BASNAYAKE
V.
EDIRISINGHE

SUPREME COURT
RANASINGHE, C.J.,
BANDARANAYAKE, J. AND
AMERASINGHE, J.
S. C. NO: 78/86
C. A. NO: 209/77
D. C. COLOMBO NO: 2201/R. E.
JANUARY 9, 1989.

Landlord and Tenant — Arrears of rent — Payment of arrears prior to appearance in Court on date mentioned in summons — Failure to pay rent for the 3 month period of notice — Rent Act s. 22 (2), (3) (c).

The words "all arrears of rent" appearing in clause (c) of sub-section (3) of Section 22 of the Rent Act No: 7 of 1972 mean only such rent as has been specified in the notice of termination of the tenancy as being the arrears and nothing more, nothing less.

Cases referred to:

1. *George v. Richard* 50 NLR 128.
2. *Fernando v. Samaraweera* 52 NLR 278.
3. *Seeyambalingam Chettiar v. Pitchchi Muttu Chettiar* 53 NLR 382.
4. *Dias v. Gomes* 55 NLR 337 (D.B.).
5. *Vincent v. Sumanasena* 55 NLR 478.
6. *Samaraweera v. Ranasinghe* 59 NLR 395.
7. *Bardeen v. W. A. A. de Silva* 66 NLR 547.
8. *Ramzam v. (Mrs) Sardar* 73 NLR 380.
9. *Ansar v. Hussain Col. App. Reports* (1986) Vol. 1 p. 365.

APPEAL from judgment of the Court of Appeal.

J. G. N. de J. Seneviratne with *Miss Damayanthi Silva* for Appellant.
N. R. M. Daluwatte, P.C., with *Manohara de Silva* for Respondent.

Cur. adv. vult.

January 30, 1989.
RANASINGHE C. J.

The deceased-plaintiff instituted these procedings, on 30.1.1973, against the Respondent to have the Respondent ejected from premises No. 1784/4, Cotta Road, Rajagiriya, which had been rented out to him, on the ground that the Respondent was in arrears of rent for three months after such rent had become due.

Prior to the institution of these proceedings, the deceased-plaintiff had, on 27.3.72, sent to the Respondent a notice terminating the tenancy as from 30th June 1972. After the institution of the plaint, summons were issued returnable on the 5th April 1973, on which date it was directed to be reissued for the 28th June 1973. The Respondent appeared before the District Court in answer to the said summons on the 28th June 1973.

Before the Court of Appeal, both parties to these proceedings agreed that, prior to the date on which the Respondent appeared in the District Court upon summons, the Respondent had paid all the arrears of rent up to the 27.3.72, which was the date on which the Respondent was given notice of termination of the contract of tenancy. It was further agreed that no rent had, however, been paid by the Respondent in respect of the period of three months referred to in the notice of termination, namely, the 27th March 1972 to the 30th June 1972.

Upon these facts and circumstances the question that arises for decision by this Court is: whether the non-payment of the rent for the period from 27.3.1972 to 30th June 1972, by the Respondent, before he appeared in Court in answer to the summons on the 28th June 1973, rendered him liable to be ejected from the premises in question.

It is contended on behalf of the Respondent: that the admitted payment of the arrears of rent, which were set out in the notice of termination of the tenancy, by him before he appeared in Court on the 28.6.73 amounts to a compliance with the provisions of section 22(3) (c) of the Rent Act No. 7 of 1972: that, therefore, he has paid to the landlord all arrears of rent due from him in respect of which these proceedings have been instituted; that he is thus entitled, in law, to have the deceased-plaintiff's action, to have him ejected from the aforesaid premises, dismissed.

The Substituted-Plaintiff, on the other hand, contends: that the payment so made by the Respondent, after the institution of these proceedings but before the 28.6.1973, the date on which the Defendant appeared in Court in answer to the summons, does not, in law, constitute a payment of "all arrears of rent" due to him from the Respondent: that the words "all arrears of rent", appearing in clause (c) of subsection (3) of section 22 of the Rent Act No. 7 of 1972, include also the rent for the period of three months between the date of the notice of termination of the tenancy and the date on which such termination takes effect.

The history of legislation in this Island, relating to the restriction of rent leviable in respect of premises which are rented out and to the ejectment of tenants from premises so rented out, commences in the year 1942 with the Rent Restriction Ordinance No. 60 of 1942. This Ordinance, which was enacted as a measure of emergency legislation during the last world war and came into operation in December 1942, imposed, in section 13, restrictions on the right to institute proceedings for ejectment of tenants. The institution of actions to eject tenants without the written authorisation of the relevant Rent Control Board was permitted where, inter alia, the tenant has been in arrear for one month after it has become due.

The Rent Restriction Ordinance of 1942 was repealed by the Rent Restriction Act No. 29 of 1948 which came into force from 1.1.1949. The restriction of the right to institute proceedings for ejectment of tenants in occupation of rent-controlled premises imposed by Section 13(1) of this Act had, however, no application where the tenant has been in arrear of rent for one month after it has become due — vide clause (a) of the proviso to Section 13 of the said Act.

