

1960

Present : Basnayake, C.J., and Sansoni, J.

CASSIM, Appellant, *and* KALIAPPA PILLAI and another,
Respondents

S. C. 679—D. C. Colombo, 36600/M

Landlord and tenant—Payment of rent by cheque—Validity of payment by cheque drawn by tenant—Validity of payment by cheque drawn by a third party—Rent Restriction Act.

A was a monthly tenant of B's premises. It was the practice for A to pay his rent by cheque drawn on his bank. In April, 1955, however, B received a cheque drawn on a different Bank and signed by a third party, C.

Held, that the cheque sent by C did not operate as payment of rent by A.

“ Payment in a contract of letting and hiring must be in cash. The landlord is under no obligation to accept payment by cheque unless there is an agreement, express or implied, to do so. Such an agreement may be presumed when over a long period of time the landlord has accepted cheques drawn by the tenant on his bank account without question. But even such an implied agreement does not cast an obligation on the landlord to accept a cheque drawn by a person other than the tenant in his favour in payment of rent. Nor has a third person a right to force the landlord of another to accept a cheque drawn by him in payment of that other's rent. Such a payment by a third person not being a payment in terms of the contract of letting and hiring would not amount to payment thereunder.”

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *M. S. Mohamed*, for Plaintiff-Appellant.

H. V. Perera, Q.C., with *S. Sharvananda*, for Defendants-Respondents.

June 3, 1960. BASNAYAKE, C.J.—

In this action the plaintiff, who is the owner of premises No. 65 Sea Street, Colombo, sought to eject the 1st defendant Kumara Perumal Kaliappa Pillai, who was his tenant of those premises since February 1947 on a monthly tenancy, on the grounds that he was in arrear of rent for one month after it had become due, and that he had sub-let the premises without his prior consent in writing. Both these are grounds which permit a landlord to institute proceedings for the ejectment of a tenant without the authorisation of the Rent Control Board.

It would appear that the defendant by an indenture No. 4245 dated 30th March 1955 attested by Kartigasu Thiru Chittampalam, Notary Public, transferred the business he was carrying on at the premises No. 65 Sea Street and No. 19 Dam Street to Periannapillai Tirupathy

the 2nd defendant as trustee for his seven children of a trust named the "Kumaraperumal trust". By that indenture Kaliappa Pillai transferred to Tirupathy as trustee—

" All and singular the stock-in-trade, shop goods, oilman stores, sundries and All and singular the furniture fittings and other articles of trade and things whatsoever lying in the aforesaid premises Nos. 65 Sea Street in Colombo and 19 Dam Street in Colombo and all and singular the moneys book-debts and other assests of whatsoever including the goodwill, quota rights, import rights and other licences and privileges as aforesaid of the business carried on by the Settlor under the name style and firm of 'Sri Lanka Stores' and the deposits with the Landlords of the said premises and the Government Electrical and Telephone Departments and more fully described in the schedule hereto and delivered possession of same "

The 1st defendant was not residing at No. 65 Sea Street, but at No. 8 Charlemont Road, Wellawatte. It is common ground that the rent of the premises was paid to the plaintiff on or before the 10th of each month. It was the practice for the 1st defendant to pay his rent by cheque drawn on his bank, but on 6th April 1955 the plaintiff received a cheque drawn on the Indian Bank Limited (P1) and signed as follows :—

" Sri Lanka Stores
P. Tirupathy
Proprietor."

with the following letter (P1A) :—

" SRI LANKA STORES
Importers & Exporters
Oilmanstores, Groceries, Hardware, Stationery, &c.

65, Sea Street
Colombo—11, 6.4.1955.

Mr. M. S. M. Cassim
Mills Avenue
Skinners Road South
Colombo.

Dear Sir,

Herewith enclosing a I. B. cheque No. C. 131048 for Rs. 210/83 Rupees two hundred and ten and cents eighty-three being house rent for the above premises for the month of March 1955.

Please be kind enough to acknowledge receipt for same.

Thanking you,

Yours faithfully,
Sgd. Illegibly
S. L. S."

