MEDONZA
v.
DE SILVA

COURT OF APPEAL.
TAMBIAH, J. AND MOONEMALLE, J.
CA 285/80 (F) – D.C. COLOMBO 2558/RE.
OCTOBER 10, 11 AND 15, 1984.

Landlord and Tenant – Rent and ejectment – Receivable rent determined by Rent Board – Whether receivable rent payable only from date of determination of Rent Board or from date of coming into operation of Rent Act – Sections 3 (1), 7 (1) (a), 7 (2), 7 (3) (a), Section 8 (1), Section 22 (2), Section 22 (3) (c) and Section 22 (5) of Rent Act, No. 7 of 1972 – Regulations 23, 25, 26, 27, 28, 33, 34 and 37 under Section 43 of Rent Act.

After the coming into operation of the Rent Act, No. 7 of 1972, the tenant in occupation of premises which were excepted premises became liable to pay the receivable rent under section 7 of the Rent Act, No. 7 of 1972. On application made to the Rent Board the receivable rent was fixed at Rs. 675 per mensem by its order dated 19.2.1976. The landlord then claimed arrears on the basis that rent at Rs. 675 per month was payable from 1.3.1972 (when the Rent Act came into force). The tenant who had until then being paying rent at Rs. 350 per month claimed that receivable rent at Rs. 675 per month was payable only from the date of the order of the Rent Board and accordingly began paying Rs. 675 per month from 1.3.1976. On 17.9.1976 the landlord served notice to quit on or before 31.12.1976 on the tenant and thereafter filed action on 12.9.1977 for ejectment and arrears of rent. The defendant deposited the amount due on 20.9.1977 to the credit of the case and sought relief in any event under section 22 (5) of the Rent Act. The District Judge held in favour of the landlord plaintiff.

Held–

(1) The receivable rent of Rs. 675 per month was payable from 1.3.1972 and not from the date of the order of the Rent Board and therefore the defendant was in arrears of rent for well over a month after it had become due within the meaning of section 22 (2) of the Rent Act.

(2) Relief in view of the tender of arrears of rent by the deposit in Court under section 22 (3) (c) of the Rent Act was not available to the tenant as the money had been deposited by the tenant after he had entered appearance and there was no valid tender of the arrears to the landlord.

(3) Relief under section 22 (5) of the Rent Act was not available as the failure to pay rent was not due to illness, unemployment or other sufficient cause but to a disclaimer of liability to pay.

(4) Tender of rent to the landlord under section 22(3) (c) must be by actual production of the money or, as in this case cheques have been accepted by the landlord in the past, by cheque.

Case referred to :

Razik v. Esufally (1957) 58 NLR 469, 471.

APPEAL from a judgment of the District Court, Colombo.

H. L. de Silva P.C. with *S. C. Crossette-Tambiah* for the defendant-appellant.
Nimal Senanayake P.C. with *P. A. D. Samarasekera, Mrs. A. B. Dissanayake* and *Mrs. Thelespha* for plaintiff-respondent.

Cur. adv. vult.

November 27, 1984.

TAMBIAH, J.

The plaintiff-respondent filed action for the ejectment of the defendant-appellant from premises No. 112, Reid Avenue, Colombo, on the ground that he was in arrears of rent in a sum of Rs. 17,895 from 1.3.72 up to 31.8.77.

The premises are situated at the junction of Bullers Road and Reid Avenue. It is an upstair house on 40 perches of land. On the ground floor, there are 6 rooms, a verandah, bath-room and lavatory, 2 servants' rooms and a garage ; the upper floor consists of an office room, 3 bed rooms and a bath-room. The floor area is 4,419 square feet.

The premises were excepted premises and not rent controlled. The defendant came into occupation in 1952. The agreed rental was Rs. 180. In 1967, parties entered into a lease agreement, No. 1152, dated 2.7.67. The lease was for a period of ten years commencing from 1.7.67, the rental payable was Rs. 180 per month with an option to the defendant to renew the lease for a further period of ten years at the same rental. Though the lease bond did not mention about the payment of taxes, the defendant agreed to pay the taxes, Rs. 450 per quarter and it would also appear that the defendant had

also paid on certain occasions a further sum of Rs. 100 which has been described by the plaintiff in one of his letters as "paga" money. In all, therefore, the defendant was paying monthly Rs. 180 plus Rs. 150 in all, Rs. 330 as rent. Obviously, the dealings between the parties were not on a business – like footing. According to the evidence, the parties had known each other for 27 years, they were very good friends and in addition, the plaintiff's sister was married to the defendant's brother. The evidence also shows that the defendant is a businessman and a director of 3 or 4 companies and the plaintiff was a sick man, in and out of hospital.

