

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

First Rent Appeal No. 36 of 2017

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

Priority

1. For orders on CMA No.2912 of 2019.
2. For orders on CMA No.2754 of 2018.
3. For orders on office objections.
4. For hearing of CMA No.9201 of 2017.
5. For hearing of main case.

21.05.2019.

Syed Masroor Ahsan, advocate for the appellant.
Mr. Muhammad Saleem Ibrahim, advocate for respondent No.1.

Heard and perused. In eviction proceedings of rent case No.23 of 2016, learned trial Judge / Rent Controller passed an order under Section 17 [8] of Cantonment Rent Restriction Act, 1963, relevant paragraph is that:-

"In view of above, the office is directed to get the signature verified from the Govt. Forensic Lab and report be put-up before the court within 30-days. Moreover, tentative rent order Under Section 17 (8) of Cantonment Rent Restriction Act, 1963 is hereby passed with the direction to the opponent to deposit the arrears of rent from April,2016 to April, 2017 [13 months] at the rate of Rs.11,000/- per month totaling Rs.1,43,000/- within 30 days from today without fail and further the opponent is directed to deposit all future monthly rents at the rate of Rs.11,000/- per month onward on or before 05th of each English Calendar month in this court/rent case and utility charges shall also be paid by the opponent to the concerned departments regularly, failing which the defense of the opponent shall be struck of and the case shall be decided accordingly. The matter regarding payment of outstanding dues / arrears (from April 2008 to March, 2016) would be decided after receiving Forensic Lab report and evidence of parties at the time of final adjudication of the instant case. The applicant may withdraw the rent if be deposited by the opponent in this Court."

From above, it is quite evident that the tenant (appellant) was categorically ordered to deposit the arrears of rent for certain period which, however, was not paid hence subsequent order was passed on 17th August, 2017, relevant paragraph is that:-

"The report was also called from the office/Reader as to whether arrears of rent amount has been deposited by the opponent in compliance of order dated 27.04.2017 or not. It was reported by the reader that an amount of



Rs. 11000/- has been deposited by the opponent on account of rent for the month of march, 2017 only. Whereas, as per rent order passed by this Hon'ble Court on 27.04.2017 an amount of Rs. 1,43,000/- on account of arrears of rent from April 2016 to April 2017 (13 months) at the rate of Rs. 11000/- per month was to be deposited by the opponent within 30-days from the date of tentative rent order, but the said amount has not been deposited by the opponent in compliance of rent order dated 27.04.2017."

2. The order, *prima facie*, shows that default on part of the tenant (appellant) was reported in categorical manner. I shall add that 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 struck off. The learned counsel for the tenant (appellant) when confronted pleaded that after filing of this FRA, ad-interim order was passed with condition that appellant shall deposit the amount as directed by Rent Controller, hence, he has complied with that order, which is sufficient to justify the order dated 17th August, 2017. I am not inclined to accept such *plea* because per law compliance is to be made of *tentative order* of the **Rent Controller** and not of the appellate Court. Deposit of amount in *appeal* under order of the appellate Court *even* cannot legally undo the legal consequences of failure of tenant (appellant) in making compliance of *tentative order*. Guidance is taken from case of M.H. Mussadaq v. Muhammad Zafar Iqbal & another 2004 SCMR 1453 wherein is held as:

10. 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 struck 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 condone the same. **It is also observed that non-compliance with the tentative rent order is directly punishable and in consequence the defence of tenant can be struck off and eviction can be granted.** In the case of province of Punjab and others v. Muhammad Jalil-ur-Rehman (1986 SCMR 1705), it has been held by this Court that the Rent Controller had no power to ignore the delay in making deposit of rent under section 13(6) of West Pakistan Urban rent restriction ordinance (VI of 1959).

3. Since, failure in making compliance of the *tentative order* is undeniable hence the tenant (appellant) cannot seek any exception to legal consequences of his own failure. Further, the appellant points out no *illegality* in the

impugned order nor denies the failure in making compliance of *tentative order* hence a misconceived *plea* legally cannot be an excuse to avoid what the law dictates to do. Accordingly, instant First Rent Appeal is dismissed along with listed applications.

JUDGE

Qurhan P.A*