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. of the High Court of the Provinces (Special Provisions) Amendment) Act No.54 of 2006 read with Article 128 of the Constitution.

Nambukara Wakwellagamage
Sujatha Janaki
257/l, Kosgahahena,
Pannipitiya.

Plaintiff

S.C. Appeal No. 33A/2012
SC/HCCA/LA No.516/2011
WP/HCCA/COLOMBO No.119/2011-LA
D. C. COLOMBO No.DRE-011/2011

vs

1.Milani Nimeshika Kariyawasam,
No.19, Avissawella Road,
Kirulapona, Colombo 05.

2.Premadasa Kariyawasam,
No.19, Avissawella Road,
Kirulapona, Colombo 05.

3.Dayawathi Kariyawasam,
No.19, Avissawella Road,
Kirulapona, Colombo 05.

Defendants

AND BETWEEN

1.Milani Nimeshika Kariyawasam,
No.19, Avissawella Road,
Kirulapona, Colombo 05.

1st Defendant-Petitioner

vs

Nambukara Wakwellagamage
Sujatha Janaki
257/l, Kosgahahena,
Pannipitiya.

Plaintiff-Respondent

AND NOW BETWEEN

Premadasa Kariyawasam,
No.19, Avissawella Road,
K irulapona, Colombo 05.

Dayawathi Kariyawasam,
No.19, Avissawella Road,
Kirulapona, Colombo 05.

2nd & 3rd Defendant-Respondents

AND NOW BETWEEN

Milani Nimeshika Kariyawasam,
No.19, Avissawella Road,
Kirulapona, Colombo 05.

1st Defendant-Petitioner-Appellant

vs.

Nambukara Wakwellagamage
Sujatha Janaki
257/l, Kosgahahena,
Pannipitiya.

Plaintiff-Respondent-Respondent

Premadasa Kariyawasam,
No.19, Avissawella Road, K irulapona,
Colombo 05.

2nd Defendant-Respondent-Respondent

Dayawathi Kariyawasam,
No.19, Avissawella Road,

Kirulapona, Colombo 05.

Presently at

22/5/C, Nandimithra Place,
(Robert Drive), Colombo 06.

3rd Defendant-Respondent-Respondent.

Before	**Saleem Marsoof P C, J.** **Chandra Ekanayake, J.** **Sathyaa Hettige P C, J.**
Counsel	W.Dayaratne PC with R.Jayawardena for the 1st Defendant-Petitioner- Appellant Ali Sabri, PC with Kasun Premaratne and Nuwan Bopage for Plaintiff-Respondent - Respondent D.H.Siriwardena with Jayantha de Silva for the 2nd Defendant- Respondent-Respondent.
Argued on	21.12.2012 and 07.03.2013
Written Submissions tendered on	23.4.2012 AND 15.02.2013 (by the 1st Defendant-Petitioner -Appellant) 19.6.2012 (by the 2nd Defendant-Respondent-Respondent. 25.5.2012 (By the Plaintiff-Respondent-Respondent)
Decided on	01.10.2013.

Chandra Ekanayake, J.

The 1st Defendant-Petitioner-Appellant (hereinafter sometimes referred to as the 1st Defendant) by her petition dated 08.12.2011 (filed together with her affidavit) had sought inter alia, leave to appeal against the order of the High Court of Civil Appeal of Western Province (Holden in Colombo) dated 06. 12. 2011 (P20) in Application bearing No.WP/HCCA/Col/119 / 2011/LA, to set aside the said order and the order of the learned Additional District Judge dated 20.10.2011(P18) in D.C. Colombo case No.DRE-011/2011 and to order the learned Additional District Judge to dismiss the plaint of the Plaintiff-Respondent-Respondent (hereinafter sometimes referred to as the plaintiff), on the preliminary objections raised by her in sub paragraphs (a) to (c) and (e) of the said petition. Further by sub paragraph (d) of the prayer to the said petition the 1st Defendant-Appellant had sought to vacate the interim injunctions issued by the said order dated 20.10.2011 in terms of prayer 'ඉ 'and ' ඊ' of the plaint filed against her in the said D.C. Colombo case. The learned Judges of the High Court of Civil Appeal by the impugned order dated 06.12.2011 had refused leave to appeal against the order of the learned Additional District Judge dated 20.10.2011. This appeal has been preferred against the 2nd order of the High Court of Civil Appeal (P20).

