

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

FRA No.01 of 2022

Appellants : Muhammad Asif Qureshi & another
through Mr. Muhammad Asif Shaikh,
Advocate.

Respondent : Waqar through Mr. Raja Nauman
Khan, Advocate.

Date of Hearing : 29.04.2022.

Date of Judgment : 29.04.2022.

J U D G M E N T

Zulfiqar Ahmad Khan, J: Through this instant First Rent Appeal, appellants have impugned the judgment dated 15.12.2021, passed by learned Rent Controller Cantonment Board, Hyderabad, where Rent Application No.01/2019 filed by respondent was allowed and appellant No.1 / opponent was directed to vacate the demised premises within one month's time from the date of the order and deliver its peaceful, physical possession to the landlord or its authorized representative.

2. Precisely, facts of the case are that respondent had filed Rent Application No. 01/2019 against the appellants / opponents before the learned Rent Controller Cantonment Area, Hyderabad for vacation of rented premises of shop bearing No.32 situated at ground floor Chandi Shopping Mall, Saddar, Hyderabad and deliver the possession on grounds of default, sublet & requirement of the shop for personal bonafide use. He stated in his application that he is owner/landlord of the subject shop. He also stated that he had entered into rent agreement on judicial stamp paper No.402 dated 07.08.2010 with the opponent No.1 in respect of the shop for a period of eleven months, the rent was decided initially at the rate of Rs.45,000/- per month. He further stated that the monthly rent was eventually increased to the rate of Rs.1,20,000/- per month w.e.f. September, 2018 whereas the appellant No.1 / opponent has paid the rent till the month of August, 2018 at previously agreed

rate of Rs.45,000/- per month, but thereafter he stopped paying rent, however, the appellant No.1 claimed that he had sent money order at the rate of Rs.45,000/- for the months of September & October, 2018 which were refused by the respondent, therefore, the appellant No.1 sent legal notice to the respondent which was replied by the respondent through his counsel at Ex.F/1. The respondent further stated that the petitioner No.1 has also sublet the subject shop to the appellant No.2 / opponent No.2 without the consent of the respondent. The respondent further stated that the subject shop is required for personal bonafide use of his brother namely Dainyal. The respondent therefore, filed the rent application with the following prayers:-

- a) To direct the appellants/opponents to vacate the rented premises of the shop and to deliver the possession of the same to respondent.
- b) To direct the appellant No.1 / opponent to deposit the monthly rent since the month of September, 2018 till the delivery of possession at the rate of Rs.1,20,000/-per month regularly and so also pay all outstanding amount of electricity.
- c) Costs of the rent application be awarded to the respondent /applicant.
- d) Any other relief which this Honourable Court deems fit and proper may be granted.

3. The summons were issued to the appellants / opponents whereupon appellant No.1 / opponent had appeared with his counsel and filed his written reply at Ex.01 dated 17.07.2019, meanwhile, the Court passed tentative rent order at Rs.87,890/-per month dated 24.07.2019 at Ex.02. The Court framed issues on 05.08.2020 at Ex.03. The respondent / applicant filed his affidavit in evidence at Ex.04 dated 21.08.2019 along with his witness at Ex.05 dated 21.08.2019.

4. On the pleadings of the parties, the Court framed the following issues:-

1. Whether the applicant/respondent is landlord of the shop No.32, ground floor, Chandni Cinema Cantt.Board, Hyderabad?
2. Whether the appellant No.1 / opponent has committed any default in payment of monthly rent?
3. Whether the appellant No.1 / opponent has sublet the rented shop to petitioner No.1 / opponent No.2?
4. Whether the demised premises is required by the applicant / respondent for personal bonafide use?

5. What should the decree be?

5. The respondent / applicant and his witness were cross examined by the counsel of appellants / opponents and evidence of respondent / applicant was recorded vide statement at Ex.6 and 7.

6. The appellant No.1 / opponent filed his affidavit in evidence at Ex.08 along with his witness at Ex.09 and they were cross examined by the counsel for respondent / applicant at Ex.10. The appellant No.1 produced money order receipt dated 07.11.2018 of Rs.45000/- as Ex.A/1 and A/2, GPO/UMS receipt dated 07.11.2018 of Rs.45,000/- as Ex.A/3, delivery report of money order dated 07.11.2018 vide receipt No.CR/UMO 0446623/2018 as Ex.A/4, Pakistan Post Office money order receipt dated 09.11.2018 of Rs.90,000/- as Ex.A/5, delivery report of money order dated 04.12.2018 vide receipt No.CR/UMO 04466256/12/2018 as Ex.A/6, amended plaint of Rent Application for rent deposit as Ex.B, Legal Notice No.259/LN/018 dated 30.11.2018 as Ex.C/1, Courier receipt of TCS of legal notice dated 30.11.2018 as Ex.C/2, Rent deposit receipt No.9875 dated 01.07.2019 as Ex.D/1, Rent deposit receipt No.9862 dated 03.06.2019 as Ex.D/2, Rent deposit receipt No.9838 dated 02.05.2019 as Ex.D/3, Rent deposit receipt No.9801 dated 01.03.2019 as Ex.D/5, Rent deposit receipt No.9787 dated 22.01.2019 as Ex.D/7, money order receipt dated 26.11.2018 of Rs.90,000/- as Ex.E/1 & E/2. The side of the appellant No.1 / opponent was closed vide statement dated 03.03.2021 as Ex.11.