The Rent Act, No. 7 of 1972, which came into operation on 1.3.72, declared void all existing leases. S. 7 introduced a new concept of "receivable rent" in relation to residential premises which were not rent controlled, and in respect of which exorbitant rents were charged by landlords. The classes of premises which would come within the operation of S. 7 are –

(1) Residential premises, where the first assessment of annual value was made before the Act came into operation, and the annual value as at 1.1.69, or if the assessment was made after 1.1.69, as specified in such first assessment, exceeds 150% of the relevant amount. The method of determining the receivable rent is set out in S. 7(1) (*a*) and (*b*) . Where the premises have been let to a tenant, the highest amount, established to the satisfaction of the Board, received by the landlord as rent for any month during the period of two years preceding 1.3.72 (S. 7 (1) (*a*)). Where the premises have not been let to a tenant, or where in the opinion of the Board, the rent referred to in (*a*) is low, and in all other circumstances not provided in para (*a*), such amount as determined by the Board (S. 7 (1) (*b*)).

(2) Residential premises, where the annual value on 1.1.69 did not exceed 150% of the relevant amount, and the Board is called upon to fix the standard rent under s. 4 (5) (*c*). If the fair and reasonable standard rent that is fixed is on the basis of an annual value which exceeds the relevant amount by 150%, such premises also become subject to the receivable amount.

In the present case, the annual value of the premises as at 1.1.69 was Rs. 3,460, and the relevant amount under the Rent Act is Rs. 2,000. Even in 1963, the annual value was Rs. 3,460. The annual value exceeded 150% of the relevant amount, and s. 7 (1) therefore applies to the premises in suit.

Under s. 7 (2), a landlord shall not demand, receive or recover and the tenant shall not pay as rent, in respect of any period commencing on or after the date of commencement of the Act, any amount which is less than the receivable rent. On or after the date of commencement of the Act, it shall be unlawful for the landlord to demand, receive or recover as rent an amount in excess of the receivable rent (s. 3 (1)). Under s. 42, a contravention of s. 3 (1) or s. 7 (2) is an offence and is punishable. The local authority within whose administrative limits, the premises are situated shall levy on the landlord, in addition to rates, a special tax amounting to 75% of the difference between the receivable rent and the authorised rent of such premises (s. 7 (3) (*a*)). The special tax so collected has to be remitted quarterly to the Commissioner of National Housing (s. 7 (3) (*b*)) and has to be credited to the "Repairs Fund" established under s. 8 (1).

Some of the relevant regulations made by the Minister under s. 43 in connection with the "Receivable Rent" and the "Special Tax" make it a duty cast on every landlord and tenant of any residential premises, to which s. 7 (1) applies, to apply to the Board to have the receivable rent determined (Reg. 33) ; the application is to be made, in cases of premises let prior to commencement of the Act, within three months from the date of the coming into force of the Regulations, i.e., 20.5.72 (Reg. 34) ; where the application is to have the receivable rent determined, the Board shall also determine the authorised rent, and where the application is to determine the authorised rent, the Board shall, where applicable, also determine the receivable rent (Reg. 37) ; every local authority is required to maintain a Receivable Rent Register and every entry relating to receivable rent shall, unless varied by the Board, be the basis for the imposition of the special tax (Regs. 23, 26) ; the "Special Tax" shall be collected by each local authority for the month of March 1972 and quarterly thereafter (Reg. 25) ; where any objection is received by the local authority to a notice of assessment of the special tax, the authority shall refer such objection to the Board, which after due inquiry, shall make a decision on such objection (Reg. 27) ; if as a result of any order made by the Board,

there has been an excess or shortfall in the special tax paid, the local authority shall give credit or recover such shortfall, as the case may be (Reg. 28).

The certified extract from the Special Tax Register (P 2) shows that the receivable rent was fixed at Rs. 800 by the local authority. By letter (D 9) dated 1.12.73, the plaintiff's attorney-at-law wrote to the defendant and informed him that the Municipal Council had required the plaintiff to pay the "Special Tax" amounting to Rs. 2,171/83 for 1972 and Rs. 2,606/20 for 1973 ; that the amount has been calculated by the Municipality on the basis that the receivable rent is Rs. 800 per month ; that giving credit to the monthly rent of Rs. 330 paid, there is due Rs. 470 per month as from 1.3.72 up to November 1973, making an aggregate sum of Rs. 9,870. The letter requested the defendant to pay this amount within two weeks, and informed him that as from December 1973, he should pay receivable rent at Rs. 800 per month. The defendant replied by his letter D 10 dated 28.12.73 and stated that he has been advised that the receivable rent is not Rs. 800 but should be calculated on the basis of the highest amount he has paid for the last two years and that s. 7 (2) applies to future payments only ; that until the position is clarified, he would continue to pay the old rent.