The learned Additional District Judge by order dated 20.10.2011 (P18) had proceeded to issue interim injunctions as per sub paragraphs 'ඉ" and 'ඊ' of the prayer to the plaint dated 24.03.2011 [P14(e)]. In terms of the above sub- paragraphs of the prayer to the plaint the aforesaid 2 interim injunctions appear to be as follows:

ඉ: මෙහි පහත උපලේඛණයේ විස්තර කර ඇති දේපල තෙවන පාර්ශ්වයකට විකිණීමෙන් සහ/හෝ බදු දීමෙන් සහ/හෝ කුලියට දීමෙන් සහ/හෝ උකස් කිරීමෙන් සහ/හෝ වෙනත් තෙවන පාර්ශවයක් හැක්තියේ පිහිටුවීමෙන් සහ/හෝ එකි දේපල කෙරෙහි තවත් පාර්ශවයක් වෙත අයිතිවාසිකම් ඇති කරන්නාවූ කවර ආකාරයක හෝ ක්‍රියාවක් සිදු කිරීමෙන් සහ/හෝ එකි දේපලේ පවත්නා ස්වභාවය (Status quo)වෙනස් වන ආකාරයේ කවර හෝ ක්‍රියාවක් සිදු කිරීමෙන් වැත්තිකරුවන් ඇතුලු ඔවුන් මගින් සහ ඔවුන් යටතේ කටයුතු කරනු ලබන සේවක නියෝජිතාදී සියලුම දෙනා වලක්වන්නාවූ අතුරු ඉන්ජන්ෂන් තහනම් ආඥාවක් ලබා දෙන ලෙසත්.

උ: මෙහි පහත උපලේඛණයේ විස්තර කර ඇති දේපලේ අනවසරයෙන් රැඳි සිටිමින් පැමිණිලිකාරියගේ අයිතිය හබ කරන අතරතුර එකී දේපලෙන් වින්තිකරුවන් අයුතු ලෙස ප්‍රයෝජන ලබා ගැනීම වැලැක්වීම සඳහා එකී දේපලේ වින්තිකරුවන් ඇතුලු ඔවුන් මගින් සහ ඔවුන් යටතේ කටයුතු කරනු ලබන සේවක නියෝජිතාදි සියලුම දෙනා ව්‍යාපාරික කටයුතුවල නියැලීමෙන් සහ/හෝ එකී දේපලේ හුක්තියේ සිටිමින් ලාභ ප්‍රයෝජන උපයා ගැනීමෙන් වළක්වන්නාවූ වූ අතුරු ඉන්ජන්ෂන් නහනම් ආඥාවක් ලබා දෙන ලෙසත්".

By the petition filed in this Court dated 08.12.2011 the 1st Defendant-Appellant has sought to set aside the order of the learned Additional Judge dated 20.10.2011. When the above application was supported, this Court by its order dated 10.02.2012 had granted leave to appeal on the questions of law set out in sub paragraphs 36(d) and 36(g) of the said petition dated 08.12.2011. The aforementioned sub-paragraphs are reproduced below:

(d) Have their Lordships misdirected when they held that the 1st Defendant- Petitioner has sub-let the premises to the 2nd and 3rd Defendant-Respondents and thereby forfeited her tenancy when there is not a single document in proof of the said contention and furthermore, when the 1st Defendant-Petitioner has clearly stated at the Sec.18A Inquiry that the 2nd and 3rd Defendant-Respondents do not live under her?

g) Have their Lordships of the Civil Appellate High Court as well as the learned District Judge misdirected themselves by drawing the inference that the 1st Defendant-Petitioner has sub-let the premises to the 2nd and 3rd Defendant-Respondents in order to justify the issuing of interim injunctions against the 1st Defendant-Petitioner, when the said inference is against the weight of the documentary evidence annexed with the Plaintiff-Respondent's plaint in D.C.Colombo case No. DRE-011/2011?

The basis of the plaint filed in the District Court was that the plaintiff had become the owner of the subject matter on the deed of gift bearing No.603 dated 03.03.1971 and same had been given on a lease agreement to one Francis whereby he had become the lawful lessee of the subject matter. Even after the expiry of the said lease agreement the aforesaid Francis had continued to be the tenant. On the death of said Francis one of his sons by the name K.T.Dayananda had continued the business carried on by his father (Francis) and continued to be the tenant of the plaintiff. The said Dayananda too had died on or about 25.12.1995 and by a last will supposed to have been left by him prior to his death his tenancy had been transferred to the

1st defendant a minor at that time. Thus her first application had been made to the Rent Board through the executors of her dead father's last will. However, the 1st defendant subsequently had made another application to the Rent Board for a Certificate of Tenancy and had been successful and thereafter continued to be in the premises continuing with the bakery business of her dead father. The complaint of the plaintiff had been that the 1st defendant without informing her has put the 2nd and 3rd defendants into possession of the subject matter under her as subtenants and 2nd and 3rd defendants are continuing with their business activities in the subject matter. In the above premises, the plaintiff had moved the District Court to grant a declaration to the effect that the 1st defendant's tenancy came to an end due to operation of law and that the plaintiff is the rightful owner of the subject matter and the defendants be ejected from the aforesaid premises and interim injunctions as prayed for in sub paragraphs (ඉ) and (ඊ) of the prayer to the plaint.

