

ORDER SHEET  
THE HIGH COURT OF SINDH, KARACHI  
FRA No. 10 of 2023

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Dated: Order with signature of Judge(s)

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1. For orders on office objection a/w reply as at 'A'
2. For hearing of CMA No.3728/2023.
3. For hearing of CMA No.2566/2023
4. For hearing of Main Case.

Date of hearing : 29 May 2023.

Appellant : Nemo

Respondent No.1 : Sheikh Muhammad Zahid represented  
by Mr. Ahmed Ali Hussain, Advocate

Respondent No. 2 : Sarwat Zahid represented by Mr.  
Ahmed Ali Hussain, Advocate

**JUDGEMENT**

**MOHAMMAD ABDUR RAHMAN,J:** This is an Appeal that has been maintained by the Appellant under Section 24 of the Cantonments Rent Restriction Act, 1963 impugning an order dated 14 February 2023 passed by the Additional Controller of Rents Clifton Cantonment Karachi in Rent Case No. 60 of 2022 whereby an application that had been maintained by the Respondents under the provision of clause (i) of Sub-Section 2 of Section 17 of the Cantonments Rent Restriction Act, 1963 was granted and the Appellant was directed to be evicted from a tenement.

2. It is common ground as between the Appellant and the Respondents, that the Respondents are the owner of the second floor of the building constructed on Plot No. 2-C, Shahbaz Commercial Lane No.2, Phase-VI, Defence Housing Authority, Karachi (hereinafter referred to as the 'Said Tenement').

3. The Respondents filed an application under clause (i) of Sub-Section (2) of Section 17 of the Cantonments Rent Restriction Act, 1963 against the Appellant seeking the eviction of the Appellant from the Said Tenement on the grounds that the Appellant had breached its obligation to pay rent to the Respondents of an amount of Rs.344,940 (Rupees Three Hundred and Forty Four Thousand Nine Hundred and Forty) per month from the month of May 2022.

4. After the filing of Rent Case No. 60 of 2022, notices were issued by the Additional Controller of Rents Clifton Cantonment Karachi to the Appellant through the Bailiff for 5 October 2022 whereafter on 11 October 2022 one Syed Muhammad Hassan Meerza appeared on behalf of the Appellant and undertook to file a vakalatnama and also received a copy of Rent Case No.60 of 2022. Finally on 20 December 2022 a counsel for the Appellant appeared and requested for time to file a Written Statement and which request was granted subject to the Appellant depositing the current rent for the month of January, 2023 along with arrears from the month of May 2022 and the matter was adjourned to 10 January 2023.

5. On 10 January 2023 (which was inadvertently written in the order sheet as 10 December 2022) the Appellant's Counsel failed to file a Written Statement and instead filed another application for adjournment. The Additional Rent Controller, Clifton Cantonment Board, Karachi rejected the Appellants application for adjournment and declared the Appellant ex-parte and adjourned the case for 31 January 2023 to permit the Respondents to file an Affidavit-in-Exparte proof. The Respondents thereafter adduced evidence in support of their Application by filing an Affidavit-in-Exparte proof on 14 February 2023 and on which date one Mr. Jahanzeb Khan filed his vakalatnama to represent the Appellant.

Thereafter, the Additional Controller of Rents Clifton Cantonment Karachi by an order dated 14 February 2023 passed in Rent Case No. 60 of 2022 was pleased to allow the Respondents application in the following terms:

“ .. I, therefore, allow the ejectment petition filed by the applicant through her attorney under section 17 Cantonment Rent Restriction Act, 1963 and direct the opponent or anybody else holding possession of the rented premises to vacate the demised premises i.e. 2<sup>nd</sup> floor, Plot No.2-C, Shahbaz Commercial Lane No.2, Phase-VI, Defence Housing Authority, Karachi and handover its vacant and peaceful possession to the applicant within (30) days. In case of any violation of this order on the part of opponent, the applicant can get the order executed from a Court of competent jurisdiction. There is no order as to cost. Announced in open Court.”

