

IN THE HIGH COURT OF SINDH AT KARACHI

F.R.A No.29 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Petitioner : Akhlaq Ali, through
Mr. Ejaz Hussain Bhatti, advocate

Versus

Respondent No.1 : Mst. Najma Begum, through
Ch. Asif Ali, advocate.

Respondent No.2 : Clifton Cantonment Board

Date of hearing : **17.02.2020**

Reasons/Decision : **17.02.2020**

JUDGEMENT

NAZAR AKBAR, J. This First Rent Appeal is directed against the order dated **06.5.2019** 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 respondent No.1 in Rent Case **No.53/2018** struck off the defence of the Appellant due to his failure to comply with the tentative rent order passed on **04.2.2019**.

2. Brief facts of the case are that Respondent had filed rent case **No.53/2018** against the appellant for his eviction from Flat No.3, on 2nd Floor, in the building known as “Najma Lodge” constructed on Plot No.E-21/5, situated at Chandio Village, Clifton, Karachi (hereinafter the demised premises) on the ground of default in

payment of rent. The Respondent claimed that the appellant is defaulter in payment of rent from **January, 2018** onward due and payable in terms of the written tenancy agreement dated **12.09.2010**, therefore, she filed rent case under **Section 17(2)(i)** of C.R.R Act, 1963.

3. The learned counsel for the Appellant/opponent filed written statement and contended that applicant/Respondent No.1 is not a real owner of the subject premises as appellant/opponent has purchased the property from her husband on payment of Rs.300,000/- on Pugri Basis and rent amount was fixed at Rs.2000/- per month, which the opponent/appellant is paying without any delay. However, after death of her husband, the applicant/Respondent No.1 increased month rent to Rs.3000/- which is being paid without any default. He also produced Money Order for the month of December, 2018 as to Rs.3,000/-.

4. The learned Addl. Rent Controller on **04.2.2019** in terms of his mandatory statutory duty has been pleased to pass tentative rent order whereby the appellant/opponent was tentatively directed to deposit future monthly rent @ Rs.800/- from March, 2019 onward in the Court of Additional Controller of Rent, Clifton Cantonment before 5th day of each month. The opponent/appellant was also directed to deposit arrear of Rs.1,04,000/- for the period from January, 2018 to November, 2019 and January, 2019 to February, 2019 (13 months) @ Rs.8000/- per month on or before 01.03.2019. The applicant/Respondent No.1 was allowed to withdraw future monthly rent @ Rs.8000/- per month from March,

2019 onward @ Rs.3000/- per month as well as arrears amount of Rs.6000/- from January, 2019 to February, 2019 @ Rs.3000/- per month. The appellant did not comply tentative rent order, therefore, the opponent/respondent No.1 filed an application under Section 17(9) of the Cantonment Rent Restriction Act, 1963 on **11.3.2019** praying therein to strike off the defence of the opponent as he failed to comply with the rent order. The Rent Controller keeping in view the pleadings, after hearing the parties disposed of the application under Section 17(2)(i) of the Cantonment Rent Restriction Act, 1963 in the following terms:-

I, therefore, allow the application under Section 17(2)(i) of the Cantonment Rent Restriction Act, 1963 and strike off the defence of the opponent. The opponent is directed to vacate the demised premises i.e. Flat No.3, located on 2nd Floor, Najma Lodge, constructed on Plot No.E-21/5, Chandio Village, Clifton Karachi and handover its vacant and peaceful possession to the applicant within thirty (30) days, failing which the applicant can get this order executed from a Court of Competent jurisdiction. There is no order as to cost.

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

6. 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 strike 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.

7. The perusal of record shows that for the last 14 months (January,2019 to February, 2020) not a single penny towards rent has been paid by the appellant to the landlord. The petitioner has not paid rent from January, 2019 though the petitioner is tenant in the demised premises since **September, 2010** under the admitted tenancy agreement dated **12.9.2010**.

8. 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.

9. In view of the above facts, the findings of the Court are not impeachable. Consequently, this First Rent Appeal was dismissed alongwith pending application by short order dated **17.2.2020** and these are reasons for the same. The appellant is directed to vacate the demised premises within **30 days** from the date of this order. In case of his failure to vacate the same, the executing Court as soon as it receive an execution application should issue writ of

possession with police aid to ensure delivery of possession of the demised premises to the respondent.

JUDGE

Karachi
Dated:18.02.2020

SM