

1967 Present : Abeyesundere, J., and Tennekoon, J.

CHARLES FERNANDO, Appellant, and T. P. DE COSTA, Respondent

S. C. 674/64—D. C. Negombo, 28/RE

Rent Restriction (Amendment) Act, No. 12 of 1966—Section 4 (b)—Scope—Rent Restriction Act, s. 12 A (1) (a).

Section 4 (b) of the Rent Restriction (Amendment) Act, No. 12 of 1966, does not apply to a pending action in which ejection of a tenant is claimed under section 12A (1) (a) of the principal Act on the ground that rent has been in arrears for three months or more after it has become due.

APPEAL from a judgment of the District Court, Negombo.

J. A. L. Cooray, with *D. A. Theverapperuma*, for the Defendant-Appellant.

J. W. Subasinghe, for the Plaintiff-Respondent.

March 11, 1967. ABEYESUNDERE, J.—

This action was instituted on 1st March, 1963 by the plaintiff for the ejection of the defendant who was his tenant of the premises described

in the plaint, and for the recovery of arrears of rent. The learned District Judge who tried the action entered judgment and decree in favour of the plaintiff. Application was made to the District Court for the execution of the decree and on that application writ was issued and executed on 26th December, 1964 restoring possession of the aforesaid premises to the plaintiff. The defendant preferred an appeal from the judgment and decree to this Court. Pending that appeal, the defendant applied to the District Court for a stay of execution of the decree of the District Court and upon that application the learned District Judge ordered him to furnish security in a sum of Rs. 4,500 in cash for the purpose of staying the execution of the decree. The defendant has also appealed from the order of the learned District Judge ordering security to be paid in cash.

We shall now consider the appeal of the defendant from the judgment and decree of the learned District Judge. Mr. J. A. Cooray appearing for the defendant-appellant submitted that by section 2 of the Rent Restriction (Amendment) Act No. 12 of 1966, a new Section 12A was inserted in the Rent Restriction Act, that by virtue of the provisions of section 4 of the said Act No. 12 of 1966, the new section 12A was deemed to have come into operation on 20th July, 1962, and that by reason of the provisions of paragraph (b) of the said section 4, the appeal of the defendant-appellant was null and void. Under the said section 12A, an action for the ejection of the tenant of any premises to which the Rent Restriction Act applies and the standard rent of which for a month does not exceed one hundred rupees is permitted if the ground on which such ejection is sought is arrears of rent for three months or more. The ground of ejection pleaded by the plaintiff-respondent was that the rent of the premises in suit was in arrears for three months or more after it had become due. Counsel for the defendant-appellant and counsel for the plaintiff-respondent agreed that the standard rent of the premises in suit for a month did not exceed one hundred rupees at the time when the action was instituted and that the ground on which the plaintiff-respondent sought the ejection of the defendant-appellant was that the latter had been in arrears of rent from 1st October, 1962 to 1st March, 1963. It is therefore clear that the said section 12A was no bar to the action instituted by the plaintiff-respondent. For that reason we are unable to uphold the submission of counsel for the defendant-appellant that the appeal from the judgment and decree of the learned District Judge is null and void by reason of paragraph (b) of section 4 of the said Act No. 12 of 1966.

We now proceed to examine the merits of the judgment and decree of the learned District Judge. Issue two relates to the question whether the defendant-appellant was in arrears of rent from 1st October, 1962, and issue four relates to the question whether the plaintiff-respondent is entitled to eject the defendant from the premises in suit. Both those issues have been answered by the learned District Judge in favour of the

plaintiff-respondent. We do not see any reason to interfere with the findings of the learned District Judge in regard to issues two and four. We therefore dismiss with costs the defendant-appellant's appeal from the judgment and decree of the learned District Judge.

TENNEKOON, J.—I agree.

Appeal dismissed.