On 3.1.74, the defendant applied to the Rent Board for the determination of the rent payable. The plaintiff too applied to have the receivable rent fixed. The application of the defendant came up for hearing on 19.2.76 and the Rent Board by its Order dated 19.2.76 fixed the receivable rent at Rs. 675, the standard rent at Rs. 550 and the authorised rent at Rs. 613. The attorney-at-law who appeared for the plaintiff informed the Board that the plaintiff's application will be withdrawn.

The plaintiff's attorney wrote the letter D 26 dated 1.3.76, and referred to the order of 19.2.76 and informed him that he was liable to pay the receivable rent of Rs. 675 per month as from 1.3.72 ; that the amount due up to 29.2.76 was Rs. 32,400 and giving credit to payments made from 1.3.72 to 31.12.75 at Rs. 330 per month, aggregating to Rs. 15,180 there was due as at 29.2.76, Rs. 17,220. The letter called upon him to pay this amount within 14 days, and informed him that in the event of his failure to do so, the tenancy would be terminated and legal action would be taken for recovery of the said sum and for ejectment. The defendant replied and

stated that he does not agree with the particulars regarding outstanding rents, and on 21.4.76 he sent a cheque for Rs. 675 for March 1976. The defendant, thereafter, continued to send rent at the rate of Rs. 675 per month which amounts were set off by the plaintiff against the arrears. On 17.9.76, a notice to quit was sent to the defendant requiring him to vacate the premises on or before 31.12.76 and demanding arrears amounting to Rs. 17,220 and the defendant by his letter D 37 acknowledged the notice, but denied his liability to pay this amount.

The plaintiff filed action on 12.9.77 and sued the defendant for ejectment on the ground of arrears of rent for well over one month after it has become due in terms of s. 22 (2) and for the recovery of Rs. 17,895 being arrears and damages up to 31.8.77. It was his case that the receivable rent of Rs. 675 was payable by the defendant with effect from 1.3.72. The defendant filed answer and denied he was in arrears ; his case was that the Rent Board order fixing the receivable rent operates only from 1.3.76. It was also his case that the plaintiff cannot maintain the action inasmuch as the defendant has deposited to the credit of the case Rs. 17,895, and that in any event, this is an appropriate case for relief under s. 22 (5) of the Rent Act, as the default in the payment of the rent was due to the uncertainty and indefiniteness in the amount due as rent from 1.3.72 to 28.2.76.

The basic question is whether the receivable rent becomes payable as from 1.3.72 or from the date of determination by the Rent Board. The learned District Judge, having regard to s. 7 (2) and Regulation 25, has held that the order of the Rent Board fixing the receivable rent at Rs. 675 a month is effective from 1.3.72, and that the rent has been in arrears for well over one month after it has become due within the meaning of s. 22 (2).

The learned District Judge then proceeded to consider whether the defendant is entitled to the benefit under s. 22 (3) (c) and for relief under s. 22 (5).

According to the judgment, the defendant deposited the money on 19.10.77 ; summons was sent by registered post on 20.9.77 ; s. 399 (1) of the Administration of Justice (Amendment) Law, No. 25 of 1975, requires the defendant to enter an appearance within 15 days of the date of service of summons ; the defendant would have received summons on 21.9.77 ; the defendant has entered his

appearance on 28.9.77 ; to get the benefit under s. 22 (3) (*c*), the defendant should tender to the landlord all arrears of rent on or before the date when he appears in Court in response to the summons ; the money has been deposited long after he entered appearance. The learned Judge held that the defendant is not entitled to the benefit under s. 22 (3) (*c*).

As regards relief under s. 22 (5), the learned Judge has held that it was not the defendant's position that rent has been in arrears on account of his illness, unemployment or other sufficient cause, but that he took up a legal position that he is not liable to pay. He therefore cannot claim relief under s. 22 (5).

Before us, learned President's Counsel for the defendant submitted that in the first instance, there has to be an application to the Board to have the receivable rent determined or fixed. The Board determines the receivable rent either in terms of (*a*) or (*b*) of s. 7 (1). The receivable rent is actualised or comes into existence only when the Board so determines. The liability to pay receivable rent arises only when it is determined. The determination of receivable rent operates prospectively and not retrospectively.

