

1959

Present : Sinneta'mby, J.

ASIYA UMMA, Appellant, and KACHI MOHIDEEN, Respondent

S. C. 226—C. R. Colombo, 68230

Appeal—Notice of tendering security—Omission to address it to the respondent personally—Absence of appellant's signature—Effect—Civil Procedure Code, s. 756 (1) (3), Schedule I, Form 126.

Rent Restriction Act, No. 29 of 1948—Section 13 (1) (d)—“ Using the premises for an immoral or illegal purpose ”.

(i) Where notice of tendering security in appeal is not drawn up strictly in accordance with Form No. 126 of the First Schedule of the Civil Procedure Code but is substantially in conformity with it, an order of abatement should not be entered. In any event, relief will be granted in such a case under sub-section 3 of section 756.

Notice of tendering security in appeal was addressed to the respondent's Proctor and not to the respondent. It was also not signed by the appellant but was issued by the Chief Clerk on the orders of Court.

¹ (1905) 9 N. L. R. 302.

² (1930) 32 N. L. B. 46.

Held, that relief should be granted under section 756 (3) of the Civil Procedure Code.

Sivagurunathan v. Doresamy (1951) 52 N. L. R. 207, considered.

(ii) Section 13 (1) (d) of the Rent Restriction Act is restricted to cases in which a tenant has been evicted of keeping or using the premises let for an illegal purpose. Conviction, therefore, in respect of an illegal act, e.g. unlawful possession of cocaine, cannot come within its compass.

APPPEAL from a judgment of the Court of Requests, Colombo.

M. Markhani, for defendant-appellant.

E. R. S. R. Coomaraswamy, with *E. B. Vannitamby*, for plaintiff-respondent.

Cur. adv. vult.

November 19, 1959. SINNETAMBY, J.—

A preliminary objection was taken to the hearing of this appeal and I shall first deal with it.

It was contended for the plaintiff-respondent that the notice of tendering security was bad in as much as it was not drawn up in accordance with form 136 of the first schedule to the Civil Procedure Code. The notice in this case was addressed to the proctor for the respondent and required him to take notice "that the defendant-appellant moves to deposit the sum of Rs. 26 being costs which may be incurred by the respondent in appeal and will on the 19th of December deposit in Court a sum sufficient to cover the expenses of serving notice of appeal". The objection is that this notice should have been addressed to the plaintiff and not to the plaintiff's proctor. It was also not signed by the defendant but issued by the Chief Clerk on the orders of Court. My attention was drawn to the decision in *Sivagurunathan v. Doresamy*¹ wherein this Court expressed the view that the notice of tendering security required by 756 of the Civil Procedure Code should be as prescribed in form 126 of the first schedule. The decision, however, while it stresses the need to observe and adopt the prescribed form, does not penalise the appellant for non-compliance by directing that an order of abatement should be entered. It seems to me that even if the form of notice is not strictly in accordance with the prescribed form it is sufficient if it is substantially the same and in any event failure to observe or to adopt the prescribed form is not of such great materiality as to preclude the Court from granting relief under Section 756 sub-section 3. I do not, therefore, propose to consider this matter any further, as, in my view, even if the form has not been strictly observed, relief should be granted.

¹ (1951) 52 N. L. R. 207.

I now come to the main question that arises for decision in the case. The plaintiff sued the defendant in ejectment and in order to dispense with the authorisation of the Rent Restriction Board alleged that the defendant was in arrears of rent. Subsequently, he amended his plaint and alleged also that the defendant had been convicted of using the premises for an illegal purpose, namely for the purpose of keeping or possessing cocaine without a licence from the Director of Medical and Sanitary Services. Section 13 (1) (d) of the Rent Restriction Act permits a landlord to institute an action in ejectment without authorisation, if the tenant had been convicted of using the premises for an illegal purpose. The plaintiff, at the hearing, abandoned the question of arrears and restricted himself to this averment. The evidence showed that the defendant was convicted of possessing three small bottles of cocaine on the 11th December, 1957, which is after the date on which the action was instituted. In the lower Court the argument of Counsel was directed to the question of whether a conviction after institution of action would be sufficient to entitle the plaintiff to dispense with the permission of the Rent Restriction Board, but I do not think it necessary to go into that question.

Section 3 (1) (d) is restricted to cases in which a tenant has been convicted of keeping or using the premises let for an illegal purpose. The conviction in this case was certainly not in respect of the use or the purpose for which the premises were kept. The conviction was for possession of cocaine. There are certain cases in which the use of a house or premises for a certain purpose is itself an offence, quite independent of the purpose which may or may not be an offence; instances that come to mind are the keeping or using a house for unlawful gaming or keeping and using premises as a brothel. These are offences in themselves independent of the purpose for which the premises are themselves put. Unlawful gaming, is by itself an offence separate and independent of the offence of using a building or premises for that purpose: the former is punishable under Section 2 of the Gaming Ordinance while the latter is punishable under Section 3. Likewise, under the Brothels Ordinance, a person who keeps or uses the premises for the purpose of a brothel is punishable under Section 2 of the Ordinance (Chapter 25 of the Legislative Enactments). There is thus a clear distinction between a conviction in respect of an illegal act and a conviction for keeping premises for the purpose of an illegal or immoral act. What the section of the Rent Restriction Act contemplates is a conviction for using the premises let for an illegal purpose and not the conviction of an occupant therein of an illegal act.

I, therefore, hold that the conviction of the tenant in any case does not come within the compass of Section 13 (1) (d) of the Act. The appeal is accordingly allowed. The judgment of the learned Commissioner is set aside and plaintiff's action dismissed with costs both here and in the Court below.

Appeal allowed.