

(1982) 01 BOM CK 0047

In the Bombay High Court

Case No : Civil Revision Application No's. 178 of 1977 and 413 of 1979

Fatechand Murlidhar and etc.

APPELLANT

Vs

Maharashtra State Electricity Board, Nagpur and etc.

RESPONDENT

Date of Decision : 22-01-1982

Acts Referred:

Contract Act, 1872 — Section 2, 37
Electricity Act, 1910 — Section 2

Citation : AIR 1985 Bom 71 : (1985) ILR (Bom) 1222

Hon'ble Judges : Rele, J

Bench : Single Bench

Advocate : B.N. Mohta and C.W. Mohorir, for the Appellant; M.H. Moonje and Y.R. Dandige, for the Respondent

Judgement

1. Both these revision applications are disposed of by this common judgments as the facts and the points involved in both these revision applications are identical.
2. The applicants in both these revision applications are the owners of their respective buildings and they have filed these revision applications against the decree passed against them by the Court of Small Causes at Nagpur for consumption of electricity by their tenants.
3. The non-applicant Maharashtra State Electricity Board filed suits in the Court of Small Causes at Nagpur against the above named applicants and their tenants for recovery of arrears of charges for electrical energy supplied to the tenants. The claim, which is the subjects matter of Civil Revision Application No. 178 of 1977 is for Rs.88.08 for the electrical energy consumed by the second respondent between the period 4-12-1973 and 3-12-1975 inclusive of interest of Rs.18/- and notice charges Rs.10/-. The claim, which is the subject matter of Civil Revision Application No. 413 of 1979 is for Rs.149.33 for the electrical energy consumed by the Oriental Research and Chemical Laboratory Ltd. Uttarpara, Hoogly as the tenant of the applicant for the period from 6-9-1972 to 14-4-1973 inclusive of interest Rs.48.42 and Rs.10/- as notice charges.

4. It is an admitted fact that on the application of the tenants in each case, service connection for business lighting was given to the tenants in occupation of their respective premises and the applicants are sought to be made liable by the non-applicant Maharashtra State Electricity Board for electrical energy supplied to the tenants and consumed by the tenants only on the basis that as owners of buildings, they fall within the definition of the word "consumer" as defined in S. 2(c) of the Indian Electricity Act, 1910.

5. The applicants resisted the suits and they contended that there is no privity of contract between the applicants and the first non-applicant and as such, they are not liable for the electrical energy consumed by the tenants who obtained the electrical connection in their own names. It may be stated that in Civil Revision Application No. 413 of 1979, the first non-applicant deleted the name of the tenant Oriental Research and Chemical Laboratory Ltd. and claimed the electrical charges from the applicant, the owner of the building. The Trial Court negatived the contention of the applicants and decreed the suits. Against the said decrees, the applicants have filed these revision applications.

6. Shri Moharir has submitted that the applicants are not supplied with electrical energy and, therefore, they would not fall within the first part of the definition of "consumer" in S. 2(c) of the Indian Electricity Act, 1910. In regard to the second part of the definition of the word "consumer", Shri Moharir has submitted that the premises which were connected for the purpose of receiving energy with the works of the first non-applicant are not of the applicants, but that the premises are of the tenants and, therefore, merely because the applicants are the owners of the buildings, they cannot be said to be persons whose premises are connected for the purpose of receiving energy and that, therefore, the Trial Court was in error in holding the owners of the buildings liable for electrical energy supplied to the premises occupied by the tenants. Shri Mohta adopted the arguments of Shri Moharir.

7. Shri Moonje has, on the other hand submitted that by the Amending Act 32 of 1959, the definition of the word "consumer" has been altered so as to make it an all-inclusive definition. His submission is that a person like the owner of a building may not escape his liability by making a submission that there is no privity of contract between him and the licensee supplying the electrical energy, that the legislature has thought it fit to alter the definition of the word "consumer" so as to make it an all-inclusive definition. He has submitted that every person within the area of supply of electrical energy is entitled, on application, to a supply of electrical energy on the same terms as those on which any other person in the same area is entitled and there is a corresponding liability cast by S. 22 of the Indian Electricity Act, 1910 to supply electrical energy to such a person and that being so, according to Shri Moonje, in the area where the premises are situate, there is an obligation cast upon the licensee, and in the present case the Maharashtra State Electricity Board, to supply electrical energy up to a point in the building and from that point in the building, the

