

LANKA WEAVING MILLS LTD.

v.

BOARD OF DIRECTORS, C.W.E.

COURT OF APPEAL.

JAMEEL, J. AND T. N. ABEYAWIRA, J.

C.A. 626/80.

D.C. COLOMBO D/152.

DECEMBER 17, 1986.

Landlord and tenant—Notice.

The law in regard to notice in cases where the Rent Act does not apply is that no notice of any definite length of time is required but notice of a reasonable length of time should be given. A month's notice has in several cases been considered reasonable.

Cases referred to:(1) *Weerapperumal v. Davood Mohamed* – (1898) 3 NLR 340.(2) *Edward v. Dharmasena* – (1964) 66 NLR 525.

APPEAL from judgment of the District Court of Colombo

D. R. P. Gunetilleke for defendant-appellants.*Dr. H. W. Jayewardene, Q.C.* with *Miss T. Keenawinne* for plaintiff-respondents.

January 13, 1987.

JAMEEL, J.

The plaintiff filed this action for the recovery of arrears of rent and for the ejectment of the defendant from premises No. 58, Chatham Street, Colombo 1. Both tenancy under the plaintiff as well as the receipt of the notice to quit (P8A) dated 28.7.1973 were admitted by the defendants. They however denied the validity of the notice, which gave the defendants only one month's time to pay all arrears and to quit and vacate the premises.

Admittedly the Rent Act does not apply to these premises. Whilst not supporting the contention that the notice given in this case is illegal, learned counsel for the defendant urged that it would be unreasonable when one takes into account the fact that these premises are prime business premises situate in the heart of Fort. Bonser, C.J. in *Weeraperumal v. Davood Mohamed* (1) has stated:

"As I understand the law no notice of any definite length of time is required. It must be reasonable notice—reasonably sufficient, in the opinion of the judges, to admit of a tenant having an opportunity of securing another house. A month's notice has in several cases been considered reasonable, and in this case the tenant had more than a month's notice."

However Sri Skanda Rajah, J. in the case of *Edward v. Dharmasena* (2) has stated:

"The law in our view is that a calendar month's notice is sufficient notice in a month-to-month tenancy."

In this case although the notice dated 28th June 1973 requested the defendant to quit by the 31st of July 1973 action was filed only on 29th of July 1974.

In addition to denying that the rental for the premises in suit was Rs. 4,886 per month the defendants in paragraph 2 of their answer have claimed that the monthly rent was only Rs. 2,316.25. Accordingly, the defendants claimed that on a proper accounting that not only would there be no arrears, but in fact there would be some money owing to them from the plaintiffs and they claimed this in reconvention. After trial the learned District Judge accepted the position that the rent was Rs. 4,886 per month and gave judgment for the plaintiffs for arrears and ejectment.

This appeal is from that judgment. The learned District Judge has seen and heard the witnesses who gave evidence for the plaintiffs. No oral evidence was led on behalf of the defendants.

The main issues before the District Judge were :-

- (1) as to whether the agreed rent was Rs. 4,886.80 as claimed by the plaintiffs or Rs. 2,621.25 as claimed by the defendants?
- (2) as to the reasonableness of the notice given?

In support of their claim that the rent was indeed only Rs. 2,631.25 the defendants relied on the letter P13. No tenancy agreement was produced. P13 is a letter addressed to the defendants by the plaintiffs wherein the rent payable is referred to as Rs. 2,631.25. But the evidence in the case reveals that this statement has been retracted by the plaintiffs and the correction indicated by them in their letter now marked P3. This letter was accompanied by a full statement of accounts, made out on the basis of the rent being Rs. 4,886.80 per month. It is also significant that the defendants themselves in their letters P1, P2 and P11 have made mention of this figure at Rs. 4,886.80. For these reasons and more particularly on the general trend of the correspondence between the parties and in the absence of any protests by the defendants when the amended accounts were served on them the learned District Judge has come to the conclusion that the rent was Rs. 4,886.80 per month. We see no reason to disturb that finding. That finding does have support from the evidence led in the case.

The learned District Judge has gone on to hold that one month's notice is legal and in the circumstances of this case reasonable. Indeed the defendants were well aware that some three years or so ago the Board of Directors of the C.W.E. and also the Minister concerned had decided that action for ejection should be filed against them. In all the circumstances of this case in spite of the fact that these are business premises in the heart of Fort, it cannot be said that the finding that the notice given was sufficient was either illegal or unreasonable. Mr. Gunatillake who appeared for the defendants-appellants did not press the case for illegality. In the light of the positive averment in the answer that the rent was Rs. 2,631.25 learned counsel for the defendants conceded that he could not resist the claim for ejection. In the circumstances the only substantial

question that remains is the question as to what, if any, are the arrears due to the plaintiffs. Again, we see no error in the computation. Indeed none was pointed out or urged. No part of the arrears awarded appears to be prescribed. Accordingly the decree in this case is affirmed and the appeal is dismissed with costs.

ABEYAWIRA, J. – I agree.

Appeal dismissed.
