SINGHAM
v.
WIGNESWARAMOORTHY

COURT OF APPEAL.
GUNASEKERA, J.
GRERO, J.
C.A. 54/86 (F)
D.C. COLOMBO 5931/RE
JULY 26, 1994.

Land Lord and Tenant – Rent Act – S. 22(2) (bb) (ii) – 5 years Rent and 6 months notice in writing of Termination of Tenancy 1984 a leap year – Tenant called upon to vacate on 28th February – Validity of notice to quit – Proviso to S. 22(6).

The Plaintiff-Respondent instituted action to eject the Defendant-Appellant in terms of S. 22(2) (bb) (ii) of the Rent Act 7 of 1972 as amended by Act No. 55 of 1980. The Plaintiff deposited prior to the filing of the action, a sum equivalent to 5 years rent with the Commissioner of National Housing, and also gave 6 months notice in writing of the termination by letter dated 27.8.83, to quit on or before 28.2.1984. The year 1984 was a leap year.

Held:

(1) It appears that instead of 29th February 1984, the notice states that the Tenant should vacate on or before 28th February 1984. The Notice falls short by a day of the required time under provision to S. 22(6) of the Rent Act and the requirement under the common law. The Notice to quit is bad in law and it has no force or effect and validity.

***Per* Dr. Grero, J.**

"The scheme of the Rent Act is to protect the Tenant in occupation of premises, which fall within the ambit of the Act and any defect, omission, or shortcoming on the part of the landlord in taking steps to eject, the Tenant should not be in favour of the former, but such defect, omission etc., should be decided in favour of the latter."

(2) Article 138 of the Constitution does not help the Plaintiffs-Respondents, as when the statute requires that the Tenant should be given 6 months notice in writing, and it is not followed or complied with it is the Tenant who is prejudiced, because, he is deprived of a Right granted to him by the statute.

AN APPEAL from the Judgment of the District Court of Colombo.

Cases referred to:

1. *Ismail v. Sheriff* – 68 NLR 19.
2. *Zahira v. Ismail* – 61 NLR 357 at 359.
3. *Hankey v. Clavering* – 1942 2 All ER, 314.
4. *S.C.* 44/86 CA 479/79(F) D.C. Colombo 2796/RE. – SC Minutes 13.3.89.
5. *Haniffa v. Sellamuttu,* 70 NLR 200-201.
6. *Sidebotham v. Holland* 1895 – 1QBD 378.

P. A. D. Samarasekera P.C., with *Keerthi Sri Gunawardena* for Defendant-Appellant.
S. Mahenthiran for the Plaintiff-Respondent.

Cur. adv. vult.

October 03, 1994.

DR. ANANDA GRERO, J.

This is an appeal preferred to this Court by the defendant-appellant against the judgment of the Learned Additional District Judge of Colombo, dated 10.01.86, whereby he gave judgment in favour of the plaintiff-respondent.

The plaintiff-respondent instituted this action to eject the defendant-appellant from the premises more fully described in the schedule to the plaint on the basis of section 22(2) (bb) (ii) of the Rent Act No. 7 of 1972 as amended by Act No. 55 of 1980.

The plaintiff-respondents in their plaint averred, that the premises are residential premises and the standard rent exceeds Rs. 100/- per month. As required under section (22) (2) (bb) (ii), it is also stated in the plaint that the plaintiff-respondents have deposited prior to the filing of the action a sum of Rs. 16,800/-, being a sum equivalent to five years rent with the Commissioner of National Housing for payment to the tenant defendant-appellant. It is also stated in the plaint that the plaintiff-respondents have given six months' notice in writing of the termination of tenancy to the tenant defendant-appellant.

The aforesaid notice to quit which is marked and produced as P1 is dated 27.08.93. According to this notice, the tenant has been requested to quit and deliver vacant possession of the premises in question on or before the 28th day of February, 1984.

When this case was argued before us, it was contended by the Learned President's Counsel for the defendant-appellant that 1984 was a leap year and in the month of February of that year there were 29 days. The tenant was not called upon to vacate on or at the expiration of the 29th day of February 1984. He further contended that the witness Mr. A. C. Strong an Attorney-at-Law who had the power of attorney on behalf of the plaintiffs while giving evidence admitted that the tenant was not given six month's notice by P1. (vide proceedings at page 89)

The Learned President's Counsel for the defendant-appellant strongly contended that the plaintiff-respondents have failed to comply with proviso to section 22(6) of the Rent Act and as such their action should fail. He also contended that issue No. 1 which deals with the notice to quit as contemplated in the said section has been answered by the Learned Additional District Judge wrongly and cannot be justified.

