

1973

Present : Wijayatilake, J.

E. MASSAKORALA, Appellant, and C. A. J. B. PERERA,
Respondent

S. C. 14/70—C. R. Colombo, 97129/R.E.

*Rent Restriction Act (Cap. 274), as amended by Act No. 12 of 1966—
Section 12A (2)—Tenant's plea that he was in arrear of rent
on account of illness—Report of a Medical Board concerning the
illness—Duty of Court to consider it without prejudice.*

The defendant, a tenant who was sued in ejectment on the ground that he had failed to pay rent for more than three months, claimed relief under section 12 A (2) of the Rent Restriction Act as the rent was in arrear on account of his illness. The Medical Board consisting of three doctors with the Chairman, an eminent physician, had reported that the defendant was unfit, owing to mental illness, for further service in the Government Department in which he was employed. The Court questioned the finding of the Medical Board and ventured to suggest that this was a usual ruse adopted by public servants.

Held, that the Court should not have rejected the report of the Medical Board without, at least, giving an opportunity to the Chairman of the Board to explain the details of their report.

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

Miss Maureen Seneviratne, with Miss Priyanthie de Silva, for the defendant-appellant.

S. C. Crossette-Thambiah, with M. Thevarajah, for the plaintiff-respondent.

Cur. adv. vult.

March 5, 1973. WIJAYATILAKE, J.—

The plaintiff filed this action on 10.12.1967 for ejectment of the defendant from the premises in question on the ground that he had failed to pay the rent from March 1966. The rental of these premises is Rs. 19.15 per mensem. Accordingly the plaintiff claimed a sum of Rs. 383 being arrears from 1.3.66 to 31.10.67 and damages at Rs. 19.15 per mensem thereafter. The defendant pleaded *inter alia* that he effected repairs to these premises with the consent of the plaintiff at a cost of Rs. 337.75 for which amount the plaintiff has failed to give him credit. The defendant further pleaded that he is entitled to relief under Section 12A (2) of the Rent Restriction Amendment Act No. 12 of 1966 as he, who was employed at the Quarantine Department, was condemned by a Medical Board owing to mental disease.

Learned Counsel for the appellant submits that on both these questions the learned Commissioner has misdirected himself in his assessment of the facts. In regard to repairs the defendant has produced the documents D 1 and D 2. The former is a letter dated 2.11.68 addressed by the defendant's wife to the plaintiff's proctor. In this letter the defendant's wife categorically states that a sum of Rs. 337.75 was spent on account of urgent and essential repairs and a further sum of Rs. 300 was paid to the plaintiff's proctor on 28.9.67. It is significant that although she invited an early reply in regard to any balance due there was no acknowledgment of this letter. The defendant in his evidence has stated that before he effected these repairs he informed the plaintiff and his proctor and the proctor even visited the premises. It is also significant that the defendant was cross-examined on the footing that the plaintiff's proctor refused to give him permission to effect repairs and the defendant stressed the fact that the permission to effect repairs was sought prior to the notice to quit. In the light of the averment in the answer

and the document D 1 it has not been explained why the plaintiff's proctor was not called by the plaintiff as a witness. I am inclined to agree with Miss Seneviratne that the learned Commissioner has failed to assess the facts in their proper perspective. The mere fact that the defendant made a payment of Rs. 300 in September 1967 over and above the rent in fact due is, in my opinion, not an adequate answer to the question that has arisen. It may well be that when the defendant received the notice to quit, in his anxiety he sought to pay what was claimed without entering into a controversy in regard to the repairs effected as he had been a tenant of these premises for nearly 12 years. It would appear that the plaintiff's father was the owner of the tenements in this garden and the defendant had functioned as a rent collector and got into the bad books of the tenants as he had to appear in Courts too. It is in this connection that he had got into a mess in the Government Department in which he was employed and thereafter in consequence become a mental patient. The Medical Board consisting of 3 doctors with the Chairman, an eminent physician, had reported that the defendant was unfit for further service owing to mental illness. (See D 3).

Despite this report the learned Commissioner has questioned the finding of the Medical Board and he has ventured to suggest that this is a usual ruse adopted by Public Servants! In my opinion there is no foundation for this aspersion and it should not have been made without probing into the matter further by at least giving an opportunity to the Chairman of the Board to explain the details of their report. A judicial pronouncement of this nature should be made with circumspection. The evidence of the defendant and his wife shows that during this period they were going through serious hardships and financially they were in a desperate state. In my opinion, section 12 (A) 2 of the Rent Restriction Act contemplates a situation such as this.

Mr. Crossette-Tambiah has very strenuously submitted that the learned Commissioner's assessment is correct on a totality of the evidence. But on careful consideration of the material before me I am of opinion that the appellant is entitled to succeed on both these grounds.

I accordingly set aside the judgment and decree of the learned Commissioner and dismiss the plaintiff's action with costs in both Courts.

Appeal allowed.