1984 December 6

[TRIANTAFYLLIDES, P., MALACHTOS, SAVVIDES, JJ.]

PANAYIOTIS PAMBORIDES,

*Appellant-Plaintiff*,

*v.*

NAKIS G. MICHAELIDES,

*Respondent-Defendant*.

(*Civil Appeal No.* 5885).

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*Consent judgment—Suspension of execution of—Contractual tenancy—Termination of—Action for possession—Consent judgment with order for delivery of the premises by a certain date—Order suspending execution of the order for delivery made at the instance of the tenant—Wrongly made because such suspension amounted in effect to a variation of the settlement in the action on which the judgment was issued and by which the period and the conditions as to stay of execution had been agreed by the appellant and embodied in the judgment.*

*Landlord and tenant—Contractual tenancy—Eviction order made by consent—Operation of, cannot be suspended—But even if there is discretion to grant a stay of execution the question of reasonableness in susperding the operation of an eviction order had to be considered.*

The appellant was the owner of a flat at Nicosia which was let to the respondent in July, 1975 but was not a building falling within the protection of the Rent Control Laws. The appellant terminated the said tenancy and demanded vacant possession of the premises on or before the end of August, 1977. The tenant did not give possession and so the appellant brought an action for possession, arrears of rent, expenses for common use facilities and mesne profits. When the case came up for hearing before the Court on the 14th February, 1978 the parties reached an agreement whereby the respondent consented to an order for giving up possession of the premises to take effect on or before the 31st July 1978. Furthermore, he consented

to pay an increased rent for the period as from 1st March, 1978 until 31st July, 1978 when the respondent was bound to deliver vacant possession of the premises in accordance with the agreement reached between the parties On the basis of the agreement reached between the parties and the consent of the respondent to submit to judgment accordingly, the Court proceeded and gave a consent judgment with an order for delivery of the premises in accordance with the terms of the agreement reached between the parties

Upon an application by the tenant the Court granted an order suspending the execution of the order of possession till the 31st December 1978 having held that it had power so to do by virtue of the provisions of section 47 of the Courts of Justice Law, 1960 (Law 14/60) notwithstanding that the parties had agreed to an order for possession

Upon appeal by the landlord the sole issue for consideration was whether the trial Court could vary the terms of a judgment agreed upon between the parties by extending the time already agreed between the parties for stay of execution and which was one of the terms of the settlement which was embodied in the judgment

*Held*, that the trial Court was wrong in suspending the execution of an order made by consent, as such suspension amounted in effect to a variation of the settlement in the action on which the judgment was issued and by which the period and the conditions as to stay of execution had been agreed by the appellant and embodied in the judgment, and that by granting such application the Court "would be assuming not only to vary the order or judgment, but to set aside the bargain which the parties had voluntarily entered into for valuable consideration" (see *Wellesley v White* [1921] 2 K B 209), accordingly the appeal must be allowed

*Held*, further, that even assuming that the Court had a discretion to grant the application, such discretion was wrongly exercised in the present case because the tenancy being a contractual one was duly terminated and on termination the tenant had to deliver vacant possession of the premises and, also, because on the facts of this case it was not reasonable to postpone the operation of the eviction order

*Appeal allowed*

Cases referred to:

*Wellesley* v. *White* [1921] 2 K.B. 209; 90 L.J.K.B. 926;

*Australasian Automatic Weighing Machine Co.* v. *Walker* (1981) W.N. 170;

*Wilding* v. *Sanderson*, 66 L.J. Ch. 467 at p. 469;

*Kinch* v. *Walcott* [1929] All E.R. Rep. 720;

*Mousoulides Trading Co. and Others* v. *Kypronics of Nicosia* (1971) 1 C.L.R. 209 at p. 210;

*Eleftheriou* v. *Ipsou* (1979) 1 C.L.R. 632 at pp. 640-641;

*Sheffield Corporation* v. *Luxford* [1929] All E.R. Rep. 581; [1929] 2 K.B. 180; 98 L.J.K.B. 512;

*Jones* v. *Savery* [1951] 1 All E.R. 820 at pp. 821, 822.

**Appeal.**

Appeal by plaintiff against the judgment of the District Court of Nicosia (Hadjiconstantinou, S.D.J.) dated the 12th October, 1978 (Action No. 4094/77) whereby the execution of an order for possession was suspended until the 31st December, 1978.

