

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

F.R.A. No. 18 of 2016

Essa Iqbal
Versus
Kanwar Asad Sarfraz

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F.R.A. No. 19 of 2016

Mansoor Iqbal
Versus
Kanwar Asad Sarfraz

Date of Hearing: 22.03.2018
Appellant: Through Mr. Abdul Qadir Khan Advocate
Respondent: Through Mr. Iftikhar Javaid Qazi Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These two connected FRAs are arising out of Rent Cases No.27 and 28 of 2013 filed by two landlords/appellants against tenant/respondent Kanwar Asad Sarfraz which rent cases were dismissed vide impugned judgment dated 14.03.2016 passed by Additional Controller of Rents, Clifton Cantonment. The pleadings of the applications are almost identical, therefore, by a common judgment these are being disposed of.

Applicants/appellants filed ejectment applications under section 17(2) and (4) of Cantonments Rent Restriction Act, 1963 pleading therein that they have sent notice dated 01.04.2013 to the respondent/opponent that they want to "take back" the premises in question and that they (appellants) have decided to start their own business for their children and alleged, "now they are able to establish business for their

bright future". The notice was not replied, as claimed. The rate of rent was Rs.34,500/- per month for each tenement and it is claimed that they are liable to make payment from 01.03.2013 till eviction at such rate.

The application was contested on both the counts i.e. personal requirement for the use of his sons and on default by the respondent. He claimed to have issued cheque for the month of March 2013 bearing No.1019149 and 1019150 dated 16.03.2013 respectively however when the subsequent cheque of rent for the month of April was refused, he sent money order for the months of April and May and on its refusal by the appellants/applicants respondent started depositing rent in MRC No.44 and 45 of 2013 respectively.

It is claimed by the respondent that the rent was deposited w.e.f. March 2013 as by that time they were of the view that the cheque for the month of March 2013 was not encashed and they (appellants) could render him defaulter by not withdrawing the cheques, therefore the entire amount w.e.f. March 2013 was deposited in the above MRCs. It was however subsequently revealed that cheque for the month of March was also encashed later by the respondents hence it is claimed that this was an additional payment towards rental dues which were to be adjusted in future thereafter.

I have heard the learned counsel and perused the material available on record.

The 'personal use', as defined under Cantonment Rent Restriction Act, has its limited scope than as provided under Sindh Rented Premises Ordinance, 1979 where its scope is widened by a definition provided in terms of section 2(g) where the 'personal use' also includes spouse, sons and daughters. Section 17(4)(a)(i) of Rent Restriction Act provides that a

the landlord in possession in case of a residential building if he requires it in good faith for own occupation or for the occupation of any member of his family whereas 17(4)(b)(i) which relates to commercial building, excludes the use and occupation of other family members. The 'own use' is neither defined in Rent Restriction Act, 1963 nor in Sindh Rented Premises Ordinance, 1979. The Sindh Rented Premises Ordinance, 1979 however provides a statutory meaning of 'personal use', which includes use of the premises by owner thereof or his wife/husband, son or daughter. 'Personal use' is not used in 17(4)(b)(i). Thus, the language of Section 17(4)(b)(i) of 1963 Act has its own interpretation and no indulgence could be sought in terms of a definition provided under Sindh Rented Premises Ordinance, 1979, which defines personal use in its definition clause in terms of Section 2(g).

In the case of Mrs. Noor Jehan Bi v. Muhammad Yousaf reported in 2002 SCMR 1933 the Hon'ble Supreme Court interpreting Section 14(4)(a)(i) and 14(4)(b)(i) provides as under:

"9. It is important to note that under sub-clause (i), clause (b), subsection (4) of section 17 of the Act, 1963 a landlord/landlady competently can apply to the Controller for an order directing the tenant to put him/her in possession of the premises subject-matter of proceedings if he/she requires it in good faith for his/her own use in the case of commercial building. At this very stage, it is important to note that conversely law gives in respect of a residential building under section 17 (4)(a)(i) of the Act, 1963 have used expression that he/she (landlord/landlady) requires it in good faith for his/her own occupation or for the occupation of any member of his/her family, he/she can apply to Controller for the ejection of tenant. Therefore, visible distinction in both the provisions is that for commercial building landlord or landlady can only ask for the ejection of tenant from the building if he/she requires it for her/his own use. Whereas in respect of residential building such requirement can also be put forwarded in respect other member of his/her family including the husband and son, etc. In Black's Law Dictionary (7th Edition) at page 1130 the word 'own' has been defined as 'to have or possess as property; to have

