

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

First Rent Appeal No.27 of 2019

Date _____ Order with signature of Judge _____

Present: Mr. Justice Nazar Akbar

Appellant : Syed Ali Zahir Hashmi
Through Mr. Taimoor Ali Mirza, Advocate.

Versus

Respondent : Tahmina Hamza Dhamee,
Through Mr. Ahmed Madani, Advocate.

Date of hearing : **15.01.2020**

Date of judgment : **15.01.2020**

JUDGMENT

NAZAR AKBAR, J:- This First Rent Appeal is directed against the order dated **13.05.2019** passed by the Additional Rent Controller Clifton Cantonment, Karachi on Application under Section 17(9) of the Cantonment Rent Restriction Act, 1963 (CRRA, 1963) filed by the Respondent in Rent Case No.50/2018, whereby the defence of the appellant was struck off and he was directed to vacate the demised premises within thirty days.

2. To be very precise, the facts of the case are that the Respondent has filed ejectment application No.50/2018 under Section 17 of CRRA, 1963 in respect of House No.77-B, Circular Street, Phase-II, Defence Housing Authority, Karachi (the demised premises) against the appellant for default in payment of monthly rent. On **28.01.2019** the Rent Controller has passed a tentative rent deposit order, whereby the appellant was directed to deposit future monthly rent @ Rs.2,75,000/- from February, 2019 onward in the Court of Additional Controller of Rent, Clifton Cantonment before 5th

day of each month. The appellant was also directed to deposit arrears of Rs.8,25,000/- for the period from November, 2018 to January, 2019 @ Rs.2,75,000/- per month on or before **28.02.2019**. Thereafter the Respondent moved an application under **Section 17(9)** of the CRRA, 1963 on **04.03.2019** before the Rent Controller for striking off defence of the appellant as he failed to comply with the tentative rent order passed by the Rent Controller.

3. The Rent Controller after hearing the parties, by order dated **13.05.2019** allowed the application under Section 17(9) CRRA, 1963, whereby the appellant was directed to vacate the demised premises within 30 days. The appellant, therefore, preferred instant First Rent Appeal before this Court against the said order.

4. The record shows that the appellant on **19.8.2019** has obtained order of suspension of his ejectment dated **13.5.2019** in Rent Case No.50/2018. The ejectment was ordered on account of statutory default since the appellant has failed to comply with the order under Section 17(9) of the Cantonment Restriction Act, 1963. His defence was struck off. On **14.01.2020** an attempt was made to linger on this First Rent Appeal by making statement that the appellant want to change the lawyer. However, no lawyer was available to supersede learned counsel, therefore, he was directed to either argue this appeal on **15.01.2020** at **11:00 am** or let some other lawyer to come forward. On **15.01.2020** Mr. Taimoor Ali Mirza, advocate says that he is ready to argue this appeal. He has contended that rent for the month of April, 2019 was deposited after lapse of **21 days** from the date on which it was to be deposited by the appellant in Court in terms of the tentative rent order. However, he has made two explanations. First explanation was that his previous counsel was depositing rent in Court, who had failed to deposit the

rent after having received the same from the appellant. The other explanation was that the appellant went to the office of the Rent Controller to obtain challan for depositing rent and the staff of the Additional Controller of Rent has refused to give him challan for depositing the rent. On query from the Court that whether the appellant has taken any action against his previous lawyer for putting him in such a awkward position and that he has made any complaint against the staff of the Additional Controller of Rent for not giving challan, if at all, the challan was not issued by the staff, the reply was that he does not know about that. The record also does not show that any action was taken against the lawyer for his failure to perform his duties resulting in loss of his right to hold tenancy. Be that as it may, both the excuses advanced for making default in statutory order of payment of rent were rightly not found satisfactorily by the Rent Controller and ejectment was ordered by striking of the defence of the appellant. I am also not convinced with such frivolous grounds by defaulting party for the simple reason that a statutory right has been accrued in favour of the landlord/ Respondent and the Court has no discretion to take away the statutory right on whatsoever ground.

5. In view of the above, this First Rent Appeal was dismissed by short order dated **15.01.2020** with direction to the appellant to vacate the demised premises within **thirty days**, and handover vacant peaceful possession of demised premises to the Respondent. Above are the reasons for the short order.

JUDGE

Karachi, Dated:16.01.2020

Ayaz Gul