

IN THE HIGH COURT OF SINDH AT KARACHI

First Rent Appeal No. 07 of 2017

Engineers & Professionals Co-operative
Housing Society Ltd.....Appellant.
V e r s u s

The Institute of Engineering Pakistan and
another.....Respondents.

Hearing case (Priority)

1. For order on CMA No. 7943 of 2017.
2. For hearing of CMA No. 7055 of 2017.
3. For hearing of CMA No. 3978 of 2017.
4. For hearing of main case.

J U D G M E N T

Date of hearing : 08th October, 2018.
Appellant through : Mr. Ghulam Hyder Shaikh, Advocate
Respondent No.1 through : Mr. Muhammad Masood Khan, Advocate.

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Kausar Sultana Hussain, J: This is an appeal under Section 24(1) of the Cantonment Rent Restriction Act, 1963, preferred against the order dated 31.01.2017 passed by the Additional Controller of Rents, Karachi Cantonment, Sarwar Shaheed Road, Karachi in Rent Case No. 23 of 2006, whereby the Ejectment Application filed by respondent No.1/ landlord against the appellant/tenant under Section 17 of the Cantonment Rent Restriction Act, 1963, was allowed with directions to the appellant/tenant to deposit differential amount of rent for Rs.5,49,083/- for the period from 15.04.2007 to 14.02.2017 in the Court of Rent Controller, Karachi Cantonment within (17) days and to vacate the demised premises i.e. portion of 5th floor measuring 802.9 square feet of the Institute of Engineering Pakistan (hereinafter referred to as IEP) Building constructed on Plot No. 177/2, Liaquat Barracks, Shahrah-e-Faisal, Karachi and handover its peaceful vacant possession to the respondent No. 1 / landlord through its Secretary within 60 (sixty)

days and further directed to deposit future monthly rent to the tune of Rs. 22,907.00 for the period from 15.02.2017 to 14.04.2017 (two months).

2. Briefly stated, respondent / landlord instituted a Rent Case No. 23 of 2006, in the Court of Additional Controller of Rents, Karachi Cantonment, under Section 17 of the Cantonment Rent Restriction Act, 1963 against the appellant / tenant. The respondent/landlord rented out the demised premises to the appellant / tenant vide agreement of lease dated 25.04.2005 through the committee appointed by the High Court of Sindh in Execution Application No. 72 of 2004. Rate of rent was fixed at Rs. 10/- square feet per month for the rented portion of 5th floor measuring 802.9 square feet, thus rent calculated at Rs. 8,029/- per month. All utility bills/charges i.e. electricity, gas, water and conservancy in respect of the demised premises were to be borne by the appellant / tenant. Agreement of lease was entered into initially for one year i.e. up to 14.4.2006 with the provision of further extension of the lease subject to increase in the rent at 10% per annum at existing rent with mutual consent of the parties. The respondent / landlord through its secretary alleged that the appellant / tenant defaulted in payment of electricity charges and paid the same after commission of default. The respondent/ landlord further claimed that it requires the demised premises for its personal bonafide need for various academic and administrative purposes as the same is located on 5th floor and the office of the respondent/landlord is located on the 4th floor of the building, therefore, the demised premises is the most suitable and convenient place for their academic and administrative requirements. The respondent / landlord prayed for orders against appellant/tenant to vacate the demised premises and handover its peaceful vacant possession to the respondent / landlord.

3. The appellant/tenant contested the matter by filing his written statement, wherein he denied the adverse averments of the ejectment application and has contended that the appellant / tenant sent enhanced rent for the year of 2006-2007 to the Secretary of respondent/ landlord at 10% amounting to Rs.1,70, 576 through Cheque No.1318406 dated 25.04.2006, but it was refused to be accepted, therefore, it was again submitted to the respondent/landlord through pay Order No.0152424 dated 11.05.2006 but that too was refused by the respondent / landlord, then the rent was deposited in MRC No. 13 of 2006, vide order dated 01.06.2006. In respect of payment of electricity bill the appellant / tenant stated that its payment was subject to billing by the respondent/landlord on the basis of reading of sub-meter of the appellant / tenant and first time respondent/landlord sent payment invoice/bill on 08.05.2006, which was promptly paid on 01.06.2006. Regarding plea of personal need he stated that respondent/landlord runs its business at 4th floor while the appellant/tenant is in possession of only 1/3rd portion of 5th floor and remaining 2/3rd portion of the said floor is lying vacant in which the respondent/landlord can easily run/establish its business. The appellant/tenant prayed for dismissal of the ejectment application with compensatory cost.