Although, at the early stages, divergent views were expresed in regard to the construction of the provision relating to arrears of rent — vide *George v. Richard,* (1) *Fernando v. Samaraweera,* (2), *Seeyambalingam Chettiar v. Pitchchi Muttu Chettiar,* (3) in March 1954, however, a Divisional Bench, in the case of *Dias v. Gomes,* (4) laid down that where a tenant falls into arrears of rent, the subsequent tender of such arrears would not protect him from being ejected on the basis of the previous default. The Court did also take the view that where, pending an action for ejectment under the provisions of the said Act of 1948, a tenant defaults in the payment of monthly rent as and when they fall due, such tenant could be ejected in a subsequent action on the basis of such default — vide *Vincent v. Sumanasena* (5) *Samaraweera v. Ranasinghe,* (6).

By Act No. 10 of 1961, which came into operation on the 6th March 1961, section 13 of the 1948 Act was amended by the introduction of an additional section, numbered 1(a) which

required the landlord to give three months notice of the termination of the tenancy before the institution of an action in ejectment. It further provided that, if all such arrears were paid before the date of termination of the tenancy, the tenant was not liable to be ejected on the basis of such default. The question, which arose under the provisions of the said section as to what was required to be tendered by the tenant as arrears in order to protect himself from being ejected, came up for consideration in the case of *Bardeen v. W. A. A. de Silva,*(7) The Supreme Court decided that what was so required to be paid as "all arrears of rent" by the tenant was only the amount set out, in the notice of termination of the tenancy, as being in arrear. The contention, put forward on behalf of the landlord, is that the obligation cast on such a tenant is to tender not only the amount due as arrears on the date such notice of termination is given, but also all subsequent rents which had fallen due up to the date on which such tender is made. This view of the provision of the said amending Act of 1961 was later followed in *Ramzam v. (Mrs) Sardar,* (8). The judgments of the Supreme Court in these two cases categorically laid down that the amount, which a tenant, who was said to be in default, had to tender to the landlord in order to protect himself from being ejected by the landlord, who had given him notice of termination of tenancy, was only the amount specified in such notice as being the amount in respect of which the tenant was in arrear, and no more.

The Amending Act No. 12 of 1966, which came into operation on 10.5.66, brought in a distinction between premises the standard rent of which exceeded rupees hundred and those which did not, and deemed the principal amendment so brought in to have come into operation as from 20.7.1962.

It was in this state of the law that the Rent Act No. 7 of 1972, which came into operation on 1st March, 1972, was promulgated.

The provisions relating to proceedings for ejectment under this Act are to be found in section 22, and those relevant to the facts and circumstances of this case are set out in sub-section (2) and (3) of the said section 22. Sub-section 3 provides that, even if a

tenant has been in arrear for the period set out in sub-section 2(1) (a) and the landlord has given notice of the termination of the tenancy as set out in paragraph (a) of the said sub-section (3), yet, the landlord shall not be entitled to institute an action in ejectment if the tenant has prior to the institution of such action tendered to the landlord "all arrears of rent" (paragraph (b) of the said sub-section (3)). Furthermore, even if such an action in ejectment is filed it cannot be proceeded with if the tenant has, on or before the summons returnable date on which the tenant has to appear in Court, tendered to the landlord "all arrears of rent" (paragraph (c) of the said sub-section 3).

It is common ground that, in this case, the default complained of is the first occasion on which rent had fallen into arrear, and that the landlord had given the Respondent the period of three months notice of the termination of the contract of tenancy between them, from 27th March 1972 to 30th June 1972.

An examination of the provisions of section 22(2) of the Rent Act No. 7 of 1972 shows that, whilst the provisions of Act No. 10 of 1961, which afford the tenant the opportunity of tendering the rent, which is in arrear, before the institution of proceedings to have him ejected, have been reproduced in paragraph (b) of section 20(3), a further opportunity of protecting himself by tendering the rent, which is in arrear, has been provided to the defaulting tenant by the provisions of paragraph (c) of the self-same subsection (3) of section 22 of the said Act No. 7 of 1972.

That the construction of the provisions, comparable to the provisions of subsection 3 (b) of the said section 22 of Act No.7 of 1972, in the earlier Act No. 10 of 1961, by the aforementioned judgments would be applicable in respect of the provisions of sub-section 3 (b) of Section 22 of Act No. 7 of 1972, was conceded by learned Counsel for the Respondent. Although he conceded that the words "all arrears of rent" contemplated by the provisions of the said sub-section 3(b), would, in accordance with the aforementioned decisions, be only such arrears of rent as are expressly set out in the notice of termination of the tenancy served on the tenant by the landlord, and on the basis of which proceedings in ejectment are sought

to be instituted, learned Counsel for the Respondent, however, contended: that the provisions of sub-section 3(c) in Act No. 7 of 1972 are entirely new: that the two aforementioned judgments of the Supreme Court have no application to the situation contemplated by the provisions of the said sub-section 3(c): that "all arrears of rent" contemplated in sub-section 3(c) cannot and must not be restricted to only such arrears of rent as are set out in the notice set out by the landlord to the tenant terminating the contract of tenancy as between them, but that the rent so contemplated also includes, in addition, all rents that have become payable by the tenant to the landlord from the date of such notice of termination up to the date, set out in the said notice, as the date of termination of such tenancy: that, therefore, on the facts and circumstances of this case, the tender in terms of the said sub-section 3(c) should include not only all rent which were set out in the said action of termination as being due upto 27.3.72, but also all the rents due to the landlord from the tenant in respect of the full period from 27.3.72 to 30.6.72.

