

1954

Present : Pulle J.

G. H. D. WIJESEKERA, Appellant, and K. KANAPATHIPILLAI,
Respondent

S. C. 108—C. R. Gampola, 10,228

Rent Restriction Ordinance, No. 60 of 1942—Section 9—Payments in excess of authorised rent—Recovery thereof—Computation of prescriptive period.

Action was instituted on June 17, 1952, against a tenant for ejection on the ground that he was in arrears of rent. The tenant admitted that no payment of rent was made by him after October 31, 1949, but pleaded that he was not in arrears of rent if credit was given to him for payments made regularly in excess of the authorised rent from the commencement of the tenancy on January 1, 1944, up to October 31, 1949.

Held, that under section 9 of the Rent Restriction Ordinance, No. 60 of 1942, the tenant was entitled to credit for overpayments only for the prescriptive period of three years reckoned from October 31, 1949.

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

Ivor Misso, with *A. G. B. Fernando*, for the defendant appellant.

H. W. Tambiah, with *K. Rajaratnam* and *T. Velupillai*, for the plaintiff respondent.

Cur. adv. vult.

July 19, 1954. PULLE J.—

The appellant in this case is the tenant of a house against whom the landlord filed an action for ejection on the 17th June, 1952, on the ground that he was in arrears of rent from November, 1949. It was common ground that no payments on account of rent were made after 31st October, 1949, and that prior to that date, namely, from the commencement of the tenancy on the 1st January, 1944, up to 31st October, 1949, the tenant had regularly made payments in excess of the authorised rent. If at the date of the institution of the action the

tenant was entitled to credit for the entirety of the overpayments the action was not maintainable. If, as was argued for the landlord, the tenant could take credit for overpayments only for the prescriptive period of three years reckoned from the 31st October, 1949, then these overpayments were not sufficient to meet the whole of the authorised rents due and payable from 1st November, 1949, to the date of action. The amount was about four months short of the rent due.

A large part of the excess payments was made during the operation of the Rent Restriction Ordinance, No. 60 of 1942, and the enforcement of any rights vested in the tenant by virtue of that Ordinance, which ceased to be in operation on 31st December, 1948—vide section 10 of the Amending Ordinance, No. 52 of 1947—was kept alive by the Rent Restriction (Special Provisions) Act, No. 4 of 1949.

The contention on behalf of the tenant was that the overpayment in any one month automatically extinguished a part of the rent due for the following month, even though the tenant, in respect of that following month, paid to the landlord a sum of money in excess of the authorised rent without making any deduction. The submission on behalf of the landlord was that if the tenant did not elect to deduct the excess in the exercise of the right conferred on him by section 9 of the Ordinance, then the only remedy he had was to sue for its recovery and that remedy was not available after a period of three years from the date of payment of each excess amount.

In my opinion the landlord's contention is right. There was no automatic extinguishment of debts because at the end of every month the tenant was the creditor and in each month there came unlawfully into the hands of the landlord a sum which represented the difference between the rent actually paid and the authorised rent. It was not till November, 1949, that the tenant by his letter D2 purported to exercise the right of deducting any excess amount paid by him. The tenant having failed to sue, the recovery of the amounts which accumulated prior to 1st November, 1946, was barred by the Prescription Ordinance.

The appeal fails and is dismissed with costs. If the arrears of rent up to and including August, 1954, and costs are paid on or before the 31st August, 1954, writ of ejectment will be stayed till 30th September, 1954.

Appeal dismissed.