

1977

Present : Ismail, J. and Ratwatte, J.

P. SELVACHANDRAN, Defendant-Petitioner
and
D. A. D. K. SILVA, Plaintiff-Respondent

S.C 380/77—M. C. Mt. Lavinia 321/ED

Rent Act No. 7 of 1972, section 27—Application for execution of writ under section 27(3)—Objections to such application—Notice of appeal from judgment filed under section 325(1) of Administration of Justice Law—Does filing of such appeal stay execution pending appeal—“Generalia specialibus non derogant”—Application of maxim to section 27 of Rent Act and section 325(1) of Administration of Justice Law, No.44 of 1973—Interpretation of Statutes.

The defendant-petitioner filed this application to revise an order made by the Magistrate's Court under section 27(3) of Rent Act No. 7 of 1972 refusing to stay execution of an order for the delivery of possession. It was submitted on behalf of the petitioner that proceedings should be stayed pending an appeal from the judgment in this case filed by the defendant under the Administration of Justice Law, No. 44 of 1973, for the reasons that (a) section 27(3) of the Rent Act applied only when there is an appeal against the order allowing execution; (b) section 27(3) applied only if the conditions set out in section 27(1) (c) were established; and (c) section 325(1) of the Administration of Justice Law superseded section 27(3) of the Rent Act.

Held :

- (1) That on a reading of sub-section 2 (b) of section 27 of the Rent Act it was clear that the order for the delivery of possession is mandatory along with the main finding in favour of the plaintiff and that the order is in the main judgment itself.
- (2) That the clear intention of the legislature when it enacted section 27(3) of the Rent Act was that there should not be a delay due to an appeal. It would be contrary to the manifest provision of section 27(3) if one were to look into the question of whether the judge's finding is correct when considering an order for the delivery of possession.
- (3) That section 325(1) of the Administration of Justice Law did not have an effect of staying proceedings when a notice of appeal is accepted by Court in cases coming under section 27 of the Rent Act. Section 325(1) though the subsequent enactment is a general provision and therefore does not repeal or supersede the special provisions of section 27(3) of the Rent Act in the absence of a particular intention to do so being established.

Cases referred to :

Seward v. The Vera Cruz (1884) 10 A. C. 59 ; 52 L. T. 474 ; (1881-5) All E. R. Rep. 216.

Corporation of Blackpool v. Starr Estate Co. Ltd., (1922) 1 A. C. 27. 126 L. T. 258 ; 38 T.L.R. 79.

APPPLICATION to revise an order of the Magistrate's Court, Mt. Lavinia.

H. Rodrigo, for the defendant-petitioner.

H. L. de Silva, for the plaintiff-respondent.

Cur. adv. vult.

November 8, 1977. RATWATTE, J.

This is an application made by the defendant-petitioner (hereinafter referred to as the defendant) for the revision of an order made by the Magistrate's Court, Mount Lavinia, under section 27(3) of the Rent Act, No. 7 of 1972, refusing to stay the execution of an order for the delivery of possession of a part of the premises in question in this case, to the plaintiff-respondent (hereinafter referred to as the plaintiff).

The plaintiff as the Trustee of the Koneswarie Maha Devale instituted action for the ejectment of the defendant who was his tenant under section 27(1) of the Rent Act. The plaintiff pleaded that the premises in question were residential premises and that both he and the defendant resided in different parts of the same premises and further that the part of the premises which was let to the defendant was not separately assessed on the day on which it was let. After trial the learned Magistrate gave judgment for the plaintiff as prayed for in the plaint on 11.04.1977. The defendant gave notice of appeal from the said finding and judgment to this Court. The plaintiff filed an application on 28.04.1977 for writ in terms of section 27(3) of the Rent Act. The defendant objected to the application for execution and moved in terms of section 325(1) of the Administration of Justice Law, No. 44 of 1973, that the execution of the order of ejectment be stayed pending the hearing of the appeal. The learned Magistrate after inquiry made order of 24.05.1977 refusing to stay execution and allowed the application of the plaintiff for execution. The defendant seeks to revise this order and prays that the execution of the order to eject the defendant be stayed.

