

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

**F.R.A NO.26/2014**

Appellant : Iqbal Ahmed,  
Present on date of hearing.

Respondent : Chaudhri Atif Muncer,  
through Mr. Muhammad Rafi Kamboh advocate.

Date of hearing : 21.12.2018

Date of announcement : 01.02.2019.

**JUDGMENT**

**Salahuddin Panhwar, J:** This F.R.A. assails order dated 03.07.2014 passed by Additional Controller of Rent concerned in Rent Case No.17/2013 allowing application under section 17 of the Cantonments Rent Restriction Act 1963 filed by respondent herein thereby directing the appellant to vacate the demised premises within thirty days.

2. Concisely, facts leading to filing of appeal are that applicant/respondent herein filed application for eviction from demised premises against opponent/appellant pleading that respondent is landlord and appellant is tenant in respect of demised premises which is owned by Syed Sabir Hussain Shah (hereinafter referred to as owner); that owner purchased the premises for his personal use while keeping in view future residence planning for his family and it was not urgently required for his personal use at that very juncture; that due to highly committed life schedule, the owner

entrusted all responsibilities of the tenement in question to the respondent including renting out to suitable tenant with authority of rent collection and vacating/looking after all the affairs of tenancy; the tenement was rented out to appellant through tenancy agreement dated 01.02.2011 for monthly rent of Rs.17,500/- which ultimately reached to Rs.19,250/- by per annum 10% increase during last two years; that appellant issued cheques in the name and favour of respondent and accordingly he paid an amount of Rs.87,500/- to respondent through cheque, out of which Rs.52,500/- was paid as fixed deposit and Rs.35,000/- was paid on account of advance rent of two months and appellant had also been paying subsequent rentals to respondent; that as per his planning, the owner required the said tenement for his personal need so respondent asked the appellant in month of September, 2012 to vacate the premises and it was amicably settled between the parties that appellant shall vacate the tenement at the earliest possible; that appellant paid last rent for the month of September, 2012 and subsequently kept on stipulations and defaulted in payment of monthly rent from October to December, 2012 and upon demand, he had been making promises to make the entire outstanding amount in one go; that appellant requested the respondent to search out any residence for him and accordingly the respondent convinced Chaudhary Muhammad Yaqoob to rent out his Flat No.3, located on 3<sup>rd</sup> Floor, Plot No.47-C, Bukhari Commercial Lane-12, Phase-VI, DHA Karachi and tenancy agreement dated 03.01.2013 was executed between them; that appellant went to Police Station Darakhshan in the month of

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December, 2012 to the reasons best known to him but upon the justification given by respondent to the Police, the appellant had no other option except to withdraw his complaint, while supplicating that it happened due to some misunderstanding; that appellant kept the respondent on promises to pay outstanding rent shortly, who also took undue advantage of the polite attitude of respondent and begged before him for return of the fixed deposit of Rs.52,500/- which he needed to pay to his new landlord and respondent returned the said amount through cheque No.2960666 dated 03.01.2013; that appellant instead of vacating the tenement and paying the outstanding amount, served the respondent with notice dated 12.01.2013 by leveling certain allegations and demanded Rs.1,00,000/- on account of so-called damages therefore and also attempted to lodge complaint against him at Police Station and also threatened the petitioner by posing himself as influential personality therefore respondent lodged complaint at Police Station Darakhshan and even after complaint, the appellant kept on threatening the respondent and pressurizing him for payment of Rs.1,00,000/- therefore respondent made comprehensive/self-explanatory reply dated 11.02.2013 to notice of appellant but instead of availing opportunity for amicable disposal of dispute, the appellant preferred to execute his ulterior designs, which he conveyed through his replication 13.02.2013, served on 21.03.2013. It was case of respondent before lower forum that that appellant has committed default in payment of monthly rent from October, 2012 to February, 2013 and in addition to default the said tenement is also required by the owner for his



personal bonafide need and the said owner Syed Sajid Hussain Shah intends to settle his family at Karachi for schooling of his children i.e. Babi Narjis & Master Iqrar Hussain Shah respectively aged about 4/5 years at that time; that the facilities of education like at Karachi are not available at Dadu and the owner does not have any other suitable or ordinary residence at Karachi either within the Cantonment area or out of it as such the vacation of the said tenement is inevitable requirement of the owner.

