

(1982) 01 BOM CK 0044

Bombay High Court**Case No:** Special Civil Application No. 808 of 1978

Bansilal Shankar Gosavi

APPELLANT

Vs

Popatlal Dhondiram Katare

RESPONDENT

Date of Decision: Jan. 27, 1982**Acts Referred:**

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 10, 10A, 10AA, 10AAA, 12(2)

Citation: (1982) 1 BomCR 741**Hon'ble Judges:** R.A. Jahagirdar, J**Bench:** Single Bench**Advocate:** Ajit P. Shash, for the Appellant; S.B. Sukhtankar, for the Respondent

Judgement

R.A. Jahagirdar, J.

This petition under Article 227 of the Constitution arises out of proceedings instituted by the respondent-plaintiff for possession of the premises tenanted by the petitioner on several grounds. The premises which are in the possession of the petitioner as a tenant consists of one room and a verandah and will hereinafter be referred to as "the suit premises". They form part of the house bearing Municipal No. 652 at Kamala in Kamala Taluka of Solapur District. They were leased out to the petitioner on 17th August, 1964 on a monthly rent of Rs. 7.88. Subsequently, that is on or about 1st September, 1967, electric connection was provided to the suit premises. It has been found by the two courts below that it was agreed between the parties that the petitioner would pay Rs. 2 per month for the provision of this electric connection. It was the defendant's case that the petitioner was also liable to pay Rs. 3 per month as water charges.

2. The respondent served a notice u/s 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, hereinafter referred to as "the Bombay Rent Act", upon the petitioner informing him that he was in arrears of rent and permitted increases for a

period of more than six months. This notice which is dated 11th May, 1969 specifically mentions that the petitioner was liable to pay Rs. 7.88 per month towards the rent of the suit premises, Rs. 3 per month as water charges and Rs. 2 per month towards electricity charges from 1st September, 1967 to 6th February, 1969. It may be mentioned that subsequently electric supply was disconnected from the suit premises. The total amount of claim was Rs. 189. By a reply dated 16th May, 1969 the petitioner informed the respondent that the rent which the respondent was claiming per month included both water charges and electricity charges. Before the expiry of one month from the date of the notice, however, the petitioner did not send any amount in compliance with the requisition made upon him by the respondent u/s 12(2) of the Bombay Rent Act. However, on 19th June, 1969 and 17th November, 1969 a sum of Rs. 94.13 was sent in two instalments on the aforesaid dates. This amount was accepted by the respondent.

3. It may be stated at this stage that if, as it has been held by the two courts below that the water charges were not separately payable and if as it has been contended by Mr. Shah before me that the electricity charges did not amount to rent, then the amount of Rs. 94.13 which was sent by the petitioner and accepted by the respondent would have satisfied the claim towards the rent upto the end of November 1969. Therefore, a suit being regular Civil Suit No. 21 of 1970, which was filed by the respondent in the court of the Civil Judge (Junior Division) of Kamala would be a suit without a cause of action because before the said suit was filed arrears of rent upto the end of November 1969 were paid. Admittedly after November 1969 no further notice u/s 12(2) of the Bombay Rent Act was issued by the respondent to the petitioner. As I have mentioned above. Regular Civil Suit No. 21 of 1970 was filed by the respondent for possession of the suit premises on the ground, among others, that the petitioner has not paid arrears of rent and permitted increases pursuant to the requisition contained in the notice issued u/s 12(2) of the Bombay Rent Act within one month after the said requisition was made. It was the case of the respondent that the petitioner was guilty of default in the payment of arrears of rent and permitted increases within the meaning of section 12(3)(a) of the Bombay Rent Act meriting a decree for eviction. This contention was upheld by the learned trial Judge who by his judgment and order dated 31st December, 1975 decreed the suit for possession as well as for the electricity charges in the sum of Rs. 36.83. It requires to be stated that the learned trial Judge held that the petitioner was not liable to pay separate water charges as the amount of Rs. 7.14 claimed by way of rent per month included water charges. This decree passed by the learned trial Judge was confirmed by the learned Assistant Judge of Solapur by his judgment and order dated 6th February, 1978 in Civil Appeal No. 17 of 1976 preferred by the petitioner. By this petition the petitioner finds himself in this Court invoking the jurisdiction of this Court under Article 227 of the Constitution.

4. Mr. Shah, appearing for the petitioner, has canvassed practically the only ground which is now available to him and that is whether what is described as electricity

charges constituted either part of the rent or constituted permitted increases under the Bombay Rent Act. If the electricity charges which became payable under an agreement between the petitioner and the respondent long after the petitioner had entered into the suit premises as a tenant then according to Mr. Shah these electricity charges are not relatable to the letting of the suit premises and, therefore, do not constitute either rent or permitted increases.

