

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum* under
and in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII/0061/2024

DC Mahara

Case No: RP 16/2024

Buddini Chintha Wickrama Surendra
No. 121, Yashodara Mawatha
Wewalduwa Road, Dalugama,
Kelaniya

Plaintiff

VS

Katagodage Dona Vijitha Mallika
No. 567/4, Kandy Road,
Ranmuthugala, Kadawatha.

Defendant

AND NOW BETWEEN

Katagodage Dona Vijitha Mallika
No. 567/4, Kandy Road,
Ranmuthugala, Kadawatha

Defendant-Petitioner

VS

Buddini Chintha Wickrama Surendra
No. 121, Yashodara Mawatha
Wewalduwa Road, Dalugama,
Kelaniya

Plaintiff-Respondent

Before :

R. Gurusinghe J

&

M.C.B.S. Morais J

Counsel : Ruwantha Cooray
for the Defendant-Petitioner

Kapila Liyanagamage instructed by
K. Danuka Lakmal
For the Plaintiff-Respondent

Supported on : 04-12-2024

Decided on: 27-02-2025

R. Gurusinghe

The plaintiff-respondent (hereinafter referred to as the respondent) filed an action before the District Court of Mahara, in terms of the provisions of Recovery of Possession of Premises Given on Lease Act No. 1 of 2023 (hereinafter referred to as the Act) to evict the defendant-petitioner and all those holding under her and to recover all arrears of lease rental, liquidated damages and costs.

The plaintiff-respondent filed documents that were necessary for the District Judge to satisfy and issue decree *nisi*. The Learned District Judge of Mahara entered the decree *nisi* as prayed for the plaintiff-respondent except for the liquidated damages. The decree *nisi* was served on the defendant-petitioner (hereinafter sometimes referred to as the petitioner), and the petitioner appeared before the District Court, and the court ordered her to show cause as to why the decree *nisi* should not be made absolute.

The defendant-petitioner, without filing show cause before the District Court, filed this application for *Restitutio-in-Integrum* before this court in terms of Article 138 of the Constitution on 07-05-2025, seeking to set aside the order of Learned District Judge to issue the *decree nisi* as prayed for by the respondent.

In her petition, the petitioner took up the following positions to support the application.

- a. The said order is contrary to law;

- b. Learned District Judge has failed to take cognizance of the fact that the termination of the lease agreement is bad in law;
- c. Learned District Judge has failed to consider the provisions of the Recovery of Possession of Premises given on Lease Act No. 21 of 2023;
- d. Learned District Judge has failed to understand that the Respondent is not entitled to invoke the provisions of Recovery of Possession of Premises given on Lease Act No. 21 of 2023;
- e. Learned District Judge has erred in law and in fact in failing to determine that the Respondent has not established a prima facie case for the issuance of Order *nisi*;
- f. Learned District Judge has erred in law in failing to establish that the Respondent is not entitled to invoke Section 3 of Recovery of Possession of Premises given on Lease Act No. 21 of 2023;
- g. Learned District Judge has erred in law in failing to take cognizance of the fact that the Respondent has failed to prove the arrears of lease rental.

The petitioner further pleaded that, in terms of the Lease Agreement bearing no. 3326 marked ¶4, the petitioner is entitled to remain in the premises until 31-06-2025. The petitioner further took up the position that the computation of lease rentals is erroneous, and the respondent has failed to annex a statement of accounts to depict the sums due, if any.

