

IN THE HIGH COURT OF SINDH AT KARACHI

**F.R.A No.24 of 2017**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Petitioner : Samina Rehman, through  
Mr. M. Rahman Ghous, advocate

**Versus**

Respondent : Dr. Parveen Iqbal, through  
Mr. Muhammad Saleem Thepdawala,  
advocate.

Date of hearing : **14.12.2018**

Reasons/Decision : **24.12.2018**

**JUDGEMENT**

**NAZAR AKBAR, J.** This First Rent Appeal is directed against the order dated **15.6.2017** whereby Addl. Controller of Rents Clifton Cantonment, Karachi on an application under **Section 17(9)** of the Cantonment Rent Restriction Act, 1963 (hereinafter C.R.R Act, 1963) filed by the respondent in Rent Case No.98/2016 struck off the defence of the Appellant due to her failure to comply with the tentative rent order passed on **24.4.2017**.

2. Brief facts of the case are that Respondent had filed rent case No.98/2016 against the appellant for her eviction on the ground of default in payment of rent of Ground plus three storied building constructed on Plot NO.AL-11, 15<sup>th</sup> Lane, Phase-VII, Pakistan Defence Officers Housing Authority, Karachi (hereinafter the demised premises). The Respondent claimed that the appellant is defaulter in payment of rent from **June, 2016** to **November, 2016**

which was due and payable on **01.6.2016** in terms of the written tenancy agreement, therefore, she filed rent case under **Section 17** of C.R.R Act, 1963.

3. The learned counsel for the Appellant filed written statement and contended that appellant has incurred an amount of more than **Rs.44 million** for establishing the Hospital by getting various works done in the premises including civil, electrical, plumbing interior, HVAC, IT System, furniture and medical equipments/gases, which amount was agreed to be adjusted towards the six months premium payable by the appellant to the respondent. He further denied the default in payment of rent contending that no premium is payable by the appellant until the said amount is fully adjusted upto **September, 2023**. The contents of written statement confirm that the amount payable by the appellant is not disputed and the respondent has claimed exact amount for which the appellant has defaulted. The figure of monthly rate of rent is also not disputed. However, an attempt has been made to interpret the tenancy agreement as a license agreement. The perusal of tenancy agreement reveals that executant of the admitted agreement have described themselves as Landlady and Tenant.

4. The learned Addl. Rent Controller on **24.4.2017** in terms of his mandatory statutory duty under **Section 17(8)** of C.R.R Act, 1963 has been pleased to pass tentative rent order. The operative part thereof is reproduced below:-

*In the light of above as well as perusal of the case record it reflects that the opponent claimed to have spent a huge amount of Rs.44 million upon consent of the applicant but failed to produce any*

*documentary evidence which shows the applicant had agreed to adjust the said amount towards six month rent. Therefore, in the interest of justice, **the opponent** under Section-17(8) of the Cantonment Rent Restriction Act, 1963 **is tentatively directed to deposit future monthly rent from May, 2017 onward @ Rs.5,32,400/- per month** in the Court of Additional Controller of Rents, Clifton Cantonment **before 5<sup>th</sup> day of each month. The opponent is also directed to deposit arrear amount of Rs.58,56,400/- from June, 2016 to April, 2017 (11-months) @ Rs.5,32,400/-per month on or before 25.05.2017.***

*The applicant is **not** allowed to withdraw future monthly rent @ Rs.5,32,400/- per month from May, 2017 onward as well as arrear amount of Rs.58,56,400/- from June, 2016 to April, 2017 (11 months) @ Rs.5,32,400/- per month from this Court. **The dispute of Rs.44 Million** or any other, if any, **shall be decided at final stage.***

5. When the Appellant failed to comply with the above tentative rent order, the Respondent filed an application under **Section 17(9)** of the Cantonment Rent Restriction Act, 1963. The appellant was given several chances to file her reply to the application for striking of her defence but she failed to give any cogent reason. The Addl. Controller of Rents Clifton Cantonment, Karachi after verifying from the accountant of the Rent Controller that not a single penny has been deposited in compliance of Court orders dated **24.4.2017** struck of defense of the appellant by order dated **15.6.2017** and directed the appellant to vacate the demised premises and handover its vacant and peaceful possession to the respondent within thirty (30) days, failing which the applicant can get this order executed from a court of Competent Jurisdiction.

