

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

First Rent Appeal No. 09 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For hearing of CMA No. 1559 of 2019
2. For hearing of main case.

10th September 2020

Mr. Muhammad Aziz Khan, advocate for appellant.
Qazi umair Ali, advocate for respondent assisted by Mr.
Salahuddin Ahmed, advocate.

Salahuddin Panhwar,J:- Through this FRA, petitioner has challenged the impugned order dated 21.02.2019, whereby the learned Additional Controller of Rents Clifton Cantonment while allowing an application under section 17(2)(i) of the Cantonment Rent Restriction Act, 1963 filed by the respondent/ landlord directed the petitioner/ tenant to handover the vacant and peaceful possession of the demised premises to the landlord within 30 days.

2. Heard learned counsel for the respective parties.
3. Candidly petitioner was inducted in demised premises as tenant; due to apprehension that he would be dispossessed without due course of law, he filed civil suit same was culminated due to compromise between the parties, accordingly, application under Order XXIII rule 3 CPC was preferred and that was decided. It would be conducive to refer the terms and condition of that application:

"1. That the Plaintiff had filed the above mentioned civil suit seeking to restrain the Defendant from dispossessing the Plaintiff from the rented premises located at Ground Floor portion of Bungalow No.166, Street No.35,PhaseVI, D.H.A, Karachi admeasuring 600 square yards (the "Said Premises").

2. That the parties had entered into a rent agreement dated 10.8.2011 for a monthly rent of Rs.50,000. The said agreement expired on 09-07-2012 and thereafter the Plaintiff has continued to be in possession/ of the said premises and on one pretext or the other delayed the vacation of the said premises However, the parties have now mutually agreed to settle their differences in the following terms:

- (a) That the Plaintiff will continue to reside at the said premises (ground floor of which only one front door is allocated to ground floor and one door of the ground floor kitchen area) for a period of Two years starting from 15.4.2013 and ending on 15.04.2015 (the "Tenancy Period"). The Plaintiff will pay monthly rent amounting to Rs 55000/- in advance for one year i.e. Rs. 660,000/- now for the period upto 14-04-2014 thereafter pay Rs 60,500/- per month at 10% increase i.e. Rs.726,000/- in advance on or before 10-05-2014 vide pay order for last final year up to 15-04-2015 without recourse to any court of law or authority of the country.
- (b) That the Plaintiff undertakes to vacate the Said Premises at the end of the tenancy Period on 15-04-2015.
- (c) That the Plaintiff shall continue to abide by the terms and conditions set forth in the tenancy agreement dated 10.8.2011 without prejudice to this compromise agreement and shall surrender keys of the Said Premises to the Defendant in order to access the Said Premises with prior intimation to the Plaintiff.
- (d) That the Plaintiff will at all times respect and upheld the norms of living in a house which consists of ground and upper floor.
- (e) The Plaintiff does not have the right to hold keys end or use the internal two doors leading to the stairs of the upper floor.
- (f) That the Plaintiff, as in the past will share the keys/duplicate keys of the locks of the two main gates from the road to the driveway of the house with the Defendant / landlord and / or his duly authorized person with written intimation to the Plaintiff.
- (g) That the Plaintiff, as in the past will share the guard room & servant quarter and 'keys / duplicate keys of locks with the Defendant and / or his duly authorized person.

- (h) All doors (two in number) leading to and for access to the stairs of upper floor is not to be used by the Plaintiff at all for any purpose.”

4. Learned counsel for the petitioner while relying upon decisions reported as PLD 2008 S.C. 663, 1982 CLC 856, 1982 CLC 1314, NLR 1984 AC 175, 1993 CLC 1076, 1982 SCMR 570 and 2008 SCMR 269 contends that admittedly petitioner (tenant) was in custody in a criminal case and he was not served any notice of eviction application, on the contrary his brother received notices appeared in court and sought time. He further contends that trial court while referring section 17(2) of Cantonment of Rent Restriction Act has allowed eviction application, which speaks that on the basis of decree one cannot be ejected as well as he has taken plea that in any default with regard to rent payment is to be decided after leading evidence and that exercise was not undertaken.

5. In contra, learned counsel for the respondent contends that petitioner (tenant) signed the compromise application and that case was ended with undertaking that tenancy will end on 15.04.2015 that order was not challenged by the petitioner (tenant), however, he has filed certified copy of MRC which shows default of tenants.

6. While attending the argument of learned counsel for the petitioner with regard to eviction of petitioner on decree, it would be conducive to refer the provision of Section 17(1) of the Cantonment Rent Restriction Act, 1963 which reads as:-

“17. Eviction of tenant:-- (1) After the commencement of this Act, no tenant whether before or after termination of his tenancy, shall be evicted from the building to his possession or occupation in execution of a decree

passed after such commencement, except in accordance with the provisions of this section.

7. A bare perusal of the above provision makes it clear that after commencement of this Act, the **tenant's** ejectment shall not be a result of *execution of a decree* but could only be recorded in accordance with this section (*17 of the Act*). I would take no exception to this legal position but I am unable to appreciate how this argument is substantial in instant matter? because the order, impugned, has been recorded by the *learned Additional Controller of Rents Clifton Cantonment* which, too, not as *Executing Court* but as *Additional Controller of Rents Clifton* which, too, while proceeding with an ejectment application, filed under this Act therefore, I do not find any substance in such argument, so raised by the learned counsel for the petitioner.

