

of ground or grounds, on which the application for ejectment is filed. Such grounds, include *default* (15(2)(ii)) and *personal bona fide need* (15(2)(vii). Needless to add that a *failure* of the landlord in satisfying the Rent Controller about ground or grounds, on which ejectment is sought, would surely result in dismissal of such application. I would also add here that jurisdiction under Article 199 of the Constitution *legally* cannot be invoked as a substitute of another appeal against the order of the appellate Court and equally mere possibility of another conclusion alone would not furnish a valid ground for interference in the concurrent findings of two courts below. Reference may be made to the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* 2010 SCMR 1925. Only exception to this *general* principle is that if any wrong or illegal conclusion are drawn by the Courts below which are not based on facts found as such an act would amount to an error of law which can always be corrected by the High Court. Reference is made to the case of *Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors* PLD 2006 SC 214.

4. Now, to see whether the conclusion, drawn by both the courts below is based is correct or otherwise, it would be conducive to refer to paragraph No.10 of the judgment of the trial Court which reads as under:-

“10. Be that as it may, it is transparent and straight away admission on the part of applicant himself supported with the documentary evidence brought by himself before this court ultimately negates his own version in respect of alleged default period. The applicant claims default from the month of October 2010² till date but subsequently the **applicant seems to be paying rent 'in advance' upto the month of March 2013 and thereafter on the refusal he deposited the rent in MRC discussed in supra.** Therefore, in the circumstances the own version of

the applicant is not clean and bonafide. As such in view of evidence as well as documents produced by the applicant, it has come on record the applicant is miserably failed to prove this point. Hence, this point is answered in negative.”

The said findings *prima facie* shows that the petitioner /applicant never successfully established the ground of *default* rather contradicted his own version. Therefore, conclusion, so drawn by Rent Controller cannot be said to be based on *no evidence*.

5. Since, legally the appellate Court is the *final authority* in rent matters, therefore, it is pertinent to reproduce paragraph No.9 of the impugned judgment of appellate Court, which answers the plea of Petitioner with regard to default:-

“9. Deposing in his cross-examination, appellant Baber Khan has admitted that such receipt bears signature of his sister Samina Waheed. He has further admitted that he does not know that during tenancy of more than thirty years for rented premises whether any complaint was filed by his father against the respondent tenant for committing any default in payment of monthly rent. He has also admitted that rent of premises was **collected from the clinic of respondent tenant.** He has further deposed that agreement as to purchase of goodwill of business of respondent tenant by his brother Khan and his sister Seema Waheed and attested as witness by his other brother Sikandar Waheed Khan, produced as Ex.A-27 was not in his knowledge but in his father cross-examination at page No.4, he has admitted that when such documents was filed by respondent tenant with this written reply and copy whereof was supplied to him but he had not confirmed about that agreement from his signatory brother and sister. In his further cross-examination, he has admitted that none from his brothers and sisters went to collect monthly rent of premises for the month of November to December 2013 from respondent tenant. He has further deposed that he was unaware that when his sister Samina refused to accept rent from respondent tenant, he sent such rent to her through money order. He has finally admitted that after filling of written reply, **he came to know about rent of premises being deposited by**

respondent tenant in MRC No.347/2014. He has also admitted that they have not filed any objection on that MRC. The agreement of good will purchase produced at Ex-O-37 stipulates in Paragraph No.4 that respondent tenant **had cleared the dues of monthly rent of tenement till October 2013.**"

6. Since, learned counsel for the Petitioner submitted history of rent through certified copy of MRC No. 347/2014 and contends that such MRC is not showing regular monthly payments, whereas learned counsel for the Respondent submitted receipts showing therein ledger No. 59 of 2014 with regard to monthly rent payment, therefore, as an abandon caution, report was called from the learned trial judge with regard to two entries. Report is received, which contends that earlier ledger No. 58 was allotted thereafter same was revised and ledger No. 59 was allotted. Accordingly, both payments are with regard to same property. After verifying such report and adjudication of the appellate Court as well as trial Court, suffice to say that petitioner has failed to prove that Respondent committed any default in payment of rent. Such conclusion of the two courts below was / is based on proper appraisal of the material hence is not open to an exception by resort to *Constitutional Jurisdiction* of this Court.

7. With regard to bonafide need I would add that *sister* does not find place in section 15(2)(vii) of the Ordinance which reads as:-

"the land requires the premises in good faith for his own occupation or use of his spouse or any of his children".

Therefore, requiring the *premises* for use of *sister* would not fit in the *criterion*, given by the section itself. Even otherwise, it is a matter of record petitioner has not examined her sister for *whom* he claims the premises and has failed to show any proof that such demised premises is required

by his sister. Thus, *prima facie*, the petitioner also failed to establish such ground hence the order (s) of two courts below is not open to any exception.

8. Accordingly, I find no reasons to interfere in the concurrent findings of the two Courts below and resultantly the instant Petition is dismissed.

JUDGE

Sajid