3. The Opponent before lower forum, who is appellant herein, in his Written Statement stated that Syed Sajid Hussain Shah has entrusted the respondent only to rent out the said premise and to collect the rent; he denied that Syed Sajid Hussain Shah had ever authorized the respondent for vacating the said premise as no such delegation of power has ever been produced by the respondent; appellant stated that owner of the said premises presented his flat for rent in the market through M/s. I.K associates (formerly Arain Estate), the appellant offered the respondent to hire the said premises on the condition that he will not be evicted until he is regularly paying the rent; respondent gave assurance on behalf of the owner of said premises then the appellant agreed to sign the rent agreement and also mentioned the assurance of the landlord alongwith his signatures on the tenancy agreement; appellant denied that he has ever made any default during the whole tenancy period of two years and further denied that respondent served any verbal or written notice to him to vacate the premise or the appellant gave any promise to vacate the same; that it was in December, 2012 when the

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respondent told the appellant that he had purchased the said flat from Syed Sajid Hussain Shah and wanted to sell the said premise; respondent also denied that he ever requested the respondent to search out any residence for him or that he withdrew any application from Darakhshan Police Station on the ground that it was filed due to some misunderstanding and denied that he has not paid any rent after September, 2012; that respondent had admittedly issued the cheque dated 03.01.2013 to an anonymous person of an amount of Rs.52,500/- being the fixed security deposit, according to the Clause-4 of the tenancy agreement, deposit was liable to be refunded at the time of vacating the said flat after deduction of all dues, bills, damages, arrears if any; the said cheque was issued to an anonymous person on 03.01.2013 which was full amount of fixed security deposit, this itself proved strong evidence that till date being 03.01.2013 no outstanding dues were there including arrears of rent hence allegation of default is false: that being fed-up of the mental tortures created to appellant by respondent, the appellant adopted the most appropriate and legal way serving him the notice to pay compensation by way of damages; he denied that respondent has ever tried to resolve the matter amicably contending that respondent tried his best to evacuate the appellant from the said premises without the due course of law by adopting the tactics i.e. after receiving the rent of December, 2012, the respondent denied the whole rent which the appellant had paid him during the whole year of 2012 and said that he did not know to whom the rent has been paid and that he will make the appellant to evacuate the said premises on the ground of default of one year's rent; another tactic adopted by the

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respondent that after finding his threats fruitless, the respondent adopted a cunning way and in the last week of December, told the appellant that he wanted to sell the flat because the marriage of his daughter who has done MBA is going to be in the month of April, 2013 so he requested the appellant to vacate the said premises on humanitarian ground and offered the appellant to shift him on rent to the flat of his friend Mohammad Yaqoob; that respondent made the appellant to sign the tenancy agreement with Mohammad Yaqoob and promised to pay Rs.52,500/- the amount of fixed security deposit directly to Mohammad Yaqoob and also promised to handover the possession of the said flat of Mohammad Yaqoob by 10.01.2013, after the installation of geyser in the said flat; that on 04.01.2013, the respondent handed over the copy of the rent agreement with Mohammad Yaqoob and asked him Rs.52,500/- but appellant refused to do that until the possession of the said flat is not given to him; that on 10.01.2013, the appellant called Yasir, the son of Mohammad Yaqoob through his letter dated 12.01.2013 to install the geyser and complete the handing/taking over procedure; that on 14.01.2013 the respondent came to the house of appellant and told his son that Mohammad Yaqoob decided not to give his flat on rent to the appellant and asked to take the rent agreement with him and to go to the estate agency of Mohammad Yaqoob to receive the cheques back; that on 02.02.2013 the respondent called the appellant and informed that the following morning some Shah Sahab will come at 10:30 am to the said flat and he will be bringing the party to show the said premises to sell whereupon the appellant told the respondent that he is living at the said premises on rent and no one

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can send the party inside, then he replied that whatever you could do then do it and he will come with the party; that on this the appellant approached the SHO Darakhshan Police Station and lodged complaint against the respondent and the SHO took quick action and sent police mobile on the premises which kept on continuously patrolling in the area due to which the respondent could not dare to do anything; that after return of money order un-received from Syed Sajid Hussain Shah at Dadu, the appellant sent one of his friend to the village Aminani to find out the fact and he was told from there that Syed Sajid Hussain Shah has shifted to Karachi since long; that actions of respondents were against the assurance provided by the landlord which has been mentioned alongwith his signatures while signing the tenancy agreement.

