

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
First Rent Appeal No. 15 of 2021

Date	Order with Signature of Judge
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- 1.For hearing of CMA No.1590/2021 (Stay) :
- 2.For hearing of main case :

15.10.2021 :

Mr. Tahir Hassan Qureshi Advocate for the appellants
alongwith Mr. Hassan Qureshi Advocate.
Mr. Muhammad Taqi Advocate for respondent No.1.

Mr. Muhammad Taqi Advocate files power on behalf of respondent No.1, which is taken on record.

Rent Case No.06/2020 was filed by respondent No.1 / landlord against the appellants / tenants for their eviction on the grounds of personal need and default in payment of monthly rent. In the aforesaid case, a tentative rent order was passed by the learned Rent Controller on 26.11.2020 by directing the appellants to deposit the arrears of rent amounting to Rs.152,000.00 for the period May 2019 to November 2020 within thirty (30) days, and also to deposit future monthly rent at the rate of Rs.8,000.00 per month on or before the fifth day of each English calendar month. As compliance of the aforesaid order was not made by the appellants, their defence was struck of by the learned Rent Controller through the impugned order dated 25.02.2021 with further direction to them to vacate the demised premises within thirty (30) days.

It is contended, *inter alia*, on behalf of the appellants that appellant No.2 had purchased the demised premises from respondent No.1 and due to this reason he was not liable to pay rent to him ; and, Suit No.2167/2019 filed by him against respondent No.1 for specific performance is *subjudice* before the Civil Court. It is well-settled that if the tenant asserts that he is no more a tenant as he had purchased the property, even then he has to vacate the property and file a Suit for specific performance of the sale agreement ; he would be entitled to possession of the property in accordance with law only if he succeeds in his Suit ; and, till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, the landlord would be entitled to recover rent. In the present

case, it is an admitted position that the aforesaid Suit for specific performance filed by appellant No.2 is still pending and no decree has been passed therein in his favour up till now. It is also an admitted position that compliance of the tentative rent order was not made by the appellants. Therefore, the Rent Controller had no option, but to strike off their defence as held by the Hon'ble Supreme Court in Safeer Travels (Pvt.) Ltd. V/S Muhammad Khalid Shafi through legal heirs, PLD 2007 S.C. 504. The impugned order is in accord with the law laid down by the Hon'ble Supreme Court and as such does not require any interference.

Learned counsel for the appellants states that the appellants would be satisfied if, subject to payment / deposit of arrears and future monthly rent as well as settlement of all utility bills in respect of the demised premises, a period of six (06) months is allowed to them to vacate the demised premises. By consent, it is hereby ordered as under :

1. The appellants shall hand over the vacant and peaceful possession of the demised premises to respondent No.1 **on or before 15.04.2022** ;
2. Appellant No.2 Fayyaz Maqbool shall deposit the arrears of rent amounting to Rs.152,000.00 mentioned in the impugned order as well as the rent accumulated thereafter for the period December 2020 till October 2021 with the Nazir of this Court **on or before 15.11.2021** ;
3. Appellant No.2 shall deposit the future monthly rent with effect from November 2021 till the handing over of the possession of the demised premises to respondent No.1 at the rate of Rs.8,000.00 per month with the Nazir of this Court **on or before the fifth day of each English calendar month** ;
4. Appellant No.2 shall clear / settle all utility bills in respect of the demised premises **on monthly basis** ;
5. If compliance of this order is not made by the appellants, writ of possession in respect of the demised premises shall be issued by the executing Court without notice to the appellants and with or without police aid, as the case may be ; and,

6. Respondent No.1 shall be entitled to withdraw the amounts deposited by appellant No.2 with the Nazir of this Court in terms of this order without any further order, however, after proper verification and identification.
7. Suit No.2167/2019 filed by appellant No.2 Fayyaz Maqbool shall be decided by the learned trial Court strictly on merits and without being influenced by this order.

By consent, this appeal and listed application are disposed of in the above terms with no order as to costs.

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