

1963 *Present : Abeyesundere, J., and Sri Skanda Rajah, J.*

D. L. WIMALASENA, Appellant, and U. L. SEINULDEEN, Respondent.

S. C. 68/1962—D. C. Matale, 1571/M. R.

Landlord and tenant—Arrears of rent—Excess sums paid by way of rent prior to date of default of payment—Right of set-off—Prescription—Rent Restriction Act.

In a contract of tenancy governed by the Rent Restriction Act, excess sums paid by way of rent during the three years immediately anterior to the date when the tenant makes default in the payment of rent are in law available to the tenant for deduction from the rent due from him.

A PPEAL from a judgment of the District Court, Matale.

N. R. M. Daluwatte, for the defendant-appellant.

S. Sharvananda, for the plaintiff-respondent.

November 28, 1963. ABEYESUNDERE, J.—

The plaintiff in this action is the landlord of the premises in suit and the defendant is the tenant thereof. The action is for the recovery of arrears of rent and damages from, and for the ejectment of, the defendant.

According to the evidence of the plaintiff, the defendant has paid the plaintiff rent at the rate of Rs. 40 per mensem upto October 31, 1957. The authorised rent of the premises is Rs. 20 per mensem. The defendant has therefore paid Rs. 20 per mensem in excess of the authorised rent upto the aforesaid date.

The learned District Judge has delivered judgment in favour of the plaintiff and has held that the defendant's claim in respect of the sums paid in excess of the authorised rent is entirely barred by the provisions of the Prescription Ordinance. The period of prescription is three years. We are of the view that the learned District Judge has erred in holding

as aforesaid because the excess sums paid by the defendant to the plaintiff during the three years immediately anterior to April 1, 1959, when he made default in the payment of rent, are available to the defendant in law for deduction from the rent due from him. Those three years commence on April 1, 1956, and end on March 31, 1959. Although the defendant has paid sums in excess of the authorised rent upto October 31, 1957, only the excess paid during the period of 19 months commencing on April 1, 1956, and ending on October 31, 1957, being the period falling within the aforesaid three years, is in law available to him for deduction from the rent due from him. The total amount paid by the defendant in excess of the authorised rent during the aforesaid period of 19 months is Rs. 380.

The defendant is entitled to set off the aforesaid sum of Rs. 380 against the rent due from him for the 19 months from April 1, 1959, to October 31, 1960. After making that set off, the defendant is in arrears of rent for the four months immediately preceding the month in which the action was instituted. It was in March, 1961, that the action was instituted. The plaintiff was therefore entitled to maintain the action against the defendant.

The learned District Judge has awarded the plaintiff damages at the rate of Rs. 40 per mensem. The plaintiff is not entitled to damages at twice the amount of the authorised rent per mensem. He is entitled to damages at the rate of only Rs. 20 per mensem.

We vary the decree of the learned District Judge—

(a) by substituting in the first paragraph thereof, for all the words and figures from “pay to the plaintiff the sum” to “till defendant is ejected”, the following :—

“pay to the plaintiff the sum of Rs. 80, being arrears of rent due from November 1, 1960, to February 28, 1961, and also damages at Rs. 20 per mensem from March 1, 1961, till the defendant is ejected” ;

and (b) by deleting the following words :—

“And it is further ordered that the defendant do pay to the plaintiff his costs of action taxed by the Officer of this Court.”

Subject to this variation, the decree of the District Court is affirmed. The plaintiff shall not be entitled to either the costs of the action in the District Court or the costs of the appeal, but shall be entitled to the costs of execution, if any.

SRI SKANDA RAJAH, J.—I agree.

Decree varied.