

**MOHAMED AZAR**  
**v**  
**IDROOS**

SUPREME COURT.  
GAMINI AMARATUNGA, J.  
S. MARSOOF, J. AND  
ANDREW SOMAWANSA, J.  
S.C. APPEAL NO. 114/2007  
C.A. L.A. 51/2006  
D.C. GAMPOLA NO. 914/81 L.  
FEBRUARY 02, 2008

*Rent (Amendment) Act No. 26 of 2002 – Section 22(3),8(a)– Benefits conferred on the landlord to get the decree executed without waiting until the Commissioner of National Housing provides alternative accommodation – Section 22(1)b and Section 22(1) C were repealed and new subsections were substituted in their places – Civil Procedure Code – Section 221, Section 320, Section 323, Section 337(1) – Time bar prescribed to the application for the Writ of Ejectment – maxim “lex non cogit ad impossibilia.”*

The plaintiff filed action under section 22(1) (bb) of the Rent Act, for the ejectment of the tenant (defendant) on the ground that such premises are reasonably required for occupation as a residence for the plaintiff (landlord). Judgment was entered of consent in favour of the plaintiff and the decree was accordingly entered directing the ejectment of the defendant. In view of Section 22(1)C of the Rent Act the decree entered in favour of the plaintiff contained a condition that the plaintiff shall have no right to obtain a writ for the delivery of possession to the plaintiff until alternative accommodation is provided to the tenant (the defendant) by the Commissioner of National Housing.

The Commissioner of National Housing allocated a house to the tenant (the defendant), but the tenant who was not satisfied with the house allocated to him, filed a Writ application No. C.A. 65/1986 in the Court of Appeal seeking a *Writ of Certiorari* to quash the notification of the Commissioner of National Housing informing the tenant of the allocation of the house to him. The Court of Appeal held that the house offered by the Commissioner of National Housing was not in law an alternate accommodation contemplated in section 22(C) of the Rent Act and accordingly issued a *Writ of Certiorari* quashing the notification sent by the Commissioner of National Housing.

After the death of the original plaintiff, the present petitioner, a heir of the original plaintiff complied with the requirements set out in Section 22(3)8(a), as the

Commissioner of National Housing failed to provide alternate accommodation to the tenant, the petitioner sought writ of ejection – which was refused by the District Court. The Court of Appeal refused leave to appeal from the said order.

The Supreme Court has granted leave to appeal against the said order of the Court of Appeal.

The two questions of law considered by the Supreme Court are as follows:

- (1) *Has the Court of Appeal erred in law in reaching the conclusion that section 337(1) of the Civil Procedure Code is a bar to the application for the Writ of Ejection made by the petitioner-appellant?*
- (2) *Did the Court of Appeal and the District Court fail to consider the purpose and the effect of the Rent (Amendment) Act No. 26 of 2002 in so far as it was relevant to the consent decree entered in favour of the plaintiff?*

**Held:**

- (1) The amendments made to section 22 of the Rent Act by the amending Act No. 26 of 2002 provided a new mechanism for the landlord to get the decree entered in his favour executed through court without indefinitely waiting until the Commissioner of National Housing provided alternative accommodation to the tenant.
- (2) In order to extend the benefit conferred on the landlord by the amending Act No. 26 of 2002, who had already obtained decrees for the ejection of their tenants, a new provision was added at the end of section 22(3)(B).
- (3) The time bar prescribed by section 337(1) commences to operate only from the date on which the judgment creditor becomes entitled to execute the writ and as such it has no application to a case where the judgment creditor is prevented by a Rule of law from executing the writ entered in his favour.

The time bar will apply in cases where the judgment creditor after becoming entitled to obtain the writ has slept over his rights for ten years.

*Per Gamini Amaratunga, J. -*

"It would indeed be unjust and inconsistent with the purpose of section 337(1) to apply the time bar in a situation where the decree has become incapable of execution due to a rule of law."