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

7. Learned counsel for the appellant concedes before the Court that till date not a single penny has been deposited by the appellant in the office of the Rent Controller in terms of tentative rent order and he has offered no explanation before this Court. Even in the grounds of this appeal, I do not find any justification for failing to respect / honor the directions given by the Court. The Additional Controller of Rent by order under **Section 17(8)** of C.R.R Act, 1963 has extended full protection to the appellant by observing that the respondent “is not allowed to withdraw future monthly rent @ Rs.5,32,400/- per month from May, 2017 onward as well as arrear amount of Rs.58,56,400/- from June, 2016 to April, 2017 (11 months) @ Rs.5,32,400/- per month from this Court”. Similarly he has observed that the dispute of **Rs.44 Million** on the renovation or expenditure shall be decided at the final stage.

8. The purpose of passing a tentative rent order is to ensure protection to the landlord that the tenant will not run away with his money after utilizing the premises of the landlord and at the same time the tenant's rights to continue to occupy / use the premises is protected from any unlawful harassment by the landlord to dispossess the tenant. Since the compliance of tentative rent order was the statutory obligation on the appellant, therefore, in view of clear default, the learned Additional Controller of Rents Clifton Cantonment had no option except to struck off defence of the Appellant. The statutory default committed by the tenant, in fact, takes away of the discretion available to judicial officer/Court and the use of the word **“shall”** in **Section 17(9)** of C.R.R Act, 1963 makes it mandatory for Court to pass an ejectment order once the

Court comes to the conclusion that the tenant has failed to comply with tentative rent order.

9. The perusal of record shows that for the last two and half years (June, 2016 to December, 2018) not a single penny towards rent has been paid by the appellant to the landlord. The petitioner has not paid rent from June 2016 though the petitioner is tenant in the demised premises since **September, 2013** under the admitted tenancy agreement dated **01.9.2013** and it has been honored by the petitioner till **May, 2016** by strictly following the schedule of payment of rent provided in annexure 'A' to the tenancy agreement. I have also gone through the written statement filed by the appellant and the tone and tenure of the written statement is such that the appellant seems to have no intention of paying a single penny towards rent upto **September, 2023** and probably his lawyer has assured that they can drag the landlord in the Court until **September, 2023**. The appellant has obtained status quo order in this very appeal without even notice on **14.7.2017** and has not proceeded with this case seriously for more than one year and six months. Be that as it may, even this Court has categorically asked the appellant that, irrespective of the default already committed, the appellant is ready to comply with the tentative rent order upto date or not. The reply was in negative meaning thereby that the appellant has no respect for law and the Courts and has no intention to abide the tentative rent order.

10. It is the aforementioned conduct of the appellant / tenant for which the legislature has enacted the provision of **tentative rent**

**order** in almost all rent law throughout the country. The compliance of **Section 17(8)** and **17(9)** of the C.R.R Act, 1963 is mandatory.

11. In view of the above facts, the findings of the Court are not impeachable. Consequently, this First Rent Appeal is dismissed alongwith pending application with cost of **Rs.50,000/-** payable by the appellant to the High Court Bar Clinic within 15 days through the Nazir of this Court. In case cost is not paid the Nazir should attach the account of the appellant and recover it. The appellant is directed to vacate the demised premises within **30 days** from the date of this order. In case of her failure to vacate the same, the executing Court as soon as it receive an execution application should issue writ of possession with police aid with intimation to SSP concerned to ensure delivery of possession of the demised premises to the respondent.

*SM*

**JUDGE**