4. Trial court for framed following issues:-

1. Whether the petitioner is landlord as required under rent restriction act 1963?
2. Whether the respondent acquires the tenement from the above named petitioner?
3. Whether is there any default of rent by the respondent?
4. Whether is the ground of personal use bonafide?
5. What should the order be?

5. Heard appellant in person and learned counsel for respondent, perused the record. Learned counsels for parties have also submitted their respective written synopses.

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6. In line with the written synopsis, appellant has submitted that admittedly respondent had no authority from owner to proceed with the case on his behalf hence ejectment application filed was not maintainable; that appellant had paid entire rent of one year to owner Syed Sajid Hussain Shah through cheques who issued receipts available at pages 65 and 73 of appeal, thereafter appellant paid rent regularly to owner through I.K. associates and paid all rent due vide receipts available at page 93 to 97 and bank verification of transfer of rent to respondent's account for months of October and November 2012 at pages 129 and 131 hence the Rent Controller directed to deposit future monthly rent only; that evidence of appellant has not been rebutted in cross-examination; that it is settled law that for personal use the owner of premises must appear in person while here in present case neither principal had filed ejectment application nor appeared before trial court for evidence; findings of trial court are based on non-reading and misreading of evidence and case cited are not applicable to present case; these findings also suffer from infirmity besides being perverse. Reliance was placed on 1987 MLD 2818, 2013 YLR 2764, PLD 2001 KARACHI 238, 1995 CLC 493, 1984 CLC 497 and NLR 1992 CIVIL 457.

7. Learned counsel for respondent has contended that due to personal requirement of the title owner, respondent asked the appellant to vacate the tenement, appellant stipulated to vacate the tenement however failed to pay rent after September 2012, appellant requested the respondent to arrange some other premises hence tenancy agreement dated 03.01.2013 was executed between





appellant and one Choudhri Muhammad Yaqoob and on appellant's request fixed deposit was returned vide cheque No.2960666 dated 03.01.2013, appellant committed default from October 2012 to February 2013 and owner also required the tenement for his personal bonafide need; per provisions of section 2(g) of Cantonment Rent Restriction Act 1963 respondent was entitled to seek remedy before the trial court as well in view of case law reported in 2004 CLC 289, 1982 CLC 1116, 1980 SCMR 29; that appellant admitted receipt of cheque of Rs.52,500/- from respondent; that appellant could not satisfy the default for the month of October 2012 to February 2013 before trial court; that appellant claimed tendering of rent through money order and without prejudiced to the view of honour superior judiciary by holding default in case of tendering money order to the person other than the previous receiver of rent, reliance is placed on 2001 MLD 1219; that it is evident from evidence that appellant had been tendering rent to respondent and if it is admitted that he tendered the rent to titled owner of the tenement in question, it is an act of overdoing by the tenant in view of apex court's view; trial court has rightly held default on part of tenant and ground of personal bonafide need has also been proved hence trial court has rightly allowed ejectment application. Reliance was placed on 1984 CLC 2120, 1972 SCMR 262, 1987 CLC 364, 1987 CLC 496 and 2001 CLC 690.

8. *Prima facie*, the appellant has challenged the competence of the respondent / landlord to file the eviction proceeding while insisting that no authorization from owner was ever produced by



respondent / landlord. Such plea, *prima facie*, appears to have been raised without careful reading of the Act. The perusal of the Act shall make it clear that term '**owner**' has not been given any separate space (definition) nor the right to file eviction proceeding is subject to such status. I would further add that the Act was / is meant to deal with dispute between '**landlord**' and '**tenant**' and not '**owner and occupant**'. This has been sole reason that the Act, no where defines the word '**owner**' but defining section only speaks about '**landlord and tenant**'.

The term '**landlord**' is defined as:

**"2(g) Landlord"** means any person for the time being entitled to receive rent in respect of any building whether on his own account or on behalf or for the benefit of any other person, or as trustee, guardian or receiver and includes a tenant who, being authorized under the terms of his lease so to do, sublets the building and every other person for the time being deriving title from the landlord"

From above definition, it is evident that satisfaction of term '**landlord**' is subject to '**entitlement to receive rent**' hence the moment one is *legally* entitled to receive / collect the rent and the **tenant** in recognition of his such entitlement starts paying **rent** to him then such **tenant** , at any subsequent, stage cannot question legal status of such person as '**landlord**'. In any case, a challenge to such person could only be made by the '**owner**'.