The Learned Counsel for the plaintiff-respondents while conceding that this particular year 1984 was a leap year, and the month of February ended on the 29th day, was of the view that the notice to quit which requested the tenant to quit the premises on or before 28.02.84 was not a notice bad in law as no prejudice was caused to the tenant; in that he very well knew that he was given six months notice and at the end of that period he should vacate the premises.

> Proviso to section 22(6) of the Rent Act states as follows: That the landlord of any premises referred to in paragraph (bb) of subsection (1) or paragraph (bb) of subsection (2) may institute an action or proceedings for the ejectment of the tenant of such premises, if such landlord has given to such tenant **six months' notice** in writing of the termination of the tenancy.

The aforementioned proviso to section 22(6) of the Rent Act clearly reveals that six (6) months' notice in writing should be given terminating the tenancy.

The Rent Act does not give the form of a notice to quit; nor does it show how a monthly tenancy should be terminated. For various

grounds of ejectment of a tenant the Rent Act has prescribed the number of months that a notice should be given terminating the tenancy between the landlord and tenant. For example three month's notice of termination of tenancy should be given on the first occasion when the tenant falls into arrears for the first time. (Section 22(3) (a)) One has to fall back on the law to find out the manner with which a monthly tenancy is terminated.

A number of decisions of our Superior Court have considered the question of terminating a monthly tenancy based on our common law. Suffice to mention the case of *Ismail v. Sheriff* [1]. which was cited by the Learned President's Counsel for the defendant-appellant when this matter was argued before us. In this case after a full discussion of the question of termination of a monthly tenancy, the Court accepted and followed the dicta of Basnayaka, C.J. in the case of *Zahira v. Ismail* [2]:

> **"It is settled law that in the absence of an agreement to the contrary the notice of termination of a tenancy must run concurrently with a term of the letting and hiring and must expire at the end of that term".**

Thus it, manifests that in the case of a monthly tenancy which commences on the first day of a month, the notice to quit to be valid should call upon the tenant to vacate the premises on the last day of a month.

The Learned President's Counsel for the defendant-appellant drew the attention of this Court to the evidence given by Mr. Strong (the witness on behalf of the plaintiffs) where he in answer to Court (the trial Court) said that the notice to quit (P1) was to operate with effect from 1st day of September 1983. Therefore he contended that the notice to quit which called upon the tenant to vacate the premises on any day other than the last day of the calender month would be an invalid notice. The tenant should have been asked to vacate on or before the 29th February 1984. But according to P1, he was asked to vacate on or before 28th February 1984; which according to the contention of the Learned Persident's Counsel for the defendent-appellant is contrary to the accepted principles of our common law, and therefore this notice is bad in law.

Considering the fact that the year 1984 was a leap year in which the month of February had 29 days, and the tenant was called upon to vacate on the 28th of February, which was not the last date of that month, it cannot be stated that six months' notice has been given as required under the proviso of section 22(6) of the Rent Act. The completion of 6 months falls on the 29th day of February 1984.

It appears that instead of 29th February 1984, the notice says the tenant should vacate the premises on or before 28th February 1984. It is only by a day that this notice falls short of the required time under the aforesaid proviso to section 22(6) of the Rent Act and the requirement under the common law. Although it is by one day the notice is bad in law, yet the Court cannot ignore the consequence of such a single day and decide in favour of the plaintiff-respondents that in fact they have properly (i.e. statutorily) terminated the tenancy.

The Learned President's Counsel for the defendant-appellant cited *Hankey v. Clavering* [3] to substantiate his contention, that a wrong date given on the notice does not terminate the tenancy or the lease of the premises.

In the aforementioned case, Lord Greene M. R. in the appeal held as follows:-

> "I dissent entirely from the proposition that, where a document is clear and specific on a particular matter, such as that of date, it is possible to ignore the inaccurate reference to a date and substitute a different date because it appears that the date was put in by a slip. In the present case what the respondent purported to do by the notice on its face was to bring the lease to an end on December 21, and if he had said "I hereby, by this notice give you, 6 months' notice to determine your lease on December 21, 1941, he would have been attempting to do something which he had no power to do; and **however much the recipient might guess, or however certain he might be; that this was a mere slip, it would not cure the defect because the document immediately it is dispatched is a document which is incapable on its face of producing the necessary legal consequence.**" (Vide at page 314).

Applying the dictum stated in the said decision to the facts of the present case it could be said that even a day short of the requisite 6 months' period is an error which cannot be rectified and the notice to quit is one which is incapable of producing the necessary legal consequence, namely the termination of tenancy.

The argument of the Learned Counsel for the plaintiff-respondents that P1, (notice to quit) does not prejudice the defendant-appellant in our view cannot be sustained as notice has not been given to comply with the proviso to section 22(6) of the Rent Act, which requires that a period of six months' (not even less by a day) notice should be given in writing of the termination of tenancy.