5. A rival point of view was canvassed by Mr. Sukhtankar, the learned Advocate appearing for the respondent and he has relied upon certain judgments to which I will make references shortly. It is the contention of Mr. Sukhtankar that merely because certain amount is agreed to be paid separately by a tenant to a landlord that amount does not cease to be rent or cease to be permitted increases under the Bombay Rent Act. If, therefore a tenant is in arrears of such an amount for a period of 6 months or more then the consequences mentioned in section 12(3)(a) of the Bombay Rent Act must visit upon him. I may not refer to every argument advanced by both the Advocates but straightway examine the authorities cited and the point of law canvassed.

6. The question that will be decided in this case is whether electricity charges payable pursuant to an agreement between the petitioner and the respondent at the rate of Rs. 2 per month amounts to rent or permitted increases under the Bombay Rent Act. That electricity charges will not amount to permitted increases seems to be beyond any dispute. Section 5(7) of the Bombay Rent Act defines increase in rent as "permitted increases" under certain sections of the Bombay Rent Act, such as 9, 10, 10-A, 10-AA and 10-AAA of the Act. In none of these sections dealing with permitted increases any mention is made of the electricity charges. Electricity charges, therefore, do not constitute permitted increases under the Bombay Rent Act. Now we must proceed to consider whether electricity charges constitute rent or part of the rent legally recoverable as such by the landlord from the tenant under the Bombay Rent Act.

7. Before I proceed to consider the authorities cited before me it would be profitable to refer to the definition of "premises" given under the Bombay Rent Act which is to be found in section 5(8) :

"5(8) "premises" means---

(a) any land not being used for agricultural purposes,

(b) any building or part of a building let or given on licence separately, (other than a farm building) including---

(i) the garden, grounds, garages and out houses, if any, appurtenant to such building or part of a building,

(ii) any furniture supplied by the landlord for use in building or part of a building,

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof

but does not include a room or other accommodation in a hotel or lodging house;"

"Rent" as is ordinarily understood is any payment made by a tenant to a landlord for the enjoyment of the premises which are let out to the tenant. If the premises include, as the definition under the Bombay Rent Act includes, any fittings fixed to the demised premises for the more beneficial enjoyment thereof they would also form part of the premises. Whenever, therefore, any payment is made not only for the enjoyment of the demised premises but also for any fittings forming part of the said premises then that payment can be said to be rent of the leased or demised premises.

8. Bearing the definition of the premises given under the Bombay Rent Act I may now proceed to consider the judgment of the Supreme Court in [Karnani Properties Ltd. Vs. Augustin](#), . In the case before the Supreme Court a question arose as to whether the payments agreed to made by the tenant to landlord for use and occupation not only of the building and its appurtenances but also furniture, electrical installations and other amenities agreed between the parties to be provided by and at the cost of the landlord amounted to rent or formed part of the rent. The Supreme Court considered some English decisions which were cited before it and proceeded to mention as follows :---

".....Those English decisions are authorities for the proposition that "rent" included not only what is ordinarily described as rent in an agreement between a landlord and a tenant but also payment in respect of special amenities provided by the landlord under the agreement between him and his tenant. The term "rent" has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. If, as already indicated, the term "rent" is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord, the conclusion is irresistible that all that is included in the term "rent" is within the purview of the Act....."

Certain other observations made in the judgment of the Supreme Court seem to suggest that if a consolidated amount is payable under the terms of tenancy for the use and occupation of the premises as well as for other amenities annexed to those premises including such amenities as electric installations, then alone the said amount can be treated as rent. For example it has been mentioned as follows :

"It will appear from the terms of the contract between the and the tenant in each case, particularly from Clause (1) of agreement quoted hereinbefore that the landlord has not agreed to supply electric and other installations but also electric

power and other services for which no separate payment been stipulated. It has not been denied,---as a matter of Counsel for the tenants-respondents clearly admitted---that the rent fixed in each case included payment for those amenities and services, though the amounts in respect of that have not been separately shown in the agreement. The rent fixed was a consolidated sum for all those amenities and services as is clearly stated in para 1 of the agreement.....".

If it had been held by the Supreme Court that the amount separately fixed under the agreement of lease for the amenities provided as distinct from premises leased would also constitute rent, then it would have been mentioned as it had been mentioned in [Shri Chhote Lal Vs. Shri Kewal Krishan Mehta](#), :

"As we have mentioned earlier, the High Court followed the decision of the same Court in the earlier case of (Hari Ram Jaggi) 1966(68) Pun.L.R. 431 (supra). The High Court failed to notice that, in that case there was a fixed amount payable every month as electric charges. We do not consider it necessary to express any opinion whether, in such a case, the electric charges could not form part of the rent.....".