**Held further:**

- (4) After the new section 22(1) C was introduced by the amending Act No. 26 of 2002, the judgment creditor became entitled to deposit ten years rent of the premises or Rs. 150,000/- which ever is higher with the Commissioner of National Housing and apply for the writ one year after the date of such deposit.
- (5) The Rent (Amendment) Act No. 26 of 2002 repealed section 22(1)(C) and enacted new provisions in its place and made it applicable to decrees already entered at the time repealed section 22(1)(C) was in force. The

object of this amendment was to remedy the mischief resulting from the pre-condition contained in section 22(1)(C).

- (6) When a judgment-creditor has made an application for the execution of the decree, the Court to which that application has been made has to satisfy itself that the judgment-creditor is entitled to obtain execution of the decree.

**Cases referred to:**

- (1) *Mowjood v Pussadeniya* (1987) 2 SLR 287.  
(2) *Jayasekera v Herath* Vol. III BASL Journal (1999) Vol. VIII part 7 1999 SLR 56.

**APPEAL** from the judgment of the Court of Appeal.

*M. Farook Thahir* with *A.L.N. Mohamed* for the substituted plaintiff-petitioner-appellant.

*L.A. Paranavithana* for the defendant-respondent-respondent.

*Cur.adv. vult.*

February 2, 2008

**GAMINI AMARATUNGA, J.**

The original plaintiff Hayathu BeeBee alias Sithy Nazeera filed action in the District Court of Gampola for the ejection of her tenant (defendant respondent) from the residential premises and the land more fully described in the schedule to the plaint. The plaintiff brought her action under section 22(1)(bb) of the Rent Act as amended by Rent (Amendment) Act No. 10 of 1977. In terms of the said section 22(1)(bb) a landlord of any premises the standard rent of which did not exceed one hundred rupees for a month, has the right to institute action for the ejection of the tenant of such premises on the ground that such premises are reasonably required for occupation as a residence by such landlord or a member of his family.

On 1st March 1982, judgment was entered of consent in favour of the plaintiff. Decree was accordingly entered directing the ejection of the defendant and all those claiming under him from the property in suit and for the delivery of vacant possession to the plaintiff. Section 22(1c) of the Rent Act contained a special provision with regard to execution of decrees entered in respect of premises referred to in section 22(1)(bb). Section 22(1c) of the Rent Act at that time was as follows:

*\*22(1c) Where a decree for the ejection of the tenant of any premises referred to in paragraph (bb) of sub section (1) is entered by any court on the ground that such premises are reasonably required for occupation as a residence for the landlord or any member of the family of such landlord, no writ in execution of such decree shall be issued by such court until after the Commissioner of National Housing has notified to such court that he is able to provide alternative accommodation for such tenant." (emphasis added).*

In view of the above statutory provision, the consent decree entered in favour of the plaintiff contained the condition that the plaintiff shall have no right to obtain a writ for the delivery of possession of the premises to her until alternative accommodation is provided to the defendant (the tenant) by the Commissioner of National Housing.

On 17.12.1985, the Commissioner of National Housing allocated a house in the Ranpokunawatta housing scheme to the defendant tenant, but the latter, who was not satisfied with the Commissioner's offer, filed Writ Application No. CA 65/1986 in the Court of Appeal seeking a *Writ of Certiorari* to quash the notification sent by the Commissioner to him informing him of the allocation of the Ranpokunawatta house to him. The Court of Appeal, following the decision of the Supreme Court in *Mowjood v Pussedeniya*<sup>(1)</sup>, held that the house offered by the Commissioner of National Housing was not in law alternative accommodation contemplated in section 22 (1c) of the Rent Act and accordingly issued a *Writ of Certiorari* quashing the notification sent by the Commissioner allocating the Ranpokunawatta house to the defendant.

The plaintiff died in 1998, leaving the present petitioner appellant Mohamed Azar and six others as her intestate heirs. Due to the inability/failure of the Commissioner of National Housing to provide alternative accommodation to the defendant tenant, the plaintiff was unable, upto the time of her death, to obtain a writ to eject the defendant in terms of the decree entered in her favour.

