

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

M. H. Abdul Barie
59A, Muslim Mosque Road,
Kalutara.

PLAINTIFF

C.A 196/1998 (F)
D.C. Kalutara 419/RE

Vs.

M. H. M. Niyaz
No. 12, Kachiyawatta,
Dharga Town.

DEFENDANT

AND

M. H. Abdul Barie
59A, Muslim Mosque Road,
Kalutara.

PLAINTIFF-APPELLANT

Vs.

M. H. M. Niyaz
No. 12, Kachiyawatta,
Dharga Town.

DEFENDANT-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: H. Withanachchi for the Plaintiff-Appellant

N. M. Shahid with N. Godellawatte for the Defendant-Respondent

ARGUED ON: 24.4.2012

DECIDED ON: 30.08.2012

GOONERATNE J.

This is an appeal from a rent and ejectment case, where the learned District Judge of Kalutara dismissed Plaintiff-Appellant's case by his judgment dated 9.3.1998. The premises in question is described in the schedule to the plaint. Eviction of the Defendant-Respondent tenant, was sought on the ground of reasonable requirement contemplated under Section 22(2)(b) of the Rent Act. At the trial it was admitted that the premises in dispute is rent controlled and a business premises at a rental of Rs. 1250/- per mensem. Notice to quit as referred to in the paragraph 5 of the plaint was admitted. Parties proceeded to trial on 18 issues but court rejected issue Nos.

10 & 11. An attempt to raise further two issues on 25.2.1997 was also rejected. In the plaint, Plaintiff also prayed for arrears of rental and damages (prayer 'अ' & 'क' of plaint).

The only aspect that need to be considered in the appeal was whether Plaintiff-Appellant was successful in proving the ground of reasonable requirement. Section 22(2)(b) reads thus:

The 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 purposes of the trade, business, profession, vocation or employment of the landlord; or

Learned counsel for Respondent emphasis that if the premises are reasonably required for occupation as a residence it could be claimed by the landlord or any member of the family. However if it is required for purpose of trade, business, profession, vocation or employment of landlord only the landlord is entitled to claim. The grounds of reasonable requirement seems to be a primary question of fact that has to be proved by evidence supported with cogent reasons. I would briefly refer to the position of the Plaintiff-Appellant in this case, in this court and in the original court.

- (a) Plaintiff's evidence that he was carrying on business under the name and style of "Favourities" in a premises taken on rent by the Plaintiff-Landlord, not asailed by Defendant-Respondent.

- (b) Owners of the premises where Plaintiff-Appellant was doing business namely 'favourites' had demanded the Plaintiff to hand over the premises. As such the Plaintiff was holding on to same until he could get vacant possession on the premises in dispute. This seems to be one way among other grounds to establish reasonable requirement.
- (c) With the 'favourites' business he was dependant for an income for himself and his family. It was the sole income.
- (d) The premises at Moratuwa owned by him but given to his daughter as dowry.
- (e) Circumstances changed between 1990 and 1995
- (f) Agreement D19 between parties entered on or about 10.4.1986 permit rent to be increased every 5 years.
- (g) Reasonable requirement to be decided as at the date of conclusion of trial and not at institution of action.

The position of the Defendant-Respondent was that the question of reasonable requirement never arose as far as the Plaintiff was concerned since the Plaintiff was having his own business in another premises and Plaintiff's attempt to enhance the rent failed and where he could not get an enhancement only the Plaintiff adopted another course of action to evict the Plaintiff, by resorting to the question of requirement which was not genuine. Learned counsel for Respondent referred to several items of evidence both documentary and oral to nullify the question of reasonable requirement. Further Respondent stressed that the appellant was demanding the premises under the disguise of reasonable requirement since the Respondent was not willing to enhance the rental to Rs. 4000/-.

The Respondent in his submission has discussed the items of evidence in relation to the legal position. This court is mindful of the following as emphasized and submitted to court by learned counsel for Respondent in his written submissions which need to be included in this judgment more particularly for the purpose of clarity of some important aspect of the appellant's case, who cannot invite court to isolate other circumstances which tarnish the image of reasonable grounds on his own evidence.

- (1) The Appellant is carrying on his business in the adjoining premises of the Respondent, to wit: No. 87, Galle Road, Kalutara. At the time of giving evidence, the Appellant stated that he had got a court order for the upper floor of No. 87, Galle Road, Kalutara. Vide pg. 50 of the brief.

ප්‍ර: 87 කියන ගොඩනැගිල්ල එත්තිකරුට කුලියට දී ඇති ගොඩනැගිල්ල කුලියට ගත්තේ කවදාද?