The 1st defendant by his statement of objections whilst denying the averments in the plaint had moved for a dismissal of the application for interim injunctions. After inquiry the learned Additional District Judge by order dated 20.10.2011 (P18) had issued interim injunctions as prayed for. When this order was impugned in the Civil Appeal High Court by leave to appeal application bearing No.WP/HCCA/COL/119 /2011/LA, the learned High Court Judges by their order dated 06.12.2011 (P20) having refused leave to appeal had dismissed the application subject to costs. This is the order this appeal has been preferred from.

It is to be observed that in P20 the learned High Court Judges had proceeded to hold that as per the tenancy Certificate (P4) issued by the Rent Board in respect of the subject matter to wit - premises No.19, Avissawella Road, Kirulapone, the 1st defendant was the lawful tenant of the entire premises and the 2nd and 3rd defendants had come into occupation of 2 portions of the said premises under the 1st defendant. On the evidence that had been available before the Rent Board and also on a perusal of the available documentary evidence in this case, the 2nd and 3rd defendants appear to have come into occupation under the 1st defendant. The main basis of the

findings of the learned High Court Judges appears to be that when the 1st defendant's tenancy ended, the occupation of 2nd and 3rd defendants also becomes unlawful and as such the plaintiff' has successfully established a *prima facie* case in her favour.

I shall first advert to the preliminary objection raised by the 1st defendant in the District Court and also when the leave to appeal application bearing No.WP/HCCA/Col - LA -119/2011 was supported before the Civil Appeal High Court. It had been on the premise that this application could not have been maintained without a non-settlement certificate obtained under the provisions of Section 7(1) of the Mediation Boards Act No. 72 of 1988. The aforesaid section is reproduced below:

Section 7(1)

"Where a Panel has been appointed for a Mediation Board area, subject to the provisions of subsection (2) no proceeding in respect of any dispute arising wholly or partly within that area or an offence alleged to have been committed within that area shall be instituted in, or be entertained by any court of first instance if:-

(a) the dispute is in relation to movable or immovable property or a debt, damage or demand, which does not exceed twenty five thousand rupees in value; or

(b) the dispute gives rise to a cause of action in a court not being an action specified in the Third Schedule to this Act; or

(c) the offence is an offence specified in the Second Schedule to this Act,

unless the person instituting such action produces the certificate of non-settlemet referred to in seciton 12 or section 14(2):

"Provided however that where the relief prayed for in an action in respect of any such dispute includes a prayer for the grant of any provisional remedy under Part V of the Civil Procedure Code, or where a disputant to any dispute in respect of which an application has been made under section 6 subsequently inistitutes and action in any court in respect of that dispute including a prayer for a provisional remedy under Part V of the Civil

Procedure Code, the court may entertain and determine such action in so far as it relates only to the grant of such provisional remedy. After such determination, the court shall :-

(a) .....

(b) .....

(2) ....."

On a plain reading of the above section it is manifestly clear that if the relief prayed for in an action in respect of any dispute includes a prayer for the grant of any provisional remedy under Part V of the Civil Procedure Code, the Court may entertain and detemine such action in so far as it relates to the grant of such provisional remedy. In the case at hand the prayer includes a provisional remedy under Part V of the Civil Procedure Code. As such the conclusion of the High Court Judges to the effect that since there is an application for interim injunction matter could be proceeded with, in the absence of the certificate of non-settlement is correct.

A party who seeks an interim injunction as a rule, would be able to satisfy Court on three requirements viz;

(i) Has the plaintiff made out a *prima facie* case?

(ii) Does the balance of convenience lie in favour of the plaintiff?

(iii) Do the conduct and dealings of the parties justify the grant of the same. In other words do equitable considerations favour the grant of the same.

The line of authorities on interim injunctions would amply demonstrate that, first and foremost thing that should be satisfied by an applicant seeking an interim injunction is: "has the applicant made out a prima-facie case?" That is, it must appear from the plaint that the probabilities are such that plaintiff is entitled to a judgement in his favour.

