

1967

Present : Samerawickrame, J.

S. RATNAM, Appellant, and S. M. K. DHEEN, Respondent

S. C. 72/66—C. R. Matale, 14982/RE

*Rent-controlled premises—Tenant in arrears of rent for more than 3 months after it was due—Failure of landlord to give 3 months' notice of termination of tenancy—Action in ejectment—Maintainability—Scope of s. 4 (1) of Rent Restriction (Amendment) Act, No. 12 of 1966—Rent Restriction Act, as amended by Act No. 10 of 1961 and Act No. 12 of 1966, ss. 12 A (1), 13 (1A)—Civil Procedure Code, s. 46 (2) (i).*

Plaintiff sought ejectment of the defendant, his tenant, on the ground that the latter had failed to pay rent for five months and was continuing to remain in unlawful occupation in spite of one month's notice given to him to leave the premises. The action was filed on the 6th July 1965. The premises were governed by the Rent Restriction Act and their standard rent was below Rs. 100.

*Held*, that the plaintiff's action was not maintainable for the reason that although the plaintiff averred as a fact that rent had been in arrears for more than three months after it was due, three months' notice of termination of tenancy in conformity with the requirement of section 13 (1A) of the Rent Restriction Act, as amended by Act No. 10 of 1961, had not been given. The action could not be said to have been brought on a ground on which an action is now permitted to be brought by section 12A of the Rent Restriction Act, as amended by Act No. 12 of 1966. The plaint should have been rejected *in limine* in terms of section 46 (2) (i) of the Civil Procedure Code.

**A** PPEAL from a judgment of the Court of Requests, Matale.

*Siva Rajaratnam*, for Plaintiff-Appellant.

*N. R. M. Daluwatte*, for Defendant-Respondent.

*Cur. adv. vult.*

August 23, 1967. SAMERAWICKRAME, J.—

The plaintiff-appellant instituted this action for the ejectment of the defendant-respondent, his tenant, on the ground that the latter had failed to pay rent for five months and was continuing to remain in unlawful occupation in spite of the notice given to him to leave the premises. The action was filed on the 6th July, 1965. The premises were governed by the Rent Restriction Act and the standard rent thereof was below Rs. 100.

At the trial, learned counsel for the defendant-respondent raised one issue only and stated that he was not raising any other issues for the present. The issue he raised was as follows :—

Can the plaintiff have and maintain this action in view of the provisions of Section 4 (1) of the Rent Restriction Act as amended by Act No. 12 of 1966 ?

He submitted that as the action was instituted after the 20th July, 1962, and was pending at the time of the date of the commencement of Act

No. 12 of 1966, the action was void. The learned Commissioner has answered the issue in favour of the defendant-respondent, apparently, on the footing that all actions for the ejection of the tenant of any premises to which the Rent Restriction Act as amended by Act No. 12 of 1966 applied were void.

This Court has taken the view that Section 4 (1) of Act No. 12 of 1966 does not have the effect of invalidating all actions filed after the 20th July, 1962, and pending at the date of the commencement of that Act—vide *K. P. C. Moosa v. Mrs. S. R. Amir*,<sup>1</sup> and *Charles Fernando v. T. P. de Costa*<sup>2</sup>. It is necessary, therefore, to consider whether this action is one which is void in terms of Section 4 (1) of Act No. 12 of 1966.

In his plaint, the plaintiff alleged that the defendant was in arrears of rent for a period of five months to the 30th April, 1965; that by notice dated 7th May, 1965 the plaintiff required the defendant to quit and vacate the premises on or before the 30th June, 1965; that the defendant failed to comply with the notice and was continuing in unlawful occupation of the premises. By reason of Section 13 (1)A of the Rent Restriction Act as amended by Act No. 10 of 1961, a landlord was not entitled to institute action on the ground that rent had been in arrears unless he had given the tenant three months' notice of the termination of the tenancy and the tenant had failed before the date of the termination of the tenancy specified in the notice to tender to the landlord all arrears of rent. The Rent Restriction Act as amended by Act No. 10 of 1961 was the law actually in force at the date of the institution of the action. According to the averments of the plaint, the plaintiff had failed to give three months' notice of the termination of the tenancy and had thus failed to give the defendant, his tenant, an opportunity of tendering to him arrears of rent before the date of the termination of the tenancy specified in the notice. In terms of the law in force at the date of the action, the plaintiff's action would accordingly have failed.

