IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA.

In the matter of an application for leave to appeal under Section 5C(i) of the High Court of the Provinces (Special Provisions) Act No, 19 of 1990, as amended by ActNo. 54 of 2006

SC.Appeal No.131/2012

SC(HCLA) LA

No: 192/2012

H.C. (Civil) Appeal

No.WP/HCCA/MT/15/08

DCMoratuwaCase

No:93/99/RE

Shaik Ibrahim Ahamed Kabeer
Of No.97
Wattalpola Road,
Henamulla
Panadura

PLAINTIFF

Vs.

M.I Mohamed Zahir
of No. 56D
Galle Road
Moratuwa

DEFENDANTS

AND

M.I Mohamed Zahir
of No. 56D
Galle Road
Moratuwa

DEFENDANT APPELLANT

Vs.

Shaik Ibrahim Ahamed Kabeer
Of No.97
Wattalpola Road,
Henamulla
Panadura
PLAINTIFF- RESPONDENTS

AND NOW BETWEEN

M.I Mohamed Zahir
of No. 56D
Galle Road
Moratuwa

DEFENDANT –APPELLANT-PETITIONER-APELLANT

Vs.

Shaik Ibrahim Ahamed Kabeer
Of No.97
Wattalpola Road,
Henamulla
Panadura
PLAINTIFF- RESPONDENTS-RESPONDENT_RESPONDENT

BEFORE:- Chandra Ekanayake J

Wanasundera P.C J

Buwaneka Aluwiliare P.C J

COUNSEL: - C.E De Silva with Sarath Walgamage for the Defendant-Appellant-Petitioner-Appellant.

S. Ruthramoorthy instructed by Sajeewa Srinath Tissera for the Plaintiff -Respondent-Respondent- Respondent

ARGUED ON: - 09 -05-2014

DECIDED ON: - 01-04-2016

Aluwihare PC J

The Plaintiff-Respondent-Respondent (hereinafter referred to as the Plaintiff) instituted action in the District Court for the ejectment of the Defendant-Appellant-Appellant (hereinafter referred to as the Defendant) from the premises in suit and for damages. At the conclusion of the trial the learned District Judge by her judgement dated 28-05-2008 answered the issues in favour of the Plaintiff and held that he is entitled to the relief sought. Aggrieved by the said order of the learned District Judge, the Defendant appealed to the High Court of Civil Appeals (hereinafter referred to as the High Court). The learned Judges of the High Court by their order dated 28-05-2012 affirmed the judgement of the learned District Judge and dismissed

the appeal. Aggrieved by the said decision of the High Court, the Defendant moved this court by way of leave to appeal.

The Supreme Court granted leave to appeal on a single question of law which is reproduced below.

> "Did the original court and the Provincial High Court err in holding that the premises in the suit is an Excepted Premises in terms of Regulation 3 of the Schedule to the Rent Act no 7 of 1972"

The facts in relation to this matter can briefly be stated as follows-:

The premises in suit are a business premises and the Defendant became the tenant of the same, in the year 1973. In evidence, it transpired that the original owner of the premises in suit who gave the premises on rent to the Defendant, had placed it as collateral and in 1997, the Peoples Bank had taken over the premises-in-suit in settlement of a debt that was due to the Bank from the original owner. Somewhere around 1998 the plaintiff had purchased the premises in suit from the Peoples Bank and had become the land lord of the defendant. In terms of the law, as far as the impugned property is concerned, the plaintiff stepped into the shoes of the original owner and thereby, not only acquired the same rights but also the liabilities of the previous owner.

The issue before this court revolves around a single issue, that is, whether the premises in suit was an excepted premises or not, for the purposes of the Rent Act.

Before I deal with the evidence led at the trail, it would seem pertinent to refer to four of the issues raised by the plaintiff before the District Court.

1. Was the premises in suit first assessed as a shop by the Moratuwa Urban Council in the year 1973?

2. Was the first assessed value of the shop, Rs. 2051/=

3. Did the first assessed value of the premise in suit exceed Rs.2000/=

4. If the questions 1 to 3 are answered in the affirmative could the premises in suit be considered as an "Excepted Premises"?