In other words the plaintiff must show that a legal right of his is being infringed and that he will probably succeed in establishing his rights. A prima facie case - does not mean a case which is proved to the hilt but a case which can be said to be established if the evidence which is led in

support of the same were believed and accepted. In the case of Martin Burn Ltd., v. R.N.Banerjee, (AIR) 1958 SC 79 at 85: the Supreme Court of India (Bhagwati, J) had opted to outline the ambit and scope of connotation "prima-facie" case as follows:-

> "A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. *While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."*

In ascertaining whether a plaintff was successful in establishing a *prima facie* case the pronouncement by Dalton, J. (at page 34) in the case of Jinadasa vs. Weerasinghe (31 NLR 33) would lend assistance. Per Dalton, J., whilst adopting the language of Cotton L.J. in Preston Vs. Luck (Supra) (1884) 24 CH.497:

> " In such a matter court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that the plaintiff are entitled to relief."

In this regard it would also be pertinent to consider the decision in F.D.Bandaranaike vs. State Film Corporation (1981 2 SLR 287) wherein the following principle of law was enunciated with regard to the sequential tests that should be applied in deciding whether or not to grant an interim injunction, namely:

- 'has the plaintiff made out a strong *prima facie* case of infringement or imminent infringement of a legal right to which he has title, that is, that there is a question to be tried in relation to his legal rights and that the probabilities are that he will win.
- in whose favour is the balance of convenience,

- as the injunction is an equitable relief granted in the discretion of the Court do the conduct and dealings of the parties justify grant of the injunction.'

Further in the case of Gulam Hussain vs. Cohen (1995 2 SLR) per S.N.Silva,J. (P/CA), (as then he was) at page 370:

> "The matters to be considered in granting an interim injunction have been crystallized in several judgments of this Court and of Supreme Court. In the case of Bandaranaike vs. The State Film Corporation Soza J., summarized these matters as follows:
>
> In Sri Lanka we start off with a *prima facie* case that is, the applicant for an interim injunction must show that there is a serious matter in relation to his legal rights, to be tried at the hearing and that he has a good chance of winning. It is not necessary that the Plaintiff should be certain to win. It is sufficient if the probabilities are he will win."

When considering whether an applicant for an interim injunction has passed the test of establishing a prima facie case, the Court should not embark upon a detailed and full investigation of the merits of the parties at this stage. But, it would suffice if the applicant could establish that probabilities are that he will win. In this regard assistance could also be derived from the decision in Dissanayake vs Agricultural and Industrial Corporation 1962 - 64NLR 283. Per H.N.G. Fernando J., (as he then was) in the above case at page 285:-

> " The proper question for decision upon an application for an interim injunction is 'whether there is a serious matter to be tried at the hearing' (Jinadasa vs.Weerasinghe[1]). If it appears from the pleadings already filed that such a matter does exist, the further question is whether the circumstances are such that a decree which may ultimately be entered in favour of the party seeking the injunction would be nugatory or ineffective if the injunction is not issued."

Perusal of the Additional District Judge's Order (P18) reveals that his conclusion was mainly based on the footing that it had been revealed even at the inquiry before the Rent Board that there had been no evidence even in 2004 to establish that the business was not carried on by the 1st defendant or any one on her behalf. By the document marked as A12 (which is same as P4) i.e. the order of the Rent Board of Colombo in application No. 27454, the applicant namely - M.N.Kariyawasam (present 1stdefendant) was issued a Tenancy Certificate bearing No.5753. The appeal preferred against this to the Rent Control Board of Review also had been dismissed as per P9. On the material that had been available the conclusion of the District Court is not erroneous. The subject matter appears to be the same and in my view the learned District Judge could not have arrived upon a finding different to that.

. Further it is to be observed that as per the Tenancy Certificate (p4) issued by the Rent Board, the premises were No.19 in its entirety. Thus it becomes amply clear that the tenant of premises No.19 was the 1st defendant. But 2nd and 3rd defendants who had come into possession of portions of the said premises bearing No.19 had disputed plaintiff's rights to the premises and further the 1st defendant does not appear to have offered any explanation at all as to how the 2nd and 3rd defenants came into possession of the premises of which 1st defendant was the sole tenant. In the above backdrop the conclusion of the learned District Judge to the effect that the 1st to 3rd defenants all were in unlawful and wrongful possession of the subject matter in violation of the provisions of the Rent Act appears to be correct.