4. The learned Additional Controller of Rents on the basis of the pleadings of the parties framed the following issues:-

- i. Whether opponent/tenant received any bill or invoice for payment of consumption of electricity from applicant/ landlord, before issuing letter dated 08.05.2006, to the opponent/tenant?
- ii. Whether after receiving letter dated 08.05.2006 about payment of electricity consumption charges of Rs. 30,286.50, the opponent/tenant has paid said amount?

- iii. Whether the opponent/tenant has committed willful default in payment of rent or other dues as asserted in the Rent Application, if yes, its effect?
- iv. Whether the demised premises is required by the applicant/landlord for its personal bonafide need/use?
- v. Whether after expiry of the tenure of the tenancy agreement, the opponent/tenant can continue to have the demised premises without consent of the applicant/landlord?
- vi. What should the order be?

5. Record reflects that the respondent's/landlord's witness namely Ayaz Mirza son of Iftikhar Mirza, Secretary of the IEP filed an affidavit-in-evidence, who was duly cross-examined by the learned counsel for the appellant/tenant and then the learned counsel for the respondent/landlord closed their side for evidence. Similarly, the appellant's/tenant's witness Engineer I.H. Siddiquie son of Inamul Haq Siddiqui filed his affidavit-in-evidence, he was duly cross-examined by the learned counsel for the respondent/landlord then the respondent's/landlord's counsel closed his side for evidence. After hearing of final arguments put forth by the respective learned parties counsel, the learned Rent Controller Karachi Cantonment allowed the eviction application vide order dated 31.01.2017. Being aggrieved the appellant/tenant has preferred instant appeal.

6. The learned counsel for the appellant/tenant while leading his arguments has contended that the impugned order dated 31.01.2017 passed by learned Additional Controller of Rent, Karachi Cantonment, Karachi is bad in law and contrary to facts as such the same is not sustainable in the eyes of law. He further submitted that the impugned order is based on misreading and non-reading of the evidence available on record, which resulted in miscarriage of justice. He argued that the

learned Additional Controller of Rents Karachi Cantonment went beyond the pleadings of the parties by considering the technical default and irregular enhancements of rent in breach of agreement as default in payment of rent. The learned counsel for the appellant/tenant urged that the respondent No.1 has not objected to the amount paid in rent, besides, the lease agreement was never renewed, which made the appellant a statutory tenant. It is further argued that the demised premises was rented out by the respondent/landlord to the appellant/tenant vide agreement of lease dated 25.4.2005 in compliance of the decision of the Committee constituted by this Court in Execution Application No.72 of 2004. He argued that the rent was paid in advance/in time regularly in MRC No. 13 of 2006 and in absence of objection to the contrary by respondent/landlord, failure to enhance the rent every year could not be termed as default in payment of rent, however, it could only be termed as technical default. The learned counsel for the appellant / tenant pointed out in his arguments that deferential amount of enhanced rent i.e. Rs. 5,49,083/- has been deposited in MRC No.13 of 2006 through pay order dated 10.02.2017. In support of his version of alleged default the learned counsel for the appellant/tenant has relied upon the decisions reported as **PLD 1997 SC 564 (National Development Finance Corporation vs. Shaikh Naseem-ud-Din & 4 others)**, **2013 YLR 2705 (Sindh) (Dr. Shahid Hussain Khan & 2 others vs. Maqsood Ahmed)**, **1987 SCMR 2052 (Kabiruddin A. Lalani vs. Zafar Ishaq Ansari and another)**, **2001 SCMR 1888 (Hirjibhai Behrana Dar-e-Meher vs. Messrs Bombay Steel Works, Partnership Firm)**, **1991 CLC 2011 (Karachi) Mian Manzoor Ali vs. Asadullah)** and **1993 MLD 2083 (Peshawar) (Ghulam Nabi vs. Nazir Ahmad)**. In respect of plea for personal bonafide requirement of demised premises, the learned counsel for the appellant/tenant submitted that the respondent/landlord did not furnish

any documentary proof/evidence in support of ground of personal need in good faith, as such failed to corroborate its intention to use the tenement for educational seminars, classes, and administrative purposes. The learned counsel for appellant/tenant pointed out that the inspection report dated 24.08.2007 as well as the advertisement for vacant space for rent published in Dawn dated 31.3.2010, clearly showed that the respondent / landlord had rented out other portions of building to various tenants, and large areas of other floors, especially ground and mezzanine floors, were lying vacant and unutilized, hence these facts themselves were sufficient to disprove the claim of the respondent/landlord for personal bonafide use. The learned counsel for the appellant/tenant has relied upon the judgments of Hon'ble Apex Court reported as **1994 SCMR 1012 (Muhammad Rafique vs. Messrs Habib Bank Limited)**, **PLD 1993 Karachi 300 (Muhammad Naseeruddin vs. Mst. Hashmat Bibi)**, **1992 SCMR 1303 (Ghulam Haider vs. Abdul Ghaffar and another)**, **1987 SCMR 2051 (Mrs. Shahnour Fazal vs. Ghulam Akbar Mangi)**, **PLD 2000 SC 829(Sardar Nabeel Wali vs. The Additional District Judge/Appellate Authority, Sahiwal and others)**, **1992 CLC 744 (Ulfat Ali vs. Abdul Shakoor)** and **PLD 1985 SC 148, (Shaikh Abdus Satar vs. Malik Muhammad Afzal and others)**. He prayed for setting aside the order dated 31.1.2017, passed by the learned Additional Controller of Rents, Karachi Cantonment, Karachi.