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legal title to'. From the dictionary meaning of the word 'own' no other inference can be drawn except that landlord/landlady can ask for ejection of the commercial building for his/her own personal use without asking ejection of the tenant for the use of any other family member in respect of commercial building under section 17(4)(b)(i) of the Act, 1963. Though such strict interpretation of the expression for 'own use' can cause difficulty in some exceptional cases, but Court is bound to interpret the law as it has been legislated and if there is any omission, that cannot be supplied without any cogent reason."

Mr. Abdul Qadir Khan, learned counsel for the appellants, has attempted to distinguish the above judgment by arguing that the pleadings in the referred case of the Hon'ble Supreme Court is such that from the very inception the premises was required for the sons and as such the good faith was scored off while deciding the application whereas the facts are different in the instant case as the applicants/appellants have pleaded that they have decided to start their own business followed by their children.

I have minutely perused the pleadings as well as cross-examination. Firstly in the legal notice it is mentioned that he (appellants/applicants) have decided to start their own business for their children as the children were compelling them to arrange their business in this area. This was mentioned in paragraph 4 of the notice. It was then followed by ejection applications where the facts regarding this notice were mentioned in paragraph 6. In paragraph 6 the pleadings further highlighted the desire of the sons as it is mentioned that appellants/applicants have decided to start their own business for their children because they are now able to establish business for their bright future.

Then in the affidavit-in-evidence same facts were mentioned. In the cross-examination the applicants/appellants suggested certain

questions where were fatal as far as demand in the application is concerned. The counsel for the applicants has suggested that the shops in question were required for the use of their children. He has further affirmed in evidence that in the present case he has stated that the shops in questions are required for the use of the children. The witness/applicant later replied that he has not mentioned as to for what purpose shops in question were required for the use of the children. Lastly he has denied a negative suggestion that the shops in question are not required for the use of the children. All these facts suggest that the premises were required for the sons and not for landlords/appellants and since these are commercial premises, therefore, eviction orders cannot be passed on an application where the landlord has made a desire of its use by his sons.

Insofar as default is concerned, the opponent/respondent originally handed over the cheque for the month of March 2013, which was not encashed until a cheque for the month of April was refused whereafter the money order was sent for the month of April and May. Since the money order was refused the opponent/respondent was compelled to deposit the rent in Court. Such facts are mentioned in the written statement in paragraph 4 onwards.

A tentative rent order was passed on 02.01.2014 and the evidence was also recorded. It was then realized by the Addl. Rent Controller that additional cheque for the month of March 2013 was also encashed leaving an additional amount of monthly rent with the landlords/appellants hence all such rents which were deposited, in view of additional amount being kept by the landlords/appellants, are for the following months and deemed to have been deposited in advance, hence not only the application under section 17(9) of Cantonments Rent Restriction Act, 1963 for striking of the defence for delayed payment of

rent was dismissed but the main application met the same fate. The question of encashment of cheque towards rent for the month of March 2013 was not denied. Mr. Abdul Qadir Khan in his argument has also conceded that later in the end of March or in the beginning of April, said cheque was encashed.

Despite the above, the instant FRAs impugn only order dismissing the ejectment applications and do not impugn an order whereby an application for striking of defence was dismissed. The pleadings of these appeals do not reveal, especially the prayer clause, that the order dismissing the application under section 17(9) of 1963 Act was also challenged as it is stated that it was merged with the final order. The final order disposing of the main ejectment application, relying on the evidence, reveals that an additional amount of Rs.34,500/- for each shop was lying with the appellants/landlords which ought to be adjusted hence rent that was deposited in compliance of order was in fact in advance. It was only a tentative rent order which was reconciled after evidence.

In view of the above, there appears to be no illegality or infirmity in the impugned order passed by learned Additional Controller of Rents Clifton. Resultantly both First Rent Appeals are dismissed along with pending applications.

Dated: 5.4.18

Judge