The petitioner took up the position that the order of the Learned District Judge dated 25-03-2024 is contrary to law. However, the petitioner failed to demonstrate as to why he had taken up such a position. Although the petitioner took up the position that the termination of the lease agreement is bad in law, the petitioner has failed to demonstrate as to why such termination of the agreement was bad in law. In terms of section 3(b) of the Act, a lessor is entitled to terminate the lease agreement prior to the expiry of the period of the lease agreement due to a breach by the lessee of any of the terms, conditions, covenants, obligations, or duties set out in the agreement. In this matter plaintiff-respondent pleaded in the District Court that the defendant-petitioner was in arrears of lease rentals in aggregate Rs. 3,680,000.00 up to the date of termination of the agreement. The defendant-petitioner could have refuted that claim of the respondent in the District Court by producing the necessary documents. The respondent annexed two Cheque Return notifications dated 25/08/2023 and 27/09/2023, which

show that two Cheques amounting to Rs.660 000.00 and Rs.1 700,000.00, respectively, issued by the petitioner for payment of lease rentals have been dishonoured. In those circumstances, the petitioner's claim that the termination of the lease agreement was bad in law is not acceptable.

The petitioner stated that the respondent has failed to annex the statement of accounts to depict the sums due. However, in paragraph 09 of the plaint, the respondent gave the necessary details of the arrears of lease rentals. Thereby the petitioner was given sufficient information with regard to the arrears of lease rentals. Especially, in paragraph 09(ආ) of the plaint alleged that for the months of June, July, August, September, October and November in the year 2023, the petitioner had failed or neglected to pay the monthly rental of Rs.330,000/=, which is Rs.1,980,000.00, in total for 6 months.

The paragraph 09(ආ) of the plaint is as follows;

(ආ) 2023 ජුනි, ජූලි, අගෝස්තු, සැප්තැම්බර්, ඔක්තෝබර්, සහ නොවැම්බර් මස සඳහා විත්තිකාරිය විසින් පැමිණිලිකාරිය වෙත ගෙවිය යුතු රු: 330,000/- බැගින් වන මාසික බදු වාරික මුදලේ එකතුව වන රු: 1,980,000/- ක මුදල ගෙවීමද, විත්තිකාරිය විසින් පැහැර හැර සහ නොසලකා හැර හිඟ තබන ලදී.

The above paragraph is plain and could have been answered without any statement of account. In her petition, the petitioner has not specifically denied paragraph 09 of the plaint or produced any document or receipt to counter the above position taken by the plaintiff-respondent.

The petitioner merely states that the respondent is not entitled to invoke the provisions of the Recovery of Possession of Premises Given on Lease Act No. 1 of 2023. The Learned District Judge observed that the Lease Agreement produced before court was properly executed, and the stamp fees were duly paid as required by law. The petitioner also admits the Lease Agreement. The petitioner has not replied to the letter of termination. By the same letter the respondent demanded for arrears of rentals for which the petitioner did not respond.

The petitioner failed to produce documents to show that she had been paying the monthly rental as agreed. In terms of the lease agreement, if the lessee fails to pay monthly lease rental for two months or more, the lessor is entitled to terminate the lease agreement by giving fourteen days' notice to the lessee. In terms of the provisions contained in Section 12 of the Act, the petitioner should have sought leave to appear and show cause in the District

Court. Although, the petitioner appeared before the District Court she had not filed show cause as to why the decree nisi should not be made absolute.

Counsel for the respondent pointed out that the respondent had acted reasonably. As per the Lease Agreement, the monthly rental from 01st of June 2020 to 31st May 2022 was Rs. 300,000/- for a month. However, the respondent agreed to reduce the monthly rental to Rs. 150,000/- for the months during the periods of curfew or travel restrictions due to the COVID-19 pandemic. Furthermore, during the time of the economic crisis, though there were no such travel restrictions or curfews, the respondent agreed to reduce the monthly rental to Rs. 200,000/-.

The petitioner has obtained interim orders without giving notice to the respondent and without furnishing any security, staying the proceedings in the District Court.

The petitioner should have contested the validity of the decree *nisi* before the District Court in terms of Section 12 of the Act. Without challenging the decree *nisi* before the District Court, the petitioner cannot seek to set aside the decree *nisi* before this court. *Restitutio in Integrum* is an extraordinary relief granted at the discretion of the court to a petitioner whose substantial rights are prejudiced or occasioned a failure of justice.

In the above circumstances we decide that this is not a fit case to use the discretion of this court to grant relief to the petitioner. The application of the petitioner is dismissed.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.