



on the ground of willful default of appellant in payment of rent as well as personal bonafide need of Respondent No.1, as he wanted to start his own business in the tenement.

3. The trial Court sent notice to the appellant through court bailiff on **26.4.2019** but wife of appellant refused to receive Court notice. Therefore, the Court notice was also sent to the appellant through TCS but he has failed to appear before the trial Court. Subsequently on **22.5.2019** the notice was pasted at the address of the appellant in presence of two witnesses and also published in newspaper but the appellant choose to remain absent. Therefore, on **27.5.2019** service upon the appellant was held good and after providing opportunity of filing written statement, the side of the appellant was closed on **25.07.2019** and the case proceeded exparte against him.

4. The Rent Controller after hearing the learned counsel for Respondent No.1, by order dated **23.09.2019** allowed the rent application, whereby the appellant was directed to vacate the tenement within **60 days**. The appellant, therefore, preferred instant First Rent Appeal before this Court against the said order.

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

6. Learned counsel for the appellant has only disputed the service upon the appellant through the bailiff and claimed that the report of bailiff that wife of the appellant has refused to receive the notice is incorrect as there is hardly any lady at the shop. This claim of the appellant has been countered by the counsel for Respondent No.1. He contended that a beauty parlor is run by the appellant in the tenement and, therefore, there is hardly any possibility of presence of

appellant at the tenement and the lady who refused to accept Court notice was wife of the appellant. Be that as it may, learned counsel for the appellant has not been able to dispute that a TCS was not sent by the trial Court as well as the service through pasting and publication was not enough. He tried to argue that service through publication was not a proper service since everybody does not go through the newspaper. Learned counsel for Respondent No.1 has pointed out that the question of service on the appellant does not arise since the appellant himself has filed counter affidavit/objection to the rent application through a counsel. But said counsel never filed any application for recalling the orders of exparte proceedings. He draw the attention of Court to page-67 which is certified copy of Counter affidavit filed by the appellant to the rent application under Section 17(4)(i) of the CRRA, 1963. When confronted with this document, appellant conceded but tried to argue that it was filed after the exparte order dated **23.9.2019**. However, perusal of this document reveals that it was signed by the appellant on **19.9.2019**. It bears appellant's cell number and CNIC number and signature of his lawyer on the same page which shows it was drafted and finalized on **19.9.2019**. Learned counsel Khawaja Izhar-ul-Hassan appearing along with Mr. Anand Kumar, Advocate informed the Court that the appellant has already purchased the tenement against advance payment of **Rs.75,00,000/-** cash to the Respondent and a suit for specific performance of contract is also pending before trial Court. He also contended that the appellant will suffer irreparable loss on account of failure of his lawyer to file an application of recalling exparte order after service was held good on him.

7. The perusal of record shows that even the instant First Rent Appeal has been filed by the same lawyer who has filed counter affidavit/ objection to the main rent case in the trial Court. Instead of putting him to task for letting the case go unattended, he has been awarded the erroneous duty of filing appeal. The perusal of appeal shows that not a single ground has been taken by the appellant in the memo of appeal to set aside the impugned orders. As far as the pendency of suit is concerned, the appellant has annexed copy of suit No.740/2019. It is in respect of **shop No.1**, whereas the rent case is in respect of **shop No.2**, ground floor of the same building meaning thereby even the suit is not in respect of the tenement and it has been filed only to delay the matter in the name of pendency of suit on the subject property or status-quo. It is settled principle of law that even if there is a genuine suit for specific performance of contract between the parties, the tenant has to first vacate the premises in case order of eviction is passed by Rent Controller and he would be entitled to repossession of the same if the suit for specific performance is decreed in his favour.

8. In view of the above facts and circumstances, no sufficient cause was shown by the appellant for not appearing before the trial Court nor it can be held that the appellant was condemned unheard. In fact it is a case of not only willful and deliberate default in payment of rent but also willful and deliberate default in contesting the rent case on merit. It is routine *modus operandi* of tenant to let the case go unattended. After maximum delay and even judgment enter the Court only to claim remand of case in the name of having been condemned unheard and fair trial was denied. The record shows that opportunity of hearing was duly given to the appellant but he

himself choose not to be heard by remaining absent. The concept of “Fair Trial” in **Article 10-A** of the Constitution is for the fair citizen of Pakistan who is ready to submit to the Court of law with honesty of purpose of fair trial without prejudice to the person who has followed every step of trial in line with the requirement of law. Comparing the conduct of the appellant and the Respondent any indulgence by Court in favour of the appellant would be beginning of an “UNFAIR TRIAL” of Respondent.

9. Consequent to above discussion, this First Rent Appeal is dismissed. The trial Court has given 60 days’ time to the appellant to vacate the tenement, which has ended on **23.11.2019**, therefore, no further time can be granted to the appellant to vacate the tenement, since he has not sought time for vacating the tenement. The appellant is directed to vacate the tenement on or before **28.02.2020**. In case of failure, the Executing Court is directed to issue writ of possession with police aid and permission to break open the locks without further notice to the appellant.

JUDGE

Karachi, Dated:12.02.2020

Ayaz Gul