

HUSSAIN  
v.  
LALVANAI

COURT OF APPEAL.  
SENANAYAKE, J. AND  
EDUSSURIYA, J.  
C.A. 396/88 (F).  
D.C. COLOMBO 6518/RE.  
JULY 31, 1996.

*Rent Act, No. 7 of 1972 – Reasonable requirement – Section 22(2) (b) of the Act – Whether the hardships of the Tenant should be considered.*

The plaintiff-appellant instituted action on the ground that the premises are reasonably required for the purpose of the business of the plaintiff appellant in terms of section 22(2) (b) of the Rent Act, No. 7 of 1972.

The District Court after trial, came to the finding that the requirements of the premises in suit for the business of the defendant overwhelmingly outweigh those of the plaintiff and dismissed the action.

**Held:**

(1) The Learned District Judge has taken into consideration extraneous matters such as difficulty of obtaining alternative accommodation and high cost of obtaining same, the goodwill and the financial benefits which accrue to the premises being rent controlled – all these facts are not even envisaged by section 22(2) (b).

(2) The plaintiff-appellant's position was that she wished to continue her textile business and even if one were to consider that she was contemplating a new venture, section 22 (2) (b) does not act as a barrier for all time on new ventures which would effectively prevent an owner of property from getting possession of the premises.

**APPEAL** from the judgment of the District Court of Colombo.

**Cases referred to:**

- (1) *Gunasena v. Sangalingam Pillai & Co.*, 49 N.L.R. 473.
- (2) *Hameedu Lebbe v. Adam Saibo*, 48 N.L.R. 181.
- (3) *A. R. M. C. Thamby Lebbe v. P. Ramasamy* 68 N.L.R. 356.

*A. A. M. Marleen with A. R. M. Ramzeen for Appellant.*

*Mahes Kanagasundaram, P. C. with Asoka Abeysinghe for Respondent.*

*Cur. adv. vult.*

July 31, 1997.

**H. W. SENANAYAKE, J.**

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

The plaintiff-appellant instituted this action against the defendant-respondent for ejectment from the premises No. 107, Main Street, Colombo 11 on the ground that the premises was required for the purpose of the business of the plaintiff-appellant in terms of the provisions of section 22(2) (b) of the Rent Act, No. 7 of 1972.

It was not in dispute that for the premises in question the monthly rent exceeds Rs. 100/-.

The learned Counsel for the plaintiff-appellant contended that the learned District Judge had failed to assess the evidence of the plaintiff. His contention was that there was evidence of the plaintiff to establish that she was carrying on a textile business and import of yarn (vide page 79 of the Brief) and there was evidence to indicate that she was a Director of Maruzook & Co. Ltd., till they were ejected from the premises by judicial process. The evidence was that even after business stopped in 1979 she had continued to import textile giving her home address. It was her position that she financed her business by obtaining Bank facilities. The Counsel contended that the learned District Judge had failed to consider the evidence and laid a heavy burden on the plaintiff-appellant. At page 261 the learned District Judge had stated "That burden of proving the nature and type of business existing for a long period is very light compared to the burden the plaintiff had to shoulder trying to prove a business she alleges to carry on from her residence. It was necessary on her part to show by certificate of registration, books of account, letter heads and or B.T.T. tax payment and by other means the fact that a

business did in fact exist at her residence and that it is for the purposes of that business that the premises in suit was needed. This burden the plaintiff has not satisfactorily discharged". I am of the view that the learned District Judge had laid an unfair burden on the plaintiff. He had failed to consider the provisions of 22(2) (b) of the Rent Act. The essential words of the provision are "the premises are in the opinion of the Court **reasonably required** for... the purpose of trade, business, profession, vocation or employment of the landlord".

It is now settled law that the need of the landlord must be urgent and genuine. The plaintiff-appellant's need was to do business and the learned District Judge placed a heavy burden on her to establish that she was doing business. In the case of *Gunaseena v. Sangalingam Pillai & Co.*<sup>(1)</sup>, Justice Windham in considering section 8 (c) of the Rent Restriction Ordinance No. 60 of 1942 which contains a similar provision to section 22(2) (b) of the Rent Act stated "the premises are in the opinion of the Court reasonably required for occupation as a residence for the landlord or any member of the family of the landlord or for the purpose of his trade, business, profession, vocation or employment".

The word reasonableness must be construed not in the light of the requirement of the landlords own desire to occupy them however well grounded, genuine and even urgent without reference to how the gratifying of that requirement might directly affect or injure or inconvenience other people?. I do not think so. It is a negation of reasonableness to take a one sided view to consider one factor only out of more than one, nor can any person be said to have reached a reasonable decision who in reaching it ignores any effect which it may have on his neighbour".