The Rent (Amendment) Act No. 26 of 2002, which came into operation on 24.10.2002, amended the existing provisions of

section 22 of the Rent Act relating to the procedure for filing of actions by landlords for the recovery of premises on the basis of reasonable requirement and the execution of decrees entered in such actions, and substituted therefor new provisions in respect of those matters. The Amending Act repealed section 22(1)(b) and substituted a new subsection in its place. After the amendment, the relevant part of section 22(1) reads as follows.

*"22(1) Notwithstanding any thing in any other law, no action or proceedings for the ejectment of the tenant of any premises the standard rent (determined under section 4) of which for a month does not exceed one hundred rupees shall be instituted in or entertained by any court, unless where-*

*(a) the rent of such premises has been in arrears for three months or more after it has become due; or*

*(b) such 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 the trade, business, profession, vocation or employment of the landlord, and such landlord has deposited, prior to the institution of such action or proceedings a sum equivalent to ten years' rent or rupees one hundred and fifty thousand, whichever is higher, with the Commissioner for National Housing and has caused notice of such action or proceedings to be served on the Commissioner;"*

The amending Act repealed section 22(1)(bb) of the Rent Act. The steps to be taken by the Commissioner on receipt of the deposit and the notice of action are set out in section 22 (1A), but those provisions are not relevant to the present purpose.

Section 22(1c) which related to execution of decrees was repealed and the following new subsection was substituted in its place.

*"22(1c) Where a decree for the ejectment of the tenant of any premises is entered by any court on the ground that such premises are reasonably required for occupation*

*as a residence for the landlord or any member of the family of such landlord or for the purposes of the trade, business, profession, vocation or employment of the landlord and -*

- (a) Where the Commissioner of National Housing has under subsection (1A) notified court that he is able to provide alternate accommodation for such tenant; or*
- (b) Where the Commissioner of National Housing has failed to notify to court of the availability of alternate accommodation under the section (1A) for over a period of one year from the date of decree of ejectment and the court is satisfied on application made by the landlord stating that -*
  - (i) the sum of money required to be deposited by him with the Commissioner for National Housing under paragraph (b) of sub section (1) has been deposited;*
  - (ii) the Commissioner for National Housing has failed to notify court of the availability of alternate accommodation under subsection (1A); and*
  - (iii) a period of one year has elapsed since the date on which the decree was entered and he is entitled to obtain a writ of execution.*

*the Court shall issue a writ of execution of the decree to the Fiscal of the court ...."*

The amendments made to section 22 of the Rent Act by the amending Act No. 26 of 2002 provided a new mechanism for the landlord to get the decree entered in his favour executed through court without indefinitely waiting until the Commissioner of National Housing provided alternative accommodation to the tenant.

In order to extend the benefit conferred on the landlords by the amending Act No. 26 of 2002 to the landlords who had already obtained decrees for the ejectment of their tenants, a new provision was added at the end of section 22(3)(8). The new provision is as follows:

*" the amendment made to the principle enactment by sub section (1) of this section shall mutatis mutandis apply to decrees entered prior to the date of commencement of this Act subject to:*

- (a) the requirement that the landlord of such premises shall deposit the required sum with the Commissioner of National Housing, **within two months** of the date of coming into operation of this Act.*
- (b) the requirement that the Commissioner of National Housing shall, where decree has already been entered, provided alternative accommodation to the tenant of such premises; and*
- (c) the condition that the period of **one year** will commence with effect from the date on which the required amount is deposited with the Commissioner of National Housing.*

The present petitioner Mohamed Azar, one of the intestate heirs of the deceased plaintiff, had deposited a sum of Rs. 150,000/- with the Commissioner of National Housing on 23.12.2002, within two months of the date on which the amending Act came into operation i.e. 24.10.2002. Thus he has complied with the requirement set out in section 22(3)(8)(a) quoted above. Even after one year from the date of depositing (23.12.2002) a sum of Rs. 150,000/- with the Commissioner of National Housing by the present petitioner appellant Mohamed Azar, who had got himself substituted in place of the deceased plaintiff, the Commissioner of National Housing had failed to provide alternative accommodation to the defendant respondent tenant. Thereafter, the petitioner appellant, after one year from the date of depositing Rs. 150,000/- with the Commissioner of National Housing, has made an application, as he is lawfully entitled to do under the provisions of the amending Act, to obtain a writ of ejectment against the defendant-respondent.

