
(2013) 04 GUJ CK 0114

In the Gujarat High Court

Case No : Special Civil Application No. 4052 of 2013

Jain Prachya Vidyabhavan

APPELLANT

Vs

Girishbhai Muljibhai Pujara and Another

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 3 GLR 2144

Hon'ble Judges : G.B. Shah, J

Bench : Single Bench

Advocate : K.V. Shelat and Viral K. Salot, for the Appellant;

Judgement

G.B. Shah, J.—Present petition has been directed against the judgment and order dated 5-3-2013, passed by the Appellate Bench of the Small Causes Court at Ahmedabad in Civil Revision Application No. 12 of 2012, preferred by the present petitioner-original applicant-landlord by which the Appellate Bench was pleased to dismiss the said revision application confirming the order of City Deputy Collector (Western), Ahmedabad, passed in Electric/Appeal/Case No. 3 of 2012 dated 31-8-2012, by which the application filed by the present respondent-original applicant-tenant was allowed and the tenant-applicant was allowed to continue/restore his electric connection, which was disconnected by the electric company, on payment of the outstanding bill amount, and at his costs. Heard, learned Advocate Mr. K.V. Shelat with learned Advocate Mr. Viral K. Salot for the petitioner-landlord. The learned Advocate for the petitioner vehemently submitted that if the tenant wants new connection for electric supply then, he can take the benefit of Sec. 23A of the Bombay Rent Act, 1947 "for short the Rent Act") and the concerned Collector or the Deputy Collector after following due procedure prescribed in the said Sec. 23A, can pass the necessary order for the new connection only. But, if the tenant wants to restore the electric connection, in that case, the Deputy Collector has no power to pass any order for restoration of the electric supply and the proper procedure for restoration of the electric supply is to file the necessary application under Sec. 24 of the Rent Act.

He has further submitted that in the case on hand, referring the above-referred order dated 31-8-2012, passed by the Deputy Collector, it can easily be located that the said application was preferred by the respondent for getting the new electric connection, under Sec. 23A, for which, he has no right to prefer the same before the said City Deputy Collector and the only remedy lies with him is filing the application under Sec. 24 of the Rent Act and the said aspect has not been properly dealt with by the City Deputy Collector while passing the order dated 31-8-2012 as well as by the Appellate Bench of the Small Causes Court, while passing the judgment dated 5-3-2013, as aforesaid.

1.1. Besides, the learned Advocate for the petitioner-landlord submitted that the learned Courts below have not considered the limitation aspect and has failed to appreciate the fact that the electric connection was disconnected since 2008 on account of non-payment of electricity charges and after the lapse of four years the application had been filed by the respondent No. 1, which was barred by the law of limitation. The learned Advocate for the petitioner also submitted that the learned Courts below have not properly taken into consideration and appreciated the documentary evidence on record. Lastly, the learned Advocate for the petitioner requested the Court to allow the present petition and to quash and setting aside the aforesaid orders impugned in the present petition.

2. I have heard the learned Advocate for the petitioner-landlord and also gone through both the orders impugned in the present petition, passed by the learned Courts below. The learned Appellate Bench vide its order dated 5-3-2013 has observed in Para 11 on Page 5 as under:

.....Till the landlord gets possession of the rented premises in due course of law, tenant is entitled to use the suit premises for his enjoyment. Nowadays electricity is essential and till he continued as tenant, it is his right to have amenity of electricity supply....

(Emphasis supplied)

2.1. The Appellate Bench has further observed on Page 7 as under:

"Moreover, Sec. 23A of the Act makes entitle to the tenant to have supply of electricity at his cost. Starting word of Sec. 23A is that, when a tenant desire to get supply of electricity at his cost from licensee....". It gives impression that it is left upto the tenant that when he desires, he may apply for electricity from the licensee (electricity company). These words are sufficient to grant supply of electricity, and therefore, order passed by the learned City Deputy Collector (Western) Ahmedabad is just, legal and proper and we are of the view that the learned City Deputy Collector (Western), Ahmedabad, who passed the order is competent authority and delegate of the Collector and learned City Deputy Collector (Western), Ahmedabad, after giving opportunity to tenant and landlord, permitted the tenant to get supply in accordance with the provision of law.....

(Emphasis supplied)

2.2. It is further observed in the aforesaid order that:

.....Moreover, it seems from the record of the civil revision application that earlier electricity connection was cut-off by the electricity company for non-payment of amount of consumption charges of electricity by the tenant. Means it was not cut by the landlord. Now the tenant wants to get electricity supply, therefore it is his right to get supply from the electricity company.....

(Emphasis supplied)

3. Drawing attention on the first page of the order dated 31-8-2012 of City Deputy Collector in Electric Case No. 3 of 2012, the learned Advocate for the petitioner has submitted that bare reading of the same (unnumbered Para 1), it is clear that the said application was preferred by the respondent herein for getting the new electric connection under Sec. 23A of the Act for which, respondent has no right to prefer the same before the said City Deputy Collector because the electricity connection was cut-off by the electricity company for want of payment of amount of consumption charges of electricity by the respondent-tenant. Moreover, the City Deputy Collector or Deputy Collector has no power to pass any order for restoration of electric supply under Sec. 23A of the Act and the only course open for respondent-tenant herein is to adopt the proper procedure for restoration of the electric supply by preferring the necessary application under Sec. 24 of the Act.