6. Being aggrieved and dissatisfied by the order dated order dated 14 February 2023 passed by the Additional Controller of Rents Clifton Cantonment Karachi in Rent Case No. 60 of 2022, the Counsel for the Appellant, at the time of the first hearing of the Appeal on 10 May 2023, had argued that the order dated 14 February 2023 passed by the Additional Rent Controller Clifton Cantonment Board, Karachi in Rent Case No. 60 of 2022 was not a speaking order inasmuch as the Additional Rent Controller Clifton Cantonment Board, Karachi had failed to even apply the evidence that had been adduced by the Respondents to see whether they were entitled to the relief sought in Rent Case No. 60 of 2022 and instead the Additional Rent Controller, Clifton Cantonment Board, Karachi had mechanically passed the order. On 10 May 2023 an ex-parte ad interim order was passed suspending execution proceedings emanating from Rent Case No. 60 of 2022 and notices were issued to the Respondents for 18 May 2023.

7. On 15 May 2023 the Respondents maintained an urgent application and which was granted and this Appeal was fixed on the same date i.e. 18 May 2023 at 1:00 p.m. Despite being aware of the pendency and the date of this Appeal the Counsel for the Appellant choose not to appear

and requested for an adjournment. Consequently and at the request of the Counsel for the Appellant, the matter was adjourned to 23 May 2023 at 11:00 a.m. and on which date the following order was passed:

“ ... *Mr. Jehangir holding brief for Mr. Jahanzeb Khan, advocate for the Appellant request for adjournment on the ground that the latter is out of city. Request is allowed. Matter is adjourned to 29.05.2023 at 11.00 a.m. with a note of caution that if on the next date of hearing counsel for the Appellant does not appear the interim order operating in this matter will be withdrawn. Subject to above, interim order passed earlier to continue till the next date of hearing.*”

Since the Counsel for the Appellant did not appear on 29 May 2023, despite the fact that he was fully aware of the date of these proceedings, the entire appeal was heard in his absence. Clearly after giving three opportunities to the Appellant to proceed with this matter, the conduct of the Appellant must be considered as obstructive towards the decision in this Appeal.

8. In his arguments Counsel for the Respondents admitted that the order dated 14 February 2023 passed by the Additional Rent Controller, Clifton Cantonment Board, Karachi in Rent Case No.60 of 2022 was not a speaking order inasmuch as no findings had been given in that order by the Additional Rent Controller, Clifton Cantonment Board, Karachi on the basis of the evidence adduced by the Respondent in the affidavit-in-exparte proof filed. He however pressed that instead of remanding Rent Case No. 60 of 2022 for re-adjudication before the Additional Rent Controller, Clifton Cantonment Board, Karachi, this being an Appeal, the Court had sufficient power under the provisions of subsection (3) of Section 24 of the Cantonments Rent Restriction Act, 1963 to consider the evidence produced by the Respondents in their Affidavit-in-Exparte proof and to pass findings thereon. He submitted that the contentions of the Respondents mentioned in Rent Case No. 60 of 2022 as well as in the Affidavit-in-Exparte proof were sufficient to prove that that the Appellant

had defaulted on its obligation to pay rent to the Respondents and therefore Rent Case No. 60 of 2022 should be granted. He relied on the decisions reported as **Muhammad Shah vs. Dr. Tajamul Hussain**,<sup>1</sup> **Waseem Khan vs. Asim Hussain & others**,<sup>2</sup> **Mst. Shehla Naz vs. Jawaid & others**,<sup>3</sup> **Anthony Joseph (late) through legal heirs vs. Mrs. Rubina & others**,<sup>4</sup> **Abdul Jabbar vs. Shirin Begum & another**,<sup>5</sup> and **Abdul Ghafoor vs. Mst. Amtul Saeeda**<sup>6</sup> to advance the proposition that in the event that the tenant failed to cross examine the landlord the evidence of the landlord would stand established. He next relied on the decision reported as **Allah Din vs. Habib**,<sup>7</sup> **Mst. Shabana & another vs. M/s. N.P. Cotton Mills (Private) Limited**,<sup>8</sup> **Ghulam Hussain through LRs. Vs. Court of Vth Additional District & Sessions Judge, Karachi (South) & another**,<sup>9</sup> **Abdul Mateen vs. Muhammad Hussain (late) through LRs & another**<sup>10</sup> and **Samson Sircar vs. Rehman Khalil & another**<sup>11</sup> to forward the proposition that to prove default on the part of a tenant to pay rent to a landlord, it is first incumbent on the Landlord to adduce evidence to state that he has not received rent. Once the landlord has done so the burden then shifts onto the tenant to prove that the rent has been duly paid by him. He finally relied on the decision reported as **Safeer Travels (Private) Ltd. Vs Muhammad Khalid Shafi through Legal heirs**,<sup>12</sup> , **Ghulam Muhammad Khan Lundkhor vs. Safdar Ali**,<sup>13</sup> **M.H. Mussadaq vs. Muhammad Zafar Iqbal & another**,<sup>14</sup> and **Syed Asghar Hussain vs. Muhammad Owais & others**<sup>15</sup> to advance the

