

IN THE HIGH COURT OF SINDH AT KARACHI

F.R.A. No. 29 of 2023

[Muhammad Tariqv..... Iftikhar uddin Paracha & others]

Date of Hearing : 22.01.2023
Appellant through : Mr. Irfan Aziz, Advocate.
Respondents through : Mr. Zafar Iqbal Dutt, Advocate.

ORDER

Zulfiqar Ahmad Khan, J:- Appellant is aggrieved with an order dated 08.08.2023 (“impugned Order’) passed by learned respondent No.7 whereby his defence was struck off on account of non-compliance of tentative rent order.

2. The precise facts of the case are that the appellant is tenant of the respondents who are landlord of Shop No.41, Uzma Shopping Plaza, Block-8, Clifton, Karachi and he is aggrieved by the forementioned findings. In *minutiae*, the respondents filed a Rent Case No.44 of 2022 before learned respondent No.7/Rent Controller, and pending adjudication of the said Rent Case, the respondents preferred as application under Section 17(8) of Cantonment Rent Restriction Act, 1963 beseeching therein for arrears of rent, which application was allowed vide order dated 06.06.2023 with directions to the appellant to deposit arrears of rent. Owing to the non-compliance of the order dated 06.06.2023, the respondents preferred an application under Section 17(9) of the Act, 1963 in the said Rent Case praying for striking off the defence of the appellant and eviction on the ground of non-compliance of the order, which plea of the respondents was allowed vide impugned order and appellant was directed to vacate the tenement within 30 days.

3. The appellant's entire case was premised on the argument that he had deposited the rent in M.R.C. before Senior Civil Judge instead of depositing or complying with the tentative rent order.

4. In contrast, learned counsel for the respondents argued that impugned order is in consonance with law as the appellant failed to deposit the arrears of rent as per order of the learned Rent Controller passed on the plea of the respondents under Order 17(8) of the Act, 1963 and on non-compliance of the said order, the defence of the appellant was struck off as mandated under Section 17(9) of the Act, 1963 and eviction order was passed, therefore, no illegality or infirmity in the impugned order hence the FRA be dismissed.

5. I have heard the respective learned counsel and have also considered the record to which surveillance of this Court was solicited. The learned Rent Controller having passed the tentative rent order whereby the appellant was directed to deposit the arrears of rent went on to struck off the defence of the appellant as he failed to comply with the tentative rent order. Per impugned order, the appellant was to deposit monthly rent of Rs.17,250/- from July 2023 onward before 5th day of each month as well as appellant was also directed to deposit arrears amount of Rs.3,96,750/- which is a 30 months due rent which the appellant failed to comply.

6. Section 17(9) of the ibid Act contains penal provision for disobedience of order passed under subsection (8), which read as following.

“17(9) If the tenant fails to deposit the amount of rent before the specified date or, as the case may be, before the 5th day of the month, his application if he is a petitioner, shall be dismissed, or his defence, if he is a respondent, shall be struck off, and the landlords shall be put

in possession of the building without any further proceedings”

7. The said two provisions, in view of the word “shall” used therein are mandatory in nature and the tenant was required to comply the said order in letter and spirit for the reason that it carries a penalty of striking of the defence of the appellant /tenant in case of non-compliance, therefore, the learned Controller was justified under the law referred to above to strike down the defence of the appellant and ordered for his eviction. In the case of “M.H. Mussadaq v. Muhammad Zafar Iqbal and another” reported in 2004 SCMR 1453, the August Supreme Court of Pakistan has held that:-

“On this aspect of the matter, the legal position is very clear. According to subsection (9) of section 17 of the Act, if the tenant fails to deposit the amount of rent before specified date, or, as the case may be, before 5th of the month, his defence shall be stuck off. On its bare perusal, it is manifest that the above provisions are mandatory in nature and even one day's delay in making the deposit would be default within its meaning and Rent Controller has no power to extend time and condoned the same. To further fortify, reference can be made to the case of Misbahullah Khan v. Mst. Memoona Taskinuddin 1995 SCMR 287 in which this Court while interpreting the scope of section 17 of the Act, has held that tentative rent order can be passed by the Rent Controller even if ground of default is not alleged for seeking eviction. It is also observed that non-compliance with the tentative rent order is directly punishable and in consequence the defence of tenant can be stuck off and eviction can be granted”.

8. In another case titled Dr. Muhammad Safdar v. Mst. Shaista Amjad reported in 2015 MLD 1342, it was held that:-

“Seeking guidance and deriving wisdom from the above referred judgments one can reach to an irresistible conclusion that once a default is established, the Rent Controller has no other

option but to pass an order for striking of the defence and put the landlord into possession of the suit premises. The learned Rent Controller while deciding the rent petition has not adverted to the legal aspects of the case, thus, has committed serious illegality, resulting into miscarriage of justice.”

9. In view of the rationale and deliberation delineated above, the appeal at hand is dismissed. Appellant is directed to vacate the shop in question within fifteen days.

Karachi
Dated: 22.01.2023.

JUDGE

Aadil Arab