

1967 Present : H. N. G. Fernando, C.J., and Sirimane, J.

MRS. Y. SINNIHPILLAI, Appellant, and M. A. C. S. ABDUL  
CADER, Respondent

*S. C. 461/64—D. C. Jaffna, 1602/L*

*Rent Restriction Act—Overpaid rents—Right of tenant to set them off against arrears of rent.*

In computing whether a tenant is in arrears of rent, credit must be given to the tenant for excess payments of rent made during the three years preceding the date when he stopped paying rent.

*Wijesekera v. Kanapathipillai* (55 N.L.R. 575) not followed.

**A**PPEAL from a judgment of the District Court, Jaffna.

*C. Ranganathan, Q.C.*, with *K. Sivananthan, R. Nalliah* and *P. S. Thuraiyappah*, for the defendant-appellant.

*H. W. Jayewardene, Q.C.*, with *R. Manikkavasagar*, for the plaintiff-respondent.

June 4, 1967. H. N. G. FERNANDO, C.J.—

Counsel are agreed that if credit must be given to the defendant for excess payments of rent made during the three years preceding the date when the tenant stopped paying rent, it cannot be said that the tenant was in arrears when the action was filed. Following the decisions in 47 N. L. R. page 62, and in 57 N. L. R. page 108, we are of opinion that the landlord should have appropriated excess payments of rent against rent due during the period during which the tenant did not make actual payments. We are not inclined to follow the judgment of Pulle, J. in 55 N. L. R. page 575.

The decree appealed from is set aside and the plaintiff's action is dismissed with costs in both Courts.

SIRIMANE, J.—I agree.

*Appeal allowed.*

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