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<sup>1</sup> 1984 CLC 2252

<sup>2</sup> 2019 YLR 1886

<sup>3</sup> 2010 CLC 1086

<sup>4</sup> 2018 CLC (Notes) 121

<sup>5</sup> 1999 YLR 464

<sup>6</sup> 1999 SCMR 28

<sup>7</sup> PLD 1982 SC 465

<sup>8</sup> 1999 YLR 230

<sup>9</sup> 2009 CLC 272

<sup>10</sup> 1997 CLC 216

<sup>11</sup> 2003 CLC 892

<sup>12</sup> PLD 2007 SC 504

<sup>13</sup> PLD 1967 SC 530

<sup>14</sup> 2004 SCMR 1453

<sup>15</sup> 2018 SCMR 1720

proposition that failure to comply with a rent order to deposit the rent would render the tenant liable to being evicted from a tenement.

9. I have heard the Counsel for the Respondent and have perused the record. It is an admitted position that the Additional Controller of Rents Clifton Cantonment Karachi has apparently decided Rent Case No. 60 of 2022 without passing a speaking order. After the filing of the Affidavit-in-Exparte proof by the Respondent No. 1, it was incumbent on the Additional Controller of Rents Clifton Cantonment Karachi, in the order dated 14 February 2023 passed in Rent Case No. 60 of 2022, to at the very least have discussed the evidence that had been led by the Respondents in the Affidavit-in-Exparte proof so as to see whether in fact that evidence led by the Respondents supported their application to evict the Appellant under the provision of clause (i) of sub-section 2 of Section 17 of the Cantonments Rent Restriction Act, 1963. Regrettably, this was clearly not done. The Supreme Court of Pakistan in the decision reported as **Mollah Ejahar Ali vs. Government of East Pakistan and others**<sup>16</sup> has held that:

“ ... To deal with the second contention first, there is no doubt that the High Court's order which is unfortunately perfunctory gives the impression of a hasty off-hand decision which, although found to be correct in its result, is most deficient in its content. If a summary order of rejection can be made in such terms, there is no reason why a similar order of acceptance, saying “there is considerable substance in the petition which is accepted” should not be equally blessed. This will reduce the whole judicial process to authoritarian decrees without the need for logic and reasoning which have always been the traditional pillars of judicial pronouncements investing them with their primary excellence of propriety and judicial balance. Litigants who bring their dispute to the law Courts with the incidental hardships and expenses involved do expect a patient and a judicious treatment of their cases and their determination by proper orders. **A judicial order must be a speaking order manifesting by itself that the Court has applied its mind to the resolution of the issues involved for their proper adjudication.** The ultimate result may be reached by a laborious effort, but if the final order does not bear an imprint of that effort and on the contrary discloses arbitrariness of thought and action, the feeling with the painful results, that just has neither been done nor seems to have been done is inescapable. When the order of a lower Court contains no reasons, the appellate court is deprived of the benefit of the views of the lower Court and is unable to appreciate the process by which the decision has been reached.”

