

(1976) 10 GUJ CK 0006

In the Gujarat High Court

Case No : Civil Revision Application No. 1344 of 1968

Dayalal Gangaram

APPELLANT

Vs

Bhimani Bhupatrai Chunilal and Another

RESPONDENT

Date of Decision : 19-10-1976

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)
Gujarat Education Cess Act, 1962 — Section 19(1), 19(3), 20, 21, 7

Citation : AIR 1977 Guj 68 : (1977) 18 GLR 349

Hon'ble Judges : M.C. Trivedi, J;J.B. Mehta, J

Bench : Division Bench

Advocate : S.M. Shah, for the Appellant; H.K. Gandhi and H.P. Sompura, for the Respondent

Judgement

J.B. Mehta, J.—The short question which has been referred by the learned single judge in this matter is as under:-

"In the absence of a contract between the landlord and the tenant as regards payment of the education cess by the tenant, would the amount of education cess form part of the rent payable by the tenant to the landlord so as to enable the Court to decide in a case governed by Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (hereinafter referred to as "the Rent Act") whether the said rent is payable by the month or otherwise?"

The context in which this question had arisen was that the suit premises had been let out to the tenant on a monthly rent of Rs. 20/- and there was no rent note or anything to show that besides this amount of monthly rent which the tenant agreed to pay as consideration for taking the property the tenant agreed to pay inter alia the education cess. The rent had fallen in arrears from August 1, 1966 for more than six months and so the statutory notice u/s 12(2), was given by the landlord on March 18, 1967, and was served on the tenant on March 21, 1967. Within one month no dispute about the standard rent had been raised and even the defence of the tenant having paid Rs. 200/- towards arrears was

disbelieved by both the Courts of facts. The trial Court, however, refused the eviction decree because education cess which was a part of the rent, was not payable by the month, and so the case was held to fall u/s 12(3)(b) while the appellate judge held that the education cess was not part of the rent and, therefore, the eviction decree was passed because of the gross default u/s 12(3) (b). It is in this context that the present reference has been made by the learned single judge as he was differing from the view taken by J. M. Sheth J. in *Vanlila Vadilal Shah Vs. Mahendrakumar J. Shah and Another*, , where such education cess was held to be a part of the rent, but it being not payable by the month, it was held that such cess could not fall u/s 12(3)(a),

2. Section 12(3) of the Rent Act in terms provides as under:-

"(3) (a) where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglected to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession.

(b) in any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or op. or before such other day as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tenders in Court regularly such rent and permitted increases till the suit is finally decided and also suit as directed by the pays costs of the Court."

Therefore, the case falls u/s 12(3)(a) as the case of gross default on fulfilment of the relevant four conditions: (1) that the rent is payable by month; (2) there is no dispute about the standard rent or permitted increases; (3) such rent or increases are in arrears for a period of six months and more; (4) and the tenant neglects to make payment thereof until expiration of the period of one month after the notice u/s 12(2). The landlord has in such a case a vested right as per the settled legal position and the Court is bound to pass a decree of eviction, Section 12(3)(b) would be applicable in any other case where those conditions of Section 12(3)(a) of gross default are not made out. It is in the context of Section 12(3)(a) that the present question arises.

3. In order to interpret this relevant first condition; "where the rent is payable by month." the term "rent" will have to be interpreted in the context and setting of this particular eviction provision for gross default when the tenant is in arrears for a period of six months or more which the Legislature considers as so gross as to leave no discretion to the Court and lays down a duty that the Court shall evict the tenant. It is only in other cases that Section 12(3)(b) can be invoked by the court to give relief to the tenant in arrears. When such is the context of this provision, this term would have to be interpreted not merely as a contractual rent but as lawfully realisable rent in the special context of this Rent Act which is

