

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

C.A. Appeal No. 108/98(F)

DC. Colombo No. 8658/RE

K.A. Somapala

No: 1/132,

Athurumulla,

Delgoda.

Appellant

Vs.

M. Albert

No: 296,

Thagalam Street,

Colombo 14.

Respondent

C.A.Appeal No. 108/98(F)

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DC. Colombo No. 8658/RE

Before: K.T.Chitrasiri, J

Counsel: Daya Guruge with Premani Pothupitiya for the Plaintiff-Appellant.

M.I. Hadi for the Defendant-Respondent.

Argued &

Decided on: 08.07.2013

Chitrasiri, J

Heard both counsel in support of their respective cases.

This is an appeal seeking to set aside the judgment dated 15.01.1998 of the learned District Judge of Colombo. By that judgment, the learned District Judge dismissed the plaint in which the plaintiff had prayed that he be placed in possession of the land referred to in Paragraph 5 of the plaint dated 16.05.1996, ejecting the defendant and the persons holding under him therefrom. In the plaint, he also has claimed damages amounting to Rs. 12375/- from the defendant for occupying the premises in suit without a payment being made.(issues 5 and 8)

At the outset, Mr. Guruge appearing for the appellant submitted that he is not pursuing the appeal filed, challenging the answers to the issues bearing Nos. 10 and 18, given on the basis of the defence taken up by the defendant relying upon the applicability of the

provisions contained in the Rent Act No. 7 of 1972 . Therefore, the relief prayed for to eject the defendant from the premises in suit need not be looked into, since the appeal in order to challenge the decision as to the refusal to evict the defendant, being not pursued due to the protection claimed by the defendant under the Rent Act. Accordingly, the reliefs prayed for in para (b) in the prayer to the Petition of Appeal is dismissed.

However the learned counsel for the appellant further submits that the learned District Judge misdirected himself when he answered the issues bearing Nos. 5 and 8, stating that those issues need not be answered in view of the answers to the remaining issues. Those 2 issues are on the basis of the damages claimed by the plaintiff from the defendant due to the occupation of the premises in suit by the defendant. Then it is clear that the appeal is restricted only to the question of damages amounting to Rs. 12375/- claimed by the plaintiff-appellant.

Learned counsel for the defendant-respondent having considered the above, submits that the defendant is willing to pay the said sum of Rs. 12375/- to the plaintiff-appellant. In view of the said agreement to pay the damages claimed by the plaintiff, the appeal in respect of the damages claimed by the plaintiff-appellant also need not be considered.

The defendant-respondent agrees to pay Rs. 12375/- by way of a money order to the plaintiff-appellant within a period of 02 weeks from today. Accordingly, Court makes an order that the defendant-respondent shall pay Rs. 12375/- to the plaintiff-appellant by way of a money order within 2 weeks.

The aforesaid agreement by the defendant-respondent to pay the damages to the plaintiff—appellant should not prejudice the civil rights of the parties.

In view of the above agreement and the submissions of both counsel, the proceedings in this appeal are terminated.

Proceedings terminated.

JUDGE OF THE COURT OF APPEAL

Kpm/-