7. On the other hand, the learned counsel for the respondent/landlord has argued that the respondent/landlord entered into tenancy agreement with the appellant/tenant due to intervention of the Committee constituted by the High Court of Sindh, Karachi in Execution Application No.72 of 2004 for the period of one year from 15.4.2005 to 14.4.2006 extendable with the mutual consent of the

parties. The learned counsel for the respondent/landlord emphasized that after expiry of one year of tenancy, the management of the respondent/landlord through letter dated 08.05.2006 had informed the appellant/tenant that they were no more interested to extend the period or renew the tenancy agreement. The learned counsel for the respondent/landlord has submitted that both the parties through a tenancy agreement mutually agreed that in case of not handing over the demised premises to the respondent/landlord after expiry of lease period the rent of the demised premises would be increased yearly at 10% of the rent. Per learned counsel for the respondent/landlord the appellant/tenant did not honour his own commitment by not increasing the monthly rent at 10% per annum as settled between the parties, therefore, in the eyes of law it was a violation of agreement, which made him liable to be evicted. He further argued that the demised premises is required by the respondent/landlord for its own administration and academic purposes as the office of the respondent/landlord is located at 4th floor, while demised premises is located at 5th floor. He has supported the judgment passed by the learned trial Court and prayed for dismissal of instant appeal. In support of his arguments, the learned counsel for the respondent/landlord relied upon **PLD 1991 Karachi 315 (Mrs. Almas Abdul Rehman Bhamani vs. Begum Hamida Nizam), 2003 CLC 892 (Karachi) (Samson Sircar vs. Rehman Khalil and another), 1991 CLC 1137 (Karachi) (S.M. Zafar vs. Vice-Admiral (Retd.) Iqbal F. Qadir), 2003 YLR 1101 (Karachi) (Siraj Khan vs. Taj Muhammad), PLD 1990 Lahore 42 (Aleem-Ud-Din vs. Muhammad Yaseen) and 2003 YLR 3060 (Peshawar) (Muhammad Nawaz vs. Shahzada Arooj Awan).**

8. After hearing arguments of learned counsels for both the sides at considerable length and perusal of entire available record, it transpired

that the respondent/landlord has initiated present ejectment proceedings against the appellant/tenant on two grounds, first is default in payment of utility bills of electricity of the demise premises and non-payment of enhanced rent. The another ground is personal bonafide need of the demise premises.

9. The ground of default of the respondent/landlord is consisting of two parts. The first part of this ground is alleged default in payment of electricity bills for the year 2005 to 2006 which could not be proved by the respondent/landlord against the appellant/tenant.

10. As far as the question of default in payment of enhanced rent for the period from 15.04.2007 to 14.02.2017 is concerned, I am of the view that the learned trial Court while deciding this part of alleged default relied upon the record brought before it i.e lease agreement executed between the parties and the record of MRC No.13 of 2006. I have gone through the lease agreement dated 25.04.2005 and found that at the time of signing the lease agreement by the parties they knew that on what terms and conditions they were going to begin their relationship as landlord and tenant, therefore, violation of such terms and conditions of the lease agreement cannot be justified rather to regard it as deliberate and intentional, especially in the circumstances when terms and conditions of lease agreement had partly been obeyed and partly violated. Record further reflects that consented enhancement in rent on yearly bases at the rate of 10% was complied with by the appellant/tenant half-heartedly with interval of years, while it should had been enhanced on yearly basis, which resulted in commission of default in payment of enhanced rent. The appellant/tenant admittedly deposited differential amount of enhanced rent, computed to the tune of Rs.5,49,083/- in MRC No.13 of 2006 from 15.4.2007 to 14.2.2017. Legal position also needs to be ascertained that whether default in

payment of enhanced rent could be treated as default in payment of rent? In instant case terms and conditions of tenancy agreement entered into between the parties were settled by their mutual consent. The appellant/tenant has paid rent of the demised premises through depositing the same in MRC No.13 of 2006. Record of said MRC No.13 of 2006 reflects that he has committed no default in payment of monthly rent and respondent/landlord also has no claim against the appellant/tenant regarding payment of monthly rent. As far as default in payment of enhanced rent is concerned the respondent/landlord entered into an agreement with the consent of appellant/tenant to get an increased rent over and above the fixed rent at the rate of 10% per annum, besides, appellant/tenant undertook to enhance the rent @ 10% on the existing rent on expiry of lease, therefore, the agreement is enforceable and non-payment of increased rent as discussed above is default in payment of rent.