*L. Papaphilippou*, for the appellant.

*E. Odysseos* with *M. Vassiliou*, for respondent.

*Cur. adv. vult.*

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice L. Savvides.

SAVVIDES J.: This is an appeal against the decision of the District Court of Nicosia, suspending the execution of an order for possession given in the above action, till the 31st December, 1978.

The facts of the case are briefly as follows: The appellant is the owner of a flat at Dighenis Akritas No. 47, Nicosia erected and for the first time let to the respondent in July, 1975. Under the provisions of the existing legislation at the time, it was not a building falling within the protection of the Rent Control Laws. The appellant terminated the said tenancy and demanded

vacant possession of the premises on or before the end of August, 1977. The tenant did not give possession and so the appellant brought Action No. 4094/77 for possession, arrears of rent, expenses for common use facilities and mean profits. When the case came up for hearing before the Court on 14th February, 1978, the parties reached an agreement whereby the respondent consented to an order for giving up possession of the premises to take effect on or before the 31st July, 1978. Furthermore, he consented to pay an increased rent for the period as from 1st March, 1978 until 31st July, 1978 when the respondent was bound to deliver vacant possession of the premises, in accordance with the agreement reached between the parties. On the basis of the agreement reached between the parties and the consent of the respondent to submit to judgment accordingly, the Court proceeded and gave a consent judgment with an order for delivery of the premises in accordance with the terms of the agreement reached between the parties. Four days before the date on which the respondent was bound to deliver vacant possession of the premises in accordance with the order made by the Court, he filed an ex-parte application praying for an order suspending the execution of the order for possession for a period of three months. The Court granted an interim stay until the 28th August, 1978, when the interim order was returnable. On the 28th August, 1978, the interim order had not until then been served on the appellant, it was refixed on the 8th September, 1978. On that date the ex-parte application was withdrawn and was dismissed by the Court, as in the meantime on the 7th September, 1978, after the expiry of the date in respect of which stay of execution was granted according to the terms of the judgment, the tenant filed two new applications, one ex-parte and one by summons. In his ex-parte application he prayed for an order suspending the execution of the order for possession until final determination of the application made by summons and by which he was praying for an order of the Court suspending the execution of the order for possession until the 31st December, 1978. On the basis of the ex-parte application an interim order was granted suspending execution pending the final determination of the application by summons. The application by summons came up for hearing before the Court on the 30th September, 1978 and directions were made by the Court on that day for the filing of written addresses by the 3rd October, 1978. The judgment of the Court was deli-

vered on the 12th October, 1978, whereby the order applied for was granted suspending the execution of the order for possession till the 31st December, 1978.

The trial Judge in dealing with a submission of counsel for appellant that the Court had no jurisdiction or power to suspend the operation of an order of possession, has this to say in his judgment:

"In the present case the application is based on section 47 of the Courts of Justice Law 14/60 and on the inherent powers of the Court. Section 47 of Law 14/60 gives the Court power, if it shall so think fit, at any stage and whether an order for execution has been issued or not, to direct that execution of such judgment or order be suspended for such time and on such terms or otherwise as the Court may deem fit. In my judgment this section brings this case in line with the English case of *ROSSITER* v. *LANGLAY* [1925] All E.R. 567, where it was held that an order for possession has been made as a result of an agreement between the landlord and the tenant does not deprive a county Court judge of the discretion with which he has been invested by s.5(2) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as to varying the order by postponing the date for possession. A comparison of the wording of s.5(2) of the above English Act and of s.47 of our Law 14/60, shows that the two sections are almost identical, and both give the Court an absolute and unfettered discretion, at any stage up to the last moment, to stay and suspend the execution of an order for such period and on such terms as the Court thinks fit. The facts in ROSSITER case (supra) are very similar with those of the present case, and, for this reason, I consider it useful to cite here a material part of the judgment of SALTER, J., delivering the decision of the King's Bench Division in that case at pp. 568, 569:-

'Sub-section (2) provides that, where an order for possession has been made the tenant can, at any time up to the last moment, go to the county Court judge and ask him to exercise his discretion----------

The question is whether this Court has any warrant for restricting these words by saying that an order made by

consent is not within this section and cannot be varied. In the case of an order made by consent, the tenant might say to the landlord:

