

Date of hearing : 18-2-1985.

#### ORDER

**Aslam Riaz Hussain, J.** Bashiruddin and Nasiruddin, petitioners seek leave to appeal against the judgment of the Lahore High Court, Lahore, dated 30-1-1985, dismissing their Writ Petition (No. 173/1985) in a real matter. The facts giving rise to the petition are, briefly, that the petitioners are tenants in a shop owned by Siraj Din, respondent No. 3. In May, 1980, the latter moved an application for their eviction from the shop before the Rent Controller, Sargodha, on the grounds of (i) default in payment of rent ; (ii) sub-letting the shop without permission of the landlord and (iii) that the shop in question was *bona fide* required by the landlord for his personal use. The application was resisted by the petitioners. After considering evidence of the parties the learned Rent Controller rejected the plea of default, but upheld the pleas of personal requirement and subletting of the Shop without the permission of the landlord, therefore, directed their eviction from the shop. The petitioners filed an appeal which was dismissed by the Additional District Judge, Sargodha, vide judgment dated 6-4-1983. They then filed a Constitutional Petition before the High Court which met the same fate. Hence the present petition.

3. It was vehemently argued by the learned counsel for the petitioners that even earlier, in 1973, the respondent-landlord had sought eviction of the petitioners from the shop in question on the ground of personal need, but that application had been dismissed and, that, as such the subsequent application filed in May, 1980, (out of which the present petition has arisen) was barred in view of the provisions of section 14 of the Punjab Urban Rent Restriction Ordinance 1939, which reads as follows

"14. **Decision which have become final not be to be reopened.** The Controller shall summarily reject any application under subsection (2) or under sub-section (3) of section 13 which raises substantially the same issues as have been finally decided in a former proceeding under this Ordinance." We are, however, unable to agree with this submission. Through this section, the principle similar to that of *res judicata* is sought to be applied to proceedings before the Rent Controller, but it is well established that principle of *res judicata* not apply where the cause of action on which the application is based, has arisen after the disposal of the first application. For example where an ejectment application is based on default in payment of rent by the tenant for himself or is found to be in occupation of other suitable premises at one time, may after some reasonable period of time be found to be in *bona fide* need of more or better accommodation either because the size of his family has increased or his need has increased or he is no longer in occupation of another suitable premises. In such a case all that is to be seen the Rent Controller is whether the circumstances have not substantially changed after the dismissal of the previous application and whether in the existing circumstances the requirement of the landlord is *bona fide*. In case the finding is in the positive the earlier application will not constitute a bar to the second (or even a third) ejectment application. The same view was taken by the Peshawar High Court in *Haji Malal Khan v. Mir Hassan* (1980 CLC 1422)

4. It may also be mentioned that the plea of subletting had not been taken by the respondent landlord in the earlier ejectment petition filed in 1973. Obviously therefore this was a fresh ground which has been accepted by the learned Rent Controller and upheld by the learned Additional District Judge. Therefore, the order of petitioners' eviction on that ground would be effective notwithstanding the dismissal of landlord's earlier application, which was based only on the ground of personal need.

5. For the foregoing reasons we find no force in this petition which is consequently dismissed.

(TQM)

Petition dismissed.