Learned President's Counsel gave an example. In the two years preceding 1.3.72, there were two tenants. The 1st tenant paid a very much higher rental than the 2nd tenant. The Board determines in 1976 the 1st rental as the receivable rent. Should then the 2nd tenant be saddled with the burden of paying the highest rental that was paid during the period of two years as, from 1.3.72 to 1976 ? He further submitted, as in this case, the tenant pays the agreed rental. By an event that occurred later, the tenant is deemed to be in arrears and his tenancy is in jeopardy. The legislature could not have contemplated such harsh results. S. 7 (1) must be construed as prospectively only. He cited *Maxwell (11th Edn. pp. 205, 206)* :

> "If the enactment is expressed in language, which is fairly capable of either interpretation, it ought to be construed as prospective only. But if the language is plainly retrospective it must be so interpreted. . . . . Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transaction or considerations already past, must be presumed, out of respect to the legislature, to be intended not to have a retrospective operation."

I agree that if the Court is in doubt whether an enactment was intended to operate retrospectively, it must resolve that doubt against such operation. I also agree that s. 7 created a new obligation in respect of a past transaction, and that the presumption is that it is not to have a retrospective operation, but, it is only a presumption and is "displaced when the intention of the legislature, either expressed or to be gathered by necessary implication is otherwise". This intention is to be gathered from "a consideration of the Act as a whole or from the terms thereof". (*Bindra "Interpretation of Statutes", 6th Edn.*, at *pp. 734. 735).*

S. 7 (1) has to be read with the other provisions in the Act and the Regulations made by the Minister which form part of the Act. Under s. 7 (2) the landlord is obliged in law to accept, as from the date of the commencement of the Act, only the receivable rent ; likewise, the tenant is also obliged in law to pay only the receivable rent as from that date. S. 42 (1) makes the failure to comply with s. 7 (2) an offence. The local authority is required by law to levy a special tax (s. 7 (3) (*a*)), maintain a Receivable Rent Register (Reg. 23), and collect the special tax for March'72, and quarterly thereafter (Reg. 25). The entry in the Register as to receivable rent is the basis for the imposition of the special tax (Reg. 26). A duty is cast on both landlord and tenant to apply to the Rent Board within the three months of the coming into force of the Regulations (Regs. 33, 34). The Regulations came into force on 20.5.72. If in consequence of the Board's determination, there is an excess or a shortfall in the special tax paid, the local authority is obliged to give credit or recover such shortfall (Reg. 28).

On a consideration of these provisions, it appears to me that the legislature has explicitly declared its intention that s. 7 (1) should operate retrospectively, as from 1.3.72. These provisions, particularly s. 7 (2) and Regulation 25, leave no room for any ambiguity as to whether s. 7 (1) was intended to be prospective or retrospective.

Learned President's Counsel for the defendant rightly conceded that the defendant cannot claim relief under s. 22 (5), for, it contemplates a case where the tenant on account of his illness or unemployment or other sufficient cause, i.e., similar misfortunes, could not pay, in the sense that he did not have the funds to pay. Here, the defendant's position was that he did not want to pay, as he had been advised that s. 7 (2) applies to future payments only.

There remains to consider whether the plaintiff could maintain his action in view of s. 22 (3) (*c*), as the defendant has deposited the money in Court.

The correct position appears to be that on 29.9.77, the defendant applied for a deposit note and Court made order for the issue of the note ; on 6.10.77, the money was deposited at the Kachcheri and the Kachcheri receipt dated 6.10.77 was filed in Court on 19.10.77.

Learned President's Counsel for the plaintiff submitted that all arrears of rent, in terms of s. 22 (3) (*c*) must be "tendered to the landlord" and that the defendant cannot get the benefit under the section.

> "To constitute tender the readiness to pay must be accompanied by production of the money that is offered in satisfaction of the debt". (*per* Basnayake, C.J. in *Razik v. Esufally* at p. 471)

> "But the law considers a party, who has entered into a contract to deliver goods or pay to another, as having substantially performed it, if he has tendered the goods or the money. . . . provided only that the tender has been made under such circumstances that the party to whom it has been made has had a reasonable opportunity of examining the goods or the money tendered, in order to ascertain that the thing tendered really was what it purported to be. Indeed without such an opportunity an offer to deliver or pay does not amount to a tender."
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> (*Law of Contract* by *Cheshire and Fifoot, 4th Edn. p. 445).*

So, it seems to me to constitute a valid tender of all arrears to the landlord under s. 22 (3) (*c*), there must be actual production of money, or, as in this case cheques have been accepted by the plaintiff in the past, payment by cheque. The tender of the money or the cheque must be made to the landlord.

I affirm the judgment of the learned District Judge and dismiss the appeal with costs.

MOONEMALLE, J. – I agree.

Appeal dismissed.