"I might be able to put difficulties in your way, but if you will let the order stand over for a certain time I will not do". The landlord in the present case said that he would not ask for costs and could leave the tenant in possession till September, 1924. If the matter were without authority, I should have some doubt, but there are two cases that should be considered. The first is *Barton* v. *Fincham*. In that case a tenant had agreed, in consideration of a money payment by his landlord, to yield up possession by a certain date, but he refused to give up possession when the time arrived

The case is not by any means conclusive of the present one, but it forms a very valuable guide. All that it decided is that parties to an agreement made after the Act came into force cannot rely on that agreement to increase the powers of the county Court judge under s. 5(1)
But nor can they withdraw from him the powers granted under s. 5(2)
The county Court judge was wrong in refusing to consider the application made by the tenant. The appeal must be allowed and the case must go back to him to exercise his discretion in the matter ".

The trial Judge then came to the conclusion that "similarly, in the present case, it cannot be said that because the parties, had agreed to an order for possession they can withdraw from the Court the power granted under section 47 of Law 14/60".

Then the trial Court in answering the submission of counsel for the appellant that an order made by consent cannot be extended or altered without consent and that such an order is binding until set aside and acts as an estoppel found as follows:

(a) that the parties to an agreement cannot withdraw from the Court jurisdiction granted under section 47 of Law 14/60.

(b) The application under consideration was not an application seeking to set aside a consent judgment or

order, but an application whereby the tenant asks the Court to exercise its jurisdiction under section 47 of Law 14/60.

As a result of his findings, the trial Court allowed the application and made an order postponing the operation of the order of possession until the 31st day of December, 1978.

Counsel for appellant in arguing his appeal against such order contended that the trial Judge was wrong in finding that he had jurisdiction or discretion to suspend the operation of an order of possession and that he wrongly relied on the case of *Rossiter* v. *Langley*. He further submitted that the finding of the trial Judge that a consent order can be extended or altered without consent was wrong, and that section 47 of Law 14/60 is not applicable in the present case. In the alternative, he contended, assuming that the Court had such discretion, its discretion was exercised wrongly in that the Court failed to review all relevant facts and/or that the Court gave undue consideration to immaterial facts whereas material facts were disregarded. Counsel further added that the trial Judge in exercising his discretion has been influenced by considerations which ought not to have weighed so much and he failed to give due weight to other considerations which would have weighed against the granting of the application. In any event, counsel submitted, the trial Judge was wrong in not imposing terms or conditions on the tenant in postponing the operation of the order for possession and/or not giving any reasons for not imposing such terms or conditions. He finally concluded that the trial Judge was wrong in not awarding costs to the appellant who was not to blame for the inability of the respondent to comply with the eviction order.

The first issue we are going to consider is whether the trial Court could vary the terms of a judgment, agreed upon between the parties, by extending the time already agreed between the parties for stay of execution and which was one of the terms of the settlement which was embodied in the judgment.

The trial Judge in reaching his decision based his reasoning on the power of the Court to grant stay of execution of a judgment under section 47 of the Court of Justice Law, 1960 (Law 14/60) and, in exercising his discretion, he relied all along on

the application of a similar provision under section 5(2) of the English Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as applied in the case of *Rossiter* v. *Langley* (supra) the facts of which he treated as "very similar with those of the present case" and that in the light of such decision "the parties to an agreement cannot withdraw from the Court jurisdiction granted under section 47 of Law 14/60".

We find ourselves unable to agree with the trial Judge that the facts in *Rossiter* case were "very similar" to the present case. The *Rossiter* case was a case under the provisions of the English Increase of Rent etc. (Restriction) Act, 1920 and the tenant was a statutory tenant protected by the Rent Act. The facts of the case were briefly as follows:

The appellant was the tenant of a shop and dwelling house at Bristol, at a rent of 17s. 4d. per week. The respondent, the landlord, gave her notice to quit in August, 1923; she did not give up possession, but remained on as a statutory tenant. Subsequently, the landlord brought an action in the county Court for possession of the premises, but on Dec. 21, 1923, an agreement was signed by the parties, by which the tenant consented to an order for the giving up of the possession of the premises to the landlord, to take effect on Sept. 29, 1924. When the landlord's claim was heard the county court judge entered judgment for the landlord in accordance with the terms of the agreement. On Oct. 1, 1924, the tenant made an application to the county Court to stay and suspend execution on the order. The county Court judge dismissed the application without considering the merits of the case, because he held that, the original order having been made by consent, s. 5(2) of the Rent Act, 1920 (as substituted), did not apply so as to confer on him jurisdiction to vary the order. The tenant appealed.

