HANEEDA
v.
ARASAKULARATNE

COURT OF APPEAL.
EDUSSURIYA, J.,
JAYASINGHE, J.
C.A. NO. 55/96 (F).
D.C. KALUTARA NO. 411/RE.
SEPTEMBER 17, 18, 1999.

Rent Act, No. 7 of 1972 – Damage to premises – Accident – Does the contract of tenancy survive.

The plaintiff-appellants alleged that a substantial portion of the premises was damaged as a result of an accident and consequent to the damage to the premises the contract of tenancy was at an end and sought the eviction of the defendant-respondent. The defendant-respondent averred that the premises was still intact and usable for his business. The District Court held that the damage was minimal and the contract of tenancy had not come to an end.

On appeal –

Held:

It appears that the repair at the present rent would cost the plaintiff 34 years' of rent.

Per Jayasinghe, J.

"It is certainly iniquitous if the Rent Act mandates the landlord to incur 34 years' of rent for a repair to enable the tenant to occupy and enjoy the premises not only to the exclusion of the landlord but also to the exclusion of his income as well. I do not think that the legislature ever intended to perpetuate so much hardship on the landlord for the benefit of the tenant or cause the landlord to sacrifice all his rights to keep the tenant in occupation."

1. The tenant is entitled to ask the landlord to repair the building. If he fails or neglects or refuses, tenant may apply to the Rent Board for approval. It is also open to the landlord to seek a revision of the rent. If the Rent Board is to increase the rent 100% it would yet be under Rs. 50/- per month.

2. The building is over 75 years old, even in the event of the Rent Board increasing the rent by 100% it would add up in years to a building that is over 75 years old. It is not a question of fact whether as a result of the damage caused to the building whether the tenancy is at an end, it is a mixed question of fact and law.

APPEAL from the judgment of the District Court of Kalutara.

Cases referred to:

1. *Samuel v. Mohideen* – 71 NLR 451.
2. *Gifry v. de Silva.*
3. *Morleys (Birmingham) Ltd. v. Slater* – 1950 1 KB 506.
4. *De Silva v. Seneviratna* – [1981] 2 Sri L.R. 7.

P. A. D. Samarasekera, PC with *R. Y. D. Jayasekera* for plaintiff-appellant.

Ranjan Gunaratne for defendant-respondent.

Cur. adv. vult.

March 11, 1999

JAYASINGHE, J.

The plaintiffs-appellants, instituted action in the District Court of Kalutara on 06.04.94 for the ejectment of the defendant from the premises in suit; averred that the 1st plaintiff is the wife of the 2nd plaintiff; that the premises in suit was administered by the 2nd plaintiff on behalf of the 1st plaintiff; that the 1st plaintiff is the owner of the said premises No. 147, Main Street, Beruwala, and the landlord of the defendant-respondent; that the premises is governed by the Rent Act, No. 7 of 1972; that the defendant carried on a business of a tea boutique at the said premises; that the monthly rent was Rs. 23.58 as determined by the Rent Board; that a substantial portion of the premises was damaged as a result of an accident on 03.04.1994; that the premises can no longer be used for the said purpose of the defendant; that consequent to the damage to the premises the contract of tenancy between the parties was at an end; that the defendant without any manner of right, title and claim to the said premises is seeking to rebuild or reconstruct the premises anew; that the 1st plaintiff has the sole right to rebuild or renovate or alter the said building as the owner; that irreparable loss and damage would be caused to the

plaintiffs if the defendant is not restrained by an enjoining order and/ or interim injunction and permanent injunction and prayed for a declaration that the contract of tenancy has come to an end; for an enjoining order until the issue of an interim injunction restraining the reconstructing of the premises pending the final determination of the action; for ejectment of the defendant, her servants and agents, etc., and for vacant peaceful possession.

The defendants filed answer on 09.06.94. Averred that the premises was still intact and usable by the defendant for his business; that the tenancy has survived notwithstanding the accident; prayed for damages in a sum of Rs. 250 a day from 03.04.1994 for not being able to repair the premises. The plaintiffs filed replication on 10.08.1994. The learned District Judge after trial came to a finding that the damage to the building being minimal and consequently unable to hold that the tenancy has come to an end.

This appeal is from the judgment of the learned District Judge.

The main question for determination before Court were issues No. 1 and 2 raised by the plaintiff; whether a substantial portion of the premises was damaged as a result of the accident on 03.04.1994 and secondly, whether the tenancy was at an end as a result of the said destruction.