Learned counsel for the defendant urged three grounds in support of his submission that the order of the Magistrate of 24.05.1977 be revised: Firstly, that section 27(3) of the Rent Act applies only when there is an appeal against an order allowing execution. Secondly, in any event section 27(3) will apply only if the conditions set out in section 27(1) (c) are established. And thirdly that section 325(1) of the A.J.L. supersedes section 27(3) of the Rent Act.

As regards the first ground urged by counsel for the defendant it would be convenient to set out here the provisions of sub-sections 2 and 3 of section 27 of the Act:—

“ (2) Where any action or proceedings for the ejectment of a tenant is instituted in a court under sub-section (1), such court—

(a) shall as expeditiously as possible hear and determine such action or proceedings; and

(b) shall, where it decides that the tenant, shall be ejected, make order for the delivery of possession of the part of the premises to the landlord on a date not later than three months from the date of such order and may, if necessary by the same or subsequent order direct the Fiscal to eject from the premises any person for the time being in occupation of such part of the premises and to deliver possession of such part of the premises to the landlord.

“ (3) Where an order under sub-section (2) is issued to the Fiscal by a court, the execution of such order shall not be stayed in any manner by reason of any steps taken or proposed to be commenced in any court with a view to questioning, varying or setting aside such order.”

It is clear on a reading of sub-section 2 (b) that the order for the delivery of possession is mandatory along with the main finding in favour of the plaintiff and that the order is in the main judgment itself. In the instant case the Magistrate after answering the issues made order granting to the plaintiff the reliefs claimed by him in the plaint. In paragraph (a) of the prayer the plaintiff asked for an order of ejectment of the defendant. My understanding of sub-section 2 (b) is that the order for the delivery of possession is the same as the judgment in the case. The order to the Fiscal flows from the decision in the plaintiff's favour. The object of sub-section (3) of section 27 is not to halt execution pending appeals. If one were to limit the provisions of sub-section (3) to an order to execute, the object of that sub-section will be nullified. The word order in sub-section (3) must be given a wider meaning, that is, that it is the decision in the case.

Regarding the 2nd ground urged by the learned counsel for the defendant, I do not think that there is any such substance in this submission. The clear intention of the legislature when it enacted section 27 (3) of the Act was that there should not be a delay due to an appeal. When considering an order for the delivery of possession and the consequential direction to the Fiscal, if one were to look into the question whether the judge's finding is correct, that would be contrary to the manifest provision of section 27 (3) of the Act.

In regard to the third submission of counsel for the defendant that section 325 (1) of the Administration of Justice Law supersedes section 27 (3) of the Rent Act learned counsel for the plaintiff submitted that section 325 (1) of the A. J. L., which

states that upon a notice of appeal being accepted by court, all further proceedings in an action shall be stayed, is a general provision. Section 27 of the Rent Act provides for the granting of relief in particular cases and section 27 (3) of the Act deals with a special case. Learned counsel for the plaintiff further submitted that the principle of “*generalia specialibus non derogant*” applied and that section 325 (1) of the A. J. L. being a later general provision of law, it must be read subject to special particular provisions. Craies in his work “*On Statute Law*” (5th Edition) at page 348 states as follows:—

“ (ii) Repeal of special by general enactment. *Generalia specialibus non derogant*. The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, ”

In the case of *Seward v. The Vera Cruz*, reported in (1884-5) 10 A.C. 59, Lord Selbourne stated at page 68 as follows:—

“ Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to a subject specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. ”

Again in the case of *Corporation of Blackpool v. Starr Estate Co. Ltd.*, reported in (1922) 1 A.C. 27, Lord Viscount states as follows at page 34—

“ My Lords, in that state of matters, we are bound, in construing the general language of the Act of 1919, to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. ”

I am therefore of the view that section 325 (1) of the Administration of Justice law though a subsequent enactment is a general provision and therefore does not repeal or supersede the special provisions of section 27 (3) of the Rent Act in the absence of a particular intention to do so in section 325 of the A. J. L.

For these reasons the defendant petitioner is not entitled to the reliefs asked for and the petition is therefore refused with costs.

ISMAL, J.—I agree.

Application dismissed.