Witness Daya Hettige a clerk attached to the Moratuwa Municipal Council stated in his testimony that the property concerned was a bare land up to 1972 and after a shop (premises in suit) was put up in 1973, the same was assessed and valued at Rs. 2051. The witness went on to testify that in 1974 the assessed value of the premises was revised and was fixed at Rs.1179.Then again revisions of the assessed value had taken place in 1986 and 1991 and value had been fixed at Rs.4450 and Rs.8900 respectively. The witness also stated that the Urban Council of Moratuwa was elevated to a Municipal Council in 1987.

What appears to be crucial, in deciding the issue in this matter, is the assessed valuation for the year 1973 for the reason, it was in the said year that the tenancy agreement commenced, between the Defendant and the Plaintiff's predecessor in title. According to the evidence of witness Nirmalee Fernanado Management Assistant of Moratuwa Municipal Council, who testified on behalf of the Defendant, the assessed value of the property in suit was Rs. 2051 as at 21 -08-1973. This witness has stated that prior to that date, the assessed value was Rs.10 and revised to Rs.2051. This change, presumably would have been due to the construction of a building for a shop on the land. This witness too has stated that in the year 1974, the assessed value of the property in suit had again been revised to Rs.1179.

What is significant in this case is, whether the premises in suit was an excepted premise or not, at the point of time the Defendant entered into the tenancy agreement in relation to this premises.

The position of the Defendant appears to be, that he became a tenant of the premises in suit in the year 1973. This was the basis on which the Plaintiff was cross examined at the trial. (Defendant had not testified at the trial). It had transpired in evidence that the premises is a twin shop and the Plaintiff has come in to occupation of the adjacent shop, also as a tenanat. The plaintiff, when under crossexamination, had been asked as to the year in which he came into occupation of the premises. When the plaintiff testified to the effect that he did so in 1973, it was suggested to him that the Defendant had also become a tenant of the premises, at or about the same time. In response to the suggestion so made, the plaintiff had stated that it was quite possible. What can be deduced from the above is that, even the Defendant's position is also, that his tenancy agreement with the original owner of the premises in suit commenced in 1973.

At this point I wish to refer to Regulation 3 of the schedule to the Rent Act No.7 of 1972:

Regulation.3 of the schedule to the Rent Act no 7 of 1972 is as follows:-

Schedule

Regulations as to excepted premises

3. Any business premises (other than premises referred to in regulation 1 or regulation 2) situated in any area specified in column 1 hereunder shall be excepted premises for the purpose of this Act if the annual value thereof as specified in the assessment made as business premises for purposes of any rates levied by any local authority under any written law and in force on the first day of January, 1968, or, where the assessment of the annual value thereof as a business premises is made for the first time after the first day, of

January, 1968, the annual value as specified in such assessment, exceeds the amount specified in the corresponding entry in column II.

I	II
Area	Annual Value Rs.
Municipality of Colombo	6000
Municipality of Kandy, Galle or And other Municipality	4000
Town within the meaning of the Urban Council Ordinance	2000
Town within the meaning of the Town Council Ordinance	1000

From the foregoing, there is no ambiguity that the determining factors, whether a premises is an excepted premises or not, are the assessed value and the area (local government authority) within which the premises are situated.

Considering the above criteria, it's abundantly clear, that when the Defendant entered into a tenancy agreement in 1973 with the original owner of the premises in suit, it was an excepted premises, as its assessed value exceed Rs.2000/= (in that year assessed value was Rs.2051) and was situated within the Urban Council of Moratuwa as per the Regulation.

