

1962

Present : Herat, J.

H. PACKEER, Appellant, and A. R. ABIDAH,
Respondent

S. C. 55 of 1961—C. R. Colombo, 78,128 (R/E)

*Rent Restriction (Amendment) Act, No. 10 of 1961—Section 13 (3)—Duration of
“ pending action ”.*

An action or proceeding does not terminate if an appeal is filed to the Supreme Court from the decree of the Court of first instance. Until such appeal is disposed of by the Supreme Court, the action or proceeding must be regarded as pending.

Accordingly, under the provisions of section 13 (3) of the Rent Restriction (Amendment) Act, No. 10 of 1961, an action for ejectment instituted on or after the 20th July 1960 concerning rent controlled premises on a ground not falling under (a) or (b) or (c) of section 13 (1) is null and void if an appeal to the Supreme Court in respect of the action was pending on the 30th April 1961 (the day immediately preceding the date of commencement of the amending Act).

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

M. Markhani, with *Sivugurunathan*, for the defendant-appellant.

M. T. M. Sivardeen, for the plaintiff-respondent.

June 13, 1962. HERAT, J.—

This is an action for rent and ejectment instituted by the plaintiff-respondent against the defendant-appellant. Admittedly the premises in question are subject to the Rent Restriction law. The action was instituted on the 24th of November, 1960. The Rent Restriction (Amendment) Act, No. 10 of 1961, by section 13 sub-section 1 provides as follows :—

“ Notwithstanding anything in the principal Act the landlord of any premises to which this Act applies shall be entitled to institute any action or proceedings for the ejectment of the tenant of such premises *only* on any one or more of the following grounds.”

Three grounds (a), (b), and (c) are thereafter set out. The ground or grounds on which the plaintiff-respondent instituted the present action, admittedly are not any of the grounds set out in section 13 (1) (a) or (b) or (c) of The Rent Restriction (Amendment) Act, No. 10 of 1961.

Sub-section 2 of the said section 13 of the said Act provides as follows :—

“The provisions of sub-section 1 shall be deemed to have come into operation on the 20th day of July, 1960, and shall continue in force for a period of two years commencing from that date.”

Therefore, section 13 (1) was in operation at the date when this action was filed. Sub-section 3 of the said section 13 of the Rent Restriction (Amendment) Act, No. 10 of 1961, further provides as follows :—

“Where any action or proceedings instituted in any court on or after the 20th day of July 1960 for the ejection of a tenant from any premises to which the principal Act applies on any ground other than a ground specified in sub-section 1 of this section *is or are pending* on the day immediately preceding the date of commencement of this Act, such action or proceedings shall be deemed at all times to have been and be null and void.”

It is admitted that the Rent Restriction (Amendment) Act, No. 10 of 1961, came into force as from the 1st of May, 1961. Judgment in this case was delivered in the Court of first instance on the 20th of March, 1961, but the defendant-appellant filed a petition of appeal in due time and that appeal was pending on the 30th of April, 1961, which is the date immediately preceding the commencement or the coming into force of the Rent Restriction (Amendment) Act, No. 10 of 1961. In my opinion this action or proceedings for the ejection of the tenant from admittedly protected premises was pending on the 30th of April, 1961, in view of the appeal.

Proceedings or an action which cannot normally terminate with the entering of the decree in the Court in which they are first instituted are, in my opinion, not terminated if an appeal is filed to the Supreme Court from the decree of the Court of first instance and until such appeal is disposed of by this Court that action or proceedings are, in my opinion, pending. I am supported in the view I take by the decision of this Court reported in 22 New Law Reports page 39. Even for purposes of res-judicata this Court and the Privy Council have both held that where an action or proceedings are pending appeal the decree of the Court of first instance cannot be used as a basis for pleading res-judicata. I think the same reasoning applies.

In my view this action was pending on the 30th of April, 1961, and therefore, by sub-section 3 of section 13 of the Rent Restriction (Amendment) Act, No. 10 of 1961, I declare that the action or proceedings may be deemed to have been and be null and void. The appeal is allowed and the decree of the lower Court is set-aside. The action by the plaintiff-respondent is dismissed. The defendant-appellant is entitled to costs in this Court as well as in the Court of Requests.

Appeal allowed.