electrical energy is supplied not only to the owner of the building but also to the tenants and other occupiers of the building and that being so, the word "premises" in S. 2(c) of the Act must be given its enlarged meaning so as to bring out the real intent of the legislature. He has given two examples to make his point clear. He has submitted that an owner of a building applies for and is supplied with electrical energy - through meter. The owner sells the building to another person, but the meter continues to stand in the name of the previous owner. Shri Moonje has submitted that in such a case, the previous owner as well as the purchaser of the building are the consumers. The second example which Shri Moonje gave is : -- suppose there is a tenant and electrical energy is supplied to the premises - occupied by the tenant in whose name the meter stands, the tenant vacates the premises transferring the tenancy to another person without the knowledge of the licensee supplying the electrical energy and the meter continues to stand in the name of the tenant. Shri Moonje has submitted that the occupier of the premises who actually consumes electrical energy cannot escape his liability for payment of charges for consumption of electrical energy for the reason that he would be a consumer within the meaning of S. 2(c) of the Act. Shri Moonje has referred to a decision of the Supreme Court in the case of Ram Chander Prasad Sharma Vs. State of Bihar and Another, in support of the proposition that "premises" must be given an enlarged meaning and to a decision of the Patna High Court in the case of Bhagalpur Electric Supply Co. Ltd. v. Hari Prasad Saha, AIR 1938 Patna 15 in support his contention that "consumer" not only includes any person who is supplied with energy, but also includes any person whose premises are for the time being connected for the purpose of supply of energy and, he has submitted that owners of building are, therefore, covered in the definition of the word "consumer". Shri Moonje has also referred to another decision of the Supreme Court in the case of Ardeshir H. Bhiwandiwalla Vs. The State of Bombay, which was a case under the Factories Act (1948) and he has referred to this decision and has contended that the word "premises" in the Indian Electricity Act is used in its generic sense to cover "land" and "buildings". Shri Moonje has then referred to the definition of "works" in S. 2(n) of the Indian Electricity Act and he has submitted that the person receiving energy with the work of the licensee is the owner of the building or the landlord of the premises and for this reason also, the landlord will be liable within the all-inclusive definition of the word "consumer" for electrical energy supplied to the premises even though the premises may have been occupied by the tenant or the sub-tenant or the licensee of the tenant along with the person who may be the actual recipient of the electrical energy. He has tried to gain support to this argument of his with reference to the definition of "service line" in S. 2(1). He has finally submitted that in the absence of an agreement or the contract, the licensee can charge for energy supplied by him to any consumer as provided in clauses (a) (b) and (c) of sub-section (3) of S. 23 of the said Act. Shri Dandige adopted the arguments of Shri Moonje.

8. The first non-applicants have sought to make the owners of buildings liable for

the electrical energy consumed by their tenants only on the ground that they are included in the definition of the word "consumer" in S. 2(c) of the said Act. The first non-applicants have admitted that the service connections were given in the premises in the respective occupation of the tenants at the instance of the tenants and the meters stand in the name of the tenants. It is not the case of the first non-applicants that the applicants have done anything in regard to obtaining of the service connections by their tenants. The question as to whether the owners/landlords of buildings could be made liable for the electrical energy consumed by their tenants through the service connections obtained by the tenants will have to be decided with reference to the definition of the word "consumer" in S. 2(c) of the Indian Electricity Act, which reads :

"consumer" means any person who is supplied with energy by a licensee or the Government or by any other person engaged in the business of supplying energy to the public under this Act or any other law for the time being in force, and includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of a licensee, the Government or such other person, as the case may be".

