

1965 Present : Manieavasagar, J.

D. B. P. ABEYWARDENE, Appellant, and **PERERA & MUNASINGHE LTD.**,
Respondent

S. C. 102/1964-C. R. Colombo, 85278

Rent Restriction Act-Section 13 (1) (c)-" For the purposes of the trade, business of the landlord .

The provisions of section 13 (1) (c) of the Rent Restriction Act do not permit a landlord to have his tenant ejected if the premises let are required by the landlord for the purposes of the business of a limited liability company of which he is a shareholder.

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

C. Renganathan, Q.C., with J. N. Fernandopulle and N. R. M. Daluwatte for the plaintiff-appellant.

G. E. Chitty, Q.C., with M. L. de Silva and E. B. Vannitamby, for the defendant-respondent.

Cur. adv. vult.

September 8, 1965. **MANICAVASAGAR, J.-**

In this action, the plaintiff-appellant was unsuccessful in obtaining a decree to eject his tenant, the respondent, from premises 54, Bloemendhal Road, Colombo. The premises is one to which the Rent Restriction Act applies.

The appellant's claim was on the ground that the premises are required by him for his present trade and business. When he first gave evidence- he was called again before his case was closed-he said that he required the premises for the business of the International Manufacturers Limited; the shareholders of this company are the appellant, his wife, two sons, and two nephews; the appellant is the Managing Director and the Chairman of the Board of Directors.

The problem in this case involves the interpretation of the words " . . . for the purpose of the trade, business . . .of the landlord" in section 13 (1C) of the Rent Restriction Act. Briefly stated the problem is this : is a landlord entitled to have his tenant ejected, if he requires the premises for the business of a limited liability company of which he is a shareholder ? The words in the section are without doubt referable to the landlord's business, and the question here is, is the business of such a company the business of the landlord ?

Mr. Renganathan submits that the Court in answering this question should take a realistic view, having regard to the circumstances in each case, and if the facts point to the business being in

reality that of the landlord, though in law that of the company, then it ought not to hesitate in saying that it is the landlord's business; he points out that the company in this instance is a family concern in which the appellant has the bulk of the shares and holds the two chief administrative positions. In my judgment these are irrelevant considerations to the attributes of a limited liability company. Unlike a partnership, a company is a legal entity which enjoys rights and is subject to duties which are not the same as those enjoyed or suffered by the shareholder ; the latter is a contributor of capital which he does for his financial gain, and he has no effective control over the business ; that he holds the bulk of the shares or a single share, or that he is the Managing Director -the latter's function is to carry out the duties assigned to him by the board-I shall assume that he is the dominant or may be the only voice on the board that matters in the conduct of the business of the company, is to introduce elements foreign to, and to place reliance on shifting circumstances in the solution of a problem which both legally and in fact points to the business of a limited liability company not being the business of a particular individual. The ratio decidendi in the case of Sangaralingam Pillai v. Mohamadu [1 (1950) 51 N. L. R. 297.],and the case of Yoosuf v. Suwaris [(1950) 51 N. L. R. 381.], confirms my view ;though the former decision proceeded on the basis that a Director of a company is its paid servant and therefore cannot claim to have his tenant ejected because the premises are needed for the company's business, yet it is clear that the court interpreted the words of the section to mean the landlord's own business.

In my judgment the plaintiff's claim on this ground fails.

The plaintiff first gave evidence on 18.3.64 : his evidence was continued and concluded on 2.6.64 : up to this time his evidence was that he

240

needed the premises for the business of the company. After he had concluded his evidence, two witnesses were called in support of his case : one of them was the engineer in charge of the factory of the company : his evidence too was confined to the requirement of the company. Thereafter counsel for the plaintiff moved for permission to recall his client : in supporting his application he said that he had not sufficient instructions from his client as regards the premises in suit and the reasons why he wants to eject the defendant therefrom : that there is evidence to show that he had intended to use these premises for some private purpose of his own and this aspect of the matter has not been given proper emphasis in the evidence led.

The proctor for the defendant said he had no objection to the application, and the court allowed the plaintiff to be recalled in the interests of justice.

The plaintiff in his evidence said he had his own business as a ship chandler, and he required the premises in suit to house his office, and to store supplies which were being stored at his residence. Though the learned Commissioner permitted evidence of this to be given, he did not decide on this claim. In view of the order I have in mind, I do not propose to say anything in regard to this claim and the offer of alternate accommodation. I think the case must go back for a fresh trial and a decision on this issue. The judgment is set aside and a fresh trial is directed : the appellant will have the costs of this appeal whilst the costs of the last trial will abide the result of the new trial.

Case sent back for a new trial.

- End -