

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

C.A.L.A.No.148/2006)
D.C.Colombo No.9606/RE

Alhambra Hotels Ltd.
No..30, Sri Mohamed Macan Markar
Mawatha,
Colombo 3.

Defendant-Petitioner

Vs.

O.L.M.Macan Markar Ltd.
No.26, Galle Face Court 2,
Sri Mohamed Macan Marker
Mawatha, Colombo3.

Plaintiff-Respondent.

BEFORE : Deepali Wijesundera J., and
M.M.A. Gaffoor J.,

COUNSEL : A.R. Surendran P.C. with N.Kandeepan
for the Petitioner.

Gamini Jayasinghe with P.P.de Silva and
Rlzana Hassan for the Plaintiff-
Respondent.

ARGUED ON : 13.07.2015

DECIDED ON : 16.11.2015

M.M.A. Gaffoor J.,

The Plaintiff has instituted this action on 20.05.2005 in the District Court of Colombo against the defendant for eviction of the defendant and all those holding from the premises in suit on the basis that the Common Law monthly tenancy under which the premises was let to the defendant had been duly terminated and for damages. Both the plaintiff and the defendant are limited liability companies and therefore it is agreed between the parties that the premises in suit is an excepted premises, and the provisions of the Rent Act No. 07 of 1972 do not apply, on the basis of the regulation published in the Gazette Extra Ordinance No.1305/17 of 09.9.2003 . It is also admitted that the tenancy of the premises in suit commenced prior to January 2003 and prior to the said Regulation.

At the trial on 18.01.2006 the following issues, inter alia, were raised and the defendants counsel moved to try these issues as preliminary issues of law, which application the Additional District Judge allowed. The preliminary issues are :-

5 (c) Does the Regulation published in the Gazette Extraordinary No.1305/17 of 09.9.2003 relied upon by the plaintiff have retrospective effect ?.

(d) If not, is the premises in dispute not exempt from the Rent Act?

(e) If so, can the plaintiff have and maintain this action?

Issue No.11 is as follows :-

11 (a) In terms of Section 43(1) of the Rent Act could a regulation under the Rent Act be made only for the purpose of carrying out or giving effect to the provisions and the principles of the Rent Act?

(b) Is the protection of the Rent Act conferred on a tenant of a rent controlled premises, an fundamental principle of the Rent Act?

(c) In the event of the regulation having retrospective effect, does the regulation relied upon by the Plaintiff take away the protection of the Rent Act from the Defendant?

(d) If issue 11 (a) (b) and (c) are answered in the affirmative is the said regulation in any event ultra vires the power to make regulation conferred by the rent act and if so force or avail in law?

(e) If so, in any event, the Plaintiff have and maintain this action?

On the above preliminary issues , Parties filed written submissions and on 31.03.2006 the learned Additional District Judge answers issued as following and fixed the case for further trial

5(c) No.

(d) the premises in suit is an excepted premises and become that it is not as aforesaid but because of the reasons set out above

(e) Can mention

11 (a) Yes

(b) Yes

(c) Deed not write due to the answer given to 5 © above

(d) Does act apply

(e) Can maintain

Having been aggrieved by the above order, the defendant preferred this application to Leave to Appeal to this Court.

The pivotal question that has been put forward for determination by this Court is “ whether Regulation made under Section 43 read with subsection (5) of Section 2 of the Rent No.7 of 1972 (as mended

thereafter) and published in the government Gazette Extra -Ordinary No.1303/17 of 09.09.2003 is applicable to business premises and has respective effect in respect of the tenancy in this case”

In this regard, the date of the commencement of the tenancy the date of the said Regulation and the date of the filing of the plaint in this case are relevant.

It is admitted by the parties that the premises in suit was let to the defendant in January 2003 which is before the said Regulation was published in the Gazette on 09.09.2003 . The plaintiff has filed this action for ejectment and damages against the defendant on 20.05.2005. It is settled law that the right of parties are decided at the time of the institution of this action. In the case of *Eastern Hardware Stores Vs.J.S.Fernando* 58 N.L.R. 568 at page 570. Sinnathamby J. said “ rights of parties have to be determined as at the date of action and this court is deciding issues arising in a case do so only on evidence relating to facts which existed before the date of action. This is an elementary rule of Law.”

Since the plaint has been filed on 20.05.2005, the rights of parties in this case have to be decided on the facts and law that prevailed before the date of action. In this regard the date of the regulation is material which is 9th September 2009. As it is, long before the date of action. The law has been amended by the regulation. According to which, if the landlord is a company registered under the companies Act No. 17 of 1982 and if the tenant is a company which is registered under the companies Act No. 17 of 1982, the premises shall be a excepted premises.

In the instant case, it is an admitted fact that both the landlord (the Plaintiff) and the tenant (the defendant) are registered companies under the Companies Act No.17 of 1982 and therefore, the parties and the premises have become subject to the regulation and as such the premises in suit is an excepted premises in terms of the said regulation, which the court can take judicial notice of under Section 57 of the Evidence Ordinance.

Sub Section (5) of Section 2 of the Rent Act states that, “ The Regulation in the schedule to this “Act shall have effect for the purpose of determining the premises which shall be excepted premises for the purpose of this Act, and may be amended from time to time by regulation made under Section 43. The said regulation No.1305/17 dated 09.09.2003, has been brought in terms of Section 43 read with Section 2(5) to amended the Schedule to the Act in order to make certain premises as “ excepted premises”. Though the effective date of the regulation, it can be presumed that it may be the date of publication of the regulation i.e. 09.9.2003. (vide Section 43 (2) subsection (2) of the Section 43 states that , “Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation”. Hence, the date of coming into operation of the regulation is deemed to be 09.9.2003 and as such the contention that the regulation has retrospective effect cannot be accepted.

“ When the substantive law is altered during the pendency of action, the rights of parties are decided according to the law as it existed when the action was begun unless the statute shows a clear intention to vary such right” Per *Soza J in Lechman & Co.Ltd. Vs. Rangalla consolidated Ltd.* 189 (2) *Sri Lanka Law Report* 373.

Since the regulation clearly altered the law as the rights of Parties in respect of the premises in suit, which has become an excepted premises in terms of the regulation, the rights of parties must be decided in terms of the regulation and not otherwise. The regulation does not relate back to the date of commencement of the tenancy in this case. The regulation is prospective and at the time of this institution of this action, to regulation is in force. The plaintiff has instituted this action on the basis that the premises in suit is an excepted premises. As the regulation was in force on the date of the institution of this action, the law that is applicable to this action are provisions of the Regulation No.1305/17 of 09.09.2003, Accordingly the plaintiff can maintain this action.

In view of these findings the rest of the matters need not be gone into. The application for leave to appeal is dismissed and the case is remitted to the District Court for further trial on the other issues.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL

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