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**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: November 29, 2005

**+ LPA 1190/2004**

**TATA MOTORS LTD. .... Appellant**  
Through Mr. Pallav Shisodia and Mr. Akhil  
P. Chhabra and Mr. N. Singh, Advocates

**versus**

**N.D.M.C. & ORS. .... Respondents**  
Through Ms. Anjana Gosain, Advocate

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE MADAN B. LOKUR**

- ✓ 1. Whether the Reporters of local papers may be allowed to see the judgement?
- ✓ 2. To be referred to Reporter or not?
- ✓ 3. Whether the judgement should be reported in the Digest?

**MARKANDEYA KATJU, C J**

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1. This Letters Patent Appeal has been filed against the impugned judgment of learned Single Judge dated 30.11.2004. We have heard learned counsel for the parties and have perused the

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record.

2. The facts in detail have been set out in the judgment of learned Single Judge and hence we are not repeating the same except where necessary.

3. The short question in this case is whether the appellant is liable to pay the electricity charges in question under the category of 'domestic use' or under the category 'non-domestic use'.

4. The appellant is a company registered under the Indian Companies Act. The appellant purchased four flats in Gauri Sadan, Hailey Road, New Delhi bearing Nos. F-101, F-201, E-501 and C-601 at Gauri Sadan, located at 5 Hailey Road, New Delhi. The appellant applied for supply of electricity for domestic use to the respondents. It is alleged that the petitioner's executives/officials travel frequently from various cities in India to the Delhi office on training and official works and for this purpose the appellant has decided to maintain a transit accommodation for stay of such officers/executives for a duration extending from a few days to a few months.

5. It is alleged in para 6 of the writ petition that the respondents' had carried out an inspection of the property at C-601, Gauri Sadan, Hailey Road, New Delhi and only thereafter the electricity connection for domestic use was granted in the name of the appellant company. Bills were received all along for the payment of electricity charges under the tariff for domestic use/residential accommodation as per the terms and conditions of supply. Out of the aforesaid four flats three flats, bearing Nos. E-501, F-101 and F-201 in Gauri Sadan, Hailey Road, New Delhi though mutated in the name of the appellant but the electricity meter was not transferred in the name of the appellant and bills continue to come in the name of the original owners for these three flats, on which the payment is made by the appellant. The mutation of the title deeds have been recorded in the name of NDMC and the property tax has been paid by the petitioner/appellant. These flats are being used by the officials/executives and the directors of the company during their travel to Delhi as a transit residential accommodation. No amount is charged from those persons who stay in these accommodation.

6. It is alleged in para 9 of the petition that the petitioner was

regularly paying the electricity charges for these flats on the basis of domestic use. However, suddenly on 13.9.2000, a letter from the Commercial Department Office of Executive Engineer, NDMC was received alleging that during the respondent's site inspection on 13.7.2000, it was observed that the electricity connection installed at Flat No. C-601, Gauri Sadan, sanctioned for domestic purpose has been misused by using the premises for Non-Domestic purpose i.e., for Guest House of the petitioner company. In the said letter it was further stated that the said discrepancy amounted to misuse of electricity connection and accordingly non-domestic tariff along with the misuser charges @ 200% will be charged with effect from the last three months from the date of inspection i.e., 13.4.2000. A copy of the letter dated 25.8.2000 is annexed as Annexure 'P3'.

7. In reply to the aforesaid letter the petitioner sent letter dated 13.9.2000, stating that the premises in question were transit residential quarters and used only for accommodating the officials/employees of appellant company and that these flats are neither being used for any commercial activity nor was the appellant company charging anything from the company officials

for their stay. Hence it was alleged that these flats cannot be said to be used for non-residential purposes. A copy of the said letter dated 13.9.2000 is Annexure 'P2'.

8. Thereafter on 2.11.2000 the appellant received bills whereby the respondent has sought to levy electricity charges of Rs.7,08,176/- on the basis of non-domestic (commercial) tariff along with misuser charges @ 200% with effect for the last three months from the date of inspection i.e., 13.4.2000. Copies of the said bills are annexed as Annexure 'P3'.

9. The appellant made representations against the same, but to no avail. The respondent by letter dated 21.11.2000 informed the appellant that the three flats inspected were found to be using electricity for non-domestic purposes whereas the electricity load was sanctioned for domestic purpose. A copy of the letter dated 21.11.2000 is annexed as Annexure 'P7'.

10. Thereafter the appellant received notice/letters dated 1.12.2000 from the respondent No.5 demanding payment of electricity dues for the period ending October 2000 with regard to

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the said four flats. The appellant has been asked to deposit the amount within seven days of the receipt of the said letter failing which electricity supply will be disconnected without any further notice. Copies of the said notices dated 1.12.2000 are annexed as Annexure 'P8'. The appellant sent a reply dated 4.12.2000 but to no effect.

11. The appellant filed a writ petition which was dismissed and hence this appeal.

12. The short question in this case is whether the appellant should be charged under the category of "domestic use" or "non-domestic use".