a measure for controlling rent and which prohibits recovery of rent in excess of the standard rent or permitted increases. The question of arrears in the context of Section 12(3)(a) would have reference only to what is lawfully recoverable from a tenant by way of rent which under the scheme of this rent control legislation is standard rent as well as permitted increases. That is why the legislature has furnished intrinsic evidence of its intention by using the expression "such rent or increases" in Section 12(3)(a). The case would be of gross default. Only if such standard rent or permitted increases only are in arrears for a period of six months or more and the tenant neglects to make payment thereof. The term "such rent and increases" could mean only previously referred to in Section 12(3)(a) and so the "rent" in arrears which is referred to and which is also required to be payable by month" for compliance with the first condition, would be this lawfully recoverable rent in the wider sense in view of this statutory bar created u/s 7 against recovery of excess over standard rent and permitted increases. The term "standard rent" is defined in Section 5(10) and the term "permitted increases" are defined in Section 5(7) to mean an increase in rent permitted under the provisions of the Rent Act. The term "landlord" and "tenant" are defined in Sections 5(3) and 5(11) as persons entitled to receive rent in respect of premises and the person by whom or on whose account rent is payable for the premises and even a statutory tenant is also included. Section 7 then in terms provides as under:

"7. Except where the rent is liable to periodical increment by virtue of an agreement entered into before the specified date it shall not be lawful to claim or receive on account of rent for any premises any increase above the standard rent, unless the landlord was, before the coming into operation of this Act, entitled to recover such increase under the provisions of the Bombay Rents Restriction Act, 1939, or the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, or is entitled to recover such increase under the provisions of this Act"

Permitted increases are specified in Sections 8(2), 9, 10, 10A, 10-AA, 10-C, 10-CC and 10-D. u/s 10 it is in terms provided that where a landlord is required to pay to a local authority in respect of any premises any rate, cess or tax imposed or levied for the purposes of such authority he shall be entitled to make an increase in the rent of the premises by an amount not exceeding the increase paid by him by way of such rate, cess or tax over the amount paid in the period of assessment which included the date of the coming into operation of this Act or the date on which the premises were first let, whichever is later, and such increase in rent shall not be deemed to be an increase for the purposes of Section 7. Section 10A is for increase in rent on account of payment of increased rates etc. after 31st March 1949 not permitted in certain areas. Section 10-AA deals with increase in rent on account of pay-merit of increased rates etc. permitted after certain date in certain areas. Sections 10-C and 10-D are for permitted increases included on account of repairs and Section 10-CC is increase for rent of premises used for Cinema in Saurashtra and Kutch areas and former

Baroda territory. And finally, Section 10-E is for increase in rent on account of payment of increased ground rent, N. A. assessment or any other tax imposed by the State Government and the landlord is entitled to make an increase in the rent of the premises by an amount not exceeding the increase paid by him by way of such ground-rent, N. A. assessment or tax, as the case may be. The amount of such increase in rent to be recovered from the tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of rent recoverable for the whole of the premises, if let, and any such increase is not to be deemed to be an increase for the purpose of Section 7. These control provisions make it in terms clear that what is legally recoverable is not contractual rent. The contractual rent may be in excess of the standard rent in some cases, and because of the bar of Section 7 only the standard rent and permitted increases are legally recoverable in such cases, and if only arrears of such standard rent or permitted increases are for a period of six months or more and the tenant neglects to make payment thereof, then the question of gross default under Sec. 12 (3) (a) arises. Therefore, in the entire context of setting of this relevant scheme, and looking to the intrinsic evidence furnished by Section 12(3)(a), the term "rent", payable by month, in the first condition could only have the wider meaning of realisable contractual or standard rent and permitted increases lawfully recoverable under the Act and it could never have the narrower meaning of mere contractual rent as is assumed by the learned single judge. If we now turn to the relevant provisions of the Gujarat Education Cess Act, 1962, hereinafter referred to as "the Cess Act", it would be amply clear that the education cess to the extent of one half, if it has been actually paid by the landlord is ordinarily recoverable from the tenant u/s 19(1) in absence of an agreement to the effect that the landlord was alone to bear this tax. Section 2(iv) of this Act defines education cess to be a surcharge or tax on lands and buildings which is levied under the Act. Section 3(b) enacts that for the purpose of providing for the cost of promoting education in the State, there shall be levied and collected in accordance with the provisions of the Act an education cess which shall consist of-4b) a tax on lands and buildings in urban areas Rajkot is an urban area. u/s 12(1) rates have been prescribed for this particular tax on lands and buildings with effect from April 1, 1970. u/s 14(1) where the actual occupier of any land or building is the owner thereof, tax is leviable primarily on such occupier and under Section 14(2)(a) in any other case, the said tax shall be leviable primarily if the land or building is let, upon the lessor. Therefore, the primary liability for this education cess is of the landlord, u/s 12(2)(a) when the building in question has been let to a tenant, Section 17 provides for such education cess tax to be first charge on land and building on which it is leviable notwithstanding anything contained in any law and notwithstanding any rights arising out of any contract or otherwise. u/s 18 on the failure to recover any sum due on account of tax from the person primarily liable therefore, this tax can be recovered from the occupier of any part of the land or building in respect of which the tax is due. Such portion thereof as bears to the total amount of the tax due the same ratio which the rent annually payable by such occupier bears to the