(Emphasis is added)

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<sup>16</sup> PLD 1970 Sc 173

As held by the Supreme Court of Pakistan it is mandatory, that the order passed by the Additional Controller of Rents Clifton Cantonment Karachi must be an order that makes a finding on the basis of the evidence adduced. If one is to peruse the Order dated 14 February 2023, the Additional Controller of Rents Clifton Cantonment Karachi after recording that the Appellant had been declared ex-parte and that the Respondents had adduced evidence, simply records that:

“ ... *I, therefore, allow the ejectment petition filed by the applicant through her attorney under section 17 Cantonment Rent Restriction Act, 1963 and direct the opponent or anybody else holding possession of the rented premises to vacate the demised premises i.e. 2<sup>nd</sup> floor, Plot No.2-C, Shahbaz Commercial Lane No.2, Phase-VI, Defence Housing Authority, Karachi and handover its vacant and peaceful possession to the applicant within (30) days. In case of any violation of this order on the part of opponent, the applicant can get the order executed from a Court of competent jurisdiction. There is no order as to cost. Announced in open Court.*”

It is apparent that the Additional Controller of Rents Clifton Cantonment Karachi did not apply the law to the facts and has instead simply passed a mechanical order directing the eviction of the Appellant. This is patently illegal as it is incumbent on the Additional Controller of Rents Clifton Cantonment Karachi to pass an order “manifesting by itself that the Court has applied its mind to the resolution of the issues involved for their proper adjudication”. I have no hesitation in saying that to this extent there is a clear irregularity in the Order dated 14 February 2023 passed by the Additional Controller of Rents Clifton Cantonment Karachi in Rent case No. 60 of 2022 and which ordinarily cannot be sustained.

10. The Order not being a speaking order the query that remains is as to whether Rent Case No. 60 of 2022 should be remanded to the Additional Controller of Rents Clifton Cantonment Karachi for re-adjudication or whether this Court has the jurisdiction to adjudicate on the *lis*. Under Sub-Section (3) of Section 24 of the Cantonments Rent

Restriction Act, 1963, the jurisdiction of this court has been stated to be that:

“ ... (3) *The High Court shall, after perusing the record of the case and giving the parties an opportunity of being heard and, if necessary, after making such further enquiry either by itself or by the Controller as it may deem fit, **make an appropriate order** which shall be final..”*

As correctly contended by Mr. Ahmed Ali Hussain, this Court under Sub-Section (3) of Section 24 of the Cantonments Rent Restriction Act, 1963 has the requisite jurisdiction to consider the evidence adduced before the Additional Controller of Rents Clifton Cantonment Karachi and thereafter to “make an appropriate order” to adjudicate the rights inter se the Appellant and the Respondents. I have considered this issue and since I have the requisite jurisdiction to adjudicate on this matter and as no interest would be served by remanding this matter back to the Court of Additional Rent Controller, Clifton Cantonment Board, Karachi I believe that the following two issues need to be determined in this Appeal namely:

- (i) Has the Appellant defaulted on his obligations to pay rent to the Respondents in terms of clause (i) of Sub-Section (2) of Section 17 of the Cantonments Rent Restriction Act, 1963?
- (ii) What should the Decree be?

I. **Has the Appellant defaulted on his obligations to pay rent to the Respondents in terms of clause (i) of Sub-Section (2) of Section 17 of the Cantonments Rent Restriction Act, 1963?**

11. The Supreme Court of Pakistan in the decision reported as **Allah Din vs. Habib**<sup>17</sup> has held that:<sup>18</sup>

“ ... *It is no doubt correct to say that the initial burden of proof lies upon the landlord to establish that the tenant has not paid or tendered rent due by him as required by section 12 (2) I) of the Sind Urban rent*

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<sup>17</sup> PLD 1982 SC 465

<sup>18</sup> *Ibid* at pg. 468



*Restriction Ordinance, 1959, but it must be appreciated that non-payment of rent is a negative fact, therefore, if the landlord appears in Court and states on oath that he has not received the rent for a certain period, it would be sufficient to discharge the burden that lies under the law upon him and the onus will then shift to the tenant to prove affirmatively that he had paid or tendered the rent for the period in question."*

It is therefore apparent that in the first instance, the Landlord has to adduce evidence to state that he has not received rent. Once the landlord has done so the burden then shifts onto the tenant to prove that the rent has been duly paid by him.

12. The Affidavit in Ex-parte Proof that has been produced by the Respondent in support of his Rent Case No. 60 of 2022 states as under:

" ... 5. I say that as per the Tenancy Agreement dated 17.03.2020, the opponent agreed to pay PKR 300,000/- (Pakistani Three Hundred Thousand Rupees only) per month as Rent, which rent amount was subject to 7% increment per annum. I say that in terms of the said Tenancy Agreement dated 17.03.2020, it was further agreed by the Opponent that he will also pay the Electric bills, Water Bills, Conservancy Charges and Maintenance charges per month to the concerned departments.

