

**2021 C L D 639**

**[Lahore (Multan Bench)]**

**Before Jawad Hassan, J**

**M.C.R. (PVT.) LTD. FRANCHISEE OF PIZZA HUT---Petitioner**

**Versus**

**MULTAN DEVELOPMENT AUTHORITY and others---Respondents**

Writ Petition No. 2761 of 2021, heard on 8th March, 2021.

**(a) Constitution of Pakistan---**

---Art. 199--- Constitutional jurisdiction--- Availability/alternate remedy---Scope---Even in presence of alternate remedy, a Constitutional petition can be entertained upon the touchstone of in-adequacy of available remedy before prescribed forum---Such extra ordinary jurisdiction can only be used in exceptional circumstances where violation of some statutory duty on the part of statutory authority is apparently established or impugned action or order reflects glaring illegality or is tainted with obvious malice or is identifiably passed as coram-non-judice---Such jurisdiction can be exercised to defeat legislative intent concerning designated and defined judicial forum to entertain and decide about a particular category of cases and furthermore it cannot be used to encroach upon defined jurisdiction of other Courts and tribunals established under command of law as the same amounts to bypassing intent and wisdom of legislature.

Mian Muhammad Yousaf and another v. Lahore Development Authority through Director-General, L.D.A. Plaza, Lahore and 5 others PLD 2001 SC 393; Haji Muhammad Ashraf v. The District Magistrate, Quetta and 3 others 2000 SCMR 238; Muhammad Waris Ali v. Deputy Commissioner, Sheikhpura and others 1999 SCMR 2380; Ali Gohar v. Province of Sindh and others 2018 CLC 1999; Abdur Rahman and 5 others v. Rifatullah and 8 others 2016 CLC Note 35; Mst. Azra Bibi v. Chief Settlement Commissioner, Punjab, Lahore and 7 others 2010 YLR 2159; Sher Samad Khan v. M.D.A. and others 2009 YLR 1504; Malik Zahoor Ahmed v. Divisional Canal Officer, Division Bahawalpur and others 2007 MLD 1309; Asad Shuja Siddiqui through General Attorney v. Lahore Development Authority, Lahore through Director General and 6 others 2006 YLR 79; Sh. Naveed Yaqoob and another v. Federal Government through Secretary of Defence, Islamabad and 4 others 2003 YLR 1268; Muhammad Khalid Javed and others v. Lahore Development Authority and others PLD 2021 Lah. 211; Syed Dost Ali v. Federation of Pakistan through Secretary Defence and 2 others 2016 CLC 367; Muhammad Raza and others v. Jammu and Kashmir Co-operative Housing Society, and others PLD 2013 Isl. 49 and Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd., Tokht Bhai and 10 others PLD 1975 SC 244 rel.

**(b) Constitution of Pakistan---**

---Art. 199---Constitutional petition---Maintainability---Alternate and efficacious remedy--- Scope--- If question of adequacy and efficaciousness of relief sought is involved and Civil Court/Court of first instance lacks jurisdictional competence to grant the same and such failure on the part of that Court tantamount to infringement of fundamental rights---High Court in such exceptional and extra-ordinary circumstances can interfere in the matter under Art. 199 of the Constitution.

**(c) Constitution of Pakistan---**

---Arts. 18 & 199--- World Bank Report on Doing Business---Constitutional petition--- Trade and business, freedom of---Doing Business indicators---Contractual commitments-- -Petitioner was an international food chain running its business on the land leased out by respondent-Authority---Respondent-Authority during pendency of lease period issued notice to auction the piece of land in possession of petitioner---Matter was pending before Commercial Court, when petitioner also invoked Constitutional jurisdiction of High Court---Validity---World Bank's Report on Doing Business (DB Report) ranked economies across the World annually on the basis of its procedural easiness in approaching and getting through with process in ten comprehensive areas that covered life cycle of a business: (i) Starting a Business, (ii) Dealing with Construction Permits, (iii) Getting Electricity, (iv) Registering Property, (v) Getting Credit, (vi) Protecting Minority Investors, (vii) Paying Taxes, (viii) Trading across Borders, (ix) Enforcing Contracts, and (x) Resolving Insolvency--- Higher ranking in ease of Doing Business indicator meant that regulatory environment of that country was more conducive for all stages of business and trade activities---Since launch of DB Report, for first time in year 2020, Pakistan reached at number 108 in overall ranking in Contract enforcement indicator, on which it was holding 156th position previously---With each passing day, the World was becoming more global and more inter-connected, particularly in the affairs of trade and commerce---Volume of foreign investment and number of such business initiatives were taken as one of the determining traits for measuring economic growth of a country and it had a direct bearing upon financial prosperity of the citizens of a country--- One of the basic purpose behind provision of fundamental right under Art. 18 of the Constitution is to advance culture of socio-economic progress and to protect business and trade activities and at the same time to encourage simplification of process of establishing and carrying out new business ventures throughout the country because activities of business and trade create opportunities for masses around and provide job options, financial stability and progress in the area---Petitioner was an international chain and entered into lease agreement with respondent Authority--- It was duty of Courts in Pakistan to see rights of parties and to protect their interest in order to build confidence of investors of Pakistan and at the same time interest of government functionaries was also to be examined regarding financial interest of government--- High Court directed Civil/Commercial Court to decide case expeditiously--- Constitutional petition was dismissed in circumstances.