උ: 1986

ප්‍ර: 87ට උඩ තට්ටුවක් තියෙනවා?

උ: ඔව්

ප්‍ර: එය මුක්ති විදින්නේ 85 අයිතිකරු?

උ: ඔව්

ප්‍ර: 85 අයිතිකරු 87 වැනි උඩ තට්ටුවේ කුලී නිවසියාවසිටන්නේ?

උ: ඔව්

ප්‍ර: ඒ සම්බන්ධයෙන් 87 උඩ තට්ටුවට නඩු දමා නඩු තීන්දුවක් ලබාගෙන තියෙනවා. ඒ තීන්දුව අනුව ඇස්කිසි ඉල්ලා තිබෙනවා?

උ: ඔව්

ප්‍ර: එහි බිම් මහලට අද නඩු කියන්නේ?

උ: ඔව්

ප්‍ර: උඩ තට්ටුවට වරිපනම් අංකය තියෙනවාද?

උ: නැහැ

ප්‍ර: පහල තට්ටුව 87 වතරයි වරිපනම් අංක දුන්නේ?

උ: ඔව්

(2) The Appellant claimed that the premises in suit are required for business premises for his sons who are engaged in business with him. However, it is noteworthy to mention that when a person is seeking a business premises for reasonable requirement, he has to satisfy that the said premises are needed for his business and his business alone and not for his family members. Vide 22(2)(b) of the Rent Act.

When I give my mind to the evidence of the Plaintiff-Appellant, it is apparent that Plaintiff never had sufficient acceptable grounds as urged to evict the Defendant-Respondent at the time the quit notice P1 was dispatched or on institution of action. The cross-examination of the Plaintiff no doubt confirm such position. As such this court cannot fault the learned trial Judge's conclusions an extract of which reads as follows:

“මේ අනුව නඩුවට අදාළ ස්ථානය එනම් පැමිණිලිකරු විසින් විත්තිකරුට කුලියට දී ඇති ස්ථානය පැමිණිලිකරුගේ ව්‍යාපාරික කටයුතු සඳහා අවශ්‍ය වී ඇතැයි පැමිණිල්ලේ කියා ඇති කාරණය අධිකරණයට පිළිගත නොහැකි බව අධිකරණයේ නිගමනයයි. පැහැදිලිවම මෙම නඩුවේ පැමිණිල්ල විසින් හරස් පුශ්කවලට දෙන ලද පිළිතුරුවලින් ඒ බව වඩාත්ම තහවුරු වී ඇත. මා කලින් සඳහන් කළ පරාදි මෙම විත්තිකරුට කුලියට දී ඇති ස්ථානයට වැඩිපුර කුලිය ගෙවීමට විත්තිකරු විසින් අකමැති වී ඇති නිසා මේ අන්දමට මෙම ස්ථානය ව්‍යාපාරික කටයුතුවලට අවශ්‍ය වී ඇති බව සැලකරමින් පැමිණිලිකරු මෙම ස්ථානයෙන් විත්තිකරු ඉවත්කර ලබාගැනීම සඳහා මෙම නඩුව පවරා ඇති බව අධිකරණයේ නිගමනයයි. මෙම හේතුව මත පැමිණිලිකරුට විත්තිකරුට එරෙහිව මෙම නඩු පවත්වාගෙන යානොහැකි බව අධිකරණයේ නිගමනයයි.

Documents V2, V4 & V9 would further fortify the views of the learned District Judge. I have considered the case of Weerasena Vs. Mathupala 1992 (1) SLR 329. There are 3 points to be considered as reported in the said case viz.

- (a) where hardship of the landlord is equally balanced with that of the tenant. Landlord's claim must prevail
- (b) where hardship of landlord out weighs the hardship to the tenant the landlords claims must prevail.
- (c) Hardship of the tenant outweighs hardship to the landlord. The landlord's case must be dismissed.

If one consider the evidence of the Plaintiff-Appellant it cannot be said that hardship of both parties are equally balanced. In fact the landlord's claim does not appear to be so genuine since he was canvassing mainly for enhanced rental nor has the original court support the position of the landlord as far as hardship caused to him. Evidence seems to be more artificial merely to rely on the ground of reasonable requirement. Such a requirement does not exist and as such one cannot infer hardship to landlord. As such the above case has no applicability to the case in hand. The trial Judge has carefully considered all basic primary facts, and this court is not inclined to disturb those findings in the manner urged by the Appellant. In

all the circumstances there is no legal basis to interfere with the judgment of the District Court. As such I affirm the judgment of the District Court.

Appeal dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL