

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

P Elmo Sriyantha Fernando,
140, Kotugoda Road,
Seeduwa

Subst. Plaintiff- Appellant

CA 878/96 F
DC Negombo 1435/RE

Vs.

P A Piyadasa,
No. 96, Kotugoda Road,
Seeduwa,

Defendant-Respondent

Before : A.W.A. Salam, J.

Counsel : P Nanayakkara with T Alahakoon for the
Plaintiff-Appellant and Dr Sunil Cooray with C Amaratunga for the
defendant-Respondent.

Agreed to dispense with the argument: 14.02.2011

Decided on : 09.05.2011

Abdul Salâm J.

The plaintiff-appellant has preferred the present appeal against the dismissal of the plaintiff's action by judgment dated 8 July 1996. When the matter of the appeal was taken up for argument on 14 February 2011 parties agreed to confine the ground of appeal only to the question as to whether there had been a valid tender of the areas of rent by the defendant-respondent to the plaintiff-appellant.

At the trial the parties admitted the contract of tenancy and that standard the rent of the business premises in question was Rs 30/- per month. It was alleged in the plaint that the defendant-respondent was in areas of rent from August 1978 to February 1987. The defendant-respondent took up the position in the district court that he had paid a sum of Rs 100/- per month by way of rent which was Rs 70/- in excess of the standard rent. He also took up the position that in any event on 16 October 1987, namely on the summons returnable day, he tended the areas of rent to the plaintiff-appellant and therefore the latter was obliged to withdraw the action in terms of section 22 (3 (c) of the Rent Act.

The learned district judge having analyzed the evidence placed before her came to the finding that there had been a valid tender of

the areas of rent on the summons returnable date and therefore the plaintiff-appellant was not entitled to continue with the action and therefore dismissed the same. This finding of the learned district judge is a matter of fact based on the evidence led before her and therefore I do not see any reason to reverse the said findings. They are quite consistent with the evidence led at the trial and do not offend the provisions of the Rent Act.

For the above reasons, I dismiss the appeal subject to costs.

Judge of the Court of Appeal