The King's Bench Division in allowing the appeal held that the fact that an order for possession has been made as a result of an agreement between landlord and tenant does not deprive a county Court judge of the discretion with which he has been invested by section 5(2) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as to varying the order by postponing the date for possession, and that the county Court

judge was wrong in refusing to consider the application made by the tenant.

In the said judgment, however, the distinction is drawn between an agreement concluded in a case falling under the provisions of the Rent Act, 1920 and an agreement concluded before the Act came into operation. Salter J. at p. 569 had this to say in this respect:

> "With regard to *Wellesley* v. *White* the present judgment does not necessarily differ from that of the divisional Court in that case. There the judgment was made before the Act of 1920 came into operation, and that fact probably distinguishes the case from the present one".

*Wellesley* v. *White* [1921] 2 K.B. 209, 90 L.J. K.B. 926 was a case of recovery of possession of premises prior to the enactment of the Rent Act, 1920. The defendant, a miller, was the tenant and had been the tenant for eleven years of certain premises, on a year to year tenancy. About July, 1919, the freehold of the whole property was sold to the plaintiff, who gave the defendant notice to quit at Christmas, 1919. The defendant refused to give up possession, and the plaintiff brought an action in the County Court to recover possession. The action came on for hearing before the County Court judge on May 31, 1920, at which date the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, had not yet passed. A compromise was arranged between the parties, and it was agreed that the defendant should give up possession of the field forthwith, and of the dwelling house, mill, granary, buildings and garden on September 29, 1920, and that the rent should be apportioned accordingly. The County Court Judge made an order, by the consent of the parties embodying the terms of the compromise which had been arrived at between them. On July 2, 1920, the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, was passed. The defendant subsequently applied to the County Court Judge, under section 5, sub-section 3 of the Act, to rescind the order made on May 31, the ground of the application being that, since the making of that order, he had become entitled to the protection of the Act of 1920. The County Court Judge dismissed the application, and the defendant appealed.

The appeal was dismissed by the King's Bench Division on the ground that the case was not one to which sub-section 3 of section 5 of the Act of 1920 applied. Lush, J. had this to say (p. 927, 90 L.J.K.B.):

"It appears to me that the power to review a previous order, which the sub-section gives to the Court, is only given in respect of an order which the Court, after consideration of the circumstances and in the exercise of its judicial discretion, has made in invitum as regards the tenant. To say that the sub-section gives the Court power to review an order made by consent of the parties would be to say in effect that the sub-section empowers the Court to alter a compromise which the parties themselves have agreed to. The sub-section implies or presupposes that the judge has exercised his own mind in the making of the order which he is asked to rescind or vary.

In the present case the Judge was asked to review an order which was not in substance an order which had been made by him, or as to which he had ever had occasion to inquire whether it was just and fitting that it should be made. To all intents and purposes the order which he was asked to rescind was an order made by the parties themselves. That being so, I think that this case is not one to which the sub-section applies. Nor does this construction do any injustice to the defendant, because it cannot be contended that a person who has entered into a bargain to give up an advantage in consideration of obtaining some other benefit has any reason to expect that he will be relieved from his bargain by subsequent legislation. The Act of 1920, which has come into force since the consent order in question was made, enables a tenant, who has been turned out of his house against his will by an order or judgment of the County Court, to obtain relief; but in this case, the defendant, in effect, turned himself out. On the ground that the consent order in question is not an 'order' within section 5, sub-section 3 of the Act of 1920, I think that this appeal should be dismissed".

In the same case at p. 928, McCardis, J., had this to add:

"It cannot, I think, have been intended that the Judge should entertain an application under the sub-section in regard

to an order or judgment made by consent; for if he did so, he would be assuming not only to rescind or vary the order or judgment, but to set aside the bargain which the parties had voluntarily entered into for valuable consideration".

