

[IN THE COURT OF APPEAL OF CEYLON]

1972 Present : Fernando, P., Sirmame, J., and Siva Supramaniam, J.

PLATE LIMITED, Petitioner, and CEYLON
THEATRES LIMITED, Respondent

APPLICATION No. 5 OF 1972

S. C. 326 (F)/66—D. C. Colombo, 56449/M

Court of Appeal Act, No. 44 of 1971—Section 8 (1) (d)—Application for leave to appeal thereunder—Question of general or public importance—Quantum of doubt as to the correctness of the judgment of the Supreme Court—Rent Act, No. 7 of 1972—“ Excepted premises ”.

Where the question that is involved in an appeal is of general or public importance, the doubt as to the correctness of the judgment from which it is sought to appeal need not necessarily be a serious one in order to enable the Court of Appeal to grant leave to appeal under section 8 (1) (d) of the Court of Appeal Act. It would be sufficient if some doubt arises about the correctness of the judgment; such doubt need not invariably present itself to the minds of a majority of the Judges hearing the application for leave to appeal.

Quaere, whether the point that part of “ excepted premises ” is itself excepted premises may not, in respect of business premises, be raised again under the new Rent Act No. 7 of 1972.

APPPLICATION for leave to appeal from a judgment of the Supreme Court.

H. W. Jayewardene, Q.C., with *M. L. de Silva* and *Miss I. Marasinghe*, for the defendant-petitioner.

S. Nadesan, Q.C., with *W. S. Weerasooria*, for the plaintiff-respondent.

Cur. adv. vult.

April 24, 1972. FERNANDO, P.—

The defendant-company has applied to the Court for leave to appeal from a judgment of the Supreme Court dismissing its appeal against a judgment of the District Court which ordered, *inter alia*, that it be ejected from certain premises.

Section 8 (1) (d) of the Court of Appeal Act, No. 44 of 1971, vests in us a discretion in the matter of the grant of leave to appeal provided we are satisfied that the proposed appeal involves a question of general or public importance.

The Supreme Court has held that the premises occupied by the defendant-company as a tenant of the plaintiff-company, although they are a part of larger premises, are "excepted premises" within the meaning of the Rent Restriction Act (Cap. 274) as the larger premises were excepted premises.

For the plaintiff, it was submitted to us that, as the Rent Restriction Act has since been repealed by Section 46 of the Rent Act, No. 7 of 1972 (which came into operation on March 1, 1972), any question arising under the repealed Act cannot now be one of general or public importance. As to this submission, Mr. Jayewardene has drawn our attention to the new Rent Act which purports to be an Act to amend and to consolidate the law relating to rent restriction, and has submitted that the Courts lean towards a presumption that a consolidating statute was not intended to alter the law. He has further submitted that, in any event, Section 6 (3) of the Interpretation Ordinance leaves unaffected any rights acquired under the repealed written law. Moreover, the petition of the defendant contains a statement subscribed to by counsel who drafted it that the question involved in the appeal affects a considerable number of tenants throughout Ceylon to whom the owners of larger buildings and houses uneconomic for single occupation have let out small portions under the alleged cover of the exception of the larger entity from the protection which the Rent Restriction Act affords to tenants. We see no sufficient reason to discount the statement in the petition.

From such examination of the new Rent Act as we were able to make during the course of the argument, we see at present no reason why the contentions raised in this case around the point that part of "excepted premises" is itself excepted premises may not, in respect of business premises, be raised again under the new Rent Act.

We recognise that the principles upon which leave to appeal might be granted by this Court do not admit of anything approaching exhaustive definition. Mr. Nadesan suggested that leave to appeal should not be granted unless doubt is entertained about the correctness of the judgment from which it is sought to appeal. Where the question that is involved in the appeal is of general or public importance, and is otherwise fit for consideration, the doubt that arises need not necessarily be a serious one. We think it is sufficient if some doubt arises on such a question, and that doubt need not invariably present itself to the minds of a majority of the Judges hearing the application. The question involved here is, moreover, a difficult one, and we note that the appeal had to be heard in the Supreme Court before three Judges as the two Judges before whom it was first argued were apparently divided in their opinions thereon.

We would grant the application for leave to appeal. The applicant is entitled to its costs.

Application granted.