Atar Ali v. Abed Ali and others PLD 1954 Dacca 158; Muhammad Shah and others v. L.D.A. and others 1993 CLC 2482; Mahmood-ul-Hassan v. Munir Ahmad and 3 others 2018 MLD 771; Khadim Hussain v. Abid Russian and others PLD 2009 SC 419 and Eastern Testing Services (Pvt.) Ltd. v. SECP and others 2016 CLD 581 ref.

Messrs Shaheen Air International Ltd. (SAI) and others v. Messrs Voyage De Air" 2006 SCMR 1684 and Messrs Sports World and others v. LA TEES Fabrics and others 1995 MLD 1707 rel.

#### **(d) Administration of justice---**

---Constitutional and legal rights---Effect---Constitution is grundnorm of a country and law is the command of sovereign body, which is established and mandated under the Constitution to promulgate and enact laws either in the form of primary legislation i.e. Acts and Ordinance etc. or in the form of delegated legislation.

Barrister Husnain Ali Ramzan, Usama Malik, Shameer Ubaid, Mehwish, Shafqat Hussain Thaheem and Saif-ul-Hassan for Petitioner.

Mehar Zameer Hussain Sundhal, Deputy Attorney General, Azhar Saleem Kamlana and Muhammad Shahid Riaz, Assistant Advocates General with Rana Shahid Manzoor, Senior Law Officer, Commissioner Office, Multan, Muhammad Ameen Malik, Advocate Supreme Court and Bilal Ameen, Advocate/Legal Advisors Multan Development Authority with Mushtaq Khan, Deputy Managing Director, WASA, Multan, Saad Ullah, Muhammad Akram Rao, Special Prosecutor, NAB, Shafqat Abbas Mighiana and Hamid ur Rehman Nasir, Civil Judges/Research Officers (LHCRC) for Respondents.

Date of hearing: 8th March, 2021.

If the businesses and industries remain closed for a long time, their revival becomes doubtful, more and more, and in case they are not revived, millions of workers will be on streets and the Government may be faced with a human disaster and calamity of such a magnitude that to overcome it, may become next to impossible. 2020 SCMR 987.

## JUDGMENT

**JAWAD HASSAN, J.**--- While writing this judgment, which deals with the rule of law, dispensation of justice and access to justice for the parties by the recently established Commercial Courts, I recall the illustrious quote of my law Professor, Benjamin B. Ferencz, Professor of International Law, Elisabeth Haub School of Law, Pace University, New York, USA which reads as under:

"There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstance."<sup>1</sup>

2. The Petitioner through this writ petition has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") by challenging the impugned auction notice/advertisement dated 11.02.2021 (the "Impugned Notice"), issued by the Respondent No.3/Director Administration, Water and Sanitation Agency (the "WASA"), Multan.

### I. BACKGROUND OF THE CASE

3. The Petitioner/M.C.R. (Private) Limited is the franchisee of an international restaurant chain, Pizza Hut (the "Pizza Hut"), and a private limited company duly registered with the Securities and Exchange Commission of Pakistan under the then applicable Companies Ordinance, 1984, now the Companies Act, 2017. It is running and operating International Group of Food Franchises including Pizza Hut, Burger King and TGIF.

