir, the impugned order dated 30.09.2019 passed by the Additional Controller Rents striking defense of the Petitioner in aforesaid rent case was set-aside. Moreover, in terms of order dated 03.09.2019, the Additional Controller of Rents vide order dated 13.07.2021 has allowed eviction application No.73 of 2018. In the said Order the Additional Controller of Rent, inter alia, observed as under:-

“The nutshell of the above discussion is that the opponent after institution of the present case had come to know about real owner of the demised premises but instead thereof, the opponent kept paying rent to Mst. Zeenat Jamal who is not one of the co-owner of the premises in question. The opponent further admitted to increase the rent of the premises but no increment has been made. However, the opponent could have deposited the rent with enhancement in this Court in Miscellaneous Rent Case after obtaining permission from the Rent Controller, which he has failed to do so and the same divulges malafide intention of the opponent to deprive legal heirs of the applicant from the rent. Therefore, I hold that the opponent by not paying the rent to the actual owner has committed wilful default in payment of rent from June, 2018 to November, 2018 and from January 2019 to April, 2019 (ten months) @ Rs.1,25,000/00 per month on or before 17.5.2019. Hence the issue No.1 is decided in affirmative and against the opponent. However, the opponent is at liberty to initiate civil proceedings against Mst. Zeenat Jamal for recovery of rent received by her from the opponent.” (emphasis added)

During course of arguments and to a query posed, the learned counsel conceded that the Petitioner has not filed any Appeal against the said order and same has attained finality nor any proceedings against said Mst. Zeenat Jamal. Moreover, by consent and after deposit of arrears of Rents to the tune of Rs.12,50,000.00, the impugned order striking off defense of the Petitioner was set-aside and matter remanded to the Rent Controller for decision on merits.

In view of the foregoing, CMA No.1443/2022 filed by the Respondent is allowed and CMA No.4992/2022 filed by the Petitioner is dismissed. Nazir is directed to disburse/release the deposited arrears of rents with profits accrued thereon till to the Respondent after proper verification and identification.

Judge