

## APPELLATE CIVIL.

*Before U Thein Maung, Chief Justice, and U San Maung, J*

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*Apl.* 26.

M. H. ISMAIL (APPELLANT)

*v.*

M. E. O. KHAN (RESPONDENT).\*

*Urban Rent Control Act, s. 14 (3)—S. 11 (a) Urban Rent Control Act—Retrospective nature of—Conditions to be satisfied—Substantial compliance if sufficient.*

On 20th December 1946 the Chief Judge of the Rangoon City Civil Court passed a decree for ejection of respondent and an order for execution was passed on 14th February 1947 but the order was not executed. On the 8th August the Chief Judge altered the order under s. 14 of the Urban Rent Control Act. On appeal two contentions were raised (1) that order for execution having been passed before the amendment of the Act, s. 14 did not apply and (2) that there has been substantial compliance of s. 11 of the Act, as in fact the landlord had given a notice though it was not filed in Court.

*Held*: Where mere order for execution of decree for ejection has been passed but the tenant has not been actually ejected and the rooms have not yet been delivered, relief could be given to the tenant under s. 14 (3) of the Urban Rent Control Act.

*J. L. Chowdhury Bros. v. Sit Taik Tong Society*, Civil Miscellaneous Appeal No. 21 of 1947, followed.

Further that it is not permissible for the landlord under s. 14 (3) to introduce new matters to supplement those already on record, as it will amount to allowing the landlord to substitute a fresh cause of action. As no notice of demand by registered post had been sent, an order for ejection under s. 11 could not have been passed. S. 11 of the Act as amended must be deemed to be in force at the time of the decree or order for ejection.

*K. R. Venkatram* for the appellant.

*D. M. Ray* for the respondent.

U SAN MAUNG, J.—This is an appeal under section 15 of the Urban Rent Control Act, 1947, as amended by Burma Act XIV of 1947, against the order dated the 8th August 1947, passed by the Chief Judge

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\* Civil Misc. Appeal No. 47 of 1947 against the order of the Chief Judge, Rangoon City Civil Court, in Civil Regular No. 1176 of 1946, dated the 8th August 1947.

of the Rangoon City Civil Court in Civil Regular No. 1176 of 1946 of that Court. By that order, which was purported to be made under section 14 (3) of the Urban Rent Control Act, 1946, as substituted by section 2 of the Urban Rent Control (Second Amendment) Act, 1947 (Burma Act XXVI of 1947), the learned Chief Judge altered the order dated the 20th December 1946 which was passed by his predecessor for the ejection of Mr. M. E. O. Khan (respondent in this appeal) in the manner indicated in the order now under appeal. It is not necessary for us to recapitulate the facts which have been fully set out in the order dated the 8th August 1947. The two points raised in this appeal are :

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(1) Whether the learned Chief Judge of the City Civil Court had jurisdiction under sub-section (3) of section 14 of the Urban Rent Control Act, 1946, to alter the order of his predecessor in view of the formal order granting execution, which appears in the Diary entry dated the 14th February 1947 in Civil Execution No. 27 of 1947:

(2) Whether the learned Chief Judge of the City Civil Court was justified in distinguishing this case from the case of *J. L. Chowdhury Bros. v. Sit Taik Tong Society* (1), where it was held that effective service of notice sent otherwise than by Registered Post was sufficient for the purpose of clause (a) of section 11 of the Urban Rent Control Act, 1946, if rent had been in arrears and the demand was not complied with within three weeks from the date of the notice.

As regards (1), it was contended by the learned counsel for the appellant M. H. Ismail that in view of the order dated the 14th February 1947 in Civil Execution No. 27 of 1947 the order for the ejection

(1) Civil Misc. Appeal No. 91 of 1947.

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of the respondent M. E. O. Khan must be deemed to have been already executed so that the learned Chief Judge of the City Civil Court had no longer any jurisdiction either to alter or rescind the order for ejectment as provided for in sub-section (3) of section 14 of the Urban Rent Control Act, 1946. This contention is clearly not tenable in view of the fact that the rooms from which the respondent M. E. O. Khan was to be ejected have not yet been delivered to him in the manner laid down in Rule 35 of Order XXI of the Code of Civil Procedure. The learned Chief Judge of the City Civil Court had, therefore, jurisdiction to alter or rescind the order for ejectment if the other conditions appearing in sub-section (3) of section 14 of the Urban Rent Control Act, 1946, had been fulfilled.

