

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

FRA No.17 of 2014

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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For orders on CMA No.3545/2014 (U/A)

27.5.2014

Mr. Sohail Qasim Ali, Advocate for Appellant.
Mr. Abdullah Munshi, Advocate for Respondent No.1.

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Urgency application is granted.

This First Rent Appeal is directed against the order passed by the Rent Controller under Section 17(9) of the Cantonment Rent Restriction Act, 1963 (“CRR Act, 1963”) whereby the appellant was ordered to vacate the demised premises i.e Sea-View Apartment No.SF-3, Block-21, Phase-V-Extension, Defence Housing Authority, Karachi and handover its vacant and peaceful possession to the Respondent within thirty (30) days, failing which the Respondent can get this order executed from a Court of competent jurisdiction.

Briefly stated the respondent No.1 filed Rent Case No.89/2013 before the Rent Controller, seeking ejectment of the appellant on the ground of default and personal bona fide need. The default has been claimed from May, 2013 to November, 2013. She has also made a written request for vacation of the premises by the appellant as she needed the premises for her personal bona fide need. The appellant after being served with the summons of the Court of Rent Controller filed a written statement and denied both the allegations of default and personal need. Since default was also alleged, therefore, the Rent Controller on the “first hearing of proceedings” and “before the framing of issues” was under statutory obligation to direct the petitioner to deposit rent due from him and the future monthly rent in the office of Rent Controller on or before the 5th of each calendar month. Therefore, by order dated 06.2.2014, the Rent Controller directed the appellant to deposit the rent in his office in the following terms: -

“The respondent is also directed to deposit arrears of rent of Rs.5,24,300/- for the months from May, 2013 to February, 2014 (10 months) @ Rs.52,025/- per month as well as different amount of Rs.4050/- for the months of March, 2013 and April, 2013 @ Rs.2025/- per month on or before 27.02.2014.”

The petitioner is allowed to withdraw future monthly rent from March, 2014 onwards @ Rs.52,025/- per month. She is also allowed to withdraw arrears of rent of Rs.5,24,300/- from this court."

The appellant failed to comply with the tentative rent order. Consequently, the respondent No.1 filed an application under section 17(9) of the CRR Act, 1963 seeking striking of the defence of the appellant. The appellant filed his objection to the said application but failed to give any plausible explanation for not depositing the rent as directed by the learned Rent Controller. His main contention in paragraph 2 of the objections to the application under section 17(9) of the CRR Act, 1963 was that *"on the basis of good understanding and non-production of rent receipts from petitioner side, this Honourable Court should have directed respondent to deposit rent from January, 2014 onwards and the dispute of rent for the alleged month be decided at evidence stage. That the petitioner has already filed her affidavit in evidence in this Honourable Court"*.

I have heard the learned counsel for the appellant and respondent No.1 and perused the record.

The appellant has admittedly failed to deposit arrears of rent amounting to Rs.5,24,025/- and Rs.4050/- within stipulated time given by the Rent Controller in the tentative rent order dated 6.2.2014 in terms of Section 17(8) of the CRR Act, 1963. Learned counsel for the Appellant is aggrieved by that part of the order of the Rent Controller whereby the respondent No.1 has been allowed to withdraw even the arrears of rent. The main contention of the learned counsel is that the learned Rent Controller had failed to appreciate the contentions of the petitioner that arrears of rent were disputed and therefore, the order was factually wrong when the landlord was allowed to withdraw even arrears. He contended that such order could have been passed by the Rent Controller after recording of evidence of the parties. The contention that such order should have been passed after recording of evidence is misconceived. The recording of evidence before passing a tentative order by the Rent Controller is not possible for the simple reason that if that is to be done then tentative rent order would become final order. This contention is also contrary to the very mandate of section 17(8) of CRR Act, 1963, which reads as follows: -

"(8). On the first hearing of proceeding under this section or as soon thereafter as may be but before the issues are framed, the Controller shall direct the tenant to deposit in his office before a specified date all the rent due from him, and also so deposit regularly till the final decision of the case, before the 5th day of each month, the monthly rent which subsequently becomes due, and if there be any dispute as to the amount of rent

due, the Controller shall determine such amount approximately.”

Therefore, the objection raised by the learned counsel that this order was illegal, wrong, perverse as it has been passed without recording of evidence is contrary to the requirement of section 17(8) of the CRR Act, 1963. Tentative rent order was passed by the Court without recording of evidence was perfectly within the parameters of the law. The excuse advanced by the appellant for defying the orders the compliance whereof was mandatory is not a plausible ground, thus the default attracted the penal consequence as envisaged in section 17(9) of the CRR Act, 1963.

The counsel for the appellant has also contended that the permission to withdraw the disputed rent to the respondent No.1, was wrong also on the ground that once the arrears have been withdrawn by the respondent / landlord, the appellant / tenant would be left unsecured to the extent of the amount so withdrawn by the respondent No.1. Suffice it to say that the appellant himself is in possession of a very valuable property of the respondent No.1 and that property in his possession automatically secures the tenant against all payment, and, therefore, the contention was ill founded as on final determination of the rent after recording of evidence if it is held that there were no arrears of rent at the time of filing of the rent case, in such an eventuality either the rent should be ordered to be adjusted in future rent or refunded. In any case, knowing well the consequences of non-compliance of tentative order, the appellant should first have complied with the order and then he should have invoked the inherent jurisdiction of Court to safeguard his interest which he felt was not fully covered in the order. Excuses are not acceptable to defy mandatory orders particularly when such non-compliance of order provides a statutory right in favour of the other side. Courts have no discretionary powers to deny statutory rights accrued to the other side on account of failure of a party to abide by the statutory orders.

The learned counsel for the respondent has contended that the compliance of the order of the Rent Controller was mandatory, therefore, once on a frivolous ground the appellant/tenant has defaulted, the respondent No.1 has acquired statutory right to be put in possession of the tenement without any further proceedings. He has emphasized on the use of word ‘shall’ both in sub-section 8 and sub-section 9 of section 17 of the CRR Act, 1963 to contend that the Court is left with no option except to order the ejectment of the petitioner from the demised premises. In support of his contention he has relied upon **PLD 2007 SC 504** (*Safeer Travels (Pvt.) Ltd. v. Muhammad Khalid Shafi*) which is directly on the point that word ‘ shall’ had made obligatory for Rent Controller that in case of default, defence of tenant would have to

be struck off. In the case in hand the default is admitted as even in this appeal, the counsel for the appellant has admitted that the default was a consequence of the fact that the appellant did not find tentative rent order correct as according to the wisdom of the appellant it was in respect of the disputed rent and it should have been passed after recording of evidence.

In reply to the contention of the appellant that the Rent Controller should have recorded evidence before passing of the tentative rent order, the learned counsel for the respondent No.1 has relied on the case law reported in **1999 CLC 852** (*Saeed Ahmed Khan v. Jamila Khanum*), wherein it has categorically been held by My lord Mr. Justice Hamid Ali Mirza (as he then was) that “it was not necessary for the Rent Controller to record evidence for the purpose of passing of order under section 17(8) of the CRR Act, 1963”.

In views of the above circumstances, the Appellant has no case, therefore, this first rent appeal is dismissed in limine, with no order as to cost.

JUDGE