Admittedly, the payment made by the Respondent to the deceased-plaintiff landlord after 27.3.72 has been of rents due only up to the 27.3.72. No rent whatsoever has been tendered to the landlord for the period 27.3.1972 to 30.6.1972, or any part of such period.

The only decision handed down by the Supreme Court, dealing with the provisions of Section 22(3) (b) of Act No. 7 of 1972, to which the attention of this Court was drawn by learned Counsel at the argument is the decision in the case of *Ansar v. Hussain* [9], Wanasundera, J., in dealing with paragraph (c) of Section 22(3) observed that it: "is merely an extension of the date for tender and is not intended to increase the amount of the arrears contemplated. It is difficult to read into this provision which is by way of a concession to the tenant the imposition of any additional burdens on him."

In *Ansar's case* the argument advanced on behalf of the landlord was that what has to be tendered on or before the summons returnable date as "all arrears of rent" is not only that

which is set out in the notice of termination as being in arrear, but also all rent payable from the date of such notice upto the date of tender.

In support of the contention that the words "all arrears of rent" in sub-section 3(c) should be given a wider interpretation than that placed upon the same words "all arrears of rent", contained in clause (b) of sub-section (3), learned Counsel for the substituted-Plaintiff submitted that, in enacting the provisions of clause (c) of sub-section (3) granting the tenant in default a further opportunity, the legislature has intended that a tenant, who seeks to avail himself of such extended opportunity, should, in order to benefit from such extension, also be required to pay all rent payable by him in respect of the period commencing from the dates of the notice of termination and ending on the date on which such termination becomes effective.

In regard to this contention it must be noted that the legislature has, by sub-section 4 of the said Section 22 expressly subjected a defaulting tenant, who instead of availing himself of the protection afforded to him by clause (b) of sub-section (3), takes further time, until the date set out by the provisions of clause (c) of the said sub-section 3, to make good the arrears, to the risk of facing a penalty. The errant tenant runs the risk of having to pay a fine if the court were to form the opinion that there was no sufficient cause for such delay on the part of the tenant in payment of the rent. A defaulting tenant who avails himself of the protection granted by the provisions of clause (b) does not run the risk of having to pay such a fine. If the contention of learned Counsel, in regard to the construction to be placed upon the provisions of sub-clause (c), is accepted, it would then amount to a tenant, who seeks to avail himself of the provisions of the said clause (c), being subject to two "additional burdens", paying an additional sum by way of rent over and above what has been demanded in the notice to quit, and also exposing himself to the risk of having a fine imposed upon him. There is no justification, in my opinion, for taking the view that the legislature did intend to penalise to that extent a tenant, who, instead of paying the arrears of rent demanded from him in the notice of termination of tenancy before action is filed against

him, seek to do so a step later, after plaint is filed but before he appears in Court in answer to the summons.

Furthermore, as Act No. 7 of 1972, was promulgated only after the aforesaid decisions of the Supreme Court — *Bardeen's case (supra) and Ramsan's case* (supra) — were handed down, the legislature must be presumed to have intended to give the words "all arrears of rent," appearing in clause (b) of the said sub-section (3), the same meaning as has already been placed upon them by the Supreme Court — vide: **Bindra: Interpretation of Statutes (7th Ed) ps. 310 — 312.** As already indicated, the words "all arrears of rent" appearing in clause (b) in the said sub-section (3) also appear in clause (c) of the self-same sub-section (3). It is also an accepted rule of construction that the same words appearing in different parts of the same enactment should ordinarily be given the same meaning — vide **Bindra (supra) ps. 310 — 312; Maxwell: Interpretation (12th Ed.)** ps. 278 — 282.

No convincing ground has, in my opinion, been urged why the words "all arrears of rent" appearing in the said clause (c) should be given a different meaning from that given to the same words appearing in clause (b) of the self-same sub-section. The context in which the said words appear, far from giving any indication that they should be given a different meaning, rather tend to indicate that the intention of the framers of the enactment was that these words appearing in the said clause (c) of sub-section (3) should have the same meaning as given to them in clause (b) in the self-same sub-section.

In this view of the matter, I am of opinion that the words "all arrears of rent" appearing in clause (c) of sub-section (3) of Section 22 of the Rent Act No. 7 of 1972 should be given the same construction as has been placed by this Court upon the words "all arrears of rent" appearing in clause (b) of the self-same sub-section (3), viz: only such rent as has been specified in the notice of termination of the tenancy as being in arrear and nothing more, nothing less.

The appeal of the Substituted-Plaintiff-Appellant is. therefore. dismissed with costs.

BANDARANAYAKE, J., — I agree.
AMERASINGHE, J., — I agree.

Appeal dismissed