3.1. Referring the first page of the order dated 31-8-2012 of the City Deputy Collector, referred above, it appears to me that the respondent-tenant herein has requested for electric connection and not requested for new electric connection, as submitted by the learned Advocate for the petitioner. In light of the said request, the City Deputy Collector has passed the above-referred order dated 31-8-2012 and approved the request of the respondent herein for continuation of electric connection means restoration of electric supply. In my view, Sec. 23A of the Act speaks for supply of electricity at the cost of tenant from licensee, whether it is by way of restoration of electric supply or it is by way of new connection. In short, Sec. 23A of the Act enables a tenant to get at his own cost, electric supply to the premises occupied by him, even though, the landlord does not give his consent thereto, as required by the Electricity Act, 1910. Thus, I do not find any merit and force in the submission made by the learned Advocate for the petitioner that City Deputy Collector or the Deputy Collector has the power under Sec. 23A for the dispute related to new connection only and has no power to pass any order for restoration of electric supply under Sec. 23A of the Act.

3.2. The next submission made by the learned Advocate for the petitioner is that if the tenant wants to restore the electric connection and the proper procedure for restoration of electric connection is to file the necessary application under sub-sec. (2) of Sec. 24 of the Act. In the case on hand, it is not the case of the respondent-tenant herein that the petitioner-landlord has cut-off or withhold essential supply or service. It is not under dispute that electric supply/connection

was cut-off by the electricity company for want of payment of amount of consumption charges of electricity by the respondent-tenant. Hence, in my view, there appears no substance in the submission made by the learned Advocate for the petitioner landlord that respondent-tenant can get the restoration of electricity connection/supply only under sub-sec. (2) of Sec. 24 of the Act.

3.3. The learned Advocate for the petitioner has put reliance on the head note of the decision in *Prabhudas Hiralal Rathod Vs. City Deputy Collector and Others*, . The said Head note reads as under:

Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947) - Sec. 23A - Constitution of India, 1950 - Art. 227 - Application under Sec. 23A for independent electric connection to City Deputy Collector - City Deputy Collector bound to grant permission if the applicant resides in the premises - By grant of permission rights and contentions of landlord are not jeopardized in Civil Court.

3.3.1. In my view Para 6 of the said judgment is applicable to the case on hand and the same goes against the submission made by the learned Advocate for the petitioner-landlord. The Para 6 of the above-referred citation reads as under:

In view of the fact that the petitioner has been staying in the said premises for a long time and in view of the fact that even the Collector has come to the conclusion that the electric supply was initially granted and subsequently discontinued, coupled with the fact that the petitioner had asked for consent of the landlord and the said consent was refused, it appears that the learned City Deputy Collector was clearly in an error in compelling the petitioner to approach the competent Court under Sec. 24(2) of the Bombay Rent Control Act. That may be an alternative remedy available to him. But all the same when there was sufficient material on the record of the case, prima facie proving that the petitioner was a tenant in the said premises, such permission could not have been refused. The reason for the above conclusion is apparent. In any case of dispute between the landlord and tenant, the landlord might aver that the person so occupying the premises is a trespasser and civil litigation as it is notoriously procrastinated he may compel the tenant to go without electricity supply for an inordinately long time in the pious hope that the tenant may vacate the premises. That situation would run counter to the Scheme and object of the Rent Act. Merely, because such permission is granted under Sec. 23A, the rights and contentions of the landlord before the Civil Court are in no way jeopardized. Hence, the petition is allowed and the order of the learned City Deputy Collector is hereby quashed.

(Emphasis supplied)

3.4. It has been argued by the learned Advocate for the petitioner that the application filed by the respondent-tenant before the City Deputy Collector is hit by provision of Limitation Act, because the connection in dispute has been cut-off by electricity company on 11-3-2008. He has put reliance on the decision in *Sumerlal M. Bafna and others Vs. D.D. Chothia* and another rendered by the

learned Single Judge of High Court of Bombay on 5-2-1997. The dispute involved between the parties of the said decision referred above was under Sec. 24 of the Bombay Rent Act, 1947 for the restoration of essential supply of services. As discussed hereinabove, the dispute between the present petitioner-landlord and respondent-tenant is related to Sec. 23A of the Act. In my view, the decision referred above is not at all applicable to the case on hand. In view of the aforesaid discussion and considering the overall aspects of the matter, in the opinion of this Court the learned Courts below have rightly decided the matter in favour of the respondent No. 1-tenant herein, and as such, in view of the concurrent findings of the learned Appellate Bench of the Small Causes Court at Ahmedabad as well as the order passed by City Deputy Collector, in the considered opinion of this Court, present petition lacks merits and deserves no consideration. Hence, present Special Civil Application is dismissed.