

1982

Present: de Silva, J.

SUYAMBULINGAM CHETTIAR, *et al*, Appellants, and
PECHCHI MUTTU CHETTIAR, Respondent

S. C. 207—C. R. Colombo, 32,190

Rent Restriction Act, No. 29 of 1948—Section 13 (1) (a)—Rent in arrears—Tender of it before institution of action—Landlord's right to eject tenant.

Where, in a case of monthly tenancy, the tenant is in arrear of rent for one month after it has become due and the tenancy is thereafter terminated by due notice, the landlord's right to eject the tenant under section 13 (1) (a) of the Rent Restriction Act cannot be taken away from him by the tenant by tender of the arrears of rent before the institution of legal proceedings.

Fernando v. Samaraweera (1951) 52 N. L. R. 278 referred to.
George v. Richard (1948) 50 N. L. R. 128 not followed.

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

H. W. Tambiah, for the plaintiffs appellants.

C. Chellappah, for the defendant respondent.

Cur. adv. vult.

April 3, 1952. DE SILVA J.—

This is an action for rent and ejectment. The defendant-respondent is the tenant of the plaintiffs-appellants of premises No. 40/53, St. Joseph Street, Grandpass, Colombo, on the footing of a monthly tenancy. The plaintiffs came to court claiming rent and ejectment of the defendant on the ground that the defendant was in arrears of rent for the months of November and December, 1950, and January, 1951.

The learned Commissioner after trial dismissed the plaintiffs' action with costs. The question that comes for decision in this appeal is the right of the plaintiffs to institute, and maintain, this action for rent and ejectment notwithstanding the fact that before the action was filed the defendant tendered all arrears of rent due up to the date of action.

The issues framed and adopted at the trial were:—

- (1) Is the defendant in arrears of rent for the months of November and December, 1950, and January, 1951, within the meaning of section 13 (1) (a) of the Act?
- (2) Was due notice to quit given on the 29th January, 1951, to quit at the end of February, 1951?
- (3) If issues Nos. (1) and (2) are answered in the affirmative, is the plaintiff entitled to a decree in ejectment?
- (4) Did the defendant duly tender the rents for the months in question?
- (5) If so, can he be said to be in arrears of rent?

The second plaintiff-appellant gave evidence at the trial and produced certain documents. It was averred in the plaint that the agreement between the parties was for the tenant to pay the rent monthly on the first day of the succeeding month for the previous month. The second plaintiff-appellant who gave evidence supported the averment in the plaint regarding the mode of payment of the rent. The defendant led no evidence. The plaintiffs have proved what the agreement was as regards the manner of payment of rent. It was proved at the trial that the defendant was in arrears of rent for the months of November and December, 1950, when on the 29th of January, 1951, the plaintiffs through their proctor gave the defendant notice to quit the premises at the end of February, 1951.

It would appear that on the 5th of February, 1951, the defendant sent the second plaintiff a sum of Rs. 45.60, being rent for the months of November and December, 1950, and January, 1951, the rent for each month admittedly being Rs. 15.20. The second plaintiff on the 6th of February, 1951, received a postal order for Rs. 45.60 which came from Mr. Zaheed. This action was instituted on 6.3.51.

The learned Commissioner has answered the issues thus:—

- (1) No.
- (2) Yes.
- (3) Does not arise.
- (4) Yes.
- (5) No.

In the result the plaintiffs' action was dismissed.

The Rent Restriction Act undoubtedly places a fetter on the common law right of the landlord to institute an action or proceedings for the ejection of the tenant to which the Act applies, unless the Board has in writing authorized the institution of such proceedings subject to the proviso that the authorization of the Board shall not be necessary in any case where rent has been in arrear for one month after it has become due.

In the case under consideration the rents for November and December, 1950, became due on the 1st of December, 1950, and on the 1st of January, 1951, respectively. The notice to quit was given on the 29th of January, 1951. When on the 5th of February, 1951, defendant sent the plaintiff a sum of Rs. 45.60 by postal order being rent for three months, he was clearly in arrears of rent for more than a month for the months of November and December, 1950. When the notice to quit was sent the defendant was in arrear of rent for the month of November, 1950, for more than a month. The Act has not taken away the right of the landlord to terminate the tenancy by giving the tenant the requisite period of notice. In this case the tenancy being monthly, a month's notice has been given terminating the tenancy. The tenant, whose tenancy has been so terminated, becomes a statutory tenant. The Act gives the landlord the right to sue in ejection a tenant who has been in arrear of rent for one month after it has become due. Thus certain rights had been created in the landlord. Can those rights be taken away from him by the tenant without the consent or acquiescence of the landlord?

The Act creates certain rights in favour of the tenant and also imposes certain obligations which he has to fulfil. The tenant is obliged not to allow his rent to fall into arrear for one month after it has become due. The violation of the statutory duty on the part of the tenant forthwith creates certain rights in the landlord which, unless waived by the latter, must be recognized.

To deny to the landlord the benefits which the statute has given him under the circumstances is certainly to place the landlord at the mercy of the tenant.

One can conceive of a case of a tenant being in arrears of rent for several months, nay, years, and only when he is threatened with a suit for ejectment, paying the rent for the period for which he was in arrears and thereafter continuing to be in occupation. What then is the position of the landlord?

I have been referred to *Fernando v. Samaraweera*¹. Basnayake J. has thus observed:—"Once a tenant commits a breach of any one of his statutory obligations the bar against the institution of proceedings in ejectment enforced by section 13 of the Act is removed and there is nothing the statutory tenant can do to regain his immunity from eviction. His rights and obligations are governed by the statute and immediately he violates its provisions the consequences of such violation begin to flow. For instance, if he is in arrears of rent for one month after it has become due the landlord becomes free to institute proceedings in ejectment. He cannot prevent his eviction by process of law by tendering the rent out of time either before or after the institution of legal proceedings. The consequences of the failure to observe the obligations imposed by the statute cannot be avoided by doing late what should have been done in time". Basnayake J. has cited two judgments of the South African courts in his judgment.

A contrary view has been taken by Nagalingam J. in *George v. Richard*². I find myself in agreement with the view expressed by Basnayake J. in *Fernando v. Samaraweera* (supra).

I hold that the plaintiffs-appellants have made out a case to entitle them to a decree as prayed for. I answer the issues framed thus:—

- (1) Defendant is in arrears of rent for the months of November and December, 1950, within the meaning of section 13 (1) (a) of the Act.
- (2) Yes.
- (3) Yes.
- (4) No.
- (5) Does not arise in view of the answer to issue No. (4).

The judgment and decree of the lower Court are set aside and judgment is entered in favour of the plaintiffs-appellants as prayed for. The defendant-respondent will pay the plaintiffs their costs of appeal and of the trial in the Court below.

Appeal allowed.

¹ (1951) 52 N. L. R. 278

² (1948) 50 N. L. R. 128.