

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
FRA No.31 of 2021

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Date                                      Order with Signature(s) of Judge(s)  
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Hearing of case (Priority).

1.For hearing of CMA No.3476/2021.

2.For hearing of main case.

**20.04.2022**

Mrs. Shazia Sultana, the appellant, present in person

Mr. Aftab Ahmed, advocate for respondent No.2.  
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**ZAFAR AHMED RAJPUT, J:-** This First Rent Appeal is directed against the order, dated 08.06.2021, whereby the learned Additional Controller of Rents, Clifton Cantonment, Karachi ("**Controller of Rents**") while allowing application under section 17 of the Cantonment Rent Restriction Act, 1963 being Rent Case No.17/2017, filed by the respondent No.2/applicant, directed the appellant/opponent to vacate the demised premises i.e. Flat situated at Ground Floor, KE 75 PA 51 Delhi Colony, Karachi, and handover its vacant physical possession to respondent No.2 within thirty (30) days, failing which the respondent No.2 can get the order executed from the Court of competent jurisdiction.

**2.** Brief facts of the case, as narrated in the rent application, are that the respondent No.2 rented out the demised premises to the appellant under a written agreement of tenancy, dated 05.02.2011, on monthly rent @ Rs.18,000/- per month excluding utility charges. The appellant deposited a sum of Rs.30,000/- as security deposit. It was the case of the respondent No.2 that the appellant since July 2011 deliberately and willfully stopped payment of monthly rent without any reason, despite several requests made by him. It was also case of the respondent No.2 that the appellant also committed willful default in payment of utility

charges and she converted the residential premises illegally into commercial by running a beauty parlor in the name and style of "Rukhsar Beauty Parlor" in it. It was also case of the respondent No.2 that the demised premises was required by him for his personal bona fide use; as such, the appellant was liable to be evicted from it.

**3.** On being served with the notice, the appellant contested the rent case by filing written statement wherein she denied the allegations leveled against her and claimed that she was the absolute owner of the demised premises. She pleaded that in the year 2011, the rent was fixed at Rs.5000/- per month on *pagri*/goodwill basis for that she paid Rs.500,000/- to respondent No.2 as goodwill amount but no goodwill agreement was executed between the parties, and she was paying Rs.5000/- per month regularly without committing any default. She further pleaded that the tenancy agreement produced by the respondent No.2 was false fabricated and bogus and her signatures thereon were not real. She also stated that at the time of receiving goodwill amount, the respondent No.2 had promised with her that her name would be registered in the office of concerned Sub-Registrar and permitted her to run beauty parlor in demised premises. She also pleaded that she paid monthly rent regularly to the respondent No.2 and she deposited monthly rent in MRC No.24/2017. She also claimed that the respondent No.2 was under obligation to register conveyance deed in her favour.

**4.** Learned Controller of Rents after recording pro and contra evidence of the parties and hearing their respective counsel allowed the rent case, vide impugned order, by holding that the appellant committed default in payment of monthly rent and the demised premises was required by the respondent No.2 for his personal bona fide use in good faith.

**5.** After hearing the appellant in person, learned counsel for the respondent No.2 and perusing the material available on record, it appears that the appellant in her cross-examination has admitted that she got the demised premises on rent from 05.02.2011 through written agreement. She denied that the rent of the property was Rs.18,000/- per month and advance was Rs.30,000/- and deposed that she paid Rs.500,000/- in advance. She also denied that she was not tendering monthly rent since July 2011 to the respondent No.2; however, she admitted that she has been depositing monthly rent @ Rs.5000/- per month from January 2017 in MRC No.24/2017. It is an admitted position that the appellant did not produce any agreement in support of her claim that the monthly rent of the demised premises was Rs.5000/-. She also failed to prove that she paid monthly rent from July 2011 to December 2016 to respondent No.2. She also failed to prove her plea that she obtained the demised premises from the respondent No.2 on goodwill basis and in this regard she paid a sum of Rs.500,000/- to him. On the contrary, she has admitted in her cross-examination that she obtained the property in question through written agreement. It appears that the appellant at the one hand claims that the tenancy agreement, dated 5<sup>th</sup> February 2011, is a fake and bogus document, while on the other hand she admits that she obtained the demised premises under a written agreement and that she did not violate the terms and conditions of the agreement and she is running beauty parlor in the demised premises as “shop” is mentioned in the agreement.

**6.** Non-payment of rent of premises being a negative factor, it is initially for the landlord to prove that no rent is paid to him by the tenant. Landlord having stated so on oath that the disputed rent has not been paid by the tenant to him, burden has shifted on tenant to prove payment of rent by positive evidence. Even in case where the tenant did not protest on refusal of landlord to issue receipts and kept

quiet on account of confidence that he reposed in landlord, presumption would be that tenant had not paid rent. In the instant case, the respondent No.2 claimed on oath the commission of default by the appellant in payment of monthly rent from July 2011 until filing of the rent case i.e., 28.02.2017; hence, burden shifted on the appellant to prove that she paid the monthly rent for the said period, wherein she has failed to do so.

**7.** As regard *Pagri*/goodwill, the perusal of record shows that the appellant has taken self-contradictory pleas in her written statement and evidence. In para (1) of her written statement, she has pleaded that the monthly rent of Rs. 5000/- was fixed on *pagri*/goodwill basis, while in para (4), she has pleaded that she is already depositing monthly rent in MRC No.24/2017, now the respondent No.2 should register conveyance deed as per mutual verbal agreement between the parties. In her cross-examination, she has admitted that she obtained property in question through written agreement, and further deposed that she is depositing rent in MRC in lieu of agreement to purchase the property and not rent. The respondent No.2 has denied charging *pagri* and the agreement does not have any reference to payment of *pagri*. As such, the appellant has failed to prove that she obtained demised premises on *pagri*/goodwill basis.

**8.** For the forgoing facts and reasons there appears no illegality or irregularity in the impugned order passed by the Controller of Rents requiring any interference of this Court under its appellate jurisdiction; hence, instant appeal is dismissed with no order as to costs along with pending application(s) by directing the appellant to vacate the demised premises within sixty (60) days hereof.

JUDGE