aggregate amount of the annual letting value thereof. Section 19 which is material runs as under:-

"19 (1) If any person from whom under the provisions of Section 12 the tax is leviable pays the tax in respect of any land or building, he shall if he be not himself in occupation thereof during the period for which he has paid the tax, be entitled to recover an amount not exceeding half the amount of the tax from the person, if any, in actual occupation of such land or building for such period.

(2) Where tax is paid in respect of any building consisting of more tenements than one, by the person primarily liable or on his behalf he shall be entitled to recover, from the occupiers of the tenements amounts not exceeding half the amounts paid pro rata to the amounts of rents for which such tenements are let:-

Provided that if the person who has paid tax under the provisions of Section 12 is a specified disabled person, such widow or disabled person shall be entitled to recover the full amount paid by her or as the case may be, from the person in occupation of the land, building or tenement, as the case may be, in respect of which the tax has been so paid:

Provided further that no such recoveries shall be made in respect of-

(a) any tenement in occupation of such person or any person acting on his behalf, or

(b) any tenement the tax on which by the terms of the tenancy, such person has agreed to pay for its occupier.

(3) The recovery of any amount of tax from an occupier under this section shall not be deemed to be an increase for the purpose of Section 7 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, or any law corresponding thereto.

Sections 21 and 22 provide as under:-

"21. Any person entitled to recover any ,;UM u/s 19 or 20 shall have for the recovery thereof, the same rights and remedies as he would have if such sum were rent payable to him by the person from whom he is entitled to receive the same."

"22. Any amount which is liable to be recovered u/s 19 or 20 shall not be deemed to be a part of the rent of the land, building, tenement or part of the build"" for the purpose of computing the annual letting value thereof for the purpose of the levy of any property tax Qr a tax under this Act."

The scheme of these three relevant sections is that u/s 19(1) if the landlord who is primarily liable for his education cess tax pays the amount in respect of any land or building for such period during which he has paid tax, he is ordinarily entitled to recover the amount not exceeding half from the tenant in actual occupation, subject to the proviso contained that no such recovery shall be made

in respect of any tenement the tax on which by the terms of the tenancy, such person has agreed to pay for its occupier and the further proviso enabling in case of widow and disabled persons the full recovery. Therefore, unless the landlord has undertaken to pay tax himself, on payment of the education cess as the person primarily liable he is entitled u/s 19(1) to recover the amount not exceeding half from the tenant for the period for which he has paid such tax. Section 21 further confers on such landlord entitled to recover the aforesaid sum u/s 19, the same rights and remedies as he would have if such sum were rent payable to by the person from whom he was entitled to receive the same. Section 22 only carves out an exception for any amount which is liable to be recovered u/s 19 is not deemed to be a part of the rent of the land, building, tenement or part of the building for the purpose of computing the annual letting value thereof for the purpose of the levy of any property tax or a tax under the Act. The exception u/s 22 is only for the purpose that the inclusion of this portion of education cess tax in the rent may not go on into the circle of increments every year of the annual letting value which would not be intended by the framers either of the Rent Act Or of the Cess Act; otherwise, the legislative intention is clear both u/s 19(3) and u/s 21 that the recovery of any amount of tax from the tenant u/s 19(1) shall not be deemed to be increase for the purpose of Section 7 of the Rent Act or any other law corresponding thereto and that even for the recovery of any such sum u/s 19 the landlord would have the same rights and remedies as he would have if such sum were rent payable to him by the person from whom he is entitled to receive the same.