The argument advanced, however, on behalf of the Defendant was entirely on a different premise. The learned counsel contended that the Moratuwa Urban Council was elevated to a Municipal Council in 1987 and the institution of action before the District Court was in 1999.It was the submission of the

learned counsel for the defendant that, by 1999 the premises in suit was situated within the limits of the Municipal Council of Moratuwa and as the 1st assessed valuation of the premises in suit as a "Business Premises" did not exceed Rs.4000/=, the premises in suit is not an excepted premises. Hence it was further argued in view of the contention aforesaid, provisions of the Rent Act No. 7 of 1972 are applicable to the premises in suit and in particular the Regulation 3 of the schedule to the Rent Act referred to earlier. It was the submission of the Learned Counsel for the Defendant that the learned District Judge erred and misdirected herself both on the law and fact, by not considering the issue from the stand point of the local authority within which the premises in suit was situated, at the time the action was filed.

In support of the contention referred to above, the learned counsel cited the decisions of the Court of Appeal in the cases of Kithsiri vs. Gamalath 2003 (2) S.L.R 123 and Ower Silva vs. Rani Saram 2003 3 S.L R. 223. I am, however, of the view that the decisions in the cases referred to have no bearing on the issue that has to be decided in the instant case.

As referred to earlier, from the evidence led at the trial, it's quite clear that, at the point of time the Defendant entered in to the tenancy agreement with the Plaintiff's predecessor in title, the premises were an "excepted premises" for the purposes of the Rent Act. The provisions of the Rent Act became applicable, if at all, to the premises on a date subsequent to the agreement of tenancy with the elevation of the Moratuwa Urban Council to that of a Municipal Council.

The issue arose, whether the original contract ends once the premises ceases to be an excepted premises.

In the Court of Queen's Bench decision in Baily vs. De Crespigny 1861-73 A.E.R 332, a case relating to covenant of landlord and tenant, Chief Justice Cockburn held that "in the absence of clear words showing contrary intention, parties must always be considered as contracting with the law as existing at the time of the contract….."

A situation similar to the instant case arose in the case of **A.H.M.M. Hadjiar Vs.Marzook and Co Ltd 1979 (2) NLR 253.**

The issue arose, where the provisions of the Rent Restriction Act become applicable to premises which were earlier excepted premises, whether the contract of tenancy, which subsisted prior to the Act becoming applicable, comes to an end.

Delivering the decision of the Supreme Court (at page 256) his Lordship Justice Walpita held " If this argument is accepted it means the earlier contract of tenancy came to an end once the premises became rent controlled and a new contractual relationship unconnected with the original contract arose as a result of the operation of the Rent Restriction Act. The Rent Restriction Act does not have that effect. The original contract can only be terminated by a notice of quit. It therefore continued even after the premises became rent controlled, though by operation of law the landlord could not recover a rent more than the authorised rent."

In the case referred to above, the court further held that the tenant could be ejected from the premises as he was in arrears of rent under the original common law contract of tenancy.

Based on the rationale of the cases referred to above, it is clear that the law applicable is, the law as at the date on which the contract of tenancy was entered into by the parties and not the law applicable at the point, action was instituted, as contended on behalf of the Defendant.

Even if, for sake of argument, the criteria asserted by the Defendant is applied, still he is not bound to succeed. It was contended that, the assessed value of the premises in suit was below Rs.4000/= as at 1999, the year in which action was filed in the District Court, as such the premises cannot be treated as a excepted premises.

The valuation, however of the premises in suit had undergone several revisions and according to the document marked V3, the annual value of the premises

in suit had been revised in the year 1986, and fixed at Rs. 4450. This was the assessed value of the premises when the Urban Council of Moratuwa was elevated to a Municipal Council in 1987. Hence as far as the Municipal Council of Moratuwa was concerned the first assessed value of the premises in suit was Rs. 4450, which is over and above the annual value stipulated in the schedule to Regulation 3 of Rent Act, in relation to a business premises within a Municipal Council.

Considering the foregoing I hold that both the learned District Judge and the learned judges of the High Court of Civil Appeals were correct in holding that the premises in suit is an excepted premises as far as the tenancy agreement between the Plaintiff and the Defendant is concerned. As such, I answer the question of law raised, in the negative.

This Appeal is accordingly dismissed with costs.

JUDGE OF THE SUPREME COURT

Justice Chandra Ekanayake

JUDGE OF THE SUPREME COURT

Justice Eva Wanasundera P.C

JUDGE OF THE SUPREME COURT