As to whether an order made by consent can be varied, North, J., in *Australasian Automatic Weighing Machine Co.* v. *Walker* (1891) W.N. 170, refused to make an order on the motion by the plaintiff to enlarge the time limited for the defendant's compliance with an order, on the ground that "an order made by consent could not be altered without consent". The order was made in chambers on the hearing of an application by the plaintiff, by consent and ordered that the defendant should, on or before the 31st day of August, 1891, transfer to the plaintiff company, or their nominee, certain shares in the company. The order was passed and entered, but it had not been complied with. It had not been served on the defendant. The motion was made on behalf of the plaintiff that the time limited by the order for the defendant to transfer the shares might be enlarged to the 2nd day of November, 1891, or four days after service of the order to be made on the motion.

As it was observed by Byrne, J. in *Wilding* v. *Sanderson* 77 L.J. Ch. 467, 469:

"A consent judgment or order is meant to be the formal result and expression of an agreement already arrived at between the parties to the proceedings embodied in an order of the Court.

He must, when once it has been completed, obey it, unless and until he can get it set aside in proceedings duly instituted by him".

The last paragraph of the above dictum as adopted by the Privy Council in *Kinch* v. *Walcott* [1929] All E.R. Rep. 720, 725 to which Lord Blanesburgh added that an order made by consent "stands unless and until it is discharged by mutual agreement or is set aside by another order of the Court;"

In *Mousoulides Trading Co. and others* v. *Kypronics of Nicosia* (1971) 1 C.L.R. 209 our Supreme Court in dismissing an appeal against the refusal of the District Court to stay execution of a judgment entered by consent on the basis of a settlement arrived

at between the parties had this to say (per Triantafyllides, P. at page 210):

> "The learned judges of the Court below, in exercising their relevant discretion, took the view that this was not a proper case in which to stay execution as applied for by the appellants; and we have not been persuaded that this is a case in which the exercise of such discretion should be interfered with: *If the relevant application of the appellants had been successful this would have amounted, in effect, to a variation of the agreement which was concluded between the parties in relation to the settlement of the action in which the judgment, of which the execution is sought to be stayed was given*; moreover, what followed after that settlement do not, in our opinion, constitute circumstances which should either have made the Court below grant the further stay of execution applied for or which call for our intervention in the matter in favour of the appellants". (The underlining is ours).

The above dictum was approved by the Supreme Court in the case of *Eleftheriou* v. *Ipsou* (1979) 1 C.L.R. 632 irrespective of the fact that the appeal against an order of the District Court staying execution of a consent judgment was dismissed as the Court found that in the circumstances of the case there was no departure from the terms of the consent judgment and that there was nothing in substance amounting to a variation of the settlement on which the consent judgment was based. Making reference to *Mousoulides* case Loizou, J., said (at pp. 640-641):

> "On the other hand, in the *Mousoulides* case this Court dismissed an appeal by the applicants-defendants against the ruling of the District Court of Nicosia whereby their application for stay of execution of a judgment which was given against them was dismissed, on the ground that if the application of the appellants for a stay of execution had been successful it would, in effect, have amounted to a variation of the agreement which was concluded between the parties in relation to the settlement of the action for which the judgment, of which the execution was sought to be stayed, was given.

The only assistance we can derive from the above cases is from the general principles involved, with which, with respect, we agree".

In the circumstances of the present case and bearing in mind the principles hereinabove explained we have reached the conclusion that the trial Court was wrong in suspending the execution of an order made by consent, as such suspension amounts in effect to a variation of the settlement in the action on which the judgment was issued and by which the period and the conditions as to stay of execution had been agreed by the appellant and embodied in the judgment. By granting such application the Court "would be assuming not only to vary the order or judgment, but to set aside the bargain which the parties had voluntarily entered into for valuable consideration" (per McCardie, J. in *Wellesley* v. *White* (supra).)

Even assuming that the Court had a discretion to grant the application, our conclusion would have been that such discretion was wrongly exercised in the present case.

The tenancy was a contractual one and therefore upon its termination, the tenant had to deliver vacant possession of the premises which consisted of a flat. The landlord gave notice dated 23rd July, 1977 terminating the tenancy as from 31st August 1977. The action for recovery of the premises was commenced on 13th September 1977 and came up for hearing on 14th February, 1978 when the settlement was concluded and in accordance with its terms stay of execution was granted till the 31st July, 1978. Therefore, as from the time the respondent came to know that the premises were required by the appelland he had a period of one year at his disposal to make arrangements to vacate the premises. Furthermore stay of execution had already been agreed by the parties for a period of nearly six months from the day when the eviction order was made and the appellant in consideration of an increased rent for the said period agreed to forego his claim for mean profits which according to the statement of claim was £18 per day. The trial Judge exercised his discretion relying on the facts of the *Rossiter* case and the principles emanating therefrom, which was as already explained a case of statutory tenancy whereas the premises in the present case were not protected by the Rent Control Laws and the tenancy being a contractual one was

