

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

F.R.A. No.19 of 2025

[Malik Rafiq Ahmed v. Haji Ahmed Ali]

Appellant: Through Mr. Zahid Kabir, Advocate.

Respondent Mr. Muhammad Arif, Advocate.

Date of Hearing & order: 07.10.2025

ARSHAD HUSSAIN KHAN J. The appellant, by means of this First Rent Appeal filed under Section 24 of the Cantonment Rent Restriction Act, 1963 (the "Act, 1963"), has assailed the order dated 25.03.2025 (the "impugned order") passed by the learned Additional Controller of Rents, Clifton Cantonment, Karachi in Rent Case No. 62 of 2023, whereby the learned Rent Controller allowed the respondent's application under Section 17(9) of the Act, 1963. Consequently, the defence of the appellant was struck off on account of his non-compliance with the tentative rent order dated 24.12.2024 and the appellant, or anybody else holding the possession of the tenement premises, was directed to vacate the demised premises i.e House No.203, Plot No.C-56/1-, Bazar Area, Punjab Colony, Clifton Cantonment, Karachi and to handover its vacant and peaceful possession to the respondent within thirty (30) days.

2. The precise facts of the case are that the appellant and respondent are real brothers. After the demise of their father, the property constructed on Plot No.C-56/10, House No.203, situated at Punjab Colony, Bazar Area, Clifton Cantonment, Karachi, was mutated in the names of all legal heirs. Subsequently, the appellant and other legal heirs relinquished their respective shares in favour of the respondent through a relinquishment deed dated 30.01.2015. The respondent/applicant has been residing on the first floor of the said premises, whereas the appellant/opponent has been occupying the second floor since 2017 as a tenant at a monthly rent of Rs.15,000/-.

It is alleged that the appellant committed willful default in payment of rent from March 2017 to 2020, whereupon the respondent instituted Rent Case No.62 of 2023 under Section 17 of the Cantonments Rent

Restriction Act, 1963, on the grounds of default in payment of rent and bona fide personal need. Along with the ejectment application, the respondent also filed an application under Section 17(8) of the Cantonments Rent Restriction Act, 1963, upon which, vide order dated 24.12.2024, the learned Rent Controller directed the appellant to deposit rent at the rate of Rs.30,000/- per month with effect from 01.11.2023 to 31.12.2024 (14 months), amounting to Rs.420,000/-, and to continue depositing future monthly rent at the same rate before the 5th day of each succeeding month in the Court of the Additional Controller of Rents, Clifton Cantonment, until final disposal of the case. Upon the appellant's failure to comply with the tentative rent order, the impugned order was passed, which is now under challenge through the instant First Rent Appeal (F.R.A.).

3. Learned counsel for the appellant argued that the impugned order is contrary to law and has been passed without proper appreciation of facts or the merits of the case. He contended that the learned Rent Controller erred in striking off the defence without affording a fair opportunity of hearing and failed to consider that no relationship of landlord and tenant exists between the parties, as the appellant has already filed a civil suit for cancellation of the relinquishment deed pending adjudication before a competent Court. It was further submitted that the impugned order is the result of misreading and non-reading of the material available on record as well as misinterpretation of the relevant provisions of law. Per learned counsel, the findings recorded by the learned Rent Controller are legally unsustainable, contradictory, and have caused a miscarriage of justice. He, therefore, prayed that the impugned orders be set aside.

4. Conversely, learned counsel for the respondent argued that the impugned orders have been passed strictly in accordance with law. He submitted that the appellant failed to deposit the arrears of rent as well as future monthly rent at the rate of Rs.30,000/-, in compliance with the tentative rent order passed on the respondent's application under Section 17(8) of the Act, 1963. Due to the appellant's non-compliance with the said order, his defence was rightly struck off under Section 17(9) of the Act, 1963, and the eviction order was consequently passed in accordance with law. Learned counsel further contended that the respondent is the

lawful owner of the demised premises, which stood duly mutated in his name by the Cantonment Board on the basis of a relinquishment deed executed by the appellant and other legal heirs in his favour in 2015, after they had received their respective shares in the property in presence of witnesses. He also submitted that the respondent subsequently obtained renewal of the lease of the said property from the Clifton Cantonment Board in 2016 after fulfilling all legal requirements. In these circumstances, learned counsel maintained that the impugned orders suffer from no illegality, irregularity, or infirmity and prayed that the present First Rent Appeal be dismissed.

5. I have heard learned counsel for the parties and perused the material available on record carefully with their assistance.