The plaintiff says that the cheque and the letter which accompanied it put him on inquiry, as the cheque was signed by a person who was not his tenant, and he went to the premises at No. 65 Sea Street and found that P. Tiruppathy, the 2nd defendant, was carrying on business there. Thereafter on 5th May 1955 the 1st defendant sent to the plaintiff a cheque drawn on the Bank of Ceylon and signed—

“ Sri Lanka Stores

K. P. Kaliappa Pillai
Proprietor.”

with the following letter of the same date (P 5) :—

“ SRI LANKA STORES

Importers & Exporters

Oilmanstores, Groceries, Hardware, Stationery, &c.

65, Sea Street,
Colombo—11, 5.5.1955.

M. S. M. Casim Esq.
Colombo.

Dear Sir,

Herewith enclosing a Bank of Ceylon Cheque No. D/3 99850 for Rs. 210/83 being house rent for the month of April 1955.

Please be kind enough to acknowledge receipt for same.

Thanking you,

Yours faithfully,

Sgd. Illegibly
for S. L. S.”

In neither of the letters did the person who signed it describe the capacity in which he did so. It is contended on behalf of the plaintiff that the learned District Judge was wrong in dismissing his action holding that the Indian Bank Cheque (P1) discharged the 1st defendant's liability in respect of the rent for March, and that it was the duty of the plaintiff to have returned the cheque if he was not accepting it as payment of

rent. The plaintiff has proved by calling an officer of the Indian Bank Limited that the 2nd defendant's account in that Bank had been closed on 9th March 1955 and that at the time the 2nd defendant had drawn the cheque in the plaintiff's favour he had no account in the Indian Bank. The question that arises for decision is whether the cheque sent by the 2nd defendant operated in law as payment of his rent by the 1st defendant.

Payment in a contract of letting and hiring must be in cash (Voet Bk XIX Tit. 2 s. 8). The landlord is under no obligation to accept payment by cheque unless there is an agreement, express or implied, to do so. Such an agreement may be presumed when over a long period of time the landlord has accepted cheques drawn by the tenant on his bank account without question. But even such an implied agreement does not cast an obligation on the landlord to accept a cheque drawn by a person other than the tenant in his favour in payment of rent. Nor has a third person a right to force the landlord of another to accept a cheque drawn by him in payment of that other's rent. Such a payment by a third person not being a payment in terms of the contract of letting and hiring would not amount to payment thereunder. In the instant case there was not only a payment by a cheque drawn by a person other than the tenant but the cheque itself was drawn by a person who had no account current at the time at the Bank on which it was drawn. "Sri Lanka Stores" is not a legal person. The existence of those words on the cheque (P1) is no indication that the plaintiff's tenant was the drawer of the cheque especially as any such impression is erased by the name of the drawer and his description of himself as proprietor. The accompanying letter did not clarify the position. In the circumstances it is understandable that the plaintiff became suspicious of the cheque. The sudden departure from the practice of sending his own cheque, without a word of warning, put him on his guard. In our opinion the cheque sent by the 2nd defendant drawn on the Indian Bank Limited does not operate as payment of rent by the 1st defendant.

Learned counsel for the appellant has drawn our attention to the case of *Smith v. Cox*¹ cited in Woodfall on Landlord and Tenant, where the question of payment of rent by a stranger has been considered. In view of the conclusion we have reached it is not necessary to discuss that decision.

On the question of sub-tenancy it is clear from the indenture entered into by the 1st defendant and the 2nd defendant that the 1st defendant had surrendered his interests in the business, and that he was not living on the premises in question and had no interest as a tenant. Learned counsel for the respondent had argued that although the 1st defendant did not carry on the business he was entitled to be the tenant. On the evidence before us we are unable to escape the conclusion that the 1st defendant having transferred the business by deed sought by this indirect method to transfer the tenancy to the trustee. In his evidence the 1st

¹ (1940) 3 All E. R. 546.

defendant says that the rent of the premises was paid by him personally, and that even after the business was transferred he paid the rent himself. The statement of accounts produced by him does not bear that out and the rents paid on account of the premises in question are shown in the accounts of the business after the transfer.

We therefore think that the plaintiff's action is entitled to succeed, and we accordingly set aside the judgment of the learned District Judge and direct that judgment be entered for the plaintiff as prayed for in his plaint with costs both here and below.

SANSONI, J.—I agree.

Appeal allowed.