duly terminated, and on termination the tenant had to deliver vacant possession of the premises. There was provision in our Rent Control Laws 1975–1980 (Laws 36/75 to 6/80), which were in force at the time when this case was dealt with by the trial Court, empowering the Court to grant stay of execution of an eviction order for a period of upto one year but such provision was applicable to statutory tenancies only and the stay could be granted at the time when the eviction order was made, by the Judge making such order.

In cases where a discretion to grant stay of execution exists the question of reasonableness in postponing the operation of an eviction order was considered by the Divisional Court in England in the case of *Sheffield Corporation* v. *Luxford* [1929] All E.R. Rep. 581; [1929] 2 K.B. 180; 98 L.J.K.B. 512, where after notice to quit had been given by the corporation to two of their weekly tenants, the County Court Judge in one instance refused to make any order and in the other instance he made an order for possession, but postponed its operation for twelve months and the landlord appealed to the Divisional Court. TALBOT, J., in delivering the judgment of the Court pointed out [1929] 2 K.B. 184):

> "On the information before us, the legal right of the plaintiffs, the landlords, was complete as soon as the notice to quit had expired, and the tenant's right to remain in occupation of this house had absolutely ceased".

The learned Judge referred then to the fact that at that time Parliament had clearly given the county Court a discretion in such a matter. He went on to say, however (ibid, 185):

> "It is, of course, to some extent a question of degree, but I think the period must not be more than is reasonably adjusted to the circumstances of the case, including the nature of the tenancy, the term (in this case a weekly term) and the object which I think the legislature must be taken to have had in this enactment, that is to say, to relieve the judge of the necessity of making an order for possession to be given then and there without further warning to the tenant. I rather hesitate to name any time for giving possession, and we do not give judgment fixing any definite time; but I think that some such period as four or five

weeks, in the absence of any altogether exceptional circumstances quite different from the facts here, would represent the outside limit of the postponement which under this power a judge would be justified in granting".

The above dictum was adopted in *Jones* v. *Savery* [1951] 1 All E.R. 820, (C.A.) by SOMERVELL, L.J., who had this to say (at p. 821):

"I will assume that in cases of this kind a county court judge and a High Court judge have a discretion similar to that indicated by TALBOT, J. It would seem that this discretion can be no greater where there is no statutory provision than where there was an express statutory provision. I am not seeking to lay down any period covering all cases. One can imagine, for instance, a large warehouse let on terms including a comparatively short notice to quit, and it may well be that that would be a relevant circumstance which the Court would take into account in deciding what limited postponement should be given. In the present case I am satisfied, having regard to the period when the notice to quit was given, to the solicitors' letters, and to the nature of the premises, that the learned judge misdirected himself in postponing the execution of the order for three months. The maximum period of postponement that he could properly have given would, in my view, have been a month, and the period must be reduced accordingly".

to which DENNING, L.J., added (at p. 822):

"It must always be remembered that in cases like the present the landlord, possibly, has a right at law to take possession. If, therefore, this horse had been taken out for exercise, the landlord had a perfect right to shut the stable door and then to take possession. It may be that he could enter the stable and lead the horse out and put it into a field and thus take possession. It would be a strange thing if by coming to the Courts his right to take possession should be cut down by a provision that he is not to exercise it for three months. I agree that the Courts have no power to limit the landlord's right in that way, and that the appeal should be allowed".

In the present case, as already explained, there was a stay of execution for nearly six months, ordered by the Court on the basis of the settlement reached between the parties which expired on 31st July, 1978. There was a further suspension of the eviction order till 8th September, 1978 granted by the Court on an ex parte application, pending the determination of an application by respondent filed on 27.7.1978 by which he was praying for an order suspending execution for three months. Such application was withdrawn on 8.9.1978 as no steps were taken for service of same and of the order provisionally suspending the eviction order.

Having found as above, we consider it unnecessary to deal with the other issues raised in this appeal.

In the result the appeal is allowed with costs in favour of the appellant, both in this appeal and in the Court below, and the order of the trial Court suspending the execution of the eviction order is hereby set aside.

*Appeal allowed.*