

(1953) 12 MAD CK 0007

In the Madras High Court

Case No : Civil Revision Petition No's. 1434 to 1438 of 1951

S.E. Abdul Ghafoor Sahib

APPELLANT

Vs

A.M. Abdul Salam Sahib and Others

RESPONDENT

Date of Decision : 10-12-1953

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1949 — Section 4, 5
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1955 Mad 93 : (1954) 67 LW 496

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : G.R. Jagadeesa Iyer, for the Appellant; K. Raman and S. Muthusubramaniam, for the Respondent

Judgement

Ramaswami, J.—These are five connected civil revision petitions filed against the decrees and Judgment of the learned District Munsif of

Vellore in S. C. S. Nos. 1003 to 1007 of 1950.

2. The facts are: The petitioner is the landlord and the respondents are the tenants of five shops belonging to the petitioner in Dhoranam-pet,

Gudiysttam taluk. These shops were not electrified and at the requests of the tenants they were electrified at a considerable expense by the

landlord and the landlord entered into the following agreement dated 1-2-1947 reproduced below:

Agreement in respect of rent and electrical charges" etc. executed on the 1st day of February 1947 in favour of S.E. Abdul Gafoor Sahib, son of

S. Yousuf Sahib, residing at Aliar Street, Dhoranampet, Gudiyattam Taluk, by A.M. Abdul Salam Sahib, son of A.U. Mathar Sahib, residing at

the aforesaid street, Pettai and town to the following effect: I had been paying till

now rent for the shop, at a sum of annas seven, Re. 0-7-0 per day for carrying on business in the building belonging to you, bearing Municipal door No. J. and situate in the bazar of Dhornampet.

At my request, since you have installed electric lights as well as the lining, fitting and meters, etc., relating to the same at the said building at your own cost and as you yourself have been meeting the current charges as well, I have executed this agreement after having consented to pay daily the usual rent for the said building at Re. 0-7-0 per day as well as the daily charge of Re. 0-9-0 for the electric lights and the current etc. from 1-2-

1947. This agreement shall be in force till the 31st day of July 1948. If for any reason the electric lining or meter be removed the electric charges of Re. 0-9-0 shall not be paid to you. To this effect the agreement in respect of the rent for the shop and electric charges executed by me with consent.

3. The tenants thereupon filed petitions before the Bent Controller, Tirupathur, impeaching the terms of the agreement and asking for a fair rent to be fixed. The Rent Controller fixed the fair rent at Re. 0-6-9 per day instead of Re. 0-7-0 set out in the agreement and left the question of electric charges mentioned in the agreement open.

4. The landlord then filed against one of the tenants involved in this fixation of fair rent proceedings a revision petition in the High Court and the order of Panchapakesa Aiyar J. which is reproduced now is as follows:

I have perused the entire records and heard the learned counsel on both sides. The petitioner was undoubtedly entitled to recover the electricity

charges he paid for the defendant in addition to the rent at 0-6-9 per day. The parties in their compromise left the electric charges open. Of course

Re. 0-9-0 per day for electric charges for a shop with a rent of Re. 0-6-9 per day is far too high. That is why the parties who agreed to a rent of

Re. 0-6-9 per day (as against the seven annas claimed) did not agree about the electric charges. A mere agreement in the anxiety of the moment to

get a roof over one's head and a light in the darkness cannot be implicitly relied on in these days of Rent Control and anti-profiteering.

The petitioner who paid the electric bills, did not produce them. His counsel says that they were all consolidated bills from which the charges for

this shop cannot be separately made out. The petitioner wanted to profiteer on

these charges and the respondent to escape paying them altogether.

Now the counsel on both sides consider three annas per day or Rs. 46 only in all for the period in question to be reasonable. I too consider this to

be the most reasonable thing and modify the lower Court's decree by giving the plaintiff a decree for Rs. 140-14-9 and proportionate costs and

dismissing the rest of his suit with proportionate costs. In this petition, the petitioner will get proportionate costs on Rs. 46 and the respondent will

bear his own costs.

5. In accordance with the Judgment of the High Court the landlord has filed these Small Cause Suits in the District Munsif's Court of Vellore for

electric charges at 3 annas per diem from 1-7-1947 to 3-7-1950 due by the defendants in respect of the shops occupied by them belonging to the

plaintiff.

6. The contention of the defendants was that the fair rent of Rs. 0-8-9 per diem fixed by the Rent Controller did not (sic) include the electric

charges, viz., for consumption of electric energy charged by the electricity authorities and that they have been paid by these tenants and nothing is

therefore due from them by way of payments towards electricity charges-

7. This contention found acceptance at the hands of the learned District Munsif and he dismissed the suits. Hence these civil revision petitions.

