(19)

IN THE SEYCHELLES COURT OF APPEAL

SUPREME COURT LIBRARY SEYCHELLES

HOTEL DES SEYCHELLES APPELLANT

Versus

FRANCOISE MICHEL RESPONDENT

Civil Appeal No: 19 of 1998

[Before: Goburdhun, P., Ayoola & Venchard JJ.A]

.....

Mr. S. Rouillon for the Appellant
Mr. P. Pardiwalla for the Respondent

JUDGMENT OF THE COURT

(Delivered by Ayoola J.A)

An appeal and a cross appeal are taken from the decision of the Supreme Court, (Bwana, J.) made on 24th March 1998 in an action instituted by the Hotel Des Seychelles ("the appellant") against Mrs. Francoise Michel ("the respondent"). By his plaint the appellant prayed the Supreme Court (a) to declare that the lease agreement in respect of Title H2652 has been lawfully forfeited and cancelled; (b) to order the formal ejectment of he Defendant from Title H2652; (c) to order the Registrar General to make the necessary entry in the Lands Registry to reflect the forfeited and cancellation of the lease agreement; (d) to declare that pursuant to Clause 7(8) of the lease the construction on Title now belongs to the Plaintiff.

By a written lease agreement dated 15th November, 1990 made with the Government of Seychelles the respondent leased Title H2652 for a term of 30 years from the 15th day of November, 1990. The agreement stated that the lease was –

> "at the rent of R6,000 per annum for the first year of the term granted and at the rent of R10,000/- (Rupees Ten Thousand) for the next 3

> years of the term granted payable half yearly in advance on the 1st April and the 1st October in each year ..."

The respondent constructed a restaurant on the leased property pursuant to the lease agreement. On 30th September 1994 Title H2652 was transferred by the Government of Seychelles to the appellant from which it had been compulsorily acquired in the first place. The instrument of transfer was dated 30th September 1994. By that instrument the appellant undertook to honour the leasehold interest which at the date of the transfer encumbered the land comprised inter alia in Title No. H2652. It is common ground that by a letter dated 7th February 1995, the appellant wrote to the respondent informing her of the change of ownership and as a consequence of this and in acknowledgement thereof the respondent paid R1200 on the 16th February 1995 and R1200 on the 23rd March, 1995. It is of interest to note that the letter of 7th February 1995 contained in part the information that the lease arrangement which the respondent made with the Government "shall continue on the same terms and conditions with my clients as existed between you and the Government" subject to stated changes in regard to the bank account to which rents should be paid.

By his plaint dated 30th January , 1996, the appellant commenced the action from which this appeal arose against the respondent. As pleaded in the amended plaint dated 14th March 1996 the basis of the appellant's claim was that as at 1st October 1995 the respondent had paid R3600 up to 1st October 1995 and had been "several months in arrears with her rent payments in the sum of R6400 on that date" and that despite "a notice as per clause 9(i) of the lease agreement served by a court usher on the defendant on the 9th day of November 1995" the respondent was still several months in arrears with her rent payment in the sum of R6400. The appellant alleged a forfeiture and cancellation of the lease which the respondent rejected. Hence, the action. The appellant contended that the lease has been lawfully forfeited and cancelled. By her statement of defence the respondent averred that rent for the next 3 years of the lease was R10,000 payable half yearly in advance and that under the lease

agreement she was under "obligation to pay R1666.67c on 1st April 1995 and R1666.67c on 1st October, 1995." She claimed that R3600 which she paid covered the amounts payable by 1st October 1995 under the agreement. She admitted receiving the notice purportedly issued pursuant to clause 9(1) of the lease agreement as averred in paragraph 11 of the plaint but denied that she was in arrears with the payment of her rent under the agreement.

Clause 9(i) of the lease agreement provided that:

> "If the rent payable by the lessee under the terms of this lease or any part thereof shall at any time be in arrears and unpaid for more than one calendar month after the same shall have become due (whether formally or legally demanded or not) and shall not be paid within one week after the same shall have been demanded by a written notice requiring payment of the same served upon the lessee by an usher of the court or so served by sending it by prepaid registered post to the lessee at its last known postal address .... then this lease shall thereupon become ipso facto forfeited and cancelled ..."

Having regard to the terms of clause 9(i) the threshold and, indeed, the dominant question at the trial was whether "the rent payable by the lessee under the terms of this lease or any part thereof" was in arrears and unpaid. To resolve that question the learned judge had first to resolve an apparent ambiguity in the lease agreement in regard to the rent reservation clause. As noted by the judge the respondent claimed that the words "at the rent of R10,000... for the next three years of the term" meant that rent payable for the whole period of 3 years was R10,000 while the appellant interpreted the words to mean R10,000 per annum. The judge interpreted the words in contention as meaning that the lessee shall continue to pay Rs5000 every six months for three years. In coming to this conclusion he relied on what he described as "the spirit of the agreement" and the