

1952

Present : Swan J.

PEIRIS, Appellant, and PARAMSAMY, Respondent

*S. C. 191—C. R. Colombo, 36,884**Rent Restriction Act—Order for ejectment—Power of Appeal Court to order suspension.*

When an appeal preferred by the tenant against a decree for ejectment is dismissed, the Appeal Court has power to order suspension of the writ of ejectment for a short period.

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

N. K. Choksy, Q.C., with *V. S. A. Pullenayagam*, for the defendant appellant.

H. V. Perera, Q.C., with *T. Somasunderam*, for the plaintiff respondent.

Cur. adv. vult.

October 27, 1952. SWAN J.—

Mr. Choksy appearing for the appellant said that he could not canvass the learned Commissioner's findings of fact or dispute the correctness of his judgment. He, however, applies to have execution of the writ of ejectment stayed for a period of six months, i.e., till 31.3.1953.

¹ (1924) 27 N. L. R. 97 at 98.

² (1919) 7 C. W. R. 95.

Mr. H. V. Perera on behalf of the respondent submits that if the appeal is to be dismissed the consequences of the dismissal must automatically follow—in other words he contends that I have no power to suspend execution of the writ of ejectment.

Mr. Choksy in asking for time on behalf of his client has referred me to the case of *Wijesinghe v. Candappa*¹ where my brother Gratiaen ordered suspension of the writ of ejectment for a short period. Mr. Perera pointed out that in that case the landlord was unsuccessful in the lower Court and that it was only meet, right and just that this Court in reversing the judgment of the lower Court should take into consideration the hardship to the tenant by immediate ejectment. But the case upon which my learned brother acted (*Wheeler v. Evans*²) was a matter where the Court of Appeal upheld an order in favour of the landlord.

In my opinion the powers of this Court extend to the granting of time to a tenant when it affirms a decree in ejectment. In this case the learned Commissioner did not consider the obvious hardship that the tenant would suffer if writ of ejectment had to be executed forthwith.

In dismissing the appeal I direct that if the defendant-appellant should deposit in Court whatever is already payable under the decree and all further damages up to 31.12.52 on or before 15.11.52 writ of ejectment will not be executed till 31.12.52. In case of default the usual consequences will follow.

The plaintiff-respondent will be entitled to the costs of appeal.

Appeal dismissed.

