1973 *Present:* **Rajaratnam, J.**

Mrs. K. KANAGASABAI, Appellant, *and* Mrs. K. SEEVARATNAM, Respondent

S. C. 9/70—C. R. Colombo, 99288/R.E.

Rent Act, No. 7 of 1972—Sections 22, 47—Pending actions—Section 22 (3) does not have retrospective effect—Distinction between substantive rights and matters of procedure—Interpretation Ordinance, s. 6 (3) (c).

Section 22 (3) of the Rent Act No. 7 of 1972 is not applicable retrospectively to an action which had already been instituted and was pending at the time when the said Act came into force. Sub-sections (1), (2) and (3) of section 22 are prospective and not retrospective in their scope and nature.

The Rent Act of 1972 contains in section 47 clear retrospective provisions affecting pending actions relating to different situations. On the other hand there is nothing retrospective in the provisions of section 22 (3).

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

H. W. Jayewardene, with *K. Shanmugam* and *Miss I. Marasinghe,* for the defendant-appellant.

C. Ranganathan, with *S. Sharvananda, V. Thuraiappa* and *S. Rudiramoorthy,* for the plaintiff-respondent.

Cur. adv. vult.

November 6, 1973. RAJARATNAM, J.—

I reserved judgment in this case only on the question whether s. 22 (3) of the Rent Act No. 7 of 1972 applied to cases which were pending at the time when the said Act came into force. The order in this case was made in the Court of Requests on 23.1.70

and the petition of appeal therefrom was filed on the same day, and the appeal was pending on the date of the operation of the Act in 1972. I am therefore going on the basis that the action and proceedings in this case were pending on that date.

The two sections of the said Act to be considered are Section 22 (1) (2) and (3), viz. *

Sub-sections (1) and (2) of s. 22 restrict the grounds for an ejectment action for different premises respectively. Both these sub-sections are obviously prospective and therefore not applicable to actions pending before the Act came into force.

Sub-section (3) imposes further conditions for such an action to be instituted, entertained or proceeded with by a landlord of any premises referred to in sub-sections, (1) and (2). These conditions are contained in paragraphs (*a*), (*b*) and (c) of s. 22 (3).

Paragraph (*a*) imposes a condition that notice must be given as required before such an action can be instituted or entertained.

Paragraph (*b*) imposes a further condition that even after such notice before institution, if a tenant tenders all arrears of rent there can be no institution or entertainment of such an action.

It is clear that conditions (*a*) and (*b*) operate before the institution or entertainment of the action. If the landlord does not satisfy conditions (*a*) and (*b*), s. 22 (3) states that he "shall not be entitled to institute....."

The condition under paragraph (c) is after the institution and entertainment of the action, i.e., where the action after institution cannot be proceeded with if the tenant pays all arrears of rent before the summons returnable date. Paragraph (c) of s. 22 (3) protects a tenant from ejectment again and gives him a second chance after the institution of the action if he does not avail himself of the first chance given under para (*b*) prior to the institution of the action.

Since this paragraph refers to an event which can only occur after the action has been instituted the obvious words the draftsman could have used were "shall not be entitled to..... proceed with". The words "to proceed with" were essential for this purpose. How else could the 3rd condition in paragraph (c) have been made applicable ?

* *See footnote * at pages 523 to 525 (infra).*

Sub-section (3) in my view refers to a prospective situation in each of the paragraphs (*a*), (*b*) and (*c*) and the words "or as the case may be, to proceed with ....." refer to the other situation where the tenant tenders all arrears of rent before the summons returnable date and after the institution of the action.

The Rent Act of 1972 contains clear retrospective provisions affecting pending actions in no unmistakable terms in the words of s. 47 in certain type of actions in different situations. On the other hand I find nothing retrospective in the provisions of s. 22 (3).

Mr. Jayewardene, learned Counsel for the appellant, argued that s. 22 (3) refers to procedural matters ousting the jurisdiction of the Court to continue to proceed with such actions. I hold that the conditions in paragraph (*a*), (*b*) and (*c*) of sub-section (3) is not a matter of procedure. It directly takes away from a plaintiff the right to a decree which he had when he instituted the action. By the rules of interpretation, that right cannot be taken away in a pending action unless there are clear words to that effect.

It was submitted that the Court must examine the social background and ascertain the intention of the legislature. The judgment of Lord Simon in the case of *Ealing L. B. C. v. Race Relations Board*[1] 2 W.L.R. 1972 at p. 82 was cited on this point. I have considered this judgment and I do not find any observation made therein which prevents me from discerning the clear intention of the legislature in s. 22 (1), (2) and (3) of the Act to confer new benefits on the tenants which they did not have before, and in s. 47 there have been further benefits conferred on tenants in that pending actions in specifically different matters have been declared null and void.

If it was the intention of the legislature to refer to pending actions in a matter as in the present case it would have said so as specifically as in s. 47.

