NAVAMANY
v.
ROSAIRO

COURT OF APPEAL.
WIGNESWARAN, J.,
WEERASURIYA, J.
CA NO. 755/87 (F).
DC BATTICALOA NO. 114/RE.
DECEMBER 3, 1997.
JANUARY 23, 1998.

Rent Act, No. 7 of 1972 – S. 13 – Repairs effected by tenant – Set off against rent without permission.

The defendant-appellant (tenant) contended that the sum of money allegedly spent by him to repair the premises in suit affected by cyclone, without permission either from the landlord or the Rent Board could be set off against rents due, until the sum spent is exhausted. The District Court held against the defendant-appellant.

Held:

(1) Duty of carrying out repairs to the premises in suit and maintaining it in proper condition is primarily vested on the landlord – S. 13.

(2) It is only if the landlord fails to comply with an order for repair and redecoration that the Board would authorise the tenant to carry out such repairs or redecoration and incur such expenditure not exceeding a ceiling set by the Board – S. 13 (3).

(3) It is such amount spent or delineated by the order whichever is less that could be set off against the rent payable.

(4) Failure of the defendant-appellant in the first instance to have recourse to the forum (Rent Board) designed by law would prevent him from seeking a set off of moneys allegedly spent by him on repairs subsequently.

APPEAL from the judgment of the District Court of Batticaloa.

Cases referred to:

1. *Appuhamy v. Seneviratne* – [1981] 2 Sri L.R. 45.
2. *Henderick Appuhamy v. John Appuhamy* – 69 NLR 29.

K. Jeganathan with *S. Kanagasingham* for defendant-appellant.

S. Mahenthiran for plaintiff-respondent.

Cur. adv. vult.

March 27, 1998.

WIGNESWARAN, J.

The question that comes up for consideration in this case is whether the sum of Rupees Ten Thousand (Rs. 10,000) allegedly spent by the tenant-defendant-appellant to repair the premises in suit affected by cyclone in November, 1978, without permission either from the landlord or the Rent Board, could be set off against rents due from November, 1978, until the said sum of Rs. 10,000 is exhausted.

The learned District Judge, Batticaloa, by his judgment dated 26.11.1987 held against the defendant-appellant and entered judgment in favour of the plaintiff-respondent.

The learned counsel for the defendant-appellant has taken up the following arguments in appeal:

(1) Section 13 of the Rent Act is applicable only to an existing premises which can be used as a dwelling place and not to a premises fully damaged. In this instance walls and roof of the premises in suit were damaged by the cyclone.

(2) The law that should apply, therefore, is the common law which permits such expense and set off.

(3) The plaintiff-respondent admitted in evidence that the defendant-appellant would have spent Rs. 10,000 for re-erection of walls and replacement of roof. Hence, the Judge should have not doubted the expending of Rs. 10,000.

(4) *Implied consent of the landlord-plaintiff-respondent was obtained* since –

(i) the latter knew of the cyclone,

(ii) the damage was brought to the notice of the plaintiff-respondent,

(iii) the latter had acquiesced when repairs were done,

(iv) the latter had not objected to such re-erection.

(5) Since the plaintiff-respondent had admitted that Rs. 10,000 could have been spent on repairs no proof of actual expenditure need have been provided.

These submissions as a whole would now be examined.

Section 13 (1) of the Rent Act is as follows:

"13 (1) When the Board is satisfied, on application made by the tenant of any premises, or on an inspection of such premises carried out by it or under its authority, that the landlord–

(*a*) has without reasonable cause discontinued or withheld any amenities previously provided for the benefit of the tenant; or

(*b*) has failed to carry out any repairs or redecoration necessary in the opinion of the Board to maintain the premises in proper condition, the Board may make

order directing the landlord to provide such amenities or to carry out such repairs or decoration as may be specified in the order; and it shall be the duty of the landlord to comply with the provisions of such order before such date as may be specified in that behalf in the order, or within such extended period as may be allowed by the Board on application made by the landlord."

There is nothing in this section which refers to the extent of the damage sustained by a premises. In any event the question of whether a premises have been completely destroyed or partly damaged must itself be decided by the Rent Board and not by the tenant unilaterally. It is to be noted that the duty of carrying out repairs to the premises in suit and maintaining it in proper condition is primarily cast on the landlord by section 13. It is only if the landlord fails to comply with an order for repair or redecoration that the Board would authorize the tenant to carry out such repairs or redecoration and incur such expenditure not exceeding a ceiling set by the Board. [vide sec. 13 (3)]. It is such amount spent or delineated by the order, whichever is less, that could be set off against the rent payable. [vide *Appuhamy v. Seneviratne*[1]].

As pointed out by the learned counsel for the plaintiff-respondent the rationale behind such statutory provision is to keep control on a tenant arbitrarily and unilaterally spending a sum of money on a rent-controlled premises and claiming a set off thereafter which might keep him in occupation for a very long time without payment of any rent.

Since there is specific provision in law as to the forum that should be sought and the mode of implementation with regard to expenditures on repairs, the party affected must necessarily seek recourse to such specified forum. In such cases the common law would be in suspense. In *Hendrick Appuhamy v. John Appuhamy*[2], it was held that where a specific remedy has been provided by an Act for the breach of a relevant statutory right, the remedy provided by the Act must be sought.

Thus, the failure of the defendant in the first instance to have recourse to the forum designed by law would prevent him from seeking a set off for moneys allegedly spent by him on repairs subsequently.

Even if one were to argue that the power of the District Court to investigate into the nature of such expenses and make an appropriate order thereon had not been taken away by the Rent Act yet the failure on the part of the defendant-appellant to prove his alleged expenditure of Rs. 10,000 in 1969 on a house whose rent was only Rs. 35 per month, precluded the Court from granting any relief to the tenant-defendant-appellant.

It is incorrect to say that the plaintiff-respondent admitted an expenditure of Rs. 10,000 by the defendant-appellant. What the plaintiff-respondent did say at pages 55 and 56 of the brief was that her answer referred to an expenditure of Rs. 10,000 and it *may* have been spent on repairs but that he never gave permission for such expenditure and the need to spend such an amount never arose since there had been no destruction to the premises in suit to necessitate such heavy expenditure.

At page 58 the plaintiff-respondent had said that he was unaware of the amount spent on repairs and that he believed that the repairs were done with material already in the premises.

When the law had specified as to what steps have to be taken when the necessity to repair tenanted premises arose, it is no use arguing that there was implied consent of the plaintiff-respondent. Whether the landlord consented or not the Rent Board had powers to compel the landlord to do repairs or to order the tenant to undertake repairs and set off expenses from the rents payable. The implied consent of the plaintiff-respondent, therefore, is irrelevant to the issue. In any event the evidence of the plaintiff-respondent shows that there was no such implied consent. In fact, the defendant-appellant had asked the plaintiff-respondent only in March, 1979, to repair the premises. The plaintiff-respondent had then said that since rents had

not been paid he could not repair the premises and that the defendant-appellant should leave the premises in suit to enable him to repair.

Therefore, there was no such consent either implied or direct forthcoming from the plaintiff-respondent.

Under the circumstances the arguments put forward by the counsel for the defendant-appellant are found to be untenable and the appeal is, therefore, dismissed. Over 10 years have passed from the date of judgment. The matters urged in appeal appear spurious and possibly designed to delay the plaintiff-respondent from enjoying the fruits of his litigation.

We make order dismissing the appeal with *incurred* costs payable by the defendant-appellant to the plaintiff-respondent.

WEERASURIYA, J. – I agree.

Appeal dismissed.