Having detailed the legal position, it would be conducive to make it clear that respondent / landlord has not filed the eviction proceedings as '**attorney**' but had categorically stated in para-2 of his petition as:-



"2. .... said Syed Sajid Hussain Shah entrusted all responsibilities of the tenement in question to the applicant including renting out to suitable tenant **with authority of rent collecting** and vacating / looking after all the affairs of tenancy."

In response to above para, the present appellant / tenant had responded in his written statement as:-

"2. The contents of para 2 are partially admitted. It is admitted that Syed Sajid Hussain Shah has entrusted the Applicant only to rent out the said premise and to collect the rent."

After above categorical admission of respondent's claim, the present appellant / tenant *legally* cannot question the competence of respondent to file the eviction proceedings.

9. Here, it may also be conducive to refer e operative part of findings of learned Rent Controller so as to see whether same are in accordance with settled legal position or otherwise?. The same are reproduced hereunder:-

"The petitioner's counsel contended in written arguments that ... the respondent paid the initial rent and fixed/advance amount to the petitioner including the subsequent monthly rent.... He further contended that respondent has admitted in Para-2 of his Written Statement as well as Affidavit-in-Evidence, that Syed Sajid Hussain Shah entrusted the petitioner to rent out the said premises and to collect the rent and respondent has also admitted through his Cross-Examination that he has made submission regarding status of the petitioner. Furthermore, counsel for petitioner referred judgment **2001 SCMR 1434** that the "Landlord", applicability/ownership has nothing to do with the position of landlord. Payment of rent by tenant and receipt thereof by landlord is sufficient to establish the relationship of landlord and tenant between the parties. The petitioner's counsel referred another judgment **2004 CLC 289** that ejection application landlord need not necessarily be the owner of the property. Any person authorized to



collect rent could be treated as landlord and he could file proceedings for ejection in his name.

While respondent on the other hand contended in written arguments that petitioner has filed the present rent application in the Hon'able court with the claim that he has been entrusted by Syed Sajid Hussain Shah regarding all responsibilities of the said tenement including renting out to suitable tenant with authority of rent collecting and vacating/looking after all the affairs of tenancy. He further contended that on Page-15 of Annexure A-1 of the rent application wherein the petitioner has signed the rent agreement as a witness and at the same place, Syed Sajid Hussain Shah has signed the rent agreement as owner of the said premises therefore it provides undeniable evidence that the respondent did not acquire the said tenement from the above-named petitioner. It is an admitted fact that the petitioner is managing the demised premises on behalf of the owner who admittedly has authorized him to let out the premises on rent and collect rent on his behalf. Thus such evidence leads to an irrefutable presumption that the petitioner is included in the definition of landlord as defined under section 2(g) of Cantonments Rent Restriction Act, 1963."

The findings of the learned Rent Controller on the issue are in complete conformity with the settled legal positions, hence the plea of the appellant raised with reference competence of respondent / landlord to file eviction proceedings is not tenable.

10. Second *plea*, so raised by the appellant is regarding point No.3 i.e:

*"Whether is there any default of rent by the respondent?"*

It is needless to add that it is by now settled that once the landlord claims failure on part of the tenant in making timely payment of rent then it is the *tenant* who has to establish timely payment of the rent. Reference may well be made to the case of Muhammad Amin Lasania v. M/s Ilyas Marine & Associates & Ors (PLD 2015 SC 33) wherein it is observed as:-



"8. The burden of establishing the timely payment of rent lay upon the tenant which he failed to discharge. ....

