1963 *Present :* Sansoni, J., and H. N. G. Fernando, J.

A. L. M. SANOON, *Appellant, and* K. V. K. THEYVANDERA-RAJAH, Respondent

S. C. 433—D. C. Colombo, 766/Z

Lease—Lessee in arrears of rent—Power of Court to grant equitable relief against forfeiture.

Where a lessee is in arrears of rent the Courts in Ceylon have jurisdiction to grant him equitable relief against forfeiture if he pays up the arrears.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *H. D. Tambiah, C. G. Weeramantry* and *N. S. A. Gunatilleke*, for the Plaintiff-Appellant.

C. Ranganathan, with *S. Sharvananda* and *Miss Suriya Wickremasinghe*, for the Defendant-Respondent.

Cur. adv. vult.

November 14, 1963. H. N. G. FERNANDO, J.—

The Defendant in this action has since 1948 been in occupation as sub-tenant and thereafter as tenant of certain business premises in Colombo. The property was formerly owned in half shares by two persons, Junaid and Mrs. Kuthdoos. In July 1956 Junaid transferred his half share to the Plaintiff and requested the Defendant by letter to pay the rent to the Plaintiff. On September 26th 1957 Mrs. Kuthdoos sold her half share to the Plaintiff and wrote the letter P6 (*a*) of the same date to the Defendant. In this letter she stated that the Defendant was in arrears of rent for the months of July, August and September 1957 and requested the Defendant to settle the arrears with the Plaintiff and to pay the future rents to him. This letter was transmitted with a covering letter from the Plaintiff's Proctor also dated 26th September 1957 requesting payment to the Plaintiff of the unpaid and future rents. The proctor added that the Defendant was in arrears of rent to the Plaintiff since July 1956, referring presumably to the half share of rent which had become payable to the Plaintiff by reason of the earlier transfer of July 1956. This letter was followed immediately by the Proctor's letter of 27th September 1957 giving the Defendant notice to quit and surrender the premises on the 31st October 1957.

On the 1st of November 1957 the defendant's proctor wrote to the plaintiff's proctor on behalf of the defendant's wife, stating that the plaintiff was well aware that defendant had been a lunatic for some time and stating also that he had been adjudged of unsound mind on the 23rd September 1957. Subsequently on 8th November defendant's proctor sent a cheque for Rs. 450 which was accepted without prejudice.

The learned District Judge held on the evidence that the defendant had been in arrears of rent from January to September 1957 in respect of one half share and from July to September 1957 in respect of the other half share. He held also that the payment of Rs. 450 made in November 1957 was more than sufficient to cover the amount in arrears. He dismissed the plaintiff's action on the ground that the Court has jurisdiction to grant equitable relief against forfeiture if in fact a tenant does pay up the rent in arrears. The only question for consideration in the appeal is whether this jurisdiction exists; if it does there is no doubt that on the proved facts the defendant is entitled to that relief. The earliest reported case is referred to in *Rajaratnam's Digest* and in a judgment of this Court in *2 Supreme Court Reports at page 35:* (*Sandford v. Peter*). Withers J. states in the judgment that in the 1875 case reported in *Bevan and Siebel's Reports* Cayley C.J. and Dias J. affirmed a judgment which " granted relief to a lessee against forfeiture for non-payment of rent ". *Rajaratnam's* note is to the effect that the tenant was in equity entitled to possess the land on paying the arrears of rent.

In *Sandford v. Peter*, Lawrie A.C.J. acted upon the principle of English law that " In equity the construction put on a clause of forfeiture of a lease on non-payment of rent is that it is a mere security for the payment of rent, and that as the breach of that covenant is capable of a just compensation a Court of equity may award the compensation and abstain from enforcing the forefeiture."

The above mentioned decision was much criticised in *Silva v. Dassanayake* [1] by Bonser C.J., and Withers J. sitting on the same Bench had to confess that he could find no authority in the Roman-Dutch Law for granting such relief to a tenant.

Nevertheless in 1904 (*Perera v. Thaliff* [2]) this Court granted relief in a case where the tenant had failed to perform his covenant to pay the Municipal rates on the leased property.

In 1905 (3 Balasingham Reports 215), Layard C.J. and Moncrieff J. again granted relief stating that " Courts of Law and Courts of Equity are always now very loth to decree forfeiture for a term in a lease, and when a party pays the amount due, even where the proper time for payment has expired, it is usual to accept such payment and allow the term of the lease to continue." In 1907 (*Perera v. Perera*[3]) Wood Renton J. also referred at some length to the jurisdiction of the Courts in England to grant equitable relief against forfeiture. He thought also that the same power could be exercised under the Roman-Dutch Law, but reference to the passage in Voet (19. 2. 18) upon which the learned Judge appeared to rely does not support the view that relief would be granted against forfeiture for non-payment of rent.

[1] *(1898) 3 N. L. R. 248.* [2] *(1904) 8 N. L. R. 118.*
[3] *(1907) 10 N. L. R. 230.*

In *Agar v. Ranewaka*[1], Lascelles C.J. with Wood Renton J. agreeing, stated that "it is beyond question that the English principles of giving relief against a forfeiture on the ground of non-payment of rent have been introduced into Ceylon and are now a part of our law". Lastly, there is the high authority of the opinion of Wijeyewardene J. (1940) 41 N. L. R. 499, that in an action for cancellation of a lease a defendant is no doubt entitled to ask for equitable relief.

Counsel for the Plaintiff in the present appeal has argued that the observation of Wijeyewardene J. was made obiter. It appears from the judgment however that the arrears had been paid up by the defendant after the due date and even after the institution of the action for cancellation of the lease. It may be that upon the facts of the particular case the Court would not in any event have granted relief, but it is clear that Wijeyewardene J. himself would have considered a grant of relief and only declined to do so because the tenant in that case had failed to ask for the relief and the Court was accordingly not obliged to give it. There was therefore in the judgment clear acceptance of the principle that under our law as declared in previous judgments of the Supreme Court the jurisdiction to grant relief against forfeiture for non-payment of rent does exist.

Having regard to this long line of decisions to which I have referred, I must take it as well settled law that the principle which obtained under the English Law is followed in Ceylon, and I do not think it necessary to accede to Counsel's request that the question be considered by a fuller Bench.

The appeal is dismissed with costs.

SANSONI, J.—I agree.

Appeal dismissed.

[1] *(1912) 16 N. L. R. 129.*