I refrain from expressing any final opinion on the question because I find on the facts of this case that the agreement to pay Rs. 2 per month towards electricity charges was entered into subsequently and did not form part of agreement of letting of the premises. Thus the amount payable towards electricity charges was not rent in this case.

9. It would, however, be not inappropriate to briefly refer to the law laid down in Chhotelal's case referred to above. The facts of that case disclose that the tenant had agreed to pay certain amount as monthly rent for the premises and had by the same agreement agreed to pay electricity charges separately. The Supreme Court found as follows :---

".....On the fact of it, where the electric charges are not fixed and can only be ascertained at the end of each month, after the electricity consumed is known, while the rent is payable in advance, it is clear that the electric charges cannot be held to form part of the rent....."

The charges paid for the consumption of electricity separately cannot in my opinion be rent because rent must be paid for the enjoyment of the premises. "Premises" as defined under the Bombay Rent Act includes any fittings affixed to the building that is leased but not the consumption of electricity. However, if a consolidated payment is required to be made under the agreement of lease by the tenant to the landlord not only for the premises but also for other furniture and fixtures, then that consolidated payment must amount to rent as held in Karnani's case.

10. Turning to the facts of this case it will be noticed that the respondent-landlord has specifically mentioned in his plaint that the respondent had provided to the petitioner electric connection of one lamp at the request of the petitioner who had

agreed to pay Rs. 2 per month. It was also been mentioned by him that subsequently the petitioner mentioned that he did not require electric connection and, therefore, it was removed. While summarising the facts of this case in the judgment I have already mentioned and it has been so specifically mentioned in the plaint itself but when the suit premises were let out the same did not have any electric connection. It was only pursuant to a subsequent agreement that electric connection was given and payment of Rs. 2 was fixed under the same agreement. It is also mentioned by the respondent himself that the said electric connection was discontinued at the request of the petitioner himself.

Besides this it has not been mentioned either in the plaint or in the deposition of the respondent that this subsequent agreement was incorporated in the original agreement of lease, oral or otherwise, and therefore, the amount of Rs. 2 which became payable with effect from 1st September, 1967 constituted rent or part of the rent. He has proceeded on the basis that electricity charges constituted rent. This in law is not the correct position. In [Sakuntala Rajappa Vs. K. Kamala](#), a Single Judge of the Madras High Court followed [K.G. Ramachandran and Others Vs. Raval and Company and Another](#), wherein it has been held that extra municipal taxes of Rs. 1212 which was agreed to be paid by the tenant as a result of an oral agreement subsequent to the original registered agreement of lease could not be deemed to be part of the rent. Two reasons were given in support of this proposition. One was that the additional payment could not be said to be consideration for the right of enjoyment of premises and the second one was that the original tenancy was by a registered instrument and it was not open to the tenant during the currency of the tenancy to plead any variation of rent which is not evidenced by another registered instrument. It may be mentioned that in the Madras case the tenant was insisting that the additional payment which he had agreed to pay should be held to be rent for reasons peculiar to the Madras rent legislation. First of the reasons given in the Madras judgment is sufficient to hold that the electric charges agreed to be paid by the petitioner in the instant case subsequent to the original agreement of letting without any incorporation of the later agreement into the original agreement of letting cannot be held to be rent.

12. It is true as has been complained by Mr. Sukhtankar that the petitioner had not specifically pleaded that the electricity charges demanded from him did not amount to rent but I find on the other hand that it had not been pleaded by the respondent himself that the electricity charges claimed by him constituted rent or formed part of the rent. Secondly no issue was framed in the trial Court on the question whether electricity charges formed part of the rent or not. This position seems to be found in Chhotelal's case referred to above. Pointed attention of the appeal Court below was fixed upon this question of law but the appeal Court below relying upon a judgment which was not relevant to the determination of this point of law held that whatever the tenant has to pay to the landlord for the purpose of residing in the tenanted premises becomes rent. In my opinion, therefore, if, as is the position in the present

case, electricity charges are to be paid by a separate agreement by the tenant to the landlord either as fixed or as variable, the same cannot form part of the rent. If this is so, then the petitioner could not be said to be guilty of arrears of rent within the meaning of section 12(3)(a). I have already Indicated above how in such a case the present suit was without cause of action.

13. In the result, this petition must succeed. The decree passed by the two courts below in so far as it relates to the possession of the suit premises and the direction for future mesne profits is set aside. There will be no order as to costs throughout.