After the defendant respondent filed his objections to the petitioner appellant's application for the writ of ejectment, the learned District Judge, by his order dated 23.01.2006, refused the application for the writ of ejectment. The learned District Judge had given two reasons for dismissing the application for the writ.

- (1) The application for the writ has been made twenty one years after the date on which the decree had been entered and as such the application is barred by section 337(1) of the Civil Procedure Code which provides that no application to execute a decree shall be granted after the expiration of ten years from the date of the decree.*
- (2) Since the consent decree contained the condition that the plaintiff shall have no right to obtain a writ for the delivery of possession of the premises to her until alternative accommodation is provided to the defendant tenant by the Commissioner of National Housing, the provisions of the amending Act No. 26 of 2002, in the absence of specific provision to that effect, do not have the effect of varying or removing that condition and as such the plaintiff is not entitled to obtain the writ until that condition is fulfilled.*

The petitioner appellant filed a leave to appeal application against the order of the learned District Judge. The Court of Appeal by its order dated 12.3.2007 refused leave to appeal and dismissed the application. The Court of Appeal was of the view that since ten years had passed from the date of the decree, the petitioner's application was barred by section 337(1) of the Civil Procedure Code. The Court of Appeal has not dealt with the other reason given by the learned District Judge that the amending Act No. 26 of 2002 did not have the effect of varying or removing the condition contained in the consent decree.

This Court has granted leave to appeal against the order of the Court of Appeal. Two questions of law arise for decision in this appeal.

- (1) Has the Court of Appeal erred in law in reaching the conclusion that section 337(1) of the Civil Procedure Code is a bar to the application for the writ of ejection made by the petitioner appellant?*
- (2) Did the Court of Appeal and the District Court fail to consider the purpose and the effect of the rent (Amendment) Act No. 26 of 2002 in so far as it was relevant to the consent decree entered in favour of the (deceased) plaintiff?*



The relevant part of section 337(1) considered by the Court of Appeal is as follows.

337(1) *"No application ..... to execute a decree shall be granted after the expiration of ten years from -*  
*(a) the date of the decree ....."*

In this case when the consent decree was entered on 1.3.1982 on the basis of the reasonable requirement of the landlord, section 22(1c) of the Rent Act, which related to such decrees contained the specific provision that *"no writ of execution of such decree shall be issued by such court until after the Commissioner of National Housing has notified to such court that he is able to provide alternative accommodation for such tenant."* Thus the law prevented the court from issuing a writ until the condition set out in the section is fulfilled. So long as this legal prohibition remained in force, the judgment-creditor had no right to obtain the writ of ejection. In 1985 when the Commissioner of National Housing allocated a house in the Ranpokunawatta housing scheme to the tenant judgment debtor as alternative accommodation, the latter obtained a *writ of certiorari* from the Court of Appeal quashing such allocation. After that no alternative accommodation was provided to the tenant by the Commissioner until Act No. 26 of 2002 repealed Section 22(1c) of the Rent Act and substituted a new subsection therefor. As such the legal prohibition to issue the writ and the corresponding, disability of the judgment creditor to apply for the writ continued for twenty years until 2002. When a judgement creditor has made an application for the writ, the Court to which that application has been made has to satisfy itself that *"the judgment creditor is entitled to obtain execution of the decree."* (see sections 225, 320 and 323 of the Civil Procedure Code). Since the legal impossibility of the judgment creditor to obtain the writ continued for twenty years, the judgment creditor was not entitled to obtain execution of the decree and accordingly he cannot be faulted for not applying for the writ within ten years from the date of the decree. *Lex non cogit ad impossibilia*. The law does not compel the performance of what is impossible.