4. Thus, Section 19(3) read with Section 21 is really a legislative judgment itself that the amount of this education cess which a landlord is entitled to recover u/s 19(1) from the tenant after he has paid the same is not deemed to be an unlawful increase for the purpose of Section 7 but a permitted increase and for the purpose of recovery of that amount the landlord is given the same rights and remedies as he would have if the said amount were rent payable to him. Therefore, both for the purpose of recovery of such rent by way of this education cess amount to the recovery of which the landlord is entitled u/s 19(1) and for distress for such rent the landlord's rights and remedies are the same as if such sums were actual rent payable to him by the tenant from whom he was entitled to receive the same. Therefore, such permitted increases within the meaning of Section 7 of the Rent Act as per the statutory language of Section 19(3) would become a part of the rent and these arrears would clearly attract gross default clause u/s 12(3)(a).

5. In *The Bombay Municipal Corporation Vs. The Life Insurance Corporation of India Bombay*, , the corresponding scheme of the Maharashtra Act evolved not by a separate Cess Act but u/s 140 of the Corporation Act had been considered and their Lordships in terms held that the amount of education cess was recoverable by the landlord from a tenant u/s 10-AA as increase in rent on account of payment of enhanced rates etc. permitted in the particular areas. Their Lordships in terms held at page 1586 that it was quite clear that the corresponding Section

7 in identical terms did not prohibit the recovery of the increase to which landlord may be entitled under the provisions of the Act in addition to the standard rent. The obvious implication of the corresponding definition of "permitted increases" in Section 5(7) was that such increase became a part of the rent. The language which has been employed in Sections 9, 10 and 10-AA seemed to indicate that the Legislature treated the permitted increases as a part of the rent which a landlord would be entitled to receive from the tenant. Thereafter their Lordships considered the position under the Municipal law and it was held that the actual rent of the building in question which was being fetched comprised the standard rent and the permitted increases. The building could well be said to be reasonably expected to be let from year to year at the figure arrived at by adding the permitted increases to the standard rent. The valuation had, therefore, to be arrived at after taking into account the amount of educational cess which was levied by the Corporation. The pertinent observations made by their Lordships were:-

"Even if such a conclusion leads to some kind of inconvenience of variation in valuation at frequent intervals, that can be no consideration for not giving full effect and meaning to the provisions of the Act of 1888 and the Rent Act under consideration".

This difficulty has already been solved by the Legislature by categorically enacting S. 22 in this separate Education Cess Act to the effect that any amount which is liable to be recovered under S. 19 was not to be deemed to be a part of the rent of the land, building, tenement or part of the building for the limited purpose of computing the annual letting value thereof for the purpose of levy of any property tax or a tax under the Act. In any event after the settled legal position it could never be contended that the education cess which was recoverable from the tenant did not become a part of the rent because as held by their Lordships the obvious implication of the definition of permitted increases in Section 5(7) was that such permitted increase became a part of the rent and even the language employed under Sections 9, 10 and 10-AA of the Rent Act indicated that the legislature treated the permitted increases as a part of the rent which the landlord would be entitled to receive from the tenant. Our legislature has not left the matter on the construction of Section 10-AA or Section 10 but has settled all doubts by enacting Section 19(3) and Section 21 under which recovery of such education cess is not deemed to be increase for the purpose of Section 7 of the Rent Act and is, therefore, permitted increase, and this recovery is made possible by the landlord u/s 21 by exercising the same rights and remedies as are provided for recovery of rent payable by the tenant to the landlord.