The landlord had alleged that appellant / tenant committed default in paying the rent for month of '**October 2012 to February 2013**', thus it was obligatory duty of the appellant / tenant to have established timely payment of monthly rent for such claimed defaulted period. The appellant / tenant, *however*, placed rent receipts for two years at A-7 to A-10. The receipt (A-10) reads as:-

*"Received in cash from Mr. Iqbal Ahmed on behalf of Syed Sajid Hussain Shah the sum of Rs.18375/=..... Rupees eighteen thousand three hundred and seventy five only) being the advance rent for the month of December 2012, for the flat situated at 1<sup>st</sup> floor 4-C, 10<sup>th</sup> street Nishat commercial Phase VI, D.H.A. Karachi.*

Dated: 10.12.2012

Sd/- (for I.K. associates)"

The above receipt, *at the most*, show payment of rent upto December 2012 and cannot be taken as *proof* for payment upto February 2013. In spite of discharging his burden, the appellant / tenant remained taking different stances, including but not limited to filing complaint (s) against respondent / landlord started in month of December 2012. Here, operative parts of written statement of appellant / tenant, being relevant are made hereunder:-

"Page-7:

a) That after receiving the rent of December 2012, the applicant denied the whole rent which the Respondent had paid him during the whole year of 2012 and said that he did not know to whom the rent has been paid and that he will make the Respondent to evacuate the said premise on the grounds of default of one year's rent. He again reiterated the same allegation in his call on dated 11.02.2013.





After denial of the receipt of rent by the Applicant, the Respondent decided to pay the rent directly to Syed Sajid Hussain Shah and after the return of money order sent to him, the Respondent is regularly depositing the rent in MRC # 07/2013"

From above, it is quite evident that appellant, *no where*, claimed to have timely paid the monthly rent *least* for January 2013, particularly when the appellant / tenant admitted in his cross-examination as:

**"It is correct to suggest that I entered into rent agreement dated 03.01.2013 with Chaudhri Yaqoob."**

and per his own written statement (P-7) the possession of such new premises was to be taken by appellant / tenant on '**10.01.2013** , therefore, payment of January and February 2013 cannot be logically made. Further, his act of sending money order to Syed Sajid Hussain Shah *directly* was also quite strange because he (appellant / tenant) *undeniably* was paying rent to respondent / landlord under receipt. In absence of proof of *timely* payment the appellant / tenant legally cannot seek an exception to affirmative findings, so rightly recorded by Rent Controller against him.

11. As regard the ground of personal bona fide personal need, I would add that the provision of Section 17 of the Act speaks about the '**landlord**' and not the '**owner**'. Further, it is also a matter of record that appellant / tenant himself, in his pleading as well affidavit in evidence, admitted to have agreed to request of vacating the *premises-in-question* and even had executed rent agreement with

some other person for some other premises. It is worth reminding that such request for vacating of premises was made by the respondent / landlord therefore, authority / competence of respondent / landlord was also not worth denying at subsequent stage.

Here, referral to relevant portion of the written statement (page-7), being material is made hereunder:-

"b) That after finding his threats fruitless, the Applicant adopted a cunning way and in the last week of December told the Respondent that he wanted to sell the flat because the marriage of his daughter who has done MBA is going to be in the month of April 2013 so he requested to the Respondent to vacate the said premise on humanitarian ground and offered the Respondent to shift him on rent to the flat of his friend Muhammad Yaqoob.

The Respondent has high regard for the humanitarian values, agreed to do that. The Applicant made the Respondent to sign the tenancy agreement with Muhammad Yaqoob and promised to pay Rs.52,500/= the amount of fixed security deposit directly to Muhammad Yaqoob. The Applicant also promised to hand over the possession of the said flat of Muhammad Yaqoob by 10.01.2013. after the installation of geyser in the said flat."

12. From above admission, it is quite evident that in recognition of such competence of respondent / landlord the appellant / tenant:

- i) agreed to vacate the premises;
- ii) agreed for return of **advanced fix deposit** directly to new landlord; &
- iii) agreed to occupy new premises on 10.01.2013 by putting the present respondent / landlord into vacant possession;



which legally allow presumption of termination of the ~~tenancy~~ hence statement of the landlord on Oath that premises is required for personal bona fide need was rightly taken as proved by learned Rent Controller. Even otherwise, appellant / tenant brought nothing on record to substantiate his *plea* that premises is not required for personal bona fide use of the landlord rather he remained stuck with his misconceived plea of demanding appearance of 'owner', which, as already discussed, was immaterial for issue involved.

13. In consequence of what has been discussed above, I am of the clear view that the order of the learned Rent Controller is not shown to be suffering from any illegality or jurisdictional error hence the instant Appeal merits no consideration. Accordingly, the instant Appeal is hereby dismissed.

  
JUDGE