The scheme of the Rent Act is to protect the tenant in occupation of premises which fall within the ambit of the Act and any defect, omission, or shortcoming on the part of the landlord in taking steps to eject the tenant should not be in favour of the former, but such defect, omission etc. should be decided in favour of the latter.

It is proved at the trial, that P1 (notice to quit) has been delivered to the tenant on the 30th August 1983. Even going on the basis that it takes effect from that day, yet from 30.8.83 to 28.2.84 it is not six months as required in the aforesaid section of the Rent Act.

The Learned President's Counsel for the defendant-appellant further contended that both in Sri Lanka and in England Courts have accepted the principle that "Notice to Quit" are documents of a technical nature and must be in proper form to become effective. He cited Megarry on "The Rent Acts" and an unreported decision of our Supreme Court [4] in order to substantiate his contention.

> Megarry on "The Rent Acts" 7th Edition at page 181 states thus: "Notices to determine a tenancy are documents of a technical nature, technical because they are not consensual documents. But, if they are in proper form they have of their own force without any assent from the recipient the effect of bringing the demise to an end".

This principle has been followed by the Supreme Court in the case stated earlier and Bandaranayake, J. with Ranasinghe C.J. and Dr. Amarasinghe, J. agreeing held that "a contractual tenancy must be terminated, and a notice to quit unlike an agreement represents

an unilateral act done by the landlord which does not involve the consent of the tenant. **Therefore such a notice must be technically perfect** as one man's act terminates another man's right"

The Learned Counsel for the plaintiff-respondents heavily relied upon the decision reported in *Haniffa v. Sellamuttu* [5] and more particularly what is stated at page 201. Justice T. S. Fernando quoting Lindley LJ in *Sidebotham v. Holland* [6] stated as follows:

"The validity of a notice to quit ought not to turn on the splitting of a straw".

In the light of what has been so far mentioned in this judgment regarding the exact legal position pertaining to Notices to Quit, it is abundantly clear that the line of thinking in the majority of the authorities (stated above) appear to be contrary to Lindley L. J.'s thinking as quoted by T. S. Fernando, J. We prefer to follow the majority views and decisions in regard to notices to quit as mentioned earlier.

In the aforesaid circumstances we are unable to agree with contention of the Learned Counsel for the plaintiff-respondents that a short fall of one day, because of an intervening leap year, cannot be construed to invalidate the notice calling upon the tenant to quit on 28.2.84. On the contrary we are of the view that the notice to quit is bad in law, and it has no force or effect and validity. Thus we agree with the contention of the Learned President's Counsel for the defendant appellant that the Learned Additional District Judge has answered the issue, namely whether the plaintiffs have given six months' notice to the defendant by notice dated 27.8.83 wrongly, and it cannot be tenable in law.

The Learned President's Counsel further urged before us that that this Court has to consider whether the plaintiffs have established that the standard rent of the premises in question exceeds Rs. 100/- per month. His contention is, that the issue that the standard rent exceeds Rs. 100/- per month has not been satisfactorily established. It is the contention of the Learned Counsel for the plaintiff-respondents, that the plaintiff's evidence (i.e. Mr. Strong's evidence) regarding the standard rent exceeds Rs. 100/- per month has not been challenged in the cross examination and therefore, such

evidence stands as unchallenged and uncontroverted evidence in so far as the standard rent is concerned.

As we are of the view that tenency has not been properly terminated as required under the proviso to section 22(6) of the Rent Act, the action of the plaintiff-respondents should fail and on that ground alone this appeal should be allowed, we do not think that the necessity does arise for this Court to consider the issue whether the plaintiff-respondents have established that the standard rent exceeds Rs. 100/- per month.

The termination of tenancy which goes to the root of an action of this nature, is not done as required under the provisions of the Act and the common law, then the consideration of other issues relating to the action is rather unnecessary and therefore we make no order regarding the second submission made by the Learned President's Counsel for the defendant-appellant.

The Learned Counsel for the plaintiff-respondents in his written submission had drawn the attention of this Court to the proviso to Article 138 of the Constitution of Sri Lanka. It states that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity which has not prejudiced the substantial rights of the parties.

When the statute requires that the tenant should be given six months' notice in writing, and it is not followed or complied with, then it is the tenant who is prejudiced, because he is deprived of a right which is granted to him by the Statute itself. In such circumstances, proviso to Article 138 of the Constitution does not help the plaintiff-respondents in this case.

For the reasons stated above we are of the view that the Learned Additional District Judge's judgment should not be allowed to stand and the appeal of the defendant-appellant is allowed and the judgment dated 10.01.86 hereby set aside. We order that the plaintiff-respondents do pay to the defendant-appellant a sum of Rs. 850/- as costs of the appeal.

D. P. S. GUNASEKERA, J. – I agree.

Appeal allowed.