

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**

**F.R.A. No. 16 of 2002**

Appellant : Muhammad Muzaffar Alvi, through  
M/s. Muhammad Ali Jan and Muhammad  
Aslam, Advocates.

Respondent : Mian Khursheed Inamullah,  
through Mr. Iftikhar Javed Qazi, Advocate.

Date of hearing : 22.02.2017 & 27.03.2017  
Date of order : 27.03.2017  
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**ORDER.**

**ZAFAR AHMED RAJPUT, J:-** This F.R.A. is directed against the order dated 13.08.2002, whereby the learned Additional Controller Rents, Clifton Cantonment, Karachi while allowing application under Section 17 of the Cantonment Rent Restriction Act, 1963, being Rent Case No. 28 of 1998 filed by the respondent/applicant/landlord directed the appellant/opponent/tenant to vacate the shop bearing No. 1, situated on ground floor of building constructed over Plot No. 104-C, Commercial Area (B) Market, Main Korangi Road, Defence Housing Authority, Karachi (herein after referred to as the “**demised premises**”) and handover its peaceful possession to respondent within 30 days from the date of order.

2. Briefly stated, the facts of the case are that the respondent herein filed the above said rent ejectment application on 19.02.1998 against the appellant alleging therein that he rented out the demised premises to deceased father of the appellant, namely, Muhammad Hanif Alvi in the year 1985 and after his death, the appellant being the son and in possession

of the demised premises became tenant of the respondent by operation of law at monthly rent of Rs.400/-, which was subsequently increased to Rs.1,000/-. It was the case of the respondent that the appellant committed default in payment of monthly rent from the year 1997. It was further case of the respondent that the appellant impaired the value of the demised premises by erecting a gate on the back wall of the demised premises without his permission. It was also case of the respondent that the appellant sublet the demised premises, and the demised premises was required to him for his personal use. On behalf of appellant, his brother Muhammad Jaffar Alvi claiming to be his Attorney, contested the rent application by filing written statement, wherein he denied the case of the respondent.

3. At the trial the respondent filed his affidavit-in-evidence and the affidavit-in-evidence of his witness / son Mian Jamshed Inamullah, while from appellant side Muhammad Jaffar Alvi filed his affidavit-in-evidence. The learned Rent Controller after hearing the counsel of the parties allowed the ejectment application on the ground of alteration, sublet and requirement of the demised premises in good faith by the respondent for his personal bonafide need, vide order dated 13.08.2002, while the issue of default was not pressed by the respondent. It is against that order the instant F.R.A. has been maintained by the appellant.

4. Heard the learned counsel for the appellant and respondent as well as perused the material available on record.

5. The learned counsel for the appellant has mainly contended that the learned Rent Controller failed to appreciate that the burden of proof of all

three issues was on the respondent, which he has miserably failed to discharge by adducing any cogent evidence and the learned Rent Controller misdirected himself by shifting the burden of proof in respect of issue of addition and alteration in the demised premises on the appellant; that the learned Rent Controller over looked the admission of the respondent in the cross-examination, which clearly shows that since 1989 when the flat on the first floor of the demised premises was handed over to the appellant on rent, the respondent had allowed to open the door in the back wall of the demised premises to have an easy access to the first floor; that the learned Rent Controller erred in law when he failed to appreciate that the appellant was not original tenant of the respondent and in view of the fact that Muhammad Hanif Alvi was one of the legal heirs of original deceased tenant Muhammad Hanif Alvi, there was no question of subletting as the demised premises was in possession of “legal heirs” of said original tenant; that the learned Rent Controller failed to appreciate that the landlord had admittedly obtained possession of first floor of a commercial flat during the pendency of rent case from the appellant; hence, he was not entitled to seek possession of any other premises on the same ground unless the other premises, which he has previously taken has become unsuitable for his need; hence, finding on this issue ought to have been in negative.

6. On the other hand, learned counsel for the respondent has fully supported the impugned judgment and has contended that the learned Rent Controller has passed a well-reasoned judgment which requires no interference of this Court in its appellate jurisdiction; that the Attorney of the opponent, namely, Muhammad Jaffar Alvi failed to produce copy of

Power of Attorney alongwith written statement as well as his affidavit-in-evidence; therefore, no credibility can be attached to his evidence; that the claim of the Attorney of the appellant that he was one of the legal heirs of the original tenant, namely, Muhammad Hanif Alvi was also against the record, as the tenant of the respondent was Muhammad Muzaffar Alvi, the son of Muhammad Hanif Alvi, which fact is evident from the record; that the opponent failed to produce any permission of the respondent to break the back wall of the demised premises and it is also a matter of record that the respondent raised objection over the said act of the opponent and directed him in writing to remove the same and reconstruct the wall.