6. There could be no dispute that u/s 28(1), the Court provided under the Rent Act only has jurisdiction to entertain and try any suit or proceeding between a landlord or tenant relating to the recovery of rent and to deal with claims and questions arising out of the Rent Act. That is why the Court empowered under

See. 28 (1) is a special forum contemplated u/s 21 of the Cess Act. In *Khem Chand Dayal Ji and Co. Vs. Mohammad Bhai Chand Bhai*, even in the context of distress for the rent, it is held that this Court u/s 28(1) can issue a distress warrant. At page 103 it is also pointed out by express terms that the tenant also had undertaken to pay municipal taxes and charges as part of the rent and it could not be argued that it was not rent recoverable by issue of a distress warrant. Therefore, whatever formed part of the rent, whether under the terms of the tenancy, or by way of lawfully recoverable standard rent or permitted increases under this rent control measure, can be recovered through the Court created u/s 28(1) and even distress warrant for such rent can be available and it is this right and remedy which is contemplated u/s 21 of the Cess Act in respect of this education cess amount recoverable by the landlord from the tenant as if it was rent payable by the tenant to such landlord.,

7. Such result would be reached by giving full effect to the fiction created in Section 21 read with Section 19(3) in respect of this very permitted increase which is treated as if it was rent payable by the tenant to the landlord after the classic observations of Lord Asquith of Bishopstone in *East End Dwelling Co. Ltd. v. Finsbury Borough Council* 1952 AC 109, at page 132 as under:-

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having, done so, you must cause or permit your imagination to boggle when it comes to inevitable corollaries of that state of affairs." In the decision in question the relevant section required the assessing authority to imagine, contrary to the actual fact, that the damage had been made good before the acquiring authority served notice to treat. The term "made good" was held to have also been covered when a building had been substituted by a new building for the old. It was, therefore, held that if this had actually occurred, the new building would have been lawfully lettable at any rent it could command and would not have been tied to the standard rent of 1939; and its value for compensation purposes would have to be arrived at on this "untied" basis. Once the education cess for all purposes of recovery of that amount by a landlord entitled to recover that amount u/s 19(1) was treated as if it was rent payable to him by the tenant from whom he was entitled to receive the same, the fiction would have to be given full legal effect for the purpose of considering the question of gross default when the tenant was in arrears of even such permitted increase u/s 19(3) of the Cess Act, and within the meaning of Section 5(7) of the Rent Act, for a period of more than six months so that the case became one fit for eviction decree.

8. It should also be borne in mind that the term "rent" has to be construed in the context of the present legislation in the widest sense because the rent is of

premises which are so widely defined in Section 5(8)(b) to mean any building or part of a building let separately (other than a farm building) Including-

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

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

(iii) 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. In *Karnani Properties Ltd. Vs. Augustin*, , in the context of a similar Rent Control measure of West Bengal where the definition of "premises" was equally wide, after considering various English decisions it had been held that the term rent was comprehensive enough to include all payments agreed to be paid to the landlord for the use and occupation not only of the building and its appurtenances but also of furnishings, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. Therefore, all that was included in the term "rent" was within the purview of the Act and the Rent Controller and the other authorities had the power to control the entire rent in this widest sense. That is why it was further held that while determining the standard rent all constituents which made up the total sum shown in the agreement as a monthly rent can be taken into account including the municipal taxes, electric charges as also Government duty which had been increased on the consumption of electric power and the cost of providing other amenities and services. Therefore, the aforesaid settled legal position is to treat the rent in the context of such rent control measure not only as a merely realisable contractual rent but in the more comprehensive sense so that all such permitted increases and the standard rent which is made lawfully recoverable under such control measure form part of the term "rent" and that is the context in which Section 12(3)(a) has used the term "rent" in the first condition required to be fulfilled. Therefore, we agree with the aforesaid view which is taken by Bal J., of the Maharashtra High Court in *Sint. Muktabai Gangadhar v. Sint. Muktabai Laxman* (1969) 711 Bom LR 752 , where also the education cess was treated as a part of the rent and the" view taken by J. M. Sheth J. in *Vanlila Vadilal Shah Vs. Mahendrakumar J. Shah and Another*, , where the education, cess levied under the Cess Act was held to be forming a part of the rent payable by the tenant to the landlord even when the cess became payable not by virtue of an agreement between landlord and tenant but as a result of the permitted increases under the statutory right conferred u/s 19(1) of the Cess Act.

