

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

F.R.A. No. 32 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGES
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1. For hearing of Misc. No.5276/2020
2. For hearing of main case:

14-04-2022

Mr. Muhammad Zahid Kabeer, Advocate for appellant.
Barrister Raja Muhammad Arsalan, Advocate for respondents.

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Omar Sial, J.: Syed Abdul Razzaq has filed this appeal impugning an order dated 12.11.2020 passed by the learned Additional Controller of Rents, Cantonment Board Clifton. In terms of the said order Razzaq was ordered to vacate the premises he was a tenant in within 30 days of the order.

2. The background necessary for the present purpose is that Razzaq leased a shop bearing address Shop No. 1, Plot No. 11/C/II situated in Street No. 11 of the Bukhari Commercial Area in Defence Phase 6, Karachi from Mohammad Saboor (Respondent No. 1 in these proceedings). The rent agreement between the two was first executed on 15.10.2010 and then renewed from time to time. Razzaq defaulted in the payment of rent and as a consequence Saboor filed an application under section 17(2)(1)(4) of the Cantonment Rent Restriction Act, 1963. The application was allowed vide the impugned order.

3. In the current proceedings, the learned counsel for the appellant has argued only on two grounds, which are as follows:

- (i) Abdul Razzaq was not represented in the proceedings before the learned Rent Controller and the order was passed ex-parte.
- (ii) A panchayat committee had decided the dispute between the two parties.

No other ground was agitated.

4. I have heard the learned counsel for the appellant Razzaq as well as the learned counsel for the respondent Saboor. My observations and findings are as follows.

5. The record reflects that notice was served to Razzaq by all modes (bailiff, courier, pasting and publication) but Razzaq did not effect an appearance. Hence, on 14.09.2020, service was held good. The matter then proceeded ex-parte against Razzaq. These facts have not been disputed by the learned counsel however he has argued that because of the prevailing pandemic at the time, notice was not received by Razzaq. With much respect I am not inclined to agree with the learned counsel. The learned counsel for Saboor has put on record photographs which show the court's bailiff pasting the notice on the wall of the shop, while the shop is open and doing business. The record reflects that on 14.09.2020 the business partner of Razzaq had filed an application under Order 1 Rule 10 C.P.C. in the rent case claiming that he was the owner of the chop but that application was dismissed on 12.11.2020. The record also reflects that the appellant Razzaq had received a copy of the ejectment application. It appears though that the endorsement that a copy has been received was covered on the copy of the application which Razzaq has attached with the appeal. None of these facts was disputed or rebutted by the learned counsel.

6. With much respect, what a panchayat committee decided, holds no legal weight and irrespective of the decision cannot form the basis of a decision in these appellate proceedings. Even the "agreement" that the learned counsel refers to as being the outcome of the panchayat decision is not signed by the respondent or his attorney. Quite surprisingly, the learned counsel has also not urged that there was no default in payment of rent. There appears to be a default in the payment of rent too but the respondent is so sick and tired of the never ending proceedings that the learned counsel for the respondent submitted that he will not even demand the rent dues if the appellant vacates the premises.

7. In view of the above, no ground has been raised or argument that would merit an interference with the order of the learned Rent Controller. To the contrary, it appears from the record that it is appellant Razzaq, who by hook or crook, has attempted to prevent the respondent from enjoying his property. Accordingly the appeal is dismissed and the appellant directed to vacate the premises within 15 days of this order.

JUDGE