8. The points for determination before us are two-fold, viz., the definition of the term ""rent"" under the Madras Buildings (Lease and Rent Control)

Act, 25 of 1949 and the term ""electricity charges"" used in the suit agreement.

9. The word ""rent"" is not defined in this Act or under the General Clauses Act. This definition has to be gathered from tile Standard Law Lexicon

(I) the expression used in certain other Acts and the case-law. In Tomlin's Law Dictionary ""rent"" is defined as a sum of money or other

consideration issued out of lands or other tenement generally taken as the consideration payable by a tenant forelands or tenements held under

lease or demise. It is a right to profit usually though not, necessarily money; for it frequently consists of a part of the produce of the land, labour etc.

It is the compensation either in money, provisions, chattels or labour, which is received by the owner of the soil or the person entitled to possession

of the premises leased for the use and occupation thereof. In the ordinary sense it is a return in money or kind for the enjoyment of a specific

property held by one person from or under another: -- "Gajjar v. Guru Surdul Singh", AIR 1925 Lah 196 (A). The expression ""rent"" must be

regarded as having reference only as something that is payable not as compensation or damages but under or by virtue of a contract: -- Gurijala

Pedda Venkatayya Vs. Komerla Kistappa, . The characteristic of the rent is periodical or of a recurring character and payment on specified occasions.

Rent is to be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy or the general

law in the absence of such contract: -- "Satyendra Nath v. Nilkantha Singh", 21 Cal 383 (C) For the purpose of the English Rent Restrictions Acts

rent is the whole amount paid by the tenant to his landlord in respect of his enjoyment of what is let to him whether described as rent or not.

"Property Holding Co. Ltd. v. Clark", 1948 1 KB 630 (D), -- "Wilkes v. Good-win", 1923 2 KB 86 (E) -- "Duke of Westminster v. Store

Properties Ltd.", 1944 Ch 129 (F), -- "Samuel v. Salmon and Gluckstein Ltd.", (1945) 173 LT 358 (G). It is in this sense that the expression

rent"" is used in several Acts like the C. P. Act 18 of 1881, Land Revenue, Section 4, Clause (15); the Bengal Tenancy Act 8 of 1885, Transfer of

Property Act (Section 105) etc. The distinguishing feature in the case of rent so far as these Buildings Rent Control Acts are concerned is that it is

payable only in money. This is deducible from the expressions used in the various parts of the Acts. (Similarly in the English Rent Restriction Acts: -

- "Hornsby v. Maynard", 1925 1 KB 514 (H)).

10. This rent does not include charges for electricity or water supply by the landlord. Consequently for the calculation of the standard rent, these

charges, if paid by- the tenant as part of his rent, as is usually done, must be excluded, since rent is the recompense paid by the tenant to the

landlord for the transfer of a right to enjoy the premises; vide -- "Francis Jackson Developments Ltd. V. Stemp", 1943 2 All ER 601 (I), --

"Dunthorne and Shore v. Wiggins", 1943 2 All ER 678 (J) and since the premises, though they ho doubt include, fittings affixed to the building do

not include electricity or water: (see Principles of Rent Control by R.B. Andhyarujina (1952) on page 101; Das Gupta Rent Control Acts and

Orders (1951) pages 96-97, 187; Sarin and Pandit Rent Restrictions in the

Punjab (1950) pages 22 and 47).

11. These electricity charges, viz., charges levied for the consumption of energy which do not constitute part of rent are different from charges

arrived at by agreement between the landlord and the tenant in regard to the installation of electric lights etc. This will be classified as an

improvement. If this improvement had been effected before the application for fixation of fair rent is made, then it would be taken into

consideration in fixing such fair rent u/s 4 and if this improvement has been effected after the fixation of fair rent there is provision for enhancement

of rent on that account u/s 5 of Madras Act 25 of 1949.

Under the English Restriction Acts an additional payment reserved either by the instrument of letting or by a supplemental instrument for such things

as fitments services or management costs or building is part of the rent for purposes of the Acts. But a supplemental payment which is even in part

in respect of something extraneous such as the goodwill of the business is not rent:

-- "Alliance Property Co. v. Shaffer", 1948 2 KB 464 (K), -- "Artillery Mansions Ltd. V. Macartney", 1949 1 KB 164 (L), -- "Woods and Co.

v. City and West End Properties Ltd.", (1921) 38 TLR 98 (M),

-- "Ellen v. Goldstein", (1920) 89 LJ Ch .586 (N). In any event, the landlord is not bound to provide electricity. It is only if as part of the premises

or buildings demised electric lights and fittings etc. go that should form part of the premises demised and the landlord cannot cut off this service and

if he does so he will be liable to penalty, for Instance u/s 41, West Bengal Premises Rent Control Act, 1950. Otherwise the landlord's refusing to

supply electricity is no offence: -- "Abdul Rahman V. Emperor", AIR 1928 Sind 49 (O).

