

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

First Rent Appeal No. 46 of 2021

Date	Order with signature of Judge
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1. For orders on CMA No.5284/2021 (Urgency) :
2. For orders on CMA No.5285/2021 (Exemption) :
3. For orders on CMA No.5286/2021 (Stay) :
4. For hearing of main case :

26.10.2021 :

Mr. Asif Ibrahim, advocate for the appellant.

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NADEEM AKHTAR, J . – Rent Case No.17/2020 was filed by respondent No.1 / landlord against the appellant / tenant for his eviction on the grounds of personal need and default in payment of monthly rent and utility bills. In the aforesaid case, a tentative rent order was passed by the learned Rent Controller on 01.07.2021 by directing the appellant to deposit the arrears of rent amounting to Rs.528,000.00 for the period October 2018 to 30.06.2021 within thirty (30) days at the rate of Rs.16,500.00 per month, and also to deposit future monthly rent on or before the fifth day of each English calendar month at the same rate. It was observed by the learned Rent Controller in his aforesaid order that respondent No.1 will not be entitled to withdraw the above mentioned amounts till the final decision of the rent case. It appears that an application was filed by the appellant before the learned Rent Controller for the review of the aforesaid order, which was dismissed vide order dated 05.08.2021. As compliance of the aforesaid order was not made by the appellant, his defence was struck off by the learned Rent Controller through the impugned order dated 23.09.2021 with further direction to him to vacate the demised premises within thirty (30) days.

It is contended, *inter alia*, on behalf of the appellant that the appellant had purchased the demised premises from respondent No.1 and due to this reason he was not liable to pay rent to him ; and, the Suit 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 premises, even then he has to vacate the premises and file a Suit for specific performance of the sale agreement ; he would be entitled to possession of the premises in

accordance with law only if he succeeds in his Suit ; 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 ; and, till the time that the tenant is able to establish his claim for specific performance on the basis of a sale agreement, the landlord would continue to enjoy the status of being owner and landlord of the premises, and till such time the relationship between the parties would be regulated by the terms of the tenancy. The above view is fortified by Haji Jumma Khan V/S Haji Zarin Khan, PLD 1999 SC 1101, Kassim and another V/S S. Rahim Shah, 1990 SCMR 647, Muhammad Iqbal Haider and another V/S Vth Rent Controller / Senior Civil Judge, Karachi Central and others, 2009 SCMR 1396, Syed Imran Ahmed V/S Bilal and another, PLD 2009 SC 546, and Abdul Rasheed V/S Mqbool Ahmed and others, 2011 SCMR 320.

In the present case, it is an admitted position that the Suit filed by the appellant 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 appellant. Therefore, the Rent Controller had no option, but to strike off his 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 by this Court. Accordingly, the appeal and listed application are dismissed in limine with no order as to costs.

J U D G E