Once the Applicant has established the existence of the *prima facie* case, then only the balance of conveneince has to be considered. Per Soza,J. In F.D.Bandaranayake vs. The State Film Corporation at p303 - “If a prima facie case has been made out we go on and consider where the balance of convenience lies”. In other words Court will have to weigh the comparative mischief and/or hardship which is likely to be caused to the applicant by refusal of the injunciton and whether it would be greater than the mischief which is likely to be caused to the opposite party by granting the same. Undoubtedly granting of interim injunctions is at the discretion of the Court. It being a discretionary remedy when granting or refusing same, discretion has to be exercised reasonably, judiciously and more particularly, on sound legal principles after weighing the conflicting probabilities of both parties. If the Court is of the opnion that the mischief which

would likely to be caused to the applicant by refusing the injunction is greater than the loss that is likely to be suffered by the opposite party in granting the same, the inevitable conclusion of the Court has to be that balance of convenience favours the applicant. Then the Court should proceed to grant the interim injunction. An examination of facts and circumstances in the case at hand would amply demonstrate that when the defendants are in wrongful possession violative of the provisions of the Rent Act, in the event of refusal of the injunction, the damage the plaintiff would suffer would be greater than the damage/mischief if any, that would be suffered by the defendants, in the event of granting the injunction. Thus balance of conveneice in this instance favours the grant of interim injunctions.

What arises for consideration next is, 'do the conduct and dealings of the parties justify the grant of the interim injunction?' In other words do equitable considerations favour the issuance of the injunction. Having considered the facts and circumstances of this case and the analysis of the learned District Judge I am inclined to take the view that conduct and dealings of the parties justify the grant of the interim injunctions.

Further it is observed that both the District Court and the Civil Appeal High Court had laid stress on the fact that when a tenant or a lessee becomes an unlawful possessor, he cannot be allowed to obtain the benefit of such wrongdoings. The learned High Court Judges too had relied on the principles of law enunciated in the two decisions , viz – Seelawathie Mellawa v. Millie Keerthiratna and Subramaniam vs Shabdeen. In the case of Seelawathie Mellawa V Millie . Keerthiratne 1982 1SLR - 1 SLR 384 it was observed by Victor Perera, J. (Wanasundera, J. and Wimalaratne, J. Agreeing) at P389 that :

> "An injunction is the normal way of stopping a wrongdoer from obtaining the benefit of such wrongdoing to the detriment of the aggrieved party"
>
> Further at page 391 – per Victor Perera, J. ;
>
> > "..... However , the District Judge had addressed his mind to the underlying principle that if a person in unlawful possession could not be ejected pending trial, he could still be restrained from taking any benefits arising out of such wrongful possession. Otherwise the Court would be a party to the preserving for the defendant-appellant a position of advantage

brought about by her own unlawful or wrongful conduct".

In the case of Subramaniam vs. Shabdeen (1984)1 Sri L R 48 also it was held as follows:

> "The plaintiff had established a strong prima facie case to his entitlement to carry on the business and the violation of his rights. It would not be just to confine the plaintiff to his remedy in damages. An interim injuction must be granted to stop the wrongdoer from obtaining the benefits arising from his own wrongful conduct. The application to dissolve the injunction therefore could not succeed".

Further at pg: 56 0f the same judgement Thambiah,J has observed that:-

> " There is this further principle that an injuctuion would issue to stop a wrongdoer from obtaining benefits arising out of his wrongful conduct.If a person in unlawful possession could not be ejected pending trial, he could still be restrained from taking any benefits arising out of such wronfgul possession, otherwise the Court would be a party to the preserving for such person a position of advantage brought about by his own unlawful or wrongful conduct (Victor Perera , J. In seelawathie Mallawa v. Millie Keerthiratne (5).

In the case at hand too when the defendants appear to be in wrongful possession of the subject matter they cannot be allowed to obtain the benefits of their wrong doings. The nature of the interim injunction sought by sub paragraph (c) of the prayer to the plaint is to restrain the defendants from obtaining any benefits from their wrongdoings. Therefore the District Judge was correct in granting the said injunction.

It is needless to stress the importance of the need to preserve status-quo. The primary purpose of granting intreim injunctions is to preserve the status quo of the subject matter in dispute until legal rights and conflicting claims of the parties are adjudicated or decided upon. The underlying object of granting temporary injunctions is to maintain and preserve *status quo* at

the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is more in the nature of protective relief granted in favour of a party to prevent future possible injury.

Learned High Court Judges had based their conclusion on cogent reasons and had proceeded to refuse leave to appeal whilst affirming the District Judge's fidings. This appears to be correct and I see no reason to interfere with the same.

In view of the foregoing analysis I proceed to answer both questions of law on which leave to appeal was granted in the negative and this appeal is hereby dismissed. However no order is made with regard to costs of this appeal.

Judge of the Supreme Court

Saleem Marsoof P C, J.

I agree.

Judge of the Supreme Court.

Sathyaa Hettige PC, J.

I agree.

Judge of the Supreme Court.