

1963

Present : Sri Skanda Rajah, J.

A. C. P. JEREMIAS, Petitioner, and K. T. PERERA, Respondent

*S. C. 307/63—Application for Revision in C. R. lombo, 83165**Rent Restriction Act—Action in ejectment—Consent decree—Construction.*

An action in ejectment in respect of rent-controlled premises was settled, and the relevant portion of the consent decree was as follows:—"If the defendant pays damages for each month on or before the end of each and every month commencing from 28th February, 1963, without two consecutive defaults writs not to issue till 31st March, 1965. In default of two consecutive payments both writs to issue without notice".

The rent for February, 1963, was paid on 2nd March, 1963. The next payment of rent for March, 1963, was made on 1st April, 1963.

Held, that there were two consecutive defaults and that the plaintiff was, in consequence, entitled to a writ of possession.

APPPLICATION to revise an order made by the Court of Requests, Colombo.

W. D. Gunasekera, for the Plaintiff-Petitioner.

S. W. Jayasuriya, for the Defendant-Respondent.

December 13, 1963. SRI SKANDA RAJAH, J.—

In this case the plaintiff sued the defendant for ejectment on the basis that the defendant was his tenant and that the plaintiff required the premises for his own use. The matter was settled and a consent decree was entered.

The relevant portion of the settlement order runs thus "If the defendant pays damages for each month on or before the end of each and every month commencing from 28th February, 1963 without two consecutive defaults writs not to issue till 31st March, 1965. In default of two consecutive payments both writs to issue without notice."

The first payment of damages for the month of February was due on or before the 28th February, 1963, but the defendant sent a Money Order dated 2nd March, 1963, though he enclosed it with a letter dated 1st March, 1963. It would, therefore, be clear that this payment was not in terms of the settlement ; for, it was paid after the 28th February, 1963.

The next payment was for March, 1963. The 31st of March fell on a Sunday and, therefore, in order to carry out the terms of the settlement he should have seen to it that the money was paid on the 30th or at the latest sent a Money Order dated 30th in order that it may be received by the plaintiff on the 1st April, 1963 ; but, the defendant sent a Money Order dated 1st April, 1963. Therefore, there had been two consecutive defaults and the plaintiff was, in consequence, entitled to a writ of possession.

For these reasons I would set aside the order of the learned Commissioner of Requests. The Plaintiff-Petitioner will be entitled to the costs of this application as well as costs of the inquiry held in the Court of Requests.

Order set aside.