4. An application was moved by the Pizza Hut to the WASA Multan for grant of land on lease measuring 4 kanals situated at Gulgashat Colony Multan (the "land in question") and subsequently, the Authority vide 34th Minutes of Meeting dated 09.03.1999 approved the lease of the land in question under Section 7(2) of the Punjab Development of Cities Act, 1976. Consequently, a Lease Agreement dated 20.12.1999 was executed for the lease of land in question for a period of 20 years extendable for further 10 years. The basic issue in this case is whether the WASA can auction the land in question leased to the Pizza Hut during the pendency of civil suit and an interim order. Through the Impugned Notice, the Respondents are bent upon to take over the possession of the land in question, which according to the version of the Pizza Hut, is before the expiry of lease period.

### II. PETITIONER'S SUBMISSIONS

5. Learned counsel for the Petitioner, Barrister Husnain Ali Ramzan, argued that as per Clause-1 of the Lease Agreement, WASA was bound to hand over the vacant possession of the land free from all encumbrances within thirty (30) days but due to certain litigation regarding land in question, its possession was handed over to the Pizza Hut on 25.03.2002, as such the lease agreement will end on 24.03.2022. Barrister Husnain Ali Ramzan further argued that right to remain in possession of the land in question till the Ending Period, was accrued under the Additional Lease Agreement dated 19.03.2018 between the parties according to which lease period has been extended for a period of thirty-three (33) years but the Respondent/WASA in violation of the aforesaid Lease Agreement issued Notice No. 459/admn(G)/WASA, dated 02.05.2020 for vacation of land in question.

6. Mr. Usama Malik, Advocate strenuously argued that lease period has not been ended but the Respondents have sealed the site in question without adopting proper procedure which is clear violation of Article 4 of the Constitution which states that it is an inalienable right of every citizen to be treated in accordance with law and no action detrimental to his/her life, liberty, reputation or property shall be taken except as per law but the impugned auction notice/advertisement infringed Petitioner's fundamental rights i.e. right to life (Article 9), safeguard against exploitation (Article 3), right of dignity (Article 14), right to freedom of trade, business or profession (Article 18) and livelihood (Articles 37 and 38). Mr. Usama Malik, Advocate added that Pizza Hut has also moved an application dated 12.05.2020 before the Respondent No.4 by invoking Clause-16 of the Lease Agreement but during the pendency of said arbitration proceedings, the Respondent No.2 sealed the land in question, whereupon the Pizza Hut approached the learned Civil Court Multan and succeeded to obtain an injunctive order dated 07.01.2021 but the Respondent No.2 assailed the said order before the learned Appellate Court, which set aside the same vide order dated 27.01.2021. He states that the final award was issued by the Arbitrator on 31.10.2020, which was challenged by the Pizza Hut under Sections 30 and 33 of the Arbitration Act, 1940 (the "Arbitration Act") before the learned Civil Court, which granted interim relief and suspended the operation of Award dated 31.10.2020.

7. Barrister Husnain Ali Ramzan stated that the Respondents are still bent upon to re-auction the land in question despite pendency of the lis before Civil Court which is against the Constitution and law, and such adamant actions and unilateral approach will also shake the confidence of foreign investors against doing business in Pakistan as well. He maintains that Article 10-A of the Constitution provides the right of fair trial and due process for determination of rights and obligations, therefore, during the suspension of operation of the Award dated 31.10.2020, if any action is taken by the Respondents, the Pizza Hut will suffer an irreparable loss and injury. In order to strengthen his arguments, learned counsel has relied on "Atar Ali v. Abed Ali and others" (PLD 1954 Dacca 158), "Muhammad Shah and others v. L.D.A. and others" (1993 CLC 2482), "Mahmood-ul-Hassan v. Munir Ahmad and 3 others" (2018 MLD 771) and "Khadim Hussain v. Abid Russian and others" (PLD 2009 SC 419).

### III. RESPONDENTS SUBMISSIONS

8. Learned counsel for the Respondents objected to the maintainability of the petition on the grounds that the matter is still pending before the Civil Court and resolution of the same requires deciding upon factual controversies involving disputed questions of fact which cannot be decided in constitutional jurisdiction. They stated that the Additional Lease Agreement dated 19.03.2018 referred to by learned counsel for the Petitioner is an un-registered and fake document as such it cannot be relied upon; thus the Pizza Hut has

concealed material facts as such is disentitled to discretionary relief. They argued that under Clause 11 of the Lease Agreement, the Pizza Hut is bound to handover the possession of vacant plot which has been denied despite issuance of numerous notices/letters and in terms of letter dated 18.12.2019, the Pizza Hut requested for rectification of lease expiry date as 24.03.2022 instead of 20.12.2019 pursuant to which the committee in its meeting held on 17.02.2020, clarified the issue of expiry of original lease agreement.

