

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

First Rent Appeals No.50, 51, 52 & 53 of 2008

Appellant : Anwar Ahmed in all appeals
through Mr. Iftikhar Javaid Qazi Advocate.

Respondent : Iqbal Ahmed in FRA No.50/2008.

Respondent : Akhlaq Ahmed in FRA No.51/2008.

Respondent : Jamil Ahmed in FRA No.52/2008.

Respondent : Mohammad Furqan in FRA No.53/2008.
all respondents called absent.

Dates of hearing : 06.08.2019 and 03.09.2019.

J U D G M E N T

NADEEM AKHTAR, J. – Through these first rent appeals under Section 24 of the Cantonments Rent Restriction Act, 1963, (**‘the Act’**), the appellant has impugned identical orders dated 07.05.2008, passed by the Additional Controller of Rents, Clifton Cantonment, Karachi, in Rent Cases No.05/1991, 06/1991, 08/1991 and 09/1991 filed by the appellant for eviction of the respondents / tenants on the ground of personal need. The above rent cases were filed in respect of separate portions of the building constructed on Plot No.A-11/II, Bazaar Area, Nishtar Road, Delhi Colony, Karachi (**‘demised premises’**). Through the impugned orders, the above rent cases filed by the appellant were dismissed by the learned Rent Controller. As the demised premises are situated in the same building and the facts and questions of law are common in all these appeals, the same are being decided and disposed of through this common judgment.

2. Relevant facts of these cases are that the above building, comprising ground and two upper floors, was a residential building, but its previous owner had divided the ground floor thereof into four portions (demised premises) and had rented out the same to the respondents for commercial purposes. The said building was purchased by the appellant for his own use and occupation and that of his family members and after purchasing the building, he issued legal notices to the respondents to vacate the demised premises. As the respondents did not vacate the demised premises, the appellant filed the above rent cases which were contested by the respondents. The appellant himself appeared in the witness box and produced relevant documents in support of his case,

whereafter he was cross-examined. It is stated in the impugned orders that the respondents had filed their affidavits-in-evidence, but they did not appear for cross-examination and as such their side was closed. After evaluating the evidence and hearing the arguments advanced on behalf of the parties, the eviction applications filed by the appellant were dismissed by the Rent Controller through impugned orders.

3. Mr. Shamshad Ali Qureshi advocate had filed power on behalf of the respondents in all these appeals, but he did not appear on any date of hearing after 27.03.2018 although his power is still subsisting. Record shows that despite continuous absence of the respondents and their learned counsel, several opportunities were given to them by way of notices, but they chose to remain absent.

4. While dismissing the eviction applications it was held by the Rent Controller that the demised premises, which are commercial "*although not officially*", were rented out by the previous owner as commercial premises and the appellant had purchased the same with tenants / respondents ; under Section 17(4)(b) of the Act, the owner of a commercial building is entitled to apply for eviction of the tenant for his own personal use, but in the present case the appellant had pleaded personal need for himself as well as for his family members for their residence ; the appellant had not obtained approved plan from the competent authority in respect of reconstruction of the building, the entire ground floor whereof was not in habitable condition ; and, the building owned by the appellant's wife can be used by the family members of the appellant.

5. The registered lease dated 30.03.1974 of the subject land on which the above building and demised premises are situated is available on record, clause 5 whereof shows that it was executed only for residential purposes. In the impugned orders it was mentioned by the Rent Controller himself that the status of the building / demised premises has not been officially changed / converted to commercial. Moreover, this fact regarding status of the demised premises was not disputed by the respondents. Therefore, it was an admitted and established position that demised premises were part and parcel of a residential building. The fact that the previous owner of the building had rented out the demised premises for commercial purposes did not change the status thereof. After purchasing the building, the appellant was fully justified in seeking restoration of the status of demised premises to residential. In fact, had he not done so, the competent authority could have taken action for cancellation of the lease on account of breach of its covenants. Thus, the eviction applications could not be dismissed on the ground that the demised premises were already

being used for commercial purposes and respondents were already tenants when the building was purchased by the appellant. The observation in the impugned orders that under Section 17(4)(b) of the Act the owner of a commercial building is entitled to apply for eviction of the tenant for his own personal use, but in the present case the appellant had pleaded personal need for himself as well as for his family members for their residence, is misconceived as the building was admittedly not commercial.

6. The other ground for dismissing the eviction applications that the building owned by the appellant's wife can be used by the family members of the appellant, is not sustainable in law. The learned Rent Controller failed to appreciate that a landlord seeking eviction of his tenant on the ground of personal need cannot be deprived of such valuable and inalienable right provided to him by law merely on the ground that his spouse and/or any other member of his family owns other property(ies) ; and, when a landlord seeks eviction of his tenant on the ground of personal need, the only burden on him is to prove that he requires the premises in good faith for his own use and occupation and he does not have any other property in the same vicinity to fulfill his said need. The law also permits the landlord to seek eviction of his tenant on the ground of personal need of his spouse and children.

7. It was specifically pleaded by the appellant in his eviction applications that the building was purchased by him for his use and occupation and that of his family members so that they may live together, and in his affidavit-in-evidence / examination-in-chief it was stated by him on oath that in addition to him, his wife and seven children, his widow mother, three unmarried sisters and one unmarried brother were also living with him. Record shows that the attorney of respondent Iqbal Ahmed had admitted in his cross-examination that the appellant was living in a rented premises. Record further shows that the respondents could not dislodge the evidence produced by the appellant and the same had remained un-rebutted. In the above circumstances, the appellant had succeeded in proving his case of personal need.

8. In view of the above discussion, the impugned orders, being not sustainable in law or on facts, are liable to be set aside. Accordingly, all these appeals are allowed, however, with no order as to costs.

J U D G E