8. Next, I would take up other arguments, so advanced by learned counsel for the petitioner. A bare reading of the Section 17(2) of the Act leaves nothing that for passing an order under this '*Section*' the *satisfaction* of Controller is only requirement for passing such an order of ejectment. Things would stand clear from a direct referral to Section 17(2)(i) of the Act which reads as:-

“(2) A landlord who seeks to evict his tenant shall apply to the Controller for an order in that behalf, and the Controller may, after giving the tenant a reasonable opportunity of showing cause against the application, make an order directing the tenant to put the landlord in possession, **if he is satisfied that:**

- (i) the tenant has not paid or tendered the rent to the landlord within fifteen days of the expiry of the time fixed in the agreement of tenancy for payment of rent, or in the absence of such agreement within sixty days following the period for which the rent is due; or

There appears no escape to the fact that it is the *satisfaction* of the landlord with regard to failure of the tenant in paying up / tendering

the rent, as detailed in this Act. No doubt, the provision of Section 27 of the Act requires an 'enquiry' to be held before passing such order. The 'enquiry' would be required *only* where things are disputed but procedural requirement cannot be insisted when things to be determined through such 'enquiry/procedure' is not disputed.

9. In the instant matter, perusal of the certified copy of MRC shows that certain amount towards rent was paid on 11.03.2019 thereafter, record is silent and subsequently after ten months Rs.484000/- were deposited on 13.01.2020 which, *prima facie*, shows the default *least* a failure of the tenant in paying up / rendering the rent, as his obligation was. Needless to mention that appeal is continuance of trial and all questions can be agitated and examined by this Court as is evident from referral to subsection (2) of Section 27 of the Act which reads as:-

“For the purposes of holding an inquiry under this Act, the Controller and the appellate Court shall have the same power as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:-

- a)...
- b)...
- c)...

Within this, counsel for petitioner was asked regarding explanation, if any, for such *default* while confronting him with legal position i.e:

M/s Uzma Construction Co. v. Navid H. Malik 2015 SCMR 642

21.Similar will be the position of default as regards the payment of rent for the months of December, 1994 and January, 1995, which was required to be paid on or before the 5th of each calendar month, but was admittedly tendered by the respondent through cheque sent via registered post with the covering letter dated 11.2.1995. As per the terms of the tenancy agreement dated 6.3.1979, the parties have mutually agreed for advance payment of rent for each month and the said term was binding on the parties even after the expiry of the terms of tenancy agreement. Thus, at the very initial stage the respondent had committed default in the payment of rent for three consecutive months and not of ten days, as held by the two Courts below.....

22. the respondent has already sent rent for the disputed period of default through cross cheques drawn in favour of the appellant, contrary to the contemplation of the provisions of the act of 1963 in this regard. The cheques were not encashed by the appellant and not even once rent was remitted by the respondent through money order, as per the requirement of law, nor the rent was deposited in the miscellaneous rent case as an alternate arrangement permissible under the law, subject to refusal of rent remitted through money order. Thus, the remittance of rent through cross cheques made by the respondent too the appellant was even otherwise of no consequence **as it violated the said provision of law and thus by itself constituted a default in the payment of rent in clear terms**, as also held in the case of *Reckitt & Colman of Pak. Ltd. (supra)*.

there came no denial to *default* nor the authenticity of the proceedings of said MRC is challenged. Here, it is also worth adding that the petitioner even does not dispute or deny the arrival of the *compromise* between him and the respondent hence can't take an exceptions to his liabilities *least* towards payment of the rent in due time.

10. Since, *prima facie*, there is no denial towards failure in timely payment of the rent hence it would not be fair to allow the petitioner (tenant) to continue taking advantage of technicalities including that of *proper service*, particularly when the tenant has no *prima facie* and *reasonable* explanation for *undeniable* default in discharging his obligations i.e to pay up / tender the rent in due time, therefore, I also do not find any substance in *plea* that default was requiring a *trial* and learned Controller of Rent was not justified in satisfying himself with referral to *admitted* facts alone. It also needs to be added that per compromise the tenancy had come to an end in year 2015 but if the tenant was intending to continue his possession, he was left with no option but to discharge his obligations i.e to pay up / tender rent in due time, as affirmed in the case of *M/s Uzma Construction Co. (supra)*. Thus, only escape was to continue depositing rent amount when MRC

was already opened. I may also add that requirements of a notice and providing an opportunity of hearing may be dispensed with in certain types of cases where such requirement would cause '*more injustice than justice*' (2015 SCMR 338) hence it would not be appropriate to allow the petitioner to take advantage of his own failure in name of procedural requirement when he, otherwise, has no explanation to make the *default* disputed.

11. In consequence to what has been discussed above, I am of the clear view that learned Additional Controller of Rents committed no, *prima facie*, illegality while finding himself satisfied towards failure of petitioner (tenant) in discharge of his obligations i.e to pay up/ tender the rent in due time. Accordingly, instant FRA merits no consideration is dismissed. Petitioner (tenant) shall handover the peaceful possession of the demised premises to the respondent (landlord) within 03 months from the date of this order. Needless to mention that in case the petitioner fails to vacate the demised premises within the stipulated period, writ of possession with police aid may be issued without further notice.

Sajid

JUDGE