FERNANDO

v.

BERNIE DE SILVA

SUPREME COURT.
WANASUNDERA, J., RANASINGHE, J. AND L. H. DE ALWIS, J.
S.C. APPEAL No. 76/85. C.A. (L.A. No. 29/82).
D.C. PANADURA No. 16657.
FEBRUARY 5, 1986.

Landlord and tenant–S. 22(3)(c) Rent Act No. 7 of 1972–Tender of arrears of rent by deposit in Court to the credit of the case–Issues–Judgment–Ss. 146(2), 184(1) and 187 Civil Procedure Code.

Where the only issue in the case was whether because of the fact that the defendant had deposited the arrears of rent to the credit of the case before the service of summons, the plaintiff could proceed with the action in view of section 22(3)(c) of the Rent Act of 1972 and the court was of the opinion that the deposit of the arrears in Court did not amount to tender of arrears to the landlord within the meaning of the provisions of the said section 22(3)(c) the District Judge should have entered judgment dismissing the action in final disposal of the action and not enter as he did an interlocutory order–

There was no need to have raised a consequential issue asking for judgment as it had been prayed for in the plaint and in the written submissions of plaintiff. If the District Judge thought such an issue was necessary he could have framed it under section 146(2) of the Civil Procedure Code and answered it in favour of the plaintiff.

The District Judge was bound to enter a proper judgment in terms of s. 184(1) and 187 of the Civil Procedure Code dismissing the action.

APPEAL from judgment of the Court of Appeal.

Nimal Senanayake, P.C. with *Kithsiri Gunaratne* and *Miss S. M. Senaratne* for plaintiff-appellant.

E. D. Wikramanayake for defendant-respondent.

cur. adv. vult.

March 4, 1986.

L. H. DE ALWIS, J.

This is an appeal, with the Special Leave of this Court, from the judgment of the Court of Appeal, dismissing the appeal and affirming the order of the District Judge of Mt. Lavinia and remitting the case to

the District Court for determination. The District Court had answered the only issue raised in the trial against the defendant, holding that the action could be maintained.

This was an action instituted by the plaintiff on 27.1.1980 against the defendant for arrears of rent in a sum of Rs. 825 from March 1977 up to April 1978 at the rate of Rs. 75 per month and ejectment from the premises in suit.

The defendant filed answer on 9. 1. 80 and at the commencement of the trial the following admissions were recorded:–

1. Tenancy under the plaintiff.
2. Rent at Rs. 75 per month.
3. Notice to quit.
4. Receipt by the plaintiff of a deposit note dated 7.5.80 that the defendant had deposited the money.
5. A sum of Rs. 825 has been deposited.
6. The sum of Rs. 825 has been deposited in Court as arrears of rent.
7. The monthly rental of Rs. 75 was deposited with the Commissioner of National Housing from March 1977 up to January, 1978.
8. Further rent was deposited with the Commissioner of National Housing in view of his letter dated 25.9.77.
9. Acceptance of letter dated 21.4.78 (D2).

It is then recorded that parties state that since arrears of rent is a question of law, they wish to tender written submissions, (that is, without leading oral evidence).

The defendant then raised the single issue in the trial, which has erroneously been recorded as admission No. 10. It runs as follows:

1 Since the sum of Rs. 825 which the plaintiff states is arrears of rent, has been deposited to the credit of the case prior to 20.5.80, can the plaintiff proceed with this action in view of section 22(3)(*c*) of the Rent Act of 1972?

The relevant portion of section 22(3) of the Rent Act No. 7 of 1972, reads as follows:-

"The landlord of any premises referred to in subsection (1).....shall not be entitled to..... proceed with, any action....for the ejectment of the tenant of such premises on the ground that the rent of such premises has been in arrears for three months or more.....after it has become due-

(*c*) if the tenant has, on or before the date fixed, in such summons as is served on him, as the date on which he shall appear in court, in respect of such action....*tendered* to the landlord all arrears of rent."(The emphasis is mine).

The decision of the District Judge related to the interpretation of the word "tender" in the context of the section. Subsection (1) referred to above relates to premises the standard rent of which for a month does not exceed one hundred rupees. It is applicable to these premises, the admitted rent of which is Rs. 75 per month. Under this subsection, one of the grounds, viz (*a*) provides for instituting an action for ejectment of the tenant where rent has been in arrears for three months or more, after it has become due.