9. Mr. Gandhi and Mr. Sompura sought to make a futile distinction on the ground that this right to recover this sum by way of education cess u/s 19(1) was an independent right which accrued only when the payment was first made by the landlord to the local authority and, therefore, it could not be treated as permitted

increases for the purpose of the Rent Act. If it was not permitted increases. Section 7 would have barred such recovery and that is why the Legislature had to enact Section 19(3) that the recovery of this amount from the tenant u/s 19(1) was not to be deemed an increase for the purpose of Section 7 of the Rent Act or any corresponding law. Equally, there is no substance in the contention that Section 21 created a fiction only for recovery of said amount by proceeding in a Civil Court when the fiction is that the recovery shall be in the same way as rent payable by tenant to the landlord and which could only be u/s 28 of the Rent Act or by distress warrant as a remedy for the same also from the same Court as per the settled legal position. Even Section 22 could never be urged because as earlier explained this provision has been introduced so that no difficulty may arise of the vicious cycle by treating this cess as a part of the rent so as to be included in the annual letting value on the footing of realisable rent which had been experienced in the aforesaid decision in the Bombay Municipal Corporation case where the cess was levied under S. 140 of the Corporation Act and was treated as a permitted increase by the Supreme Court u/s 10-AA of the Rent Act. So far as the Gujarat Cess Act is concerned, specific provision is made for treating it as permitted increases u/s 19(3) and so this comprehensive scheme under Sections 21 and 22 has been enacted which on the contrary clinches the issue of this being permitted increase which always forms part of the rent as per the settled legal position. Mr. Gandhi and Mr. Sompura pressed in aid the decision by the learned Single judge in *Nathusing v. Raval Markandrai* 1973 Ren CJ 276 , where Section 10 was interpreted by construing the phrase "over amount paid" as emphasising the fact that there must be existing liability of payment of rate, cess or tax during the prescribed period which liability may have been increased subsequently. The word "increase" is very suggestive of the fact that the legislature provided for passing on the burden of an increase in the existing liability of the landlord in respect of the rate, cess or tax of the tenant, Where, therefore, there was no liability on the landlord to pay any rate, cess or tax, no question of increase in the liability arises and if there is no increase, the question of liability contemplated by Section 10 of the Act in respect of the said cess is not applicable. It is not necessary for us to consider the correctness of this view but the fact remains that the legislature has contemplated this contingency while conferring right of recovery u/s 19 that no such recovery shall be made in respect of any tenement the tax on which by the terms of the tenancy, the landlord would agree to pay for his occupier. It is only when the landlord had to pay this additional tax in the shape of education cess and there was no such agreement as indicated by Section 19(2)(b), that the proviso (b) with this specific right of recovery by passing on the burden to the tenant had been enacted and that is why it was made a permitted increase. Finally, it was argued that this construction would make Section 12(3)(a) otiose. The very proviso (b) furnishes a complete answer. If the landlords wanted to exercise this right under, Section 12(3)(a) without any such restriction of fulfilling the first condition of the rent being payable by the month, they should enter into such agreement of tenancy under which the liability to pay education cess would be borne by the

landlords and in which event no such question would arise of recovery of this permitted increase. Therefore, Section 12(3)(a) could never be said to be otiose in the circumstances of the case. Therefore, no ground whatever has been made out which would justify a different view being taken from one which is taken by J. M, Sheth J. in Vanlila Vadilal Shah Vs. Mahendrakumar J. Shah and Another, , and which view was also taken in the Maharashtra State on the similar scheme of legislation. We would, therefore, answer the question referred by holding that even in the absence of a contract between the landlord and tenant as regards payment of education cess, the education cess would form part of the rent payable by the tenant to the landlord so as to enable the Court to decide u/s 12(3)(a) that the said rent was not payable by the month and, therefore, in the facts of the, present case Section 12(3)(a) would not be attracted and the case would fall into any other case u/s 12(3)(b). It is on this footing that the matter shall go back to the learned Single judge for further disposal. The Reference is accordingly disposed of with no order.

10. Reference answered accordingly.