7. Thereafter, the matter was proceeded and after hearing the parties, learned Rent Controller Cantonment, Hyderabad allowed the rent application of respondent vide order dated 15.12.2021. Being aggrieved, appellants preferred this First Rent Appeal, where it is to be determined that whether any interference is warranted in the impugned order or not.

8. Learned Counsel for the appellants submitted that the impugned order is against the law, equity and natural justice and replete with illegalities and irregularities, hence liable to be set aside. Per learned counsel, the trial court had failed to consider that the appellant never defaulted payment of monthly

rents, let alone that for the months of September and October 2018 as according to the rent agreement, he was only obligated to pay rent to the tune of Rs.45,000 per month till the fifth day of every month, which was so tendered by him to the respondent, but the latter refused to receive the same, instead demanded exorbitant amount of rent to the tune of Rs.120,000/- despite the fact that in the month of September 2017 it was decided between the parties that the rent would not be increased upon further payment of Rs.550,000/- towards advance rent fixed deposit and thereafter the appellant had been paying the rent at the rate of Rs.45,000/- till the tentative order dated 24th July 2019 passed in the instant rent application where rent was enhanced to Rs.87,890/- per month.

9. It was reiterated that on the refusal of respondent to accept the monthly rent to the tune of Rs.45,000/- for the month of September, 2018 respondent was reminded of the commitment made in the month of September, 2017 that upon having paid the deposit of Rs.550,000/- no escalation would be claimed, but the appellant was put on false hopes to collect the rent for the month of September and October 2018. When the agreed rent of Rs.45,000/- was eventually sent through postal money order, the landlord refused to accept it whereafter the appellant sent a legal notice regarding the deposit of rent that resulted in filing of the subject rent application before the court of the learned Rent Controller. Learned counsel next stated that from the month of September 2017, the appellant has been depositing the rent up-to-date without any default with the learned Rent Controller and placed reliance on the record of the Misc. Rent Application No. 01 of 2018 filed by the appellant prior to the filing of the instant rent application, where the appellant sought permission to deposit monthly rent of September 2018 and October 2018 totaling Rs.90,000/-.

10. With regards personal bonafide use, learned counsel stated that the respondent has admitted in his evidence that he has demanded the demised shop for his personal use but has mentioned in his application that the shop is needed for the use of his brother, but failed to show that his brother was

jobless and depending upon the respondent. With regard to the personal bona fide use, learned counsel states that such claim is devoid of any merit as no evidence was produced. By the end of his arguments, the learned counsel requested that the appellant would be ready and willing to vacate the said premises if six month's time be given, which proposal was rejected by the respondent / landlord.

11. Heard the learned counsel for the respective parties and perused the material on record.

12. In the case at hand the relationship between the parties has not been denied where the appellant is the tenant of the respondent-landlord. Relationship between the parties commenced when the parties signed the agreement dated 17th August 2010 where the demised property was rented out at the rate of Rs.45,000/- per month, the agreement also requires the tenant to deposit a sum of Rs.200,000/- as advance rent that will continue to be held by the landlord as long as the agreement lasts. Seemingly parties have certain ups and down. As the agreement did not provide for any escalation, what transpired between the parties after they signed the said agreement can be gauged from the legal notice issued by the tenant to the landlord through his counsel on 30th November 2018, where paragraph 4 of the legal notice suggests that in the month of September 2017, the landlord showed his intention to increase the rent, however, he was advised to choose an option of receiving a sum of Rs.550,000/- towards advance rent instead. It appears that the tenant never fulfilled that part of commitment which resulted in the landlord demanding an enhanced rent of Rs.120,000/- per month. Perusal of the cross-examination of the tenant suggests that he has admitted in his cross that he did not deposit rent for the months of September 2018 to October 2018 in the Court, he rather has taken the plea that he intended to hand out the said amount to the landlord, nonetheless even that promise did not materialize. In his cross, the tenant has admitted that in the demised premises now business is being run by Samsung Mobile Company for the last 6 to 7 years and there are six employees working in the said shop. He further

admitted that salary of these six individuals is being paid by the Samsung Company directly. On the other hand, the landlord has stated that the tenant did not give him rent for four months i.e. from September 2018 to December 2018 particularly when the tenant refused to honour his commitment of making an enlarged fixed deposit in favour of the landlord. Not only that it has come to the Court's knowledge that the appellant had made a default in making payment of the rent, but has also sublet the shop to a third-party i.e. Samsung company as it is admitted by the appellant that all those working in the said shop are directly paid by the Samsung company, which appears to be a clear violation of clause 8 of the rent agreement which provided that the tenant will not sublet the demise shop. Perusal of the order passed by the learned Rent Controller shows that it had eloquently framed issues and has properly answered each one of those. While learned counsel for the appellant has shown interest that the appellant will be willing to vacate the said premises if six month's time is given, but that request has been refused by the landlord. In the given circumstances, I do not find any reason to interfere with the order of the learned Rent Controller, except that the term of one month as specified in the said order is enlarged to three (03) months after which period, the said shop be handed out to the respondent-landlord or his representative in a tidy condition as envisaged by the impugned order. Accordingly, this First Rent Appeal is dismissed.

JUDGE