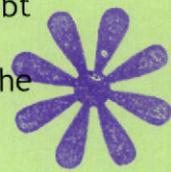




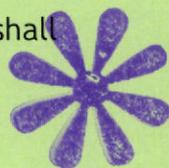
contention was that this has not been proved beyond reasonable doubt that it was ever offered to the landlord and reliance was placed on the affidavits of witnesses of the tenant.



At the very outset once a statement on oath is made that the landlord/landlady has refused to receive the rent prima facie under the law the onus to a large extent was discharged as the refusal was followed by money order which too was refused. Offer of rent by money order is also an offer. In cross of landlord nothing came as contrary to such statement made in the affidavit-in-evidence. However, the tenant made further attempt to strengthen his stance by producing witnesses. Nothing substantial came out contrary to what is claimed in the affidavit-in-evidence of the tenant and his witnesses. One of the witnesses namely Hameeda Bano, as relied upon by petitioner's counsel, stated that she does not remember if it is mentioned in the affidavit or not that tenant/opponent approached landlord for payment of rent. Nothing would turn on this statement as witness has already stated categorically in Para 7 that landlord refused to receive the rent. The rent was since thereafter sent through money order and on its refusal deposited in Court. The two Courts below thus reached to these concurrent findings of fact that there was no willful default that is unearthed by the landlord in cross. In such a situation under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, cannot come for rescue to re-determine question of facts, which were concurrently reached by two forums below. There is no question of law raised by learned counsel for petitioner as discretion was exercised by the two forums below and hence no interference is required.

At this stage learned counsel for petitioner submits that it may be observed that such orders whereby eviction application was dismissed on the ground of default may not prejudice any other case filed by the landlord on any fresh cause of action. It goes without saying that any

further lis or case on fresh cause of action shall not be prejudiced by any observation in this order and/or judgments of two Courts below or shall influence subsequent proceedings based on fresh cause of action.



In view of above petition being misconceived is dismissed along with listed applications.

JUDGE