6. Before proceeding further, it would be conducive to reproduce hereunder the relevant portion of the tentative rent order dated 24.12.2024:

“4. I have gone through Deed of Relinquishment which shows that the legal heirs of deceased Jalaludin have surrendered/relinquished their respective shares of the property in question in favour of the applicant Haji Ahmed Ali S/o Jalal-und-Din (Late), who became absolute owner of the entire property. The opponent in its written reply has admitted the Deed of Relinquishment on the plea that the same was not executed voluntarily or with consideration. The opponent has not placed any substantial document in support of his stance, whereas the applicant has admittedly got the title as sole owner of the property. In a recent judgment dated 8.11.2023 (Civil Petition No.2885 of 2022, titled Nasir Khan Vs Nadia Ali Butt & others) passed by the Supreme Court of Pakistan (AFR), it is held that the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of premises is considered as a tenant under the law. The tenancy may not be necessarily created by a written instrument in express terms, rather may also be oral and implied.

5. Article 113 of the Limitation Act, 1908 provides three years' period of limitation for availing the legal remedy against refusal of a certain performance. The applicant himself claims that cause of action accrued to him for filing of instant rent case in year 2017, when he rented out portion of Plot No.C-56/10, House No.203, located at Punjab Colony, Bazar Area, Clifton Cantt Karachi, and when opponent refused to pay the rent in March 2017. However, he issued legal notice to the opponent on 31.10.2023 and instituted the instant rent case on 06.12.2023. In the circumstances and in the larger interest of justice, the opponent under the powers conferred under Section-17(8) of Cantonment Rent Restriction Act, 1963 is tentatively directed to deposit monthly rent @ Rs.30,000/- per month with effect from 1 November, 2023 to December 2024 (14 x months) by 24.1.2025

amounting to Rs.420,000/- & onwards at the monthly rent of Rs.30,000/- in the court of Additional Controller of Rents, Clifton Cantonment before 5th day of each month till final disposal of the case. The remaining arrears claimed by the applicant from March 2017 will be decided at the time of final decision of the case.

6. The applicant is not allowed to withdraw the amount deposited by the opponent from this Court till final decision of the case.

6. The applicant is not allowed to withdraw the amount deposited by the opponent from this Court till final decision of the case.”

7. The record reveals that the learned Rent Controller, while passing the tentative rent order, duly considered the contentions of the parties as well as the material available on record. Vide order dated 24.12.2024, the appellant was directed to deposit rent at the rate of Rs.30,000/- per month with effect from 01.11.2023 to 31.12.2024 (14 months), amounting to Rs.420,000/-, and to continue depositing future monthly rent at the same rate before the 5th day of each succeeding month in the Court of the Additional Controller of Rents, Clifton Cantonment, until final disposal of the case. However, the appellant failed to comply with the said tentative rent order, whereupon the learned Rent Controller, in exercise of his lawful authority, struck off the defence of the appellant vide order 25.03.2025, impugned herein.

8. It may be observed that Section 17(9) of the Act 1963 contains penal provision for disobedience of order passed under subsection (8), which read as following.

“17(9) If the tenant fails to deposit the amount of rent before the specified date or, as the case may be, before the 5th day of the month, his application if he is a petitioner, shall be dismissed, or his defence, if he is a respondent, shall be struck off, and the landlords shall be put in possession of the building without any further proceedings”

The aforesaid provision, by virtue of the use of the word “*shall*”, is mandatory in nature. Accordingly, the tenant was under a legal obligation to comply with the tentative rent order in its true letter and spirit, as non-compliance entails the penal consequence of striking off the defence. The learned Rent Controller, therefore, acted strictly in accordance with law in striking off the defence of the appellant/tenant and subsequently passing the eviction order. The Hon’ble Supreme Court of Pakistan, in the case of *M.H. Mussadaq v. Muhammad Zafar Iqbal and another* (2004 SCMR 1453), has authoritatively held that non-compliance with a tentative rent

order attracts the mandatory consequence of striking off the tenant's defence, such consequence being inevitable and expressly provided under the statute.

The Hon'ble Supreme Court of Pakistan, in the case of *Safeer Travels (Pvt.) Ltd. v. Muhammad Khalid Shafi through legal heirs* (PLD 2007 SC 504), while dealing with the identical issue has categorically held that where a tenant fails to comply with the tentative rent order of the learned Rent Controller, it becomes obligatory upon the Rent Controller to strike off the defence of the tenant. Once such default is committed, the Rent Controller is left with no discretion or jurisdiction except to strike off the tenant's defence, subject only to the exceptions provided under law.

9. The above authoritative pronouncements underscore the principle that compliance with a tentative rent order is mandatory in nature. A tenant's failure to adhere thereto disentitles him from contesting further proceedings, thereby facilitating the expeditious adjudication of landlord-tenant disputes. The ruling further reinforces the settled law that once default is established, the Rent Controller is bound to enforce the consequences envisaged under the statute, ensuring both certainty and uniformity in judicial practice.

10. In view of the foregoing discussion, and in light of the facts and law governing the matter, the impugned orders are found to be well-reasoned, legally sustainable, and free from any infirmity warranting interference by this Court. Accordingly, the instant First Rent Appeal stands dismissed.

JUDGE