11. The next issue is related with bonafide personal need of the demise premises as pleaded by the respondent/landlord to be used for its own administrative and academic purposes/activities. The respondent/landlord stated that the office of the Karachi Local Centre (IEP) is located at 4th floor of the same building, while the demised premises is located at 5th floor of the same building, which is the most suitable/convenient place for the respondent/landlord for administrative and academic use. The appellant/tenant has denied the personal bonafide need of the demised premises by the respondent/landlord, however, he admitted that the respondent/landlord runs its business at 4th floor. The respondent/landlord admitted in cross examination that only 1/3 portion of the floor of demised premises is in possession and occupation of the appellant / tenant while remaining 2/3 portion of the said floor is lying vacant, wherein the respondent/landlord can establish

its business. The respondent/landlord in his affidavit in evidence corroborated such version and further deposed that they arrange international/national events, such as seminars, lectures and workshops etc. The respondent / landlord further deposed in its affidavit in evidence that demised premises is required to the respondent/landlord for setting up full fledged office to streamline the office activation as well as to commence MIE (Pak) classes and examination in the demised premises. On the contrary the appellant's/tenant's stance is quite different from the stance of the respondent/landlord as according to appellant/tenant inspection was carried out in Rent Case No.24 of 2006, filed by the respondent/landlord Syed Nasir Abbas Rizvi and in clause 9 of that report dated 24.08.2007 commissioner reported that "huge area on ground floor, first floor & 5th floor of premises is lying vacant, whereas most of the tenants have been rented out recently. He further deposed that area on ground floor left by Aero Asia is still lying vacant and sufficient area on various floors is available for extension of library.

12. Record under consideration reflects that the respondent/landlord is an "Institution of Engineers of Pakistan" duly registered under Societies Registration Act, 1860 having its Headquarter at Lahore having various local centers in various cities of Pakistan including Karachi, while the appellant/tenant is an "Engineers and Professional Housing Cooperative Society Ltd." The respondent/landlord requires the demised premises for its own administrative and academic purposes/activities and the reason of giving priority to the demised premises is that its own office is located at 4th floor, while the demised premises is situated at 5th floor, therefore, the said 5th floor is more suitable and convenient place for the respondent/landlord for its administrative and academic use. On the other hand, the appellant/tenant opposed such claim on the simple ground that the respondent/landlord besides the demised

premises has possessed more other places available to them for their use.

13. It is a settled proposition of law that the place of the landlord for personal bonafide requirement of the demised premises cannot be disbelieved, if consistent with his averment made in his Ejectment Application and not shaken in his cross examination, failed to disprove him in rebuttal. In the instant case, the respondent/landlord being Institution is responsible and required to elevate its position and status for which arranging seminars, conferences and training programs are no doubt not only important for academic purposes but also requirement of present era to achieve more excellence. The respondent/landlord has produced some relevant record and also decisions of the Hon'ble Apex Courts in support of its version of personal bonafide need **i.e. PLD 1991 Karachi 315, 2003 CLC 892 (Karachi), 1991 CLC 1137 (Karachi), PLD 1990 Lahore 42, 2003 YLR 3060 (Peshawar), 2000 CLC 274 (Peshawar), 1990 SCMR 1070, 1999 MLD 3269 (Karachi) and 1998 MLD 1765 (Peshawar).**

14. Besides this, it is an admitted position that extension of the tenancy agreement was subject to mutual consent of the parties. Per record, the respondent/landlord in his letter dated 08.05.2006 brought it in the knowledge of the appellant/tenant that they did not want to continue the tenancy agreement any more between the parties, therefore, to keep continue the relationship of landlord and tenant between the parties is a clear cut violation of the terms & conditions of the tenancy agreement executed through the committee formed by this Court.

15. For the reasons discussed above, I am of the clear view that the learned Controller of Rent of Cantonment Karachi has rightly took his

view against the appellant/tenant and in favour of the respondent/landlord. Accordingly, the appeal is dismissed on merits. The appellant/tenant is directed to handover the vacant and peaceful possession of the demised premises to the respondent/landlord within 60 days from the date of this Judgment subject to payment of monthly rent regularly at the rate of due enhanced rent. There shall be no order as to cost.

J U D G E

Faheem/P.A