

1969

Present : Wijayatilake, J.

G. D. K. D. A. JAYATISSA, Appellant, *and*
B. EBERT SILVA, Respondent

S. C. 160/67—C. R. Colombo, 85812

Rent Restriction (Amendment) Act, No. 12 of 1966—Section 4 (c)—Scope—Rent Restriction Act, s. 12 A—Applicability in a consent decree.

Section 4 (c) of the Rent Restriction (Amendment) Act, No. 12 of 1966, is not applicable to execution proceedings in respect of an action in which consent decree was entered in favour of a landlord on the basis that, at the institution of the action, rent was in arrears for a period over three months. In such a case, the fact that the consent decree entered on 4th June 1964 prior to the Amendment Act states that the tenant was in arrears for *one month* after it became due is immaterial if, at the stage when the settlement was entered into, the arrears were in fact for a period over three months.

APPEAL from an order of the Court of Requests, Colombo.

Walter Jayawardena, Q.C., with *K. Jayasekera*, for the plaintiff-appellant.

K. Shanmugalingam, with *L. V. R. Fernando*, for the defendant-respondent.

Cur. adv. vult.

February 18, 1969. WIJAYATILAKE, J.—

The principal question which has arisen for consideration in this Appeal is whether Section 4 (c) of the Rent Restriction (Amendment) Act, No. 12 of 1966, applies to the instant Action. The decree has been entered against the defendant of consent. Section 4 provides as follows:—

“The provisions of sections 2 and 3 of Act No. 12 of 1966 shall be deemed to have come into operation on the twentieth day of July, 1962, and accordingly—

- (a) any action which was instituted on or after that date and before the date of commencement of Act No. 12 of 1966 for the ejection of a tenant from any premises to which the principal Act as amended by Act No. 12 of 1966 applies shall, if such action is pending on the date of commencement of Act No. 12 of 1966, be deemed at all times to have been and to be null and void,
- (b) any appeal preferred to the Supreme Court from any judgment or decree of a court in any such action as is referred to in paragraph (a) and is pending before the Supreme Court on the date of commencement of Act No. 12 of 1966 shall be deemed at all times to have been and to be null and void, and
- (c) proceedings shall not be taken for the enforcement of any judgment or decree in any such action as is referred to in paragraph (a), and where such proceedings have begun before the date of commencement of Act No. 12 of 1966 but have not been completed on the date of commencement of Act No. 12 of 1966, such proceedings shall not be continued.

The plaintiff filed this Action on 22.8.63 against the defendant for ejection, arrears in a sum of Rs. 300 being 12 months' rent and damages. The defendant filed answer on 22.10.63 pleading that the authorised rent of the premises is Rs. 18.93 and that the plaintiff has recovered rent at the rate of Rs. 25 per month. Setting off the sum of Rs. 612.50 referred to in the plaint in respect of repairs carried out by the defendant and in respect of which sum the plaintiff has given credit to the defendant, and the excess rent paid, the defendant pleads that all rents upto the end of September 1963 have been paid or otherwise accounted for. The defendant further pleads that on 4.10.63 (after the institution of the Action) he paid a sum of Rs. 86.15 being rates and warrant costs on a seizure notice being served on him for non-payment of rates.

When the case came up for Trial issues were framed *inter alia* in respect of arrears of rent and the authorised rent. Thereafter the case proceeded to Trial and when the plaintiff was under cross-examination the Trial was adjourned for 4th June 1964. On this date the case was settled. The relevant clauses of the settlement are as follows :—

“After giving credit for all amounts that have been spent by the defendant for repairs in terms of order of the Rent Control Board under application No. 22/DN 59 and for all other claims made by defendant, it is agreed that all rents and damages have been paid up to the end of 31st July 1963. Defendant undertakes to pay the monthly damages of Rs. 25 as from 1st August 1963. Taking into consideration the permitted increase for all improvements effected by the plaintiff to the premises in suit, the arrears of rent and damages from 1st August 1963 to 31st May 1964 amount to Rs. 250. The defendant

admits that rent has been in arrears within the meaning of Section 13 (1) (a) of the Rent Restriction Act.

By consent judgment for Plaintiff in ejectment, in the said sum of Rs. 250 and damages at the rate of Rs. 25 per month as from 1st June, 1964. ”

This was the position on the 4th of June 1968 when the settlement was arrived at. These terms do not negative the averment in regard to the arrears claimed *at the institution of Action*. Nor do these terms question the correctness of the quantum of the rent payable at Rs. 25 per month. On the face of the settlement it is evident that the arrears of rent *at the institution of Action* were for a period over *three months* and the new Section 12 A of the Rent Restriction Act is therefore no bar to the Action instituted by the plaintiff. It may be noted that Section 4 of the Amendment Act is retroactive in its operation, the date of commencement being 20.7.1962.

The learned Commissioner has taken the view that the consent decree cannot be enforced under Section 4 (c) of the Amending Act 12 of 1966 as it has been entered on the ground that the defendant was in arrears of rent for *one month* after it became due. Apparently the Commissioner is referring to the following clause in the settlement.

“The defendant admits that rent has been in arrears within the meaning of Section 13 (1) (a) of the Rent Restriction Act.”

However, it must be appreciated that at the stage this settlement was entered the new Act had not been promulgated and the parties to the settlement could not have anticipated the period of three months referred to in Section 12 A and therefore it was not necessary to refer to a period over one month. Be that as it may, as I have already observed it is quite clear from the settlement that at the institution of the Action the arrears would have been for a period longer than three months. Thus it is clear that the averment regarding the arrears in the plaint is not fictitious.

In my opinion the judgment of Abeyesundere J. and Tennekoon J. in the case of *Charles Fernando v. T. P. de Costa*¹ which has dealt with Section 4 (b) of the Amendment Act, No. 12 of 1966, would apply with equal force to Section 4 (c) of this Act. See also *Navas v. Mohamed*², *Abdul Samad v. Sirinayake*³.

Another feature in the instant Action is that although the decree was entered in terms of the settlement on 4.6.64, the defendant has slept over his rights, if any, till 5.5.67 to object to the enforcement of this decree! As Counsel for the appellant has submitted during this period the defendant has availed himself of his rights under the settlement and he would therefore be precluded from attacking that very decree. This appears to a substantial argument but I do not think it necessary for me to rest the decision of this Appeal on that in view of the conclusion I have already come to in regard to the applicability of Section 4 (c) of the Amendment Act, No. 12 of 1966.

¹ (1967) 69 N. L. R. 381.

² (1968) 70 N. L. R. 570.

³ (1967) 70 N. L. R. 47.

I would accordingly set aside the order of the learned Commissioner and direct proceedings in execution to issue in terms of the consent decree already entered.

I award the plaintiff the costs of Inquiry and costs of Appeal.

Order set aside.