The 2nd plaintiff gave evidence at the trial and stated that on the day in question a lorry No. 24 Sri 9961 coming from the direction of Galle had collided with a stationary lorry No. 22 Sri 1246 which in turn due to the impact crashed into the premises destroying a wall of the building occupied by the defendant. The vehicle had gone about 4 feet into the premises and was removed by the defendant by supporting the upper floor immediately above the lorry that had crashed in; the plaintiff stated that the premises was beyond repair and prayed for a declaration that the premises has been destroyed as a result of the accident. In cross-examination the plaintiff admitted that the front portion of the premises was still intact; that cracks on the walls due to the accident on the upper floor were visible and that restoration of the said building was inexpedient and also costly. It was suggested to the plaintiff that the building could be restored at a cost of about Rs. 7,000 to Rs. 8,000 to which the plaintiff responded that it is not worth the expenditure. One Kalansuriya an engineer then gave

evidence for the plaintiff. He stated that an area 10 feet in width and 13 feet in height has been damaged as a result of the accident. That the upper floor is about 10 feet from ground level and the walls extend to about 15 1/2 feet upto the roof level and that a crack was visible upto 13 feet. That the building was about 100 years old and built with kabok and plastered with lime and stated that when he inspected the building the upper floor was held by wooden support from below and that it was likely to collapse if the support was withdrawn. He said that it was not worth repairing the premises considering the extent of the damage and the vibration it has sustained. His evidence was that even after a repair the possibility of the building collapsing cannot be ruled out. Thereafter, one Withanachchi the chief clerk Beruwala Urban Council and police constable 2356 Nandasena of Beruwala Police Station gave evidence for the plaintiff.

The defendant called one Amaraweera, a retired Technical Officer. He stated that the building could be repaired at a cost of Rs. 9,850. He said that when he inspected the building the upper floor was being held with the support from below. He had noticed cracks on the walls in addition to an opening of 9 1/2 feet x 13 feet; that the building was about 75 to 80 years old and that it can be restored without any structural damage at a cost of Rs. 9,560 (the earlier position was Rs. 9,850). It is also relevant to advert to the evidence of the police officer who inspected the premises after the accident. He observed that the lorry No. 29 Sri 1246 has gone about 3 feet into the building and that the roof of the building was intact and that some bricks were resting on the roof of the lorry. He further stated that the business is still being carried out in the premises.

It is a question of fact whether the building has suffered damage to the extent that it is no longer profitable or expedient to be restored. This Court would interfere with the findings of the District Judge only if such a finding is perverse or not supportable on the evidence that has been led, or if the question of fact goes beyond the realm of the factual situation to assume the character of a question of law, or if the question of fact is complex, this Court should intervene. According to the police officer who gave evidence the roof was still intact but with support from below and that the business is still being carried out as usual. When the plaintiff was asked whether the building can be restored at a cost of Rs. 7,500 to Rs. 8,000, he avoided answering the question and replied that it was of no use. Even the

evidence of Kalansuriya was that it can be restored, though he questioned the expediency of the exercise. He did not write off the building, but only expressed doubts as to the sustainability of the building in the long-term. As against this evidence the defence witness Amaraweera's position was that it could be restored at a cost of a figure around Rs. 9,500. He stated that the weight of the roof rests on two walls that has not sustained any damage due to the impact.

On a consideration of evidence of both technical officers the trial Judge has come to a finding that the extent of the damage has not had an effect on the sustainability of the building, the extent of the damage being minimal. He makes a point that since business is still being carried out in the premises in its present state, is enough proof of the fact that the building is still usable.

Mr. Samarasekera made a forceful submission that the repair would cost the plaintiff in excess of 20 years' of rent. In fact, the repair at the present rent would cost the plaintiff 34 years' of rent. Mr. Samarasekera submitted that if the landlord is called upon to pay as much as 34 years' of rent for the repair then such a situation goes beyond the realm of a question of fact. The question is not whether the building is repairable as stated by the defence witness Amaraweera. What is relevant is the cost factor. The cost of Rs. 9,850 may not appear excessive as observed by the trial Judge. But, when considered in terms of the rent that has been levied is it unconscionable? No doubt the Rent Act is designed to protect the incumbent tenant. Mr. Goonaratne submitted that the Rent Act is an iniquitous piece of legislation. It certainly is iniquitous if an interpretation is placed that the Rent Act protects the tenant, come what may. It is certainly iniquitous if the Rent Act mandates the landlord to incur 34 years' of rent for a repair to enable the tenant to occupy and enjoy the premises not only to the exclusion of the landlord but also to the exclusion of his income as well. I do not think that the legislature ever intended to perpetuate so much hardship on the landlord for the benefit of the tenant or cause the landlord to sacrifice all his rights to keep the tenant in occupation. I am unable to subscribe to the point of view that the protection of the rights of the tenant is the only consideration. The Act does not travel to endless limits to protect the tenant. That journey must end at some point. In the present case I am inclined to the view that it has, Mr. Goonaratne referred Court to *Samuel v. Mohideen*[1] where Sirimane, J. observed that ". . . the