9. Arguments heard. Record perused.

#### IV. DETERMINATION BY THE COURT

10. By examining the documents filed by the Pizza Hut and the reply filed by the Respondents, it is evident that the lease was executed and extended from time to time and there is a dispute between the parties only to the extent of auction of the land in question, for which arbitration clause under the lease is of much importance which reads as under:

"In case of dispute on the interpretation of any clause of this agreement, the matter shall be referred to the Commissioner Multan Division, Multan for arbitration. His decision being sole arbitrator shall be final and binding upon both the parties. Arbitration fee shall be borne the LESSEE"

11. As per arguments of learned counsel for the Pizza Hut, the matter was referred to the Arbitrator under the above-mentioned clause, and the parties also filed civil suits before the Civil Court. However, this Court has to examine the subject matter of the instant constitutional petition which is the auction notice.

12. The Pizza Hut has not put a veil of denial on the fact that civil suit regarding the same subject matter and for the same ultimate relief is pending between the same parties before the Civil Court Multan and while considering the commercial nature of the lis, this Court vide its interim order dated 22.02.2021 directed to be heard by a Court, which is designated as Commercial Court through notification No. 6032/DDJ/ DR(PD&IT) dated 28.04.2020 exclusively to hear and adjudicate the cases of commercial nature as defined in Vol-I, Chapter-1, Part-K, Rules 10 and 11, of the Lahore High Court Rules and Orders. In this view of the matter, when the case is still pending before the Commercial Court, which for all intent and purposes, is a Civil Court of competent jurisdiction to adjudicate and finally decide the case in hand. The first and foremost question requiring determination of this court is the maintainability of this constitutional petition under Article 199 of the Constitution.

#### V. MAINTAINABILITY OF THE WRIT PETITION IN PRESENCE OF THE CIVIL SUIT ON THE SAME SUBJECT MATTER BETWEEN THE SAME PARTIES

13. In a somewhat similar matter, the Islamabad High Court in "Eastern Testing Services (Pvt.) Ltd. v. SECP and others" (2016 CLD 581) summed up the guiding principles regarding entertainment and maintainability of Writ Petition under Article 199 of the Constitution as laid down by the Constitutional courts of the country from time to time in the following manner:-

"(i) The rule that the Court will not entertain a petition under Article 199 when other appropriate remedy is available is not a rule of law barring the jurisdiction of the Court.

(ii) When the law provides an adequate remedy, constitutional jurisdiction under Article 199 of the Constitution will be exercised in exceptional circumstances.

(iii) The exceptional circumstances which may justify invoking jurisdiction under Article 199 of the Constitution when adequate remedy is available are when the order or action impugned is palpably without jurisdiction, mala fide, void or coram non iudice.

(iv) The tendency to bypass the remedy provided under the relevant statute by resorting to the Constitutional jurisdiction of a High Court is to be discouraged so that the legislative intent is not defeated.

(v) Constitutional jurisdiction under Article 199 cannot be readily resorted to when the matters amenable to the jurisdiction of an exclusive forum is mandated by the Constitution itself or when hierarchy provided under a statute ends up in appeal, revision or reference before a High Court or directly the apex Court.

(vi) The High Court in exercising its discretion will take into consideration whether the remedy provided under the statute is illusory or not".

14. It is therefore established that even in the presence of alternate remedy, a Constitutional petition can be entertained upon the touchstone of in-adequacy of the available remedy before the prescribed forum. However, this extra-ordinary jurisdiction can only be used in exceptional circumstances where violation of some statutory duty on the part of a statutory authority is apparently established or impugned action or order reflects glaring illegality or is tainted with obvious malice or is identifiably passed as coram-non iudice. Nevertheless, this jurisdiction cannot be exercised to defeat the legislative intent concerning designated and defined judicial forum to entertain and decide about a particular category of cases and furthermore it cannot be used to encroach upon the defined jurisdiction of other Courts and tribunals established under the command of law as it will certainly amount to bypassing the intent and wisdom of legislature.