The next submission was that s. 22 (1), (2) and (3) are procedural limitations with regard to the jurisdiction of the Court and therefore the Court *pro tanto* ceases to have jurisdiction in terms of s. 22 (1), (2) and (3) to entertain or proceed with such actions. I find it difficult to accept this submission. Even if it is conceded it is a matter of procedure, it cannot be denied that

[1] *(1972) 2 W. L. R. 82.*

it is also a question of the landlord's rights to institute and proceed with the action. In the words of Lord Macnaughton in the case of the *Colonial Sugar Refining Co. Limited v. Irving*[1], (1905) A. C. 369 (Privy Council) where a statutory right to appeal from the Supreme Court of Queensland to His Majesty in Council had been taken away by the Australian Commonwealth Judiciary Act of 1903 and it was held that the Act was not retrospective and did not apply to an appeal pending when the Act was passed. "On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand if it be *more than a matter of procedure,* if it touches a right in existence at the passing of the Act, it was conceded that in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed".

I have most anxiously considered all aspects of this question so ably and thoroughly presented by Counsel and I hold that to say the least the matter under consideration is one *more than a matter of procedure.*

I have considered the case of *Attorney-General v. Vernazza,*[2] (1960) 3 A. E. R. 97. In this case Lord Denning referred to the Privy Council case from Australia referred to above without disapproval and observed that if the Act affected the respondent's substantive rights, it would not apply to proceedings which have already commenced unless a clear intention to that effect is manifested. "But if the New Act affects matters of procedure only, then prima facie it applies to all actions pending as well as future..... Even if the New Act did affect substantive rights however I think there are clear words in this Act which show that Parliament intended it to be retrospective". The Act in the particular facts of that case empowered the High Court to make order that any legal proceedings instituted by the vexatious litigant in any Court before the making of the order shall not be continued by him without such leave. It was also observed in that case that Vernazza or any one for that matter had no vested right to bring or continue proceedings which are an abuse of the process of Court. The decision and observations in this case do not in any way support the legal proposition advanced on behalf of the appellant on the question before me for my consideration. The circumstances, the nature and the terms of the Rent Act are entirely different from those of the Act considered in *Vernazza's case.* Moreover the rights of the landlord and the vexatious litigant are distinguishably poles apart.

[1] *(1905) A. C. 369.*

[2] *(1960) 3 A. E. R. 97.*

In the case of *Lanka Estates Agency Limited v. Corea*[1] (1951) 52 N. L. R. 477, it was held that where during the pendency of an action for ejectment, the provisions of the Rent Restriction Act were by proclamation declared to be applicable to the locality in which the premises in question were situated, the coming into operation of the Act after action for ejectment has already commenced does not affect the landlord's accrued right to claim ejectment under the common law. It will not be inappropriate to quote the following extract from the judgment of Gratiaen J. in this case—

> "The general principles upon which a Court must determine whether intervening legislation can be regarded as having retrospective effect so as to interfere with rights in a pending action are clear enough. In *Hitchcock v. Way* Lord Denham declared that "in general the law as it existed when an action was commenced must decide the rights of the parties in the suit unless the legislature express a clear intention to vary the relation of litigant parties to each other". It was similarly held that "when the legislature alters the rights of parties by taking away from them, or conferring upon them, any rights of action, its enactments, unless in express terms they apply to pending actions, do not affect them at all". Vide also *re Joseph Suche and Co.* This principle is recognised in s. 6 (3) of the Interpretation Ordinance, although the language of the Section does not strictly apply to the present action.
>
> I have endeavoured, within the time at my disposal, to search for precedents where the English Courts have considered whether analogous legislation (affecting the rights of landlord and tenant) were retrospective in effect. The *ratio decidendi* of all the decisions which I have traced seems to be that it is necessary in each case to examine the language of the particular enactment, and that only a clear intention on the part of the legislature to affect rights in a pending action could rebut the general presumption to which I have already referred. *Stevin v. Fairbrass; Landrigan v. Simons; Brooks v. Brimecome.* In the last mentioned decision Lord du Parcq (then du Parcq J.) adopted an earlier ruling that "no rule of construction is more firmly established than this—that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure,

[1] *(1951) 52 N. L. R. 477.*

unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only".

Apart from all authorities with great respect we have the imperative provisions of s. 6 (3) (c) of the Interpretation Ordinance which reads—

"Wherever any written law repeals either in whole or in part a former written law, such repeal shall not *in the absence of any express provision* to that effect, affect or be deemed to have affected—

(c) any action, proceeding or thing pending or incompleted when the repealing written law comes into operation, but every such action, proceeding or thing may be carried on and completed as if there had been no such repeal".

The words in our law in the Interpretation Ordinance are even more restrictive in their scope than in the corresponding English Statute. The words in our law are "in the absence of any express provision to that effect", which are more forceful and more specific than the words in the English Statute "unless the contrary intention appears".

