[IN THE COURT OF APPEAL OF SRI LANKA]

1973 *Present:* **Fernando, P., Sirimane, J., and Siva Supramaniam, J.**

M. J. M. NILAMDEEN, Appellant, *and* D. R. C. NANAYAKKARA, Respondent

APPEAL No. 22 OF 1972

S. C. 90/70—C. R. Colombo, 184/ED

Rent Restriction Act (Cap. 274)—Section 12A (1) (a)—Tenant in arrears of rent—Notice to quit—Payment of arrears of rent thereafter before institution of action—Liability of the tenant nevertheless to be evicted—Interpretation of statutes—Two rules of construction.

Defendant was a tenant of the plaintiff paying a monthly rental of Rs. 34.33. He had allowed the rent to fall into arrear for three months or more before notice was served on him to quit the rented premises. He paid all arrears after receipt of the notice and before the present action in ejectment was instituted on March 16, 1969.

Held, that the defendant was liable to be evicted despite his payment of the arrears of rent before the action was instituted. Once a tenant has fallen into arrear in the payment of rent, he forfeits the protection against eviction afforded by the Rent Restriction Act.

Mohamed v. Wahab (72 N. L. R. 333) overruled.

Although the Rent Restriction Act was amended after the date of the Divisional Bench decision in *Dias v. Gomes*—(1954) 55 N. L. R. 337—by Acts Nos. 10 of 1961 and 12 of 1966, the legislature retained the expression "has been in arrear . . . after it has become due" which had been the subject of interpretation by the Divisional Bench. It is a well-known rule of construction that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted. There is also another rule of construction that where the words of an old statute are made part of a new statute, the legal interpretation which has been put upon the former by courts of law is applicable to those same words in the new statute.

APPEAL from a judgment of the Supreme Court.

A. Sivagurunathan, for the defendant-appellant.

Bimal Rajapakse, for the plaintiff-respondent.

Cur. adv. vult.

1*—A 00806—2,808 (7/73)

May 14, 1973. FERNANDO, P.—

Leave to appeal was granted in this case on account of a conflict of decisions in the Supreme Court.

We need set down below only such facts of the case as are relevant to the determination of the question of law we are called upon to settle. The plaintiff had let to the defendant the premises from which ejectment is sought at a monthly rental of Rs. 34.33 payable on the first day of each month. Rent up to the end of May 1967 had been paid on the due dates. Alleging that the payment of rent thereafter has been in arrear for three months or more after it has become due, the plaintiff on December 28, 1968 gave to the defendant notice to quit the premises at the end of January 1969. This action was filed on March 16, 1969 alleging failure to quit as noticed and demanding ejectment and payment of arrears and damages. It is admitted that (1) the defendant had allowed the rent to fall into arrear for three months or more before the service of notice to quit and (2) the defendant paid all arrears after receipt of the notice and before institution of this action.

The contention for the defendant that he is not liable to be ejected is based on a judgment of Samerawickrame J. in *Mohamed v. Wahab*[1] (1969) 72 N. L. R. 333 that, in a case governed by section 12A (1) (*a*) of the Rent Restriction Act where a landlord seeks ejectment of his tenant on the ground that rent has been in arrear for three months or more after it has become due, the tenant is not liable to be ejected if, before the date of the institution of action, he tenders to the landlord the rent due.

The learned Commissioner of Requests, although he was of opinion that the defendant had allowed the payment of rent by him to fall into arrear for three months or more within the meaning of that expression as understood for many years after 1954, properly felt that he had to submit to the judgment in *Mohamed v. Wahab* (*supra*). On appeal by the plaintiff to the Supreme Court, Thamotheram J. set aside the judgment of the Court of Requests and decreed ejectment of the defendant, preferring to follow two decisions later in point of time to *Mohamed v. Wahab*. These are *Samarakoon v. Gunadasa*[2] (1970) 74 N.L.R. 62, a decision of Pandita-Gunawardene J. and *Parack v. Fasi*[3] (1971) 75 N.L.R. 7, a decision of Silva J. who had both declined to follow *Mohamed v. Wahab*.