15. Speaking of general criteria as chalked out by the Constitution and the law of the land, Civil Courts, and in the instant case Commercial Court, being the Courts of first instance are like the swell step in the staircase of judicial hierarchy of the country. If an aggrieved person, who is facing negation or denial of his civil rights, and intends to get it enforced and seek redressal of his grievance, he has to approach the corridor of justice by beginning with the starter step of that stair case i.e., court of first instance. Bypassing the first step by adopting a hurling approach or plunge for the ultimate end of the stair way, in order to avoid the starter step, will not only frustrate the purpose behind this whole structural framework but it will also run against the object of establishing the whole scheme of Courts, which provides a gradual uplifting of step by step, where each upper pedestal is in place with an aim to re-look and re-examine the findings and conclusions of the lower tier, in order to certify the right conclusion drawn by it and also to rectify the probability of error, if it found any. This structured hierarchy is there to be preserved and not to be breached and violated in any ordinary course of choice.

16. If the Civil Court being the court of first instance is vested with definite jurisdiction regarding the lis of the parties and is also competent to grant adequate and ultimate relief, available under the law, then in such a case, passing round such forum with the aim and goal to take grasp of the extra-ordinary jurisdiction of this court under Article 199 of the Constitution must be discouraged. Such tendency is often practiced by a party to secure an umbrella of relief, which does not belong to the grievance it put forth in a case where the ultimate entitlement of relief, is the sunshade offered by the trees that falls within the plains of law, which is within the well devised jurisdiction of Civil Court being the court of first instance. In the instant case, when the matter is still pending

before the Civil/Commercial Court, which has clear jurisdiction in the matter and competent to grant adequate, efficacious and ultimate relief then interfering in such a matter within the scope of Article 199 of the Constitution will amount to prejudging and pre-empting the judgment of Civil/Commercial Court and in a way will shake the jurisdictional foundation of that court in an irreparable manner.

17. The Pizza Hut has not established in a substantial manner that the matter falls within the category of extra-ordinary circumstances to exercise discretionary relief in its favor and in the absence of such exceptional circumstances, interfering in the matter which is pending before the competent forum will amount to upsetting the apple cart of well-structured judicial hierarchy as discussed above. This will not only amount to bypassing and multiplying the remedies available under the law but in a way will also result in the breach of jurisdiction validly vested in the Civil/Commercial Court under the law. That is why it has been a consistent position of the Courts, well-reflected through number of judgments that during pendency of civil suit, a constitutional petition regarding the same subject matter and for the similar relief cannot be maintainable. The August Supreme Court in "Mian Muhammad Yousaf and another v. Lahore Development Authority through Director-General, L.D.A. Plaza, Lahore and 5 others" (PLD 2001 Supreme Court 393) deprecated the tendency of bypassing plenary jurisdiction of Civil Courts in pending matters and approaching the constitutional jurisdiction of High Court and observed that "In the instant case the suits and an appeal are pending decision between the parties before the Civil Courts and, therefore, bypassing the remedy provided under, the plenary jurisdiction of the Civil Courts would not be justified and to press into service the Constitutional jurisdiction of the High Court by the appellants can only be deprecated." Similarly the Hon'ble Supreme Court in "Haji Muhammad Ashraf v. The District Magistrate, Quetta and 3 others" (2000 SCMR 238) held that "when a suit was pending before civil court and interim injunction was also issued in the same then any further grievance in the very matter should have been agitated before the civil court and no ground for interference by the High Court under Article 199 of the Constitution was made out". It was also held by the Court that "it is apparent that in the present case at the time the constitution petition was filed in the High Court, the petitioner's suit was already pending and on his own admission an interim order had been issued by the Civil Court, as such, even if the petitioner had been forcibly dispossessed from the plot, as alleged, he could have conveniently approached the Civil Court for appropriate action. In the above circumstances, no ground for interference with the findings of the learned Judges of the' High Court is made out. The petition is accordingly dismissed and leave is refused." Same view was taken by the august Supreme Court in "Muhammad Waris Ali v. Deputy Commissioner, Sheikhpura and others" (1999 SCMR 2380) by holding that "it is not denied that civil suit on the same subject-matter is pending before Mr. Mohsin Abbas, Civil Judge, Sheikhpura. The learned Single Judge of the Lahore High Court, was, therefore, right in declining to exercise his discretionary jurisdiction under Article 199 of the Constitution by dismissing the writ petition filed by the petitioner."

