

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

FRA 19 of 2022

Muhammad Shamsheer Ali	Appellant
	Vs.	
Learned Rent Controller, Faisal Cantonment & others	Respondents

Mr. Maqbool ur Rehman, advocate for appellant.
Syed Ehsan Raza, Advocate for Respondent No.1.

25.09.2024.

ORDER

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MUHAMMAD IQBAL KALHORO J: Respondent No.3 filed a rent case against appellant u/s 17 of Cantonment Rent Restriction Act, 1963 (the Act) for eviction in respect of Shop No.21 Billy's Heights, Block-18, Gulistan-e-Johar Karachi on the ground of personal bonafide need as well as default in payment of monthly rent. After notice, appellant filed a written reply questioning cause of action to file rent case and further stating that respondent No.1 had approached the court with unclean hands; he had refused to receive the rent from the appellant hence he deposited the same with Nazir of VIII-Rent Controller/Senior Civil Judge, Karachi East in MRC No.448/2019. It appears that on the pleadings of the parties following issues were framed:-

1. Whether the opponent has committed willful default?
2. Whether the applicant/landlord requires demised premises for his person's bonafide need?
3. Whether the applicant under order V1 rule 17 C.P.C is maintainable / competence before the Rent Controller?
4. Whether the case filed by the opponent is maintainable in law?
5. What should the order be?

2. Thereafter, respondent filed his affidavit in evidence and the matter was fixed for cross-examination but counsel for appellant and appellant himself failed to appear despite many opportunities afforded to them in this respect. Finally the matter was put off for filing affidavit in evidence by the appellant/opponent but he chose to remain absent, consequently appellant's side was closed and the case was fixed for final hearing. The trial court while discussing the said situation has observed as under:-

On 10-2-2021, the applicant filed affidavit-in-evidence. The Matter was fixed for cross examination of the applicant. The applicant appeared in the witness box and produced his affidavit-in-evidence, which was taken on record as Exhibit-A. The counsel of the opponent failed to appear and cross examination to the applicant in spite of the fact that in the interest of justice, he was given a number of opportunities time and again. The matter was thereafter fixed for filing an affidavit in evidence for the opponent but he did not turned up, consequently his evidence side was closed. And the matter was posted for final hearing/arguments.

3. After the failure of the appellant to contest the matter, the case has been decided vide impugned order dated 17.03.2022.

4. Learned counsel for appellant has argued that complete justice has not been done as the case has been decided on a technicality and not on merits; appellant was not afforded a proper opportunity to defend the case. However, the impugned order speaks otherwise. It shows that a number of opportunities were given to the appellant to defend the case but he failed and chose to remain absent. It is well settled proposition of law that an indolent who does not safeguard his interest does not deserve help of the court. The hands of the court are not tied from proceeding and passing some order in case a party does not appear despite having knowledge of the case, as it is not required to continuously wait for indefinite time for the party. The court is required to give a reasonable opportunity to the party to appear in the court and contest the matter, but if despite such opportunities given, a party does not appear in the court and contest the matter, the court would be left with no recourse but to proceed with the matter in accordance with law and pass the judgment. The trial court has not committed any error by closing side of the appellant and pronouncing the judgment in favour of the respondent, in absence of any material defeating his case for eviction of the appellant from the demised premises. This being the position, I do not find any merit in this appeal and dismiss it.

The appeal stands disposed of alongwith pending applications.

Judge