

# IN THE HIGH COURT OF SINDH, KARACHI

First Rent Appeal No. 70/2016

Appellants : Malik Mohammad Riaz & Another,  
through Mr. Muhammad Ali Waris  
Lari, Advocate.

Respondent No.1 : Mrs. Farhat Imrana, through Mr.  
Shahid Ansari, Advocate

Date of hearing : 30.05.2017

Date of Judgment :

## J U D G M E N T

**YOUSUF ALI SAYEED, J:-** The instant First Rent Appeal under S.24 of the Cantonment Rent Restriction Act 1963 (the “**Act**”) pertains to the left front portion of Plot No. D-128 Depot Lines, Saghir Hussain Shaheed Road, Karachi, (the “**Subject Premises**”), and calls into question the propriety of the Order dated 25.10.2016 (the “**Impugned Order**”) made by the learned Additional Controller of Rent, Karachi Cantonment, in Rent Case Number 10 of 2014 (the “**Rent Case**”), whereby the defence of the Appellants was struck-off and they were directed to vacate the Subject Premises and hand over peaceful possession thereof to the Respondent within 40 days.

2. Briefly, the salient facts leading up to and culminating in the Impugned Order, are as follows:

- (a) The Appellants entered into a Tenancy Agreement with the Respondent on 16.11.2012, whereby the Subject Premises, as delineated therein, was taken by them on rent from the Respondent on a monthly rent of Rs.300,000/-.

- (b) In respect of their obligation to pay rent under the Tenancy Agreement, the Appellants issued 24 post-dated cheques to the Respondent, covering the period January 2013 to December 2014.
- (c) The Respondent instituted the Rent Case, alleging that the Appellants had violated the Tenancy Agreement by raising illegal construction over the Subject Premises and committed default in payment of rent in respect of the months of February and March 2013 and the period May 2013 and beyond and that the post-dated cheques issued in that regard had been dishonoured on presentment.
- (d) An Application under S.17(8) of the Act was filed by the Respondent seeking a direction as against the Appellants as to payment of the aforementioned arrears of rent as well as payment of future rent.
- (e) On 23.12.2014, the learned Rent Controller was pleased to make a tentative rent Order in respect of the Respondent's Application, whereby the Appellants were directed to deposit the arrears of rent amounting to Rs.6,900,000/- on or before 31.12.2014 and to deposit future monthly rent at the rate of Rs.300,000/- before the 5<sup>th</sup> day of each month.
- (f) The Appellants failed to comply with the tentative rent Order, and no amount whatsoever was deposited, whether in respect of the arrears or the future period, prompting the filing of an Application under S.17(9) of the Act, and after affording ample opportunity of hearing to the Appellants, the Rent Case eventually came to be disposed of in terms of the Impugned Order, on the terms aforementioned.

3. With reference to the Written Statement and the Counter-Affidavit to the Application under S.17(8) filed in the Rent Case, learned counsel for the Appellants contended that Impugned Order was bad in law as the learned Rent Controller had failed to taken into account that there was a dispute pending inter se the Appellants and the Respondent in relation to the Subject Premises in as much as the Appellants had been induced to enter into the Tenancy Agreement on the basis of a representation that the Subject Premises could be put to commercial use, whereas it subsequently transpired that the same was residential in nature. He contended that such misrepresentation constituted a fundamental breach of the Tenancy Agreement on the part of the Respondent, and the Appellant was therefore under no obligation to pay rent thereunder. He further submitted that the Respondent had thus issued instruction to the bank to stop payment of the Cheques. Whilst admitting that no payment had been made towards compliance of the tentative rent Order, learned counsel contended that the said Order ought not to have been passed in view of this dispute, which was the subject of Suit Number 1709 of 2014, for declaration, mandatory and permanent injunction, and compensation of Rs.10 crore, pending before this Court. He prayed that the Impugned Order thus be set aside.

4. Learned counsel for the Respondent controverted the aforementioned submissions and contended that the course of action followed by the learned Rent Controller was just and proper, keeping in view the admitted default on the part of the Appellants. He submitted that the Appellants had fabricated a dispute in an endeavour to

explain away such default and had thus sought to superimpose the same on the proceedings in the Rent Case albeit the same having no nexus with such proceedings. He pointed out that, even otherwise, the Application filed by the Appellants under Order 39, Rules 1 & 2 CPC in Suit Number 1709 of 2014 seeking a restraining order against the Respondent from claiming rent had been dismissed by a learned single Judge of this Court vide Order dated 09.01.2015, and submitted that the instant proceedings similarly merited dismissal.

5. Having considered the arguments advanced at the bar and examined the record, I am of the view that the failure on the part of the Appellants to comply with the tentative rent Order cannot be condoned on the basis of a dispute as alleged by the Appellants. The Appellant, whilst alleging misrepresentation and unfitness of the Subject Premises for its intended purpose, has nonetheless paradoxically remained in possession thereof, whereas, if they were indeed unable to put the Subject Premises to use, they ought to then have forthwith vacated the same. In my opinion, as long as the Appellants remain liable to pay rent in respect of the Subject Premises to the Respondent for such time as they remain in occupation thereof, and the existence of a dispute, as raised by the Appellant in the aforementioned Suit, would be determined on its own merits in that proceeding, but does not serve to absolve the Appellants of their payment obligation in respect of their continued occupation of the Subject Premises, and the default on their part in perpetuation of such a stance is clearly wilful and contumacious.

6. As such, I find no irregularity or illegality in the Impugned Order, and no case for interference stands made out. Accordingly, this Appeal is dismissed.

JUDGE

Karachi  
Dated \_\_\_\_\_