18. The Division Bench of Sindh High Court in "Ali Gohar v. Province of Sindh and others" (2018 CLC 1999) also concluded that splitting up claim and multiplying remedies in this way is not permissible under the law. It was observed by the Court that "Keeping in view the pendency of suits, it appears that the Petitioner has not only split the claim put forward by him but has multiplied the remedies regarding the same subject matter/cause of action which under law is not permissible." The Division Bench of Peshawar High Court in "Abdur Rahman and 5 others v. Rifatullah and 8 others" (2016 CLC Note 35) also came to the same conclusion in the manner that "we have noticed that civil suits

regarding the mutations referred above are already pending disposal before the competent Civil Courts and as per information furnished by the learned counsel for the parties, the civil suits are ripe up for final hearing. The learned Member Board of Revenue rightly observed and directed the parties, under the circumstances of the present case to approach the Civil Court for points raised by the parties with regard to the impugned mutations and also passed a well reasoned order. We would refrain from commenting upon the legality of the orders passed by the revenue forums impugned in this writ petition as the same may damage the case of either party. It is for the Civil Court to decide the controversy between the parties by a full fledged trial and affording the parties to prove their stance." This Court in "Mst. Azra Bibi v. Chief Settlement Commissioner, Punjab, Lahore and 7 others" (2010 YLR 2159) also laid down same principle while holding that "admittedly, civil litigation already pending between the parties and in such like matter, civil court has jurisdiction to entertain in the matter and the jurisdiction of Civil Court cannot be ousted." This Court in "Sher Samad Khan v. M.D.A. and others" (2009 YLR 1504) also expressed similar opinion by holding that "admittedly the writ petitioner himself has invoked the jurisdiction of civil Court regarding the same controversy against respondents which is still pending adjudication besides he himself filed partnership deed before the respondent-M.D.A. Admittedly the disputed questions of facts are involved which need thorough inquiry and this exercise cannot be under-taken in constitutional jurisdiction. The case law cited at bar, by the learned counsel for the petitioner is not of much help to him as those are distinguishable in view of peculiar facts of the case in hand. I, therefore, find no merits in this petition which is hereby dismissed as being not maintainable". This Court in "Malik Zahoor Ahmed v. Divisional Canal Officer, Division Bahawalpur and others" (2007 MLD 1309) also laid down the same principle while holding that "Since the matter is already pending in the Civil Court and alternate remedy is available to the petitioner to approach the said Court by filing an application or to approach the Divisional Canal Officer for passing an appropriate order." Same observations were made earlier by this Court in "Asad Shuja Siddiqui through General Attorney v. Lahore Development Authority, Lahore through Director General and 6 others" (2006 YLR 79) by holding that "as mentioned above, civil suit is pending adjudication, it is a good ground not to exercise discretion in favour of the petitioner as the law laid down by the honourable Supreme Court in Ch. Tanbir Ahmad Siddiky v. Province of East Pakistan and others PLD 1968 SC 185." This Court in "Sh. Naveed Yaqoob and another v. Federal Government through Secretary of Defence, Islamabad and 4 others" (2003 YLR 1268) also enunciated this principle by holding that "It is settled principle of law that the writ petition is not maintainable in case a civil suit qua the same subject-matter is pending adjudication before the Civil Court, as per principle laid down by the Hon'ble Supreme Court in Ch. Tanbir Ahmad's case PLD 1968 SC 185."

19. It is, however, in no manner to suggest that in every case where civil suit is pending, Writ petition under Article 199 must always be failed because the most essential ingredient to determine the question of maintainability of such petition is not only the availability of 'alternate remedy' but the most vital and determining factor is that such alternate remedy must also be 'adequate and efficacious'. This Court while rendering a recent judgment in titled as "Muhammad Khalid Javed and others v. Lahore Development Authority and others" (PLD 2021 Lahore 211) has also ventured into the arena, where pendency of civil suit was declared as no bar to allow the Constitutional petition under Article 199 on the touchstone that the salient features of "adequacy of remedy and its efficaciousness" could not have been secured before the Civil Court. It was held:



"adequacy of an alternative remedy is to be judged in relation to the requisite relief. If the relief available through the alternative remedy, in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an "other adequate remedy" within the meaning of Article 199 of the Constitution."

