

1968 Present : H. N. G. Fernando, C.J., and Abeyesundere, J.

U. N. WIJETUNGE, Petitioner, and
J. SENANAYAKE *et al.*, Respondents

*S. C. 111/67—Application for conditional leave to appeal to the
Privy Council in 653/64/D. C. Kandy, 7179/L*

*Appeals (Privy Council) Ordinance (Cap. 100)—Schedule, Rule 1 (b)—Appeals to
Privy Council at the discretion of the Supreme Court—Considerations applicable.*

Leave to appeal to the Privy Council under Rule 1 (b) of the Schedule to the Appeals (Privy Council) Ordinance will not be granted at the discretion of the Supreme Court in a case where the question to be decided, although it may be one of general or public importance, is not one of unusual difficulty.

APPPLICATION for conditional leave to appeal to the Privy Council.

D. S. Wijewardene, for the defendant-petitioner.

C. Ranganathan, Q.C., with *I. S. de Silva*, for the plaintiffs-respondents.

February 7, 1968. H. N. G. FERNANDO, C.J.—

In this action for ejection the position for the plaintiff was that the premises were excepted premises as defined in the schedule to the Rent Restriction Act (Cap. 274). The defendant contested that position and in addition made two claims in reconvention, one in respect of advances paid by way of rent or premium, and the other in respect of alleged improvements to the building of a value of about Rs. 17,000. The learned District Judge entered decree for ejection holding that the premises were excepted premises within the meaning of the Act, and

also allowing the claim of the defendant in reconvention in respect of the advances or premium. But he dismissed the claim in reconvention in respect of alleged improvements.

In appeal the judgment and decree of the District Court were affirmed, in a judgment which has been reported in 69 N. L. R. at page 445.

The present application for leave to appeal to the Privy Council from the judgment of this Court is made on two grounds. The first ground is that one of the matters in dispute is the claim in reconvention for compensation in respect of improvements. In regard to this claim, although the petition of appeal to the Supreme Court does include it as one of the grounds of appeal, the judgment of this Court makes no reference whatsoever to any argument concerning that claim in reconvention. Having regard to the fact that the judgment of this Court was a reserved judgment, it seems to us that the only proper inference must be that the appeal in regard to the claim in reconvention was not in fact pressed at the hearing before this Court. Counsel who now appears for the appellant was one of the counsel who appeared at the hearing of the appeal, and he does not state to us that any argument was then addressed to the Court concerning the claim in reconvention for improvements.

The second ground now urged in support of the application for leave to appeal is that the interpretation of certain words in the schedule to the Rent Restriction Act involves a question of great general or public importance. We agree that the question is of such importance, for the reason that there must be a large number of cases in which alterations of the annual value of premises can have the result that premises formerly subject to rent control may cease to be so subject upon a change of assessment. Nevertheless the element of importance does not in our opinion end the question to be determined under Rule 1 (b) of the schedule to the Privy Council Appeals Ordinance. A further point which this Court has to decide is whether the question ought to be submitted to Her Majesty in Council for decision. Since in the opinion of the present Bench, as well as of the Bench which decided the action in this case, and in addition the Judge who decided the case reported in 59 N. L. R., page 525, the words in the schedule do have the meaning contended for by the plaintiff in this action, and since we do not think that the question to be decided is one of unusual difficulty, we hold that the present case is not one which calls for the exercise of the discretion of this Court.

The application for conditional leave is refused with costs.

ABEYESUNDERE, J.—I agree.

Application dismissed.