The second question is a little more difficult. Sub-section 3 of section 14 of the Urban Rent Control Act, 1946, so far as is relevant to the case under consideration, is in the following terms :

"Where any order or decree of the kind mentioned in section 11 is made or given, whether before or after the commencement of this Act, and the order or decree has not been executed, and the Court is of opinion that such order or decree would not have been made or given if the provisions of section 11 were in force or applicable thereto at the time when the order or decree was made, the Court shall, on application by the tenant . . . . . rescind or alter the order or decree in such manner as it thinks fit for the purpose of giving effect to this Act; and the provisions of section 11 shall, for the purpose of such application, be deemed to be applicable to the suit or proceeding in which such order or decree was made." (The italics are ours.)

Turning to section 11, it is clear that in a suit or proceeding to which this section applies no order for ejectment of a tenant can be made unless the rent due from the tenant, which accrued after the resumption of civil government has not been paid or deposited in the

manner laid down therein after a written demand for payment of such rent has been sent to the tenant by Registered Post and has not been complied with for three weeks from the date of such demand. As has been pointed out by the learned Chief Judge of the City Civil Court in the order under appeal, the suit filed by the appellant (*Mohamed Hashim Ismail v. M. E. O. Khan*) in that Court was based on a simple notice to quit. It was neither contended nor proved therein that the arrears of rent had not been paid within three weeks from the date of the written notice of demand which had been sent by Registered Post. In fact, it was not alleged that any such notice was given. No doubt, in the counter-affidavit filed by the appellant M. H. Ismail in reply to the affidavit in support of the application under section 14 (3) of the Urban Rent Control Act, it is alleged that on the 29th June 1946 a notice was served upon the petitioner calling upon him to pay Rs. 800, being arrears of rent, and that the copy of the notice filed with the counter-affidavit was a true copy. The respondent M. E. O. Khan did not deny in his reply to the counter-affidavit that this was not so. Mr. M. E. O. Khan's only contention in the reply to the counter-affidavit was that the notice sent was not according to law and that therefore no ejectment-decree could have been passed thereon.

However it is clear from the language of subsection (3) of section 14 of the Urban Rent Control Act, 1946, that the Court, in dealing with an application under that section, should consider whether on the material on record a decree for ejectment would have been passed if the provisions of section 11 of the Act had been operative during the pendency of the suit or proceeding in which the order for ejectment was in fact passed. Therefore, it is not permissible for a party

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in an application under sub-section (3) of section 14 of the Act to introduce new matters either by way of affidavits or otherwise to supplement those already on record in order to show that an order for ejection would have been passed even if the provisions of section 11 had been applicable to the suit or proceeding. To hold otherwise would mean that in the majority of cases where ejection suits had been filed on simple notices to quit it would be necessary to go into fresh matters, *e.g.* (1) whether an order for ejection would have been passed because rent had been in arrears and not paid within three weeks from the date of notice of demand which had been sent by Registered Post, or (2) whether any obligation of the tenancy under the contract of tenancy or under the Urban Rent Control Act has been broken or not performed, or (3) whether any sum representing rent due from a tenant in respect of any period before the date of resumption of the civil government and in respect of which an order or decree has been made or given by a civil Court in favour of the landlord, has not been paid, or (4) whether the tenant or any other person holding under him or residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, etc. This in effect would be tantamount to allowing the landlord to substitute a fresh cause of action for ejection for the one on which he had filed the original suit.

Therefore, as on the material on record there is nothing to show that the appellant M. H. Ismail had sent a notice of demand by Registered Post as required under clause (a) of section 11 of the Act, the learned Chief Judge of the City Civil Court was quite justified in distinguishing this case from the case of

*J. L. Chowdhury Bros. v. Sit Taik Tong Society* (1) and in passing the order which he did under section 14 (3) of the Urban Rent Control Act, 1946.

Now, even assuming for the sake of argument that the materials on record show that the appellant M. H. Ismail had in fact sent a notice of demand for arrears of rent which had been received but not complied with within three weeks from the date of the notice, it is clear that since that notice was not sent by Registered Post as required by clause (a) of section 11 of the Act he would not have been entitled to an order for ejection of the respondent M. E. O. Khan. The portion which we have italicized above in sub-section (3) of section 14 of the Urban Rent Control Act as substituted by section 2 of Burma Act XXVI of 1947 makes it clear that for the purpose of an application under sub-section (3) of section 14 of the Act the Courts must assume that the provisions of section 11 of the Act were applicable to the suit or proceeding in which the order for ejection was in fact made and under that assumption come to an opinion as to whether the order for ejection should be rescinded or altered. If section 11 had been operative at the time Civil Regular No. 1176 of 1946 of the City Civil Court was instituted there is no doubt whatsoever that the order for ejection would not have been passed by the then Chief Judge of the City Civil Court.

In the result the appeal fails and must be dismissed with costs. Advocate's fees two gold mohurs.

U THEIN MAUNG, C.J.—I agree.

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