

1973

Present : **Wijayatilake, J.**

P. T. H. ABDUL RAHAMAN, Appellant
and
C. JUSTIN FERNANDO, Respondent

S. C. 29/71—C. R. Colombo, 96966 (R.E.)

Landlord and tenant—Agreement by tenant to pay rent that is “legally due”—Subsequent increase of authorised rent in consequence of annual value of the rented premises being increased by the local authority—Arrears of rent—Computation.

Where a tenant has agreed to pay rent that is “legally due” and the annual value of the rented premises is increased by the Municipal Assessor’s Department, the tenant is not bound to pay the higher authorised rent resulting from the increased annual value until notice is given to him by the landlord requiring him to pay rent at the higher rate. When such notice is given, he is not liable to pay rent at the increased rate except in respect of the months subsequent to the date of the notice.

APPPEAL from a judgment of the Court of Requests, Colombo.

C. Ranganathan, Q.C., with A. Sivagurunathan, for the plaintiff-appellant.

Respondent absent and unrepresented.

Cur. adv. vult.

November 12, 1973. WIJAYATILAKE, J.

The plaintiff had bought the premises in question in 1944 and since then the defendant had been his tenant. The rent had varied from time to time and during the relevant period the defendant was paying Rs. 130.15. In 1966 the defendant had filed action No. 1513/ZL in the District Court of Colombo against the plaintiff for damages and a permanent injunction. On 3.4.67 a settlement was arrived at whereby the present defendant agreed to pay the rent that is legally due from the 1st of April to the present plaintiff. The question has arisen in the instant case whether the defendant has been in arrears of rent in respect of the months of April and May 1967 as he had paid only Rs. 130.15 for each of these months although the authorised rent was Rs. 168.33.

It is common ground that the rent payable prior to April 1967 was Rs. 130.15 and the defendant had sent a money order for Rs. 130.15 on 30.4.67 with a covering letter stating that the said sum is the cost of the rent for the month of April 1967 (P2). There was no reply to this letter. Thereafter the defendant had on 30.5.67 sent a money order for Rs. 130.15 with a similar covering letter stating that this is the cost of rent for the month of May 1967. He has drawn the attention of the plaintiff to the earlier remittance and called for receipts of payment—(P3).

The proctor for the plaintiff by his letter P4 of 3.6.67 acknowledged P2 and P3 and he has taken the position that the premises in question are 'a new premises' and has been assessed as from 1.4.67 at the annual value of Rs. 3,000—hence the standard rent of the premises is Rs. 357.50 per month. The two money orders have been returned and the defendant has been requested to deposit a further three months rent calculated at the present standard rent. The plaintiff by his letter of 30.6.67 P5 has pointed out that the premises do not come under the definition of "new premises" from 1.4.67. He, however, concedes that the Colombo Municipality has raised the annual value consequent on the improvement and alteration from 1.4.67 to Rs. 3,000 and therefore the rates have been increased to Rs. 225 per quarter as from that date—hence the increase in rent permissible is only Rs. 38.25. However, he contends that as the plaintiff has not given prior notice to him of this increase he is not bound to pay the same as from 1.4.67. Thereafter the plaintiff by letter dated 12.8.67 gave notice to the defendant to vacate the premises on 30.9.67 for failing to pay the correct legal rent for the month of April 1967. Admittedly, as from June 1967 the defendant had paid rent at Rs. 168.40 per month. Therefore the principal question which has arisen for consideration is as to whether the defendant had been in arrears from April 1967 in the light of the Agreement 'B'.

The plaintiff in his plaint avers that the rent "legally due" per mensem is Rs. 168.33 and the defendant has failed or neglected to pay such rent for the months of April and May 1967.

Mr. Ranganathan, learned Counsel for the appellant submits that the defendant has clearly and deliberately acted in breach of the aforementioned settlement arrived in Court as he has failed to pay the rent "legally due". He has drawn my attention to the Statutory Notice issued by the Municipal Assessor's Department (P11) dated 31.3.67 whereby the annual value has been fixed at Rs. 3,000 as from 1.4.67. The date of service of this notice according to P11 was 7.4.67. The defendant has admitted receiving this notice on this date. Mr. Ranganathan stresses the fact that on the receipt of this notice it was incumbent on the defendant to pay the rent "legally due"—Rs. 168.33 per month as from April 1967. However, in regard to the rent "legally due", although now the plaintiff claims Rs. 168.33 even on 3.6.67 (P4) he has claimed a sum of Rs. 357.50 per month as standard rent. The plaintiff in his evidence has admitted that up to the time he sent the letter P4 he was not aware what was legally due as rent. This is a most anomalous situation. Despite his lack of awareness he gets his proctor to make a claim of Rs. 357.50 per month. So that in my opinion where a landlord himself is

unaware of the maximum rent he is entitled to charge it would be harsh and unconscionable to expect the tenant to compute the figures on the basis of a fresh assessment and initiate the payment of an enhanced rent. I do not think the settlement referred to makes any difference—so long as the tenant continued to pay a rent not more than the authorised rent.

The further question arises why the defendant failed to make good the balance even at a later stage, particularly in the light of P5 of 30.6.67 whereby the defendant has conceded that on the basis of the fresh assessment the increase in rent would be Rs. 38.25. In this letter he takes the position that as the plaintiff has failed to give prior notice of this increase he is not bound to pay this increased rent as from 1.4.67. It may be noticed that the defendant has paid the increased rent as from June 1967. In my opinion the defendant was right in adopting this position as the landlord had failed to intimate to him the rent "legally due" from him in terms of the settlement. The admission made by the defendant in regard to the increase of rent in P5 of 30.6.67 would be of no avail to the plaintiff as the rent for April and May was due by the end of the month ; and at that stage the rent was not in arrears. I do not think the quantum of rent could be increased retroactively and thereafter pursue a claim for arrears of rent on this basis. As I have already referred to, the letter P4 of 3.6.67 whereby the landlord claims rent at Rs. 357.50 per month from 1.4.67 clearly cuts the ground under his feet.

In the circumstances, I see no reason to interfere with the judgment and decree of the learned Commissioner. I accordingly dismiss the appeal without costs.

Appeal dismissed.