20. The Division Bench of Sindh High Court in "Syed Dost Ali v. Federation of Pakistan through Secretary Defence and 2 others" (2016 CLC 367) also held that "in cases where remedy including by way of a civil suit is neither adequate nor efficacious and does not give the requisite relief then in such peculiar circumstances invoking the writ jurisdiction even during pendency of suit is not prohibited." The Islamabad High Court in "Muhammad Raza and others v. Jammu and Kashmir Co-operative Housing Society, and others" (PLD 2013 Islamabad 49) also laid down the similar principle by holding that "as far as objection regarding the pendency of civil suit is concerned, the same loses force in the present situation because where there is a clear violation of rules and where authority acts in a manner altogether unwarranted by law, the remedies provided under the law need not be exhausted before having recourse to the constitutional jurisdiction of this Court." The August Supreme Court in an earlier judgment "Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd., Tokht Bhai and 10 others" (PLD 1975 Supreme Court 244) answered such eventuality by holding that where civil suit does not provide an alternative effective remedy then pendency of civil suit does not bar exercise of Writ jurisdiction by the High Court. It was observed by the Apex Court "Learned counsel for the appellant is right in pointing out that the learned Judges in the High Court overlooked the fact that in the civil suit the legality of the proceedings of the meeting held on the 15th of June 1972 was not under challenge, as the suit had been filed before the date of this meeting, with the object of restraining the defendants from holding the same. The suit, however, did not prove effective, as temporary injunction was refused by the trial Court only one day before the meeting was scheduled to be held. It would, therefore, appear that, on the factual plane, the suit filed by the appellants could not be regarded as an adequate alternative remedy. Even otherwise, on principle, the weight of authority is in favour of dealing with such matters in the exercise of the writ jurisdiction of the High Court rather than by way of civil suits."

21. After examining both sides' view and scanning of vice versa positions, which culminated into totally divergent and different conclusions of the matter, and in the light of judicial pronouncement referred above, it is held that during pendency of civil suit before a competent Civil Court/Commercial Court vested with jurisdiction to adjudicate upon the matter and to grant ultimate relief, a constitutional petition under Article 199 of the Constitution is not maintainable as the same violates jurisdictional sanctity of the courts established under the structured scheme of law and amounts to overlapping of jurisdiction, which is not warranted and required under the law and Constitution. However, if the question of adequacy and efficaciousness of the relief sought is involved and Civil Court/Court of first instance, lacks jurisdictional competence to grant the same, and such failure on the part of the court tantamount to infringement of fundamental rights, then the High Court, in such exceptional and extra-ordinary circumstances, can interfere in the matter under Article 199 of the Constitution.

22. Applying this principle to the case in hand, the Petitioner/Pizza Hut has approached the Civil/Commercial Court of first instance, which is competent forum to entertain, adjudicate and decide the matter in accordance with law and to grant the ultimate relief, which the petitioner failed to establish as inadequate or inefficacious, therefore the matter in hand is a matter of non-interference within the mandate of Article 199 of the Constitution.

23. However, at this juncture, the learned counsel for the Respondents Messrs Muhammad Ameen Malik, ASC and Bilal Ameen, Advocates along with Muhammad Shahid Riaz, A.A.G. through C.M.No.2317 of 2021 filed today, informed that vide letter dated 05.03.2021, the WASA has withdrawn the notice dated 11.02.2021 for the time being. They have also stated that the matter pertaining to the civil rights and liabilities of the parties will be dealt with in accordance with the conclusion of civil suit pending before the Civil/Commercial Court. The Pizza Hut has made the prayer to set-aside the impugned auction notice dated 11.02.2021 which has been withdrawn by the WASA through the letter referred above, therefore, this petition has become infructuous. The necessary outcome of the stance taken on behalf of the Respondents and natural corollary of this development of withdrawing the Impugned Notice, leave this Court with no other option but to not touch upon the merits of the case and let the parties pursue their already pending civil suit before Civil Court/Commercial Court, the court of first instance, for determination of their rights and liabilities.

## VI. FUNDAMENTAL RIGHTS IN CONTEXT OF EASE OF DOING BUSINESS

24. Before parting with the judgment, it is observed that the Commercial Courts, which are established by the Lahore High Court in Lahore, Multan and Faisalabad for the time being, are meant to secure expeditious disposal of cases of commercial nature within the scope of Article 202 and 203 of the Constitution. The purpose of Article 203 of the Constitution was expounded by the Supreme Court in "Messrs Shaheen Air International Ltd. (SAI) and others v. Messrs Voyage De Air" (2006 SCMR 1684) while holding that the object of Article 203 of the Constitution is to enable High Court to establish orderly, honorable, upright and impartial and legally correct administration of justice. Article 37(d) of the Constitution also provides that it is the duty of state to provide inexpensive and expeditious justice to the people. Therefore, the Commercial Court, which is seized with the matter in hand is directed to seek guidance from Rules 10 and 11, Chapter 1-K, Volume I of the Lahore High Court Rules and Order and from the judgment of "Messrs Sports World and others v. LA TEES Fabrics and others" (1995 MLD 1707 Lahore); wherein this Court had directed the learned trial Court to follow Rule 10, Chapter 1-K of the High Court Rules and Orders, Volume I in cases of commercial nature, which mandates as under:-