6. I say that the Opponent, as per the Agreement paid PKR 1,200,000 advance for the four months and PKR 600,000/- as the fixed security deposit. The payment was made through two pay orders of PKR 900,000/- each bearing Nos.23173014 and 23173015. The Opponent also provided the post-dated cheques for the months from September 2020 to March, 2021...

10. I say that at this juncture, it is worth clarifying/reiterating that as per the Tenancy Agreement it was mutually agreed between the parties that the rent for the subject property was subject to a 7% increase per annum. It is accordingly submitted that from the month of March 2021 the rent for the subject property increased from PKR 300,000/- to PKR 321,000/-, which increased rent was paid by the Opponent for the period March 2021 to March 2022. Similarly, from the month of March 2022 the rent for the subject property increased from PKR. 321,000/to PKR. 343,470/-.

11. I say that the Opponent issued Cheques in a lumpsum from March 2022 till March 2023 however, such cheques were issued for an amount of PKR. 321,000/- even though the rent for the period March 2022 till March 2023 had increased to PKR.343,470/- in terms of Clause 16 of the Tenancy Agreement. Therefore, for the period of March 2022 to May 2022, the Opponent has defaulted upon/not implemented the rent increment which is Rs.22,470 per month therefore, in total the rent increment from March 2022 to May 2022 amounts to Rs.67,410/- which the Opponent has defaulted upon.

12. I say that the Opponent has willfully and deliberately stopped the payment of monthly rent since the June 2022, as the cheques that were issued to the Applicants by the Opponent for the period June 2022 to January 2023 were dishonoured upon presentation. Thus, the Opponent has

*committed willful default in payment of monthly rent from June 2022 onwards.*

*13. I say that the total arrears of rent due till date which have not been tendered/paid by the Opponent to the Applicant are detailed as under:*

S. No	Month/Year	Monthly Rent Due	Monthly Rent Paid	Differential Amount
1.	March 2022	Rs.343,370/-	Rs.321,000/-	Rs.22,470/-
2.	April 2022	Rs.343,370/-	Rs.321,000/-	Rs.22,470/-
3.	May 2022	Rs.343,370/-	Rs.321,000/-	Rs.22,470/-
4.	June 2022	Rs.343,370/-	Nil	Rs.343,370/-
5.	July 2022	Rs.343,370/-	Nil	Rs.343,370/-
6.	August 2022	Rs.343,370/-	Nil	Rs.343,370/-
7.	September 2022	Rs.343,370/-	Nil	Rs.343,370/-

13. The Respondent having adduced evidence to the effect to show that the Appellant has defaulted to pay the rent to the Respondents, the burden to prove that default had not occurred shifts on to the Appellant to show that he has paid rent. Since the Appellant was debarred and declared ex-parte and could not adduce evidence to show that he has not defaulted and has also failed to cross examine the Respondents, I am clear that such burden has not been discharged. The Respondents have therefore been able to prove that the Appellant had defaulted on its obligations to pay rent to the Respondents in terms of clause (i) of Sub-Section (2) of Section 17 of the Cantonments Rent Restrictions Act, 1963 and is therefore liable to be evicted from the Said Tenement.

## **II. What should the Decree be?**

14. As it has come on record that the Respondents have been able to prove that the Appellant had defaulted on its obligations to pay rent to the Respondents in terms of clause (i) of Sub-Section (2) of Section 17 of the Cantonments Rent Restrictions Act, 1963, the Appellant is therefore liable to be evicted from the Said Tenement.

15. While admittedly, the Order dated 14 February 2023 passed by the Additional Controller of Rents Clifton Cantonment Karachi in Rent Case No. 60 of 2022 was not a speaking order, for the foregoing reasons, I am inclined to dismiss this Appeal, with directions that the Appellant, or any other person holding possession of the Said Tenement through the Appellant, is liable to be evicted and to handover vacant and peaceful possession of the Said Tenement to the Respondents within (30) days from the date of passing of this Judgment but with no order as to costs.

JUDGE

Karachi  
Dated:18 August 2023