After new section 22(1c) inserted by the amending Act No. 26 of 2002, the judgment creditor became entitled to deposit ten years rent of the premises or Rs.150,000/- whichever is higher with the

Commissioner of National Housing and apply for the writ one year after the date of such deposit. Thus the substituted plaintiff petitioner appellant became entitled to execute the decree only on 24.12.2003, being the date one year after the deposit of Rs. 150,000/- with the Commissioner. The limit of 10 years contemplated in section 337(1) commenced to run only from 24.12.2003. The time bar prescribed by section 337(1) commences to operate only from the date on which the judgment creditor becomes entitled to execute the writ, and as such it has no application to a case where the judgment creditor is prevented by a rule of law from executing the writ entered in his favour. The time bar will apply in cases where the judgment creditor after becoming entitled to obtain the writ has slept over his rights for ten years.

In *Jayasekera v Herath*<sup>(2)</sup> the Court of Appeal has held that the period of ten years begins to run only from the date on which the judgment creditor becomes entitled to make an application for the writ. I am in respectful agreement with the decision of the Court of Appeal. It would indeed be unjust and inconsistent with the purpose of section 337(1) to apply the time bar in a situation where the decree has become incapable of execution due to a rule of law which prevents its execution. The learned District Judge and the learned Judges of the Court of Appeal were in error when they held that the petitioner appellant's application made on 18.5.2004 to obtain the writ was barred by section 337(1) of the Civil Procedure Code. I accordingly answer the first question of law in the affirmative.

The second question of law is based on the second reason given by the learned District Judge for dismissing the application for the writ of ejectment. In his order, the learned District Judge has stated that the amending Act No. 26 of 2006 did not have the effect of varying the condition in the consent decree that the plaintiff shall have no right to obtain the writ of ejectment until the Commissioner of National Housing is able to provide alternative accommodation to the defendant tenant. This condition had been included in the consent decree in view of the specific provision contained in section 22(1c) of the Rent Act (Quoted at the beginning of this judgment).

In view of the broad interpretation given to the term 'alternative accommodation' by the Supreme Court in *Mowjood v Pussedeniya* (*supra*), the Commissioner of National Housing was unable to provide

alternative accommodation to many tenants against whom decree had been entered on the basis of the reasonable requirement of the premises by the landlord. In view of the precondition contained in section 22(1c) of the Rent Act, many landlords who had obtained decrees in their favour were unable to enjoy the fruits of their litigation. Their decrees were deduced to mere pieces of paper devoid of the substantive benefits which flow from decrees entered by Courts. The Rent (Amendment) Act No. 26 of 2002 repealed section 22(1c), enacted a new provision in its place and made it applicable to decrees already entered at the time the repealed section 22(1c) was in force. The object of this amendment was to remedy the mischief resulting from the precondition contained in section 22(1c). When the Legislature has removed that precondition and extended the benefit of such removal to those who had already obtained decrees in their favour, there is no justification in law and equity to tie down the decree holders to a condition which they were legally obliged under the existing law to agree to. The mechanical approach adopted by the learned District Judge would result in negating the object sought to be achieved by the amendments made to section 22(1c) and section 22(3)(8) by the amending Act No. 26 of 2002.

The Court of Appeal has not dealt with the second reason given by the learned District Judge for dismissing the substituted plaintiff petitioner appellant's application for the writ of ejectment.

For the reasons set out above, I answer the second question of law in the affirmative and set aside the order of the Court of Appeal dated 12.3.2007 and the order of the learned District Judge of Gampola dated 23.01.2006 and allow the substituted plaintiff petitioner appellant's application for ejectment of the defendant respondent respondent S.H.M. Idroos from the premises relevant to this case. I direct the learned District Judge to issue the writ of ejectment forthwith. The parties shall bear their costs in relation to execution proceedings.

The order of the Court of Appeal dated 12-3-2007 set aside.

**MARSOOF, J.**            -       I agree.  
**SOMAWANSA, J.**       -       I agree.

*Appeal allowed.*