

"11. In this regard the Court perused the depositions found within the R & Ps brought from the trial court wherein it is admitted by the respondent/ applicant that he being the co-owner of the subject shop, and after the death of his mother, his brother and sister have also given consent in his favour, established his valid title in the property. The said co-ownership entitled has not been challenged in the present appeal. Moreover it has been admitted by the appellant that he had been depositing rent in the MRC after the death of the father of the applicant/ respondent thus accepting the relationship of the landlord and tenant between them. Admittedly the respondent is retired person who is not currently doing any job. It has also been admitted on the both sides that it is the wife of the respondent/applicant who is doing job at Saudi Arabia and their children are getting education there. Admittedly the wife of the respondent is the sole bread earner of the family, whereas the respondent having no source of income at present. The contention raised by the learned counsel for the applicant that the respondent is of 70 years and has also not elaborated his intended nature of business, in my humble view could not restrict him from claiming the subject property for his personal use. Whereas the passport and Visas of the respondent/applicant and his family were also produced before trial court, who observed that the Visa of the respondent/ applicant was a non-employment Visa"

4. Learned counsel for the petitioner contends that earlier to this eviction application respondent's father and mother also preferred same nature of applications but both were dismissed, hence, *res judicata* will apply to the present respondent, who is son and being legal heir he also represents his parents.

5. I do not find any substance in the plea of *res judicata*, so raised by the learned counsel for the petitioner. The plea of *res judicata*, I would add, would only be applicable in the rent *jurisdiction* if it is with reference to same 'cause of action'. Here, it is worth explaining that in rent jurisdiction, the term 'cause of action' is subject to circumstances because it is the *circumstances* which, *in fact*, control the '*need*' of a man. One, because of his circumstances, needs not be in need of doing any *business* but changed circumstances may compel him to do a *business* or even may compel him to part with *failed* business and to start a new one. This has been the reason because of which, it is by now settled that the selection of business is the sole prerogative of the

landlord so also choice of rented shop, if having more than one. Reference is made to case of Shakeel Ahmed and another v. Muhammad Tariq Farogh and others 2010 SCMR 1925.

"5.It is well-settled principle of law regarding appreciation of evidence that the evidence adduced by the parties is to be read, evaluated and assessed as a whole, and the impact of the evidence of an individual witness is also to be gauged in the same manner. Here it may also be observed that the selection of business is the sole prerogative of the landlord so also choice of rented shop, if having more than one, and therefore **no restriction can be imposed upon the landlord/ appellant No.1 on the pretext of restoration of his clearing and forwarding license during the pendency of rent case.** "

Thus, I would not hesitate in adding that failure of a landlord in earlier eviction proceedings would not be of sufficient to bring the plea of *res judicata* if he, otherwise, proves his '*personal bona fide need*' with reference to changed circumstances i.e. '*new cause of action*'.

6. In the instant matter, such plea is even misconceived for simple reason that referred earlier proceedings were launched by father of the respondent/ applicant who, *undeniably*, is dead thereby making his legal heirs, including the respondent/ applicant as one of the co-owner/co-sharer and other legal heirs have given no objections to the present landlord though legally, in the rent jurisdiction every co-owner has a right to agitate the plea of *personal bona fide need* irrespective of fact that tenancy, created by other co-sharer because *legally* every co-sharer has his/her own circumstances hence legally shall have a right to establish the plea of *personal bona fide need* in respect of such premises. Reference may be made to Imran Qadir v. Roqiya Sultana and 7 others 2017 CLC Note 80 wherein it is observed as:-

"Any of the co-sharers may file a rent case against the tenant irrespective of the fact that some other co-sharers had inducted the tenant in the tenement. (Abdul Ghani v. Abrar Hussain 1999 SCMR 348 & Muhammad Hanif and others v. Muhammad Jameel and 5 others 2002 SCMR 429)."

therefore, instant proceedings, initiated by the respondent/ applicant, is with reference to an independent and fresh cause of action, who is admittedly landlord so was rightly discussed by the learned appellate Court in its

impugned judgment. However, learned counsel for the petitioner is satisfied if instant petition is disposed of with directions that he may be allowed to evict the demised premises within six months with rider that in case respondent fails to establish his business within four months, he will return the same. Accordingly, instant petition is disposed of along with listed applications with directions to the petitioner that he shall handover the possession of demised premises within six months from/today. In case of failure, the petitioner/tenant shall be got evicted from demised premises by approaching the Rent Controller without any notice or further time. However, in case, respondent fails to establish his business, he will return the demised premises to the tenant with fine of Rs.50,000.

7. With regard to arrears along with utility bills, if any, executing court would be competent to decide the same. This, however, shall not prejudice to eviction of petitioner within stipulated period, as undertaken as well his right of seeking restoration of possession, if respondent fails to establish his business within stipulated period

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