The definition of the word "consumer" falls in two parts. In the first part of the definition, the person who is supplied with energy by the licensee is a "consumer". In the present case, on the first part of the definition, the tenants are the consumers within the meaning of the Act. The second part of the definition is an inclusive definition and it includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of a licensee. Now, this part of the definition is to be construed strictly for the reason that certain civil and criminal liability is imposed upon a "consumer". The civil liability is the liability to pay charges for the electrical energy consumed. Sub-sec. (3) of S. 23 of the said Act empowers the licensee to charge for energy supplied by him to any consumer. This is the civil liability imposed upon a consumer. Reference to S. 44 of the Act may also be made which is a penal section and clause (d) of S. 44 of the Act makes punishable the improper use of the energy of a licensee. The definition of the word "consumer" will have, therefore, to be strictly construed. In the first part of the definition, the words used are "supplied with energy", while in the second part of the definition the words used are "premises for the time being connected for the purpose of receiving energy". The emphasis, in my opinion, is on the word "premises" in the second part of the definition, while the emphasis in the first part of the definition is on the word "person". The premises may be in the occupation of the owner himself or it may be in the occupation of the tenant or the licensee of the owner. It may also be in the occupation of the sub-tenant or sub-licensee of the licensee. If the premises are in the name of the owner or tenant or licensee and if these premises are for the time being connected for the purpose of receiving energy, the person in occupation of the said premises or the tenant or the licensee cannot escape the liability by showing that the premises are not in his occupation, but are in the occupation of his sub-tenant or sub-licensee. It is to

meet this situation that the inclusive part of the definition has been made. It would be doing violence to the language of S. 2(c) of the Act to say that the owner of a building is included in the term "consumer" in cases where the premises are in occupation of the tenant. There must be some nexus shown between the person and the premises. Merely because a person is the owner of a building, there is no nexus between the owner of the building and the premises. The owner of the building is, therefore, in my opinion, not included in the definition of the word "consumer" in S. 2(c) of the Act where the premises are in the occupation of his tenant. There is no privity of contract between the applicants and the Maharashtra State Electricity Board and hence the applicants cannot be held liable as consumers.

9. In regard to the submission of Shri Moonje that the owner of the building is included in the definition of the word "consumer" because he falls within the area of supply of electrical energy and that electrical energy is supplied not only to the owner of the building, but also to the tenant and other occupiers of the building and that being so, the word "premises" in S. 2(c) of the Act must be given its enlarged meaning whatsoever being the real intent of the legislature, it is stated only to be dismissed. S. 22 of the said Act casts an obligation upon the licensee to supply energy. It states :

"Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply".

The casting of obligation upon the licensee to supply is one thing and receiving supply is another thing. Shri Moonje has then contended that the "premises" should be given an enlarged meaning whatever meaning that may be given to the word "premises" and that it would include an owner of a building where the premises are in occupation of the tenant. The Act, itself, makes a distinction between the owner of a building and occupier of the premises. Reference to S. 12 of the Act may be made in this regard where the words "owner" or "occupier" of building have been used.

10. This brings me to the decision referred to by Shri Moonje in Bhagalpur Electricity Supply Co. Ltd. Vs. Hari Prasad Saha and Others, where members of a joint family and the joint proprietors of the shop were charged under S. 44(c) of the Indian Electricity Act for maliciously injuring the meter. The accused were acquitted. As against the order of acquittal, an appeal was preferred and it was urged that the accused are "consumers". In considering that question, the High Court observed :

"There is no evidence that the five accused are members of a joint family and the joint proprietors of the shop, and the Magistrate has not said whether he accepts that evidence or not".

It is in this regard that the Court observed :

"The definition of "consumer" includes any person who is supplied with energy by a licensee, and any person whose premises are for the time being connected for the purpose of supply of energy with the works of the licensee. Therefore prima facie it should be enough to prove either that energy was supplied for the use of the persons or that the persons were owners or occupiers of premises connected with the licensee's electric system".

The case is clearly distinguishable on the facts of the present case.

11. The next decision referred to by Shri Moonje is in the case of Ram Chander Prasad Sharma Vs. State of Bihar and Another, where it was held : that the appellants who became co-owners by reason of purchase of the mill must be regarded as "consumers". This also is distinguishable on the facts of the present case.

12. The third decision referred to by Shri Moonje is in the case of Ardeshir H. Bhiwandiwalla Vs. The State of Bombay, . The question before the Supreme Court was whether the salt work comes within the definition of the word "premises" under the Factories Act. That being under a different Act, needs no further consideration.

In the result, I pass the following order :-

The revision application is allowed. Rule absolute. The decrees of the Trial Court in both these revision applications in so far as the applicants are concerned, are set aside. In the circumstances of the case, there will be no order as to costs of these revision applications.

13. Revision allowed.