Act No. 12 of 1966 came into operation on the 10th May, 1966 and by Section 2 introduced a new Section, 12A, which set out grounds upon which a landlord could ask for ejection of the tenant of premises of which the standard rent did not exceed Rs. 100. One of the grounds is that the rent of the premises has been in arrears for three months or more after it has become due. There is no requirement that three months' notice of termination of tenancy should be given to the tenant or that he should have an opportunity of paying the arrears during such period. Section 4 (1) of Act No. 12 of 1966 stated :—

“ The Provisions of Sections 2 and 3 of this Act shall be deemed to have come into operation on the twentieth day of July 1962, and accordingly—

- (a) any action which was instituted on or after that date and before the date of commencement of this Act for the ejection of a tenant from any premises to which the principal Act as

<sup>1</sup> (1966) 67 N. L. R. 44.

<sup>2</sup> (1967) 69 N. L. R. 381.

amended by this Act applies shall, if such action is pending on the date of commencement of this Act, be deemed at all times to have been and to be null and void ”.

This Court has taken the view that Section 4 of Act No. 12 of 1966 does not apply to make void a pending action in which ejection of the tenant was claimed on a ground set out in Section 12A (1) of the principal Act as, for example, the ground that rent has been in arrears for three months or more after it has become due. If that principle is applicable to this case and the action is maintainable and the provisions of Act No. 12 of 1966 are applicable in determining this action, then the result will be that the plaintiff can maintain an action which he could not have maintained in accordance with the law actually in force at the date of action and the defendant would be deprived of the defence that he had not been given three months' notice of the termination of the tenancy and had not been afforded an opportunity of tendering arrears of rent to the plaintiff during that period. Mr. Daluwatte appearing for the defendant-respondent submitted that it could not have been the intention of the Legislature to deprive a tenant who is the defendant to an action of a defence that was available to him in law by the retrospective operation of Act No. 12 of 1966.

Where the Legislature makes an Act retrospective, it generally makes some provision in regard to pending actions. In Section 4 (1) the Legislature has provided that an action instituted after the 20th July, 1962 and before the date of the commencement of the Act and pending on that day should be deemed to be void. Upon an interpretation of that provision, this Court has taken the view in two cases that that provision would not apply to render void an action where it had been brought upon a ground upon which an action is permitted under Section 12A of the Rent Restriction Act introduced by Section 2 of the said amending Act.

The case of *K. P. C. Moosa v. S. R. Amir* dealt with premises, the standard rent of which were over Rs. 100 and the action was brought under the provisions of Section 9 of the principal Act No. 29 of 1948 which the learned Judge held were unaffected by Sections 2 and 3 of the amending Act. Further, in that case, the plaintiff-respondent had obtained a decree for ejection of the defendant on the basis of the law as it stood before the amendment. In *Charles Fernando v. T. P. de Costa*, the action was one brought, as in this case, on the ground that rent had been in arrears for a period of over three months, but the plaintiff had obtained a decree for ejection on the basis of the law as it then stood and the provisions of the amending Act were pleaded in appeal in order to defeat his rights. It will thus be seen that the Court in that case did not have to deal with the situation where the plaintiff claimed that by reason of the retrospective operation of the amending Act he was entitled to have and maintain an action which would have failed under the law which was actually in force at the date of the action

and where if the plaintiff's claim were allowed, the defendant tenant would have been deprived of the defence that he had not been given notice of termination and an opportunity of paying arrears of rent to the plaintiff. The application of the principle laid down in that case to the present case where the facts are different would be wrong as it would have a result that is both unfair and unjust.

It also appears that upon the averments in the plaint, the plaintiff's action was one which he was not entitled to institute in view of the terms of Section 13 (1) A which was the law actually in force and applicable at the date of action. Under that law, the landlord of any premises to which the Act applied was not entitled to institute action or proceedings for the ejectment of a tenant on the ground that rent was in arrears unless he had given three months' notice of termination of the tenancy and unless the tenant had failed to tender to him the arrears. The action, accordingly, was one which appeared from the statement in the plaint to be barred by a positive rule of law and, in terms of Section 46 (2) (i) of the Civil Procedure Code, the plaint should have been rejected.

Does this action fall within the principle applied in the decisions of this Court to which I have referred? It is true that the plaint in this action averred as a fact that rent had been in arrears for more than three months after it was due, but at the time the plaint was filed that fact did not constitute a ground for bringing an action for ejectment in the absence of three months' notice of termination of tenancy. The action was accordingly not in law brought on any ground. *A fortiori* it cannot be said that it was brought on a ground on which an action is now permitted to be brought by Section 12A of the Rent Restriction Act.

I am of the view that the ruling made in those decisions, namely, that Section 4 of Act No. 12 of 1966 does not operate to render void an action for ejectment brought upon one of the grounds for which an action is permitted under Section 12A, does not extend to this case as its application to it is negatived by the matters I have set out. Accordingly, I hold that the finding of the learned Commissioner that the action was void can be supported for the reasons given by me and I dismiss the appeal with costs.

*Appeal dismissed.*