Under section 22(3)(*c*) a tenant against whom an action for arrears of rent and ejectment has been instituted, is afforded an opportunity of tendering all the arrears of rent to the landlord on or before the summons returnable date. In the present case summons was returnable on 20.5.80 and the defendant deposited the arrears to the credit of the case on 5. 5. 80. The tenancy, arrears of rent, notice to quit and the deposit of the arrears are admitted by the parties. The defendant then raised the issue as set out above as to whether the plaintiff could proceed with the action in view of the deposit of the arrears, in terms of section 22(3)(*c*) of the Rent Act of 1972.

The learned District Judge took the view that the deposit of the arrears of rent in court did not amount to a tender of the arrears to the landlord and answered the issue to the effect that the plaintiff "can proceed with the action". This is the English version of the judgment which is in Sinhala. He was obviously quoting the language of section 22(3) of the Rent Act when he used the above words within inverted commas.

Learned counsel for the appellant contended that having come to the conclusion that there was no tender of all the arrears of rent to the plaintiff by the defendant in terms of section 22(3) (*c*) of the Rent Act, the learned District Judge should have entered judgment for the plaintiff as prayed for. He also argued that the Court of Appeal erred in upholding the judgment of the District Judge because no consequential issue asking for judgment had been raised, and that if judgment was entered it would have deprived the defendant of raising any further issues, or as counsel for the respondent submitted before us, of even amending his answer thereafter.

Counsel for the appellant contended that once the District Judge had come to a finding that the defendant was in arrears of rent there was no alternative left for him but to enter judgment for the plaintiff. There was nothing more left for the plaintiff to prove in his case, in view of the recorded admissions, which supplied the necessary proof of the matters entitling her to judgment. I agree with the learned counsel for the appellant. . . .

The judgment that the District Judge entered was regarded as an interlocutory order because it did not give finality to the matter in issue between the parties. This was due to the District Judge employing the same language as section 22(3), in entering judgment. The finding of the District Judge under this section in this case should have resulted in a conclusion of the action, one way or another. If, for instance, the defendant succeeded in establishing that he paid the plaintiff the arrears of rent in terms of section 22(3) (*c*), the judge would have been bound to enter judgment dismissing the plaintiff's action. Similarly, if the defendant failed to establish the payment of all arrears of rent in terms of the section, and no other matters had been raised in issue between the parties, the District Judge was obliged to enter judgment for the plaintiff. In this case there were no other matters in issue between the parties that had to be resolved, in view of the admissions recorded before commencement of the trial. The only matter put in issue was the question of arrears of rent, and that was answered in the plaintiff's favour. The learned District Judge should accordingly have entered judgment for the plaintiff. There was no need to have raised a consequential issue asking for judgment as it had been prayed for in the plaint and also in the written submissions

tendered by plaintiff's counsel in the District Court. If, however, the District Judge thought that such an issue was necessary it was his duty to have framed such an issue under section 146(2) of the Civil Procedure Code and then answered it in favour of the plaintiff.

As the learned counsel for the appellant contended, the learned District Judge was bound to enter a proper judgment in terms of sections 184(1) and 187 of the Civil Procedure Code after he answered the only issue raised in the case in the plaintiff's favour. It should have been a judgment which gave finality to the action and on which a decree under section 188 could have been entered. The judgment on the other hand that the District Judge pronounced, took the form of an interlocutory order on which a decree could not have been entered. The learned District Judge appears to have been led into this error by endeavouring to follow the language of section 22(3) of the Rent Act of 1972.

A submission was made that on the judgment entered by the District Judge, the trial would have continued and the defendant would have been entitled to satisfy the court under section 22(5) that the rent was in arrears on account of "other sufficient cause," namely that he had erroneously deposited it in court.

But this was a 'defence' on which the defendant could have raised an issue at the trial but chose not to do so. In fact he raised it in his written submissions tendered in the Disctrict Court and has not been given the relief he sought.

In my view no prejudice will be caused to the defendant if the District Judge is directed to enter a final judgment in the action on the proceedings held by him. When such a judgment is entered it will be open to the defendant, if he so wishes, to canvass the correctness of the District Judge's finding on the question that the deposit of the arrears of rent to the credit of the case does not amount to a tender of the arrears to the plaintiff landlord in compliance with section 22(3) (*c*) of the Rent Act.

I therefore set aside the judgment of the District Court and of the Court of Appeal and direct that the record be remitted to the District Court to enable the District Judge to pronounce a proper judgment on the findings he had reached in the proceedings held before him, after notice to the parties, and then to enter decree in accordance with the judgment.

The plaintiff-appellant will be entitled to costs in this court and in the other two courts below.

WANASUNDERA, J. – I agree.

RANASINGHE, J. – I agree.

Judgment set aside. Record remitted to District Judge to pronounce judgment, after notice, on his findings.