"All cases which have been marked as 'commercial cases' under the preceding paragraph shall be brought to a hearing as early as may be practicable. Such cases shall be given priority on the day of hearing over other cases, except part-heard cases, and shall, so far as possible be heard from day to day until they are finally decided"

25. The Enforcing Contracts indicator of Doing Business, a project introduced by the World Bank as 'Ease of Doing Business' in 2002, has also followed a data-driven approach to measure improvements in business environment based on time, cost and quality of judicial processes across economies of 190 countries. Keeping in view the global economic challenges, World Bank's Report on Doing Business (DB) ranks economies across the world annually on the basis of its procedural easiness in approaching and getting through with the process in ten comprehensive areas that covers the life cycle of a business: (i) Starting a Business, (ii) Dealing with Construction Permits (iii) Getting Electricity (iv) Registering Property (v) Getting Credit (vi) Protecting Minority Investors (vii) Paying Taxes (viii) Trading across Borders (ix) Enforcing Contracts and (x) Resolving Insolvency. A higher ranking in ease of doing business

indicator means that the regulatory environment of that country is more conducive for all stages of business and trade activities. Since the launch of DB Report, for the first time in 2020, Pakistan has reached at No.108 in overall ranking in Contract enforcement indicator, on which it was holding 156th position previously.

26. With each passing day, the World is becoming more global and more inter-connected, particularly in the affairs of trade and commerce. The volume of foreign investment and number of such business initiatives are taken as one of the determining traits for measuring economic growth of a country and it has also a direct bearing upon the financial prosperity of the citizens of a country.

27. Article 4 of the Constitution guarantees equal protection of law and fundamental right to be treated in accordance with law as inalienable right of every citizen "wherever he may be, and of every other person for the time being within Pakistan". Simultaneously, Article 5 of the Constitution unequivocally laid down that obedience to the Constitution and law is the inviolable obligation of "every citizen wherever he may be, and of every other person for the time being within Pakistan". It is thus evidently clear that the enjoyment of rights is made subject to abiding of the law and fundamental right of inviolability of equality before the law is equally corresponded with the obligation of obedience to the Constitution and the law, both for the citizen and for any other person who is for the time being in Pakistan. The Constitution is grundnorm of the country and law is the command of sovereign body, which is established and mandated under the Constitution to promulgate and enact laws either in the form of primary legislation i.e., Acts and Ordinance etc. or in the form of delegated legislation. Similarly, under Article 189 and Article 201 of the Constitution, the decisions of the Supreme Court and High Courts to the extent of decision on a question of law or enunciation on the principle of law, are also binding on all the Courts of the country and in the particular Province, as the case may be. It is therefore imperative and obligatory upon the citizen as well as any person of foreign nationality, who is for the time being in Pakistan, to adhere and abide by the Constitution, the law and judgments of the constitutional Courts of the country and on the other hand, he has a fundamental inviolable right of equal protection of the law.

28. Undoubtedly freedom of trade, business and commerce is a fundamental right guaranteed under Article 18 of the Constitution which states that every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business. One of the basic purposes behind provision of this fundamental right is certainly to advance culture of socio-economic progress and to protect and promote business and trade activities and, at the same time, to encourage simplification of the process of establishing and carrying out new business ventures throughout the country because activities of business and trade create opportunities for the masses around and provide job options, financial stability and progress in the area.

29. Since the Pizza Hut is an international chain and entered into lease agreement with WASA, it is the duty of the Courts in Pakistan to see the rights of the parties and to protect their interest in order to build confidence of investors in Pakistan but at the same time the interest of government functionaries has also to be examined regarding financial interest of the Government. The learned Civil/Commercial Court is, therefore, directed to decide the case expeditiously but not later than 60 days from the receipt of copy of this judgment in accordance with law.

30. With these observations, instant petition stands disposed of.

MH/M-77/L

Order accordingly.