In short, for installing electric lights at a capital expenditure of considerable amount, there can be an agreement between the landlord and the tenant

charging so much per light extra or per diem. This would not form part of the rent:

-- Emperor Vs. Ram Gopal Rupji, . The charges paid for supply of electric energy may not be payment of rent (Ibid). But where the landlord

recovers exorbitant charges for the same, it might be said that the landlord is recovering excessive rent (Ibid). This agreement which it is perfectly

legitimate for the landlord and tenant to enter Into and which will not form part of the standard rent, must be taken into consideration in fixing the

fair rent u/s 4 or Section 5 of the Madras Act 25 of 1949 as the circumstances may require. (For a lucid discussion of the Inter-action of

contractual and noncontractual services on the fixation of fair rent see -- "R. v. Paddington and Saint Marylebone Rent Tribunal; Ex Parte Bell

London and Provincial Properties Ltd.", 1949 1 KB 686 (Q)).

12. In the instant case under the agreement reproduce above the tenants have agreed to pay nine annas per diem in regard to the electric charges

which have been wrongly understood both by the Rent Controller as well as the Small Cause Judge as meaning payment only towards the

consumption of electricity. On the other hand, the covenant in the agreement that if for any reason the electric lining or meter be removed the

electric charges will not be paid by the tenants to the landlord, and the fact that no agreement need be made regarding the payment of charges for

the consumption of the electric energy for which bills will be sent by the electric authorities clearly show that what the tenants have undertaken was

a lump sum payment of nine annas per diem as part payment towards the capital expenditure Incurred by the landlord constituting an improvement

plus monthly payment of the electricity consumption charges. Therefore, the Rent Controller should not have left open this part of the case and

must have filed the fair rent taking into consideration this improvement u/s 4 of the Act. Hence when the matter came up in revision, after discussion

with the advocates appearing on both sides Panchapakesa Aiyar J. has fixed three annas per diem as covering both heads viz., charges for

consumption of electricity plus the reasonable additional payment which the tenants had undertaken to pay towards the improvement effected at

considerable cost by the landlord.

13. The Small Cause Judge therefore was not justified in refusing to pass a decree in regard to the payment to be made by the tenants towards the

Improvements which by agreement of parties was fixed at nine annas per diem covering installation charges as well as the electricity consumption

bills. This agreement cannot be summarily brushed aside unless it is shown to have been vitiated by the invalidating circumstances under which a

contract can be avoided. The defendants have not adduced evidence to avoid the

agreement. But there are two limiting factors. The learned Small Cause Judge has found that the monthly electricity bills had been met by the tenants and secondly the plaintiff has limited his claim to three annas per diem. So the proper course for the Munsif to have adopted was to accept the figure of three annas per diem fixed by Panchapakesa Aiyar J., and for which these suits had been filed and deduct the payment made by the tenants for meeting the electricity bills and passed decrees for the balance.

14. Therefore, the decrees and judgment of the lower court dismissing the suits cannot be upheld and the suits have to be remanded for fresh disposal in the light of the observations made above. The learned Small Cause Judge is directed to take these suits on file and give them their original numbers, find out the amounts paid by the respective defendants towards the charges for consumption of electricity, calculate the arrears under this head due from the defendants at three annas per diem and deducting the former from the latter pass decrees for the balance in the respective suits.

15. These civil revision petitions are disposed of accordingly and the costs of these civil revision petitions will be provided for in the revised decrees to be passed by the learned Small Cause Judge.

16. Before parting with the case I wish to Impress on the learned Small Cause Judges that the correct approach to these cases is in the words of

Lord Greene M. R. in a recent case (cited in Blundell's preface to his Rent Restriction Guide, 3rd Edn. (Sweet and Maxwell Ltd., 1949) that the

"Rent Restriction Acts are for the protection of tenants and not for the penalising of the landlords". It is their duty to so administer the Acts that in

the words of Blundell many owners and tenants of houses, to say nothing of those who manage properties for others and those who advise on the

law (who?) have been tempted towards the suspicion that the Rent. Restriction Acts might rather be for the confusion and baffling of simple honest

men have no ground for entertaining such beliefs in future.