

1967

*Present : Alles, J.*

V. M. ABDUL SAMAD, Appellant, and H. D. SIRINAYAKE,  
Respondent

*S. C. 68/1966—C.R. Kandy, 18382*

*Rent Restriction (Amendment) Act No. 12 of 1966—Applicability of its provisions at stage of execution of decree—Inapplicability if tenant is in arrears of rent for 3 months—Rent Restriction Act, s. 12 A (1) (a).*

Where execution proceedings for the enforcement of a decree obtained by a landlord for the ejection of his tenant had begun but were not completed on the date when the Rent Restriction (Amendment) Act No. 12 of 1966 came into operation, the tenant is entitled to take shelter under the provisions of the Amending Act, even if he had gained time by unsuccessful applications for stay of execution of writ and by preferring an appeal to the Supreme Court. But he is liable to be ejected under section 12 A (1) (a) of the Rent Restriction Act (as amended by Act No. 12 of 1966) if he was in arrears of rent for three months at the time of the institution of the action.

**A**PPEAL from a judgment of the Court of Requests, Kandy.

*S. Sharvananda, with M. Sivarajasingham, for the plaintiff-appellant.*

*T. B. Dissanayake, with Nihal Jayawickrema, for the defendant-respondent.*

*Cur. adv. vult.*

August 14, 1967. ALLES, J.—

This case illustrates some of the hazards that have to be experienced by a landlord after the passing of the Rent Restriction (Amendment) Act No. 12 of 1966.

The plaintiff filed action against his tenant, the defendant, on 2.7.64 for ejection from the premises in question on the ground that the defendant was in arrears of rent from December 1963 to June 1964. During the course of the trial the case was settled and it was agreed between the parties that the defendant was in arrears of rent ; the defendant agreed to pay the arrears of rent amounting to Rs. 724/32 and a further sum of Rs. 47/94 monthly as damages failing which the plaintiff was entitled to take out writ. The terms of the consent decree were carefully drawn up by both parties and supplemented by further conditions on 3.6.65. On 16.9.65, it was brought to the notice of Court that the defendant had defaulted in the payment of the very first monthly instalment agreed upon between the parties. The defendant denied that there was any default and the dispute was fixed for inquiry. On 1.10.65, after hearing the submissions of Counsel, the Court dismissed the objections of the defendant and the application for execution of the

writ was allowed. The Court was of the view that the defendant's objections were devoid of merit and were merely an excuse for his failure to pay. From this order the defendant made applications to the Supreme Court in Revision or *restitutio in integrum* and also lodged an appeal. The application in revision was dismissed on 10.12.65 and the appeal was withdrawn on 23.3.66. When the record was returned to the Court, Proctor for the plaintiff on 7.4.66 again moved for the re-issue of writ and the application was allowed on 28.4.66. On the same day the liquidator of the Company of which the defendant was the Manager intervened and prayed that writ be stayed pending inquiry as he claimed to be in possession and not bound by the decree. The defendant acquiesced in the petitioner's application. This application came up for inquiry on 6.5.66 and the Magistrate made order on 31.5.66 that the application lacked *bona fides* and dismissed the liquidator's application. Thereafter the learned Commissioner proceeded to consider the legal position resulting from the passing of the Amendment Act which received the Governor-General's assent on 10.5.66 and held, that in view of the provisions of the Amending Act which was given retrospective effect from 20.7.62, the plaintiff was not entitled to take proceedings for the enforcement of the decree. It would appear that as a result of the two applications for the stay of writ and the abandonment of the appeal, the passage of time had enured to the benefit of the defendant who was now able to take shelter under the provisions of the Amending Act. The present appeal is from the order of the Commissioner of 31.5.66.

For the plaintiff to succeed in appeal he must satisfy the Court in this case that the defendant was in arrears of rent for three months at the time of the institution of the action on 2.7.64. Between January 1964 and the date of action the defendant remitted the rent for four months, the other cheques in payment of rent being dishonoured. He has therefore paid rent for the months of December 1963 and January, February and March 1964. The June rent was not due on the date the plaint was filed. The defendant was therefore in arrears of rent only for two months—April and May. Consequently the plaintiff cannot avail himself of the benefit of the new section 12A (1) (a) of the Amending Act since proceedings for the enforcement of the decree had 'begun' but were not completed on the date the Amending Act came into operation.

Since both Commissioners who heard the objections of the defendant to the issue of writ were of the view that the defendant's application of 1.10.65 and his nominee's application of 6.6.66 were devoid of merit and intended to delay the issue of writ which enabled the defendant to successfully seek shelter under the provisions of the law, I would, in the circumstances of this case, while being constrained to dismiss the appeal, deprive the defendant of his costs in appeal. ●

*Appeal dismissed.*