7. As regard the claim of alteration, it appears that the respondent in his ejectment application and affidavit-in-evidence has categorically stated that the opponent has made structural changes, addition and alteration without his permission and consent and impaired the value and utility of the demised premises by erecting a gate on the back wall of the demised premises, violating the terms and conditions of the tenancy agreement, provisions of Cantonment Rent Restriction Act, 1963 and rules and regulations of Cantonments Act, 1924. The appellant against that plea has taken the stance that the same was made with the consent and approval of the respondent; however, he could not produce in evidence any written permission allegedly given by the respondent. On the contrary, the respondent has produced with affidavit-in-evidence of his witness a letter, showing the objection of respondent on fixing a door and requesting the appellant to remove the same and reconstruct the wall. Since it is an admitted position that the appellant made alteration in the demised

premises, the burden lies upon his shoulder to prove that the same was done by him with the consent of the respondent but he failed to discharge his burden. In this regard I am not in agreement of learned counsel for the appellant that the burden of proof lies upon the shoulder of respondent to prove that the appellant made alleged alteration without his consent. Suffice to say it that after the admission of making alteration in the demised premises the burden lies upon the shoulder of the appellant to prove that the same was done by him with the consent of the respondent, but he failed to prove it.

8. As regard sublet, it is the contention of the respondent that the appellant has sublet the demised premises to some other person, who is claiming to be the Attorney of the appellant, while the appellant has shifted to America. The appellant in his written statement has taken the defence that the demised premises was taken on rent by his father, who paid Rs.200,000/- as Pagri and after death of his father the appellant has become the tenant of the respondent by operation of law. He has also claimed that after death of his father his brother Muhammad Muzaffar Alvi, the appellant, and he being legal heirs are tenant of the respondent. In his cross-examination Muhammad Jaffar Alvi has admitted that appellant Muhammad Muzaffar Alvi is out of Pakistan. The record shows that the rent is being deposited in MRC No. 103 of 1997 by the appellant Muhammad Muzaffar Alvi from the month of October 1997, which discredits the claim of Muhammad Jaffar Alvi that being legal heir of deceased Muhammad Hanif, he is also tenant in the demised premises. It may be relevant to mention here that if it was the claim of Muhammad

Jaffar that being legal heir of said Muhammad Hanif, he is also tenant in the demised premises then he should have filed an application under Order I Rule 10 C.P.C. to become a party in the rent ejectment application as opponent being co-tenant but instead of doing so he contested the ejectment proceedings claiming to be the Attorney of appellant without filing power of attorney with his written statement and producing the same even alongwith his affidavit-in-evidence. Under the circumstances, I am of the view that the learned Rent Controller has rightly held Muhammad Jaffar Alvi as sublettee.

9. As regard the requirement of demised premises for personal bonafide need by the respondent, it appears that the respondent in his ejectment application has pleaded that he was working with a shipping company on temporary contract basis and after completion of the contract he remained jobless for months; as such, he wants to establish his estate and property business in the demised premises. Responding the claim of respondent, the appellant in his affidavit-in-evidence has stated that his deceased father had taken the premises on rent by paying Rs.200,000/- being Pagri amount and Rs.25,000/- was also paid to respondent for transfer of tenancy in the name of his father; however, the Attorney of the appellant failed to produce any receipt of Rs.200,000/-. The receipt he has produced amounting to Rs.25,000/-, appears to be a payment on account of fitting and fixture of several articles. However, against the claim of respondent for the requirement of the demised premises, the appellant has failed to bring anything on record in contrary. Thus, the learned Rent Controller while observing that although the Attorney of the appellant in his written

statement as well as affidavit-in-evidence has claimed that the respondent has other properties but during cross-examination he has admitted that the respondent does not own any other commercial premises in the commercial area has rightly decided the said issue in affirmative.

**10.** In view of above, the learned counsel for the appellant failed to point out any illegality or infirmity in the impugned order requiring any interference of this Court on any issue of facts and law. Accordingly, this F.R.A. is dismissed with no order as to cost by directing the appellant to vacate the demised premises within 60 days.

**11.** Above are the reasons of my short order, dated 27.03.2017, whereby this F.R.A. was dismissed.

JUDGE

Athar Zai