The scope and impact of s. 6 (3) (*b*) and (c) of the Interpretation Ordinance on pending actions *vis a vis* repealing legislation has been considered by five Judges in the case of *Akilandanayaki v. Sothinavaratnam*[1] 53 N.L. R. 385 ; *Hai Bai v. Perera*[2] 55 N.L.R. 442, and *Nawadun Korale Co-operative Stores Union Ltd. v. Premaratna*[3] 55 N.L.R. 505. It is not necessary for me to take any further observations on this question except to say that I agree with great respect with all these authorities which have given full meaning and life to s. 6 (3) of our Interpretation Ordinance.

In view of my holding that s. 22 (3) has no retrospective effect to pending actions, it will not be necessary for me to consider the other submission made by Mr. Ranganathan that in any case the defendant was in sufficient arrears of rent to satisfy the requirements to terminate his tenancy with the notice actually given in this case. I hold that s. 22 (1), (2) and (3) of the Rent Act are prospective in their scope and nature.

[1] *(1952) 53 N. L. R. 385.* [2] *(1954) 55 N. L. R. 442.*
[3] *(1954) 55 N. L. R. 505.*

I see no reason to interfere with the finding on the facts. I may also mention that it is not altogether a matter without some interest that the decision in the case of *Nilamdeen v. Nanayakkara*[1] by the Court of Appeal made in 1973 reported in 76 N.L.R. 169, allowed the appeal and ejectment of the tenant who had paid all arrears of rent before the institution of the action as later contemplated by para. (*a*) of s. 22 (3). The right of the landlord to proceed with the action and eject the tenant survived the new Act which did not retrospectively protect him when he lost the protection given to him by the old Act. It is true, as Mr. Jayewardene pointed out, this matter does not appear to have been taken at the argument. But nevertheless it is a matter of some significance that the action survived the new Act and reached a finality in the Court of Appeal.

I therefore dismiss the appeal with costs.

Appeal dismissed.

[1] *(1973) 76 N. L. R. 169.*

* *Rent Act No. 7 of 1972—Proceedings for ejectment*

22. (1) Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises the standard rent (determined under section 4) of which for a month does not exceed one hundred rupees shall be instituted in or entertained by any court, unless where—

(*a*) the rent of such premises has been in arrear for three months or more after it has become due ; or

(*b*) such premises, being premises which have been let to the tenant on or after the date of commencement of this Act, are, in the opinion of the court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord, or for purposes of the trade, business, profession, vocation or employment of the landlord ; or

(*c*) such premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord and the tenant has ceased to be in such service or employment ; or

(*d*) the tenant or any person residing or lodging with him or being his subtenant has, in the opinion of the court, been guilty of conduct which is a nuisance to adjoining occupiers or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person.

* *See p. 518 (supra), line 6*

For the purposes of paragraph (b) of this subsection, any premises of which the landlord is a body of persons corporate or unincorporate shall be deemed to be required for the purposes of the business of the landlord, if they are, in the opinion of the court, reasonably required for any of the objects or purposes for which the body is constituted.

(2) Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of—

(i) any residential premises the standard rent (determined under section 4) of which for a month exceeds one hundred rupees;

or

(ii) any business premises the standard rent (determined under section 4) of which for a month exceeds one hundred rupees and the annual value of which does not exceed the relevant amount,

shall be instituted in or entertained by any Court, unless where—

(*a*) rent has been in arrear for one month after it has become due; or

(b) the premises are, in the opinion of the court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord or for the purposes of the trade, business, profession, vocation or employment of the landlord; or

(*c*) such premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord and the tenant has ceased to be in such service or employment; or

(*d*) the tenant or any person residing or lodging with him or being his subtenant has, in the opinion of the court, been guilty of conduct which is a nuisance to adjoining occupiers or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person.

For the purposes of paragraph (b) of this subsection, any premises of which the landlord is a body of persons corporate or unincorporate shall be deemed to be required for the purposes of the business of the landlord, if they are, in the opinion of the court, reasonably required for any of the objects or purposes for which the body is constituted.

(3) The landlord of any premises referred to in sub-section (1) or sub-section (2) shall not be entitled to institute, or as the case may be, to proceed with, any action or proceedings for the ejectment of the tenant of such premises on the ground that the rent of such premises has been in arrear for three months or more, or for one month, as the case may be, after it has become due,—

(*a*) if the landlord has not given the tenant three months' notice of the termination of tenancy if it is on the first occasion on which the rent has been in arrear, two months' notice of the termination of tenancy if it is on the second occasion on which the rent has been in arrear and one month's notice of the termination of tenancy if it is on the third or any subsequent occasion on which the rent has been in arrear; or

(*b*) if the tenant has prior to the institution of such action or proceedings tendered to the landlord all arrears of rent ; or

(*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 or proceedings, tendered to the landlord all arrears of rent.

(4) The court may, ...