The Court in my view has to consider whether the requirement is reasonable. It is the Court that has to consider the additional factors. In the instant case the plaintiff-appellant was genuinely interested in carrying on the textile business. The defendant-respondent was occupying the premises since 1958 and doing a business and he had been given an opportunity to find alternative accommodation.

The defendant-respondent had not even taken the trouble to put an advertisement in the paper (vide page 210 of the Brief) and in 'P6' paragraph 8 the defendant-respondent had stated that it was cheaper to be a tenant. The attitude of the defendant-respondent was one of defiance. In my view the learned District Judge had failed to analyse and consider the evidence given by the defendant-respondent. He has failed to consider the defiant attitude of the defendant-respondent who had not tried to find out whether there was alternative accommodation in the particular business area (vide page 208).

The opinion of the Court regarding reasonableness must be considered with the attending circumstances and other relevant factors that were available before Court. It is my considered view that the learned District Judge had failed to consider the relevant factors but had emphasised on the phrase a "business in posse not in ease". The learned District Judge at page 265 stated "it is the finding of this Court that the requirements of the premises in suit for the business of the defendant overwhelmingly outweigh those of the plaintiff". The learned District Judge had taken into consideration extraneous factors which are not contemplated by the section. He has taken into consideration the difficulty of obtaining alternative accommodation, and enjoying the benefits of a rent controlled premises, the high cost in obtaining alternative accommodation of premises not subject to the Rent Act. Finally he had taken into consideration that the defendant's business "Lalvani Brothers" was at that place for a considerable period and thereby had acquired the good will and the financial benefits which accrue due to the premises being rent-controlled.

In my view all these factors are extraneous and not even envisaged by section 22(2) (b) of the Rent Act. In my view consideration of such factors as alternative accommodation and others stated above by the learned District Judge is in effect read into section 22(2)(b) as additional provisions to the section. The learned District Judge had therefore misdirected on the facts and consequently on the law.

In the case of *Hameedu Lebbe v. Adam Saibo*<sup>(2)</sup>, it was held that in considering whether the premises are reasonably required for the use of the landlord in terms of section (c) of the Rent Restriction Ordinance, the fact that the landlord has no business of his own and wants to earn a livelihood by commencing a business is a matter taken into account.

The plaintiff-appellant had stated that she wished to continue her textile business and even if one were to consider that she was contemplating a new venture, section 22(2) (b) does not act as a barrier for all time on new ventures which would effectively prevent an owner of property from getting possession of the premises but where the landlord requires the premises for her business venture this must be considered with other factors. However because the tenant had entrusted in that place for a long period and has build up a goodwill are in my view extraneous factors. If those factors are taken into consideration then a landlord will not be able to obtain any relief in terms of provisions of 22(2) (b) of the Rent Act. The plaintiff has given reasons for commencing a business on a larger scale than what she was doing at home, where the hardship are equally that the Court must exercise the discretion in favour of the owner of the premises. According to the learned District Judge's view landlord who intends to start a business to earn his livelihood will be deprived of getting relief in terms of this section.

In the case of *A. R. M. C. Thamby Lebbe v. P. Ramasamy*<sup>(3)</sup>, G. P. A. Silva held where in regard to the issue of reasonable requirement it is shown that the hardship of the landlord is equally balanced with that of the tenant the landlord's claim must prevail.

The critical question the learned District Judge had to decide in this case was whether the plaintiff-appellant's contention that she intended to run a textile business in these premises was true, and if so whether the premises were reasonably required by him for the purpose of trade or business.

In arriving at this decision the learned District Judge had failed to consider the totality of the evidence. In fact it is my view that he had

failed to consider the evidence of the defendant. He had failed to give his mind to the defendant's evidence where he insisted and stated that he did not want a premises at Liberty Plaza or at the new complex at Bambalapitiya but he wanted only a place at Main Street. Even then he was not prepared to pay a high rent and advance. The learned District Judge had not considered the relevant evidence, thereby he had misdirected on the facts thereby committed a error in law by placing an undue burden on the plaintiff-appellant to establish that her intention to carry on a business in the premises was only prospective and she in fact did not carry any business at the present. This is not the question that the court had to answer. The question was whether she had a genuine desire. If that was answered in the affirmative the other factors are not relevant to the issue.

In the circumstances I set aside the judgment of the learned District Judge and enter judgment for the plaintiff as prayed for in terms of paragraph (a) and (e) of the amended plaint. I allow the appeal with costs fixed at Rs. 3250/-.

**EDUSSURIYA, J.** – I agree.