[1] *(1969) 72 N. L. R. 333.* [2] *(1970) 74 N. L. R. 62.*
[3] *(1971) 75 N. L. R. 7.*

We must point out here that in *Dias v. Gomes*[1] (1954) 55 N.L.R. 337, a Divisional Bench of three judges of the Supreme Court (Nagalingam A.C.J., Pulle J. and Swan J.), to which an appeal had been referred in view of the existence then of a conflict of decisions, held that, once a tenant has fallen into arrear in payment of rent (for the period specified in the Rent Restriction Act) after it has become due, he forfeits the protection given to him by the Act. It actually overruled a decision of Nagalingam J. himself in *George v. Richard*[2] (1948) 50 N.L.R. 128 which had held that, where arrears of rent are tendered before the institution of action, the landlord is not entitled to maintain an action for the ejectment of the tenant.

Although the Rent Restriction Act was amended after the date of the decision in *Dias v. Gomes* (*supra*) by Acts Nos. 10 of 1961 and 12 of 1966, the legislature retained the expression "has been in arrear . . . . . after it has become due" which had been the subject of interpretation by the Divisional Bench. In *Jay v. Johnston*[3] (1893) 1 Q. B. D. at 28, Lord Coleridge C. J. called it a well-known rule of construction that where the legislature uses in an Act a legal term which has received judicial interpretation it must be assumed that the term is used in the sense in which it has been judicially interpreted. So again, "where the words of an old statute are either transcribed into or by reference made part of a new statute, it is a rule of construction that this is done with the object and intent of adopting any legal interpretation which has been put upon them by courts of law, the same words being used in order that everything that had been settled before as to their construction should remain settled without fresh litigation"—per James L.J. in Dale's Case[4] (1881) 6 Q.B.D. at 453. Indeed, when Nagalingam A.C.J. agreed to the overruling of his own earlier judgment he did so—to use his own words—"with a view to set at rest once and for all the controversy in respect of the point of law."

In *Samarakoon v. Gunadasa* (*supra*), Pandita-Gunawardene J., in a considered judgment, has explained, with reference to earlier decisions of the Supreme Court, why he held that once a tenant has fallen into arrear in the payment of rent he has forfeited the protection against eviction offered by the Rent Restriction Act. It is unnecessary to repeat here the reasons he has set out. We would respectfully agree with his opinion and that of Thamotheram J. in the appeal now before us. Both of them applied the reasoning in the Divisional Bench judgment. Although there is no specific reference to the Divisional Bench

[1] *(1954) 55 N.L.R. 337.*
[2] *(1948) 50 N. L. R. 128.*
[3] *(1893) 1 Q. B. D. at 28.*
[4] *(1881) 6 Q. B. D. at 453.*

case in the judgment of Silva J. referred to above, the circumstances (i) that he preferred to follow *Samarakoon v. Gunadasa* and declined to follow *Mohamed v. Wahab* and (ii) that he held that the material point of time for the determination of the question whether a tenant is in arrear in payment of rent is the time the cause of action arose are indication enough that he did not recognise as valid the narrowing of the decision of the Divisional Bench attempted in *Mohamed v. Wahab.*

Samerawickrame J., after referring to the amendments made to the Rent Restriction Act by Act No. 12 of 1966 and drawing attention to the disappearance of sub-section (1A) of section 13 in its application to premises the monthly rent of which does not exceed one hundred rupees, considered it improbable (1) that the legislature intended that the tenants of premises the monthly rent of which is below one hundred rupees should be placed in a worse position in this regard than tenants of premises the monthly rent of which is in excess of that sum or (2) that it intended to put them into a position of greater disadvantage compared to their position before the 1966 amendment. It was for those and like reasons that he attempted to distinguish the Divisional Bench decision and to narrow its application. As to these reasons, we find ourselves in much the same position as Pandita-Gunawardene J. found himself in *Samarakoon v. Gunadasa.* We do not think, with all respect to Samerawickrame J., that we are free to speculate upon the intention of the legislature. We remind ourselves of the words of Lord Watson in *Salomon v. A. Salomon & Co. Ltd.*[1] (1897) A.C. at 38 :—"Intention of the Legislature is a common but very slippery phrase which popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication." We do not think it profitable to speculate upon the probable intention of the legislature when the language employed by it, particularly after the interpretation placed thereon by the Divisional Bench judgment referred to above, cannot now be said to admit of any serious doubt. We would accordingly overrule the decision in *Mohamed v. Wahab* (*supra*).

This appeal is dismissed with costs.

Appeal dismissed.

[1] *(1897) A. C. at 38.*