evidence shows that even though the premises are not completely destroyed in the sense that some of the walls are still standing yet, the leased premises can no longer be used as a building. In such a case, where the leased tenament is so extensively damaged that it can no longer be used for the purpose for which it was leased, it is impossible to say, that the premises are still in existence for the tenancy to continue". In *Giffry v. de Silva*[2] it was held that where a building which is subject to a lease is burnt down without the fault of the landlord or tenant the tenancy comes to an end even if it fell within the Rent Restriction Act. In *Morley's (Birmingham) Ltd. v. Slater*[3] landlords let the premises to a tenant on a monthly tenancy partly for use as a dwelling house and partly for business purposes . . . the premises were damaged by enemy action and remained uninhabitable but the tenant was able to and continued to use them for the purpose of his business. The landlords gave the tenants a notice in writing to quit. It was held that the premises were originally let as a dwelling house within the Rent Act; they remained the same identifiable premises. The fact that owing to the damage the tenant was prevented from living in the premises did not change the character of the letting and therefore at the date of expiration of the notice to quit the premises were still let as a dwelling house and the tenant was entitled to the protection of the Rent Act. Mr. Goonaratne relied heavily on the fact that the premises were still intact and is still being used for the purpose for which it has been let. The cases referred to by counsel certainly support his argument that the tenancy has survived notwithstanding the accident and that the extent of damage is a question of fact and therefore this Court should be slow to interfere. But, Mr. Samarasekera argued that the plaintiff is being called upon to spend 34 years' of his income for the restoration of the building and therefore the tenancy was at an end irrespective of the extent of the damage to the building. Therefore, the cases referred to by Mr. Goonaratne are distinguishable. If the cost of repairs was not a consideration then this Court would accommodate Mr. Goonaratne's argument. This Court, however, is unable to ignore the expenditure the plaintiff is called upon to incur in terms of the rent. The tenant is entitled to ask the landlord to repair the building as provided for by the Rent Act. If the landlord fails or neglects or refuses then the tenant may apply to the Rent Board for approval. It is also open to the landlord to seek a revision of the rent. The question would then arise how much could the Rent Board stipulate as an enhanced rent. In the present case if the Rent Board is to increase the rent 100%

it would yet be under Rs. 50 per month. How long does it take for the building to yield an income to the landlord in the event of an increase of 100%? Here it is not an arithmetical exercise. It is a question whether as a result of the damage caused to the building whether the tenancy is at an end. At this point it ceases to be a question of fact only. It is a mixed question of fact and law. According to the plaintiff the building is about 100 years old while according to the defendant it is about 75 years. The evidence is that it is built of with kabok and plastered with lime. The building has outlived its usefulness in the context of the development the building industry has achieved. Even in the unlikely event of the Rent Board increasing the rent by 100% upon an application by the landlord yet it would add up in years to a building that is over 75 years. To my mind this is not only a question of fact. This Court would therefore step in. Mr. Goonaratne submitted that the tenant is yet willing to undertake the repairs. In fact, the defendant attempted to restore the building when he was restrained by a Court order. The Rent Act does not make provision for the tenant to undertake repairs without the approval of the Rent Board. I cannot but help to observe the defendant's anxiety to restore the building and continue the tenancy because of the meagre rent he is paying and cost that he has to incur for the repairs. But, from the plaintiff's standpoint it is years of rent. This is not only a question of fact. I am unable to agree with Mr. Goonaratne's submission that this Court ought not to interfere with the findings of the trial Judge on the basis that this is a pure question of fact. In this context the guidelines set out in *De Silva v. Seneviratne*[4] is not helpful though I am in agreement with the principle which it has laid down.

It is my view for the reasons stated above that a substantial portion of the premises has been damaged as a result of the accident specially taken in the context of the commitment by the landlord to restore the said premises and I hold that the tenancy is at an end.

I, accordingly, set aside the findings of the learned District Judge and enter judgment for the plaintiff as prayed for with costs fixed at Rs. 3,100.

EDUSSURIYA, J. – I agree.

Appeal allowed.