13. In the amended counter affidavit filed by respondent it is stated that the flats in question are being used by the petitioner for non-domestic purpose, and the respondents have relied upon the decision of the Supreme Court in Municipal Corporation of Greater Bombay v. Mafatlal Industries and Ors. 1996(8) SCC 27. In para 4 of the aforesaid decision the Supreme Court observed:

"This being the position the question for

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consideration is whether the guest house maintained by the company for the use of its employees when they come to the city can be held to be a premises "exclusively used as a private residential premises" so as to come within Category 'R'? On a plain literal meaning being given to each of the words in the expression "exclusively used as a private residential premises" it is difficult for us to hold that the guest house maintained by a company or commercial undertaking would come within the aforesaid expression. The aforesaid expression connotes that the premises in question must be exclusively used as a residential premises which in other words would mean where the premises which is used by any person privately for its own residence for a sufficiently continued period and not a premises where a person can come and spend a day or a night and then go back."

14. In the aforesaid decision of the Supreme Court in Municipal Corporation of Greater Bombay v. Mafatlal Industries and Ors. (supra) the facts of the case were similar to the facts of the present case. There also the premises in question was used as a guest house for accommodation of its own employees. In that case the guest house was used for its employees who came and stayed for some time there when they came to Bombay. The Supreme Court held that the expression "exclusively used as a private residential premises" means that the premise was used for a sufficiently long period as a residence, and not a premises where a person can come, spend a day or night and go back.

15. In our opinion the ratio of the decision of the Supreme Court in the aforesaid case squarely applies to the present case.

16. It may be mentioned that the expression "domestic premises" has been defined by the Delhi Electricity Regulatory Commission as follows:-

**"Domestic Premises:** Means premises for bonafide residential purposes."

**"Non-Domestic Premises:** Shall mean any premises other than domestic, industrial or agricultural premises unless otherwise stated."

17. We have, therefore, to find out what is the meaning of the word "residential". As is clear from the decision in the case of Municipal Corporation of Greater Bombay v. Mafatlal Industries and Ors. (supra), the expression "residential" means that there is certain degree of permanence, though not necessarily absolute permanence of the stay of the person in the premises.

18. A person can be a resident of a place where he lives sufficiently for a long period of time. If he occasionally comes for a day or two to a place and then goes away, it surely cannot be said



that he is residing there. The same view has been taken by the Supreme Court in NDMC v. Sohan Lal Sachdeva 2000(2) SCC 494, in which the Supreme Court observed:-

“In the case of a “guest house” the building is used for providing accommodation to “guests” who may be travelers, passengers, or such persons who may use the premises temporarily for the purpose of their stay on payment of the charges. The use for which the building is put by the keeper of the guest house, in the context cannot be said to be for purely residential purpose.”

19. A person can be said to be residing at a place where the ordinarily lives, eats and sleeps (***Sherigopal Rameshwardas v. CIT(1979) 119 ITR 980 (MP)***). Some territorial connection amounting to residence must subsist between the person and the place which must be the house or a portion of the house which could be regarded as an abode or home. Residence implies something more than a mere physical presence. It is a combination of acts and intention. Broadly, presence and intention of remaining at a place for a sufficiently long period of time constitutes 'residence'. A person before he could be said to be ordinarily residing at a particular place, has to have an intention to stay at that place for a considerably long time. Mere temporary residence or residence by compulsion at a place,

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however long, cannot be equated or treated as a place of ordinary residence. It would not include a flying visit of a short or casual nature (Union of India v. Dudh Nath Prasad AIR 2000 SC 525).

20. In Black's Law Directory, the word residence has been defined as follows:-

"Place where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one's home is; a dwelling house. *Perez v. Health and Social Services*, 91 N.M. 334, 573 p.2d 689, 692. Personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently. *T.P. Laboratories, Inc.v. Hugel*, D.C.Md., 197 F.Supp. 860, 865."

21. In our opinion, the guests who come to the premises in question cannot be said to be staying there for residential purpose. Their visit is only a flying visit for official purpose since they stay there only for a few days.

22. It would have been a different matter if the company had given the flat in question to its employees for staying there for a long time along with their families for residential purpose. In such

case, it could be said that the premises is being used for residential purpose. A company is an abstract entity and if its employees reside in premises owned by the company the premises can be said to be used for residential purposes by the company. But that is not the case here. It is not the appellants case that its employees reside in the premises in question with their families, who have made it their home or abode.

23. Thus, there is no force in this appeal which is dismissed.

24. However, we are of the opinion that since there was an interim order by the learned Single Judge no misuser charges should be charged for the period when the stay order was in operation. We direct accordingly. However, even for this period the appellant has to pay the electricity dues at the rate of non-domestic tariff and he must also pay interest at the rate 10% p.a. on the amount due from the date when it became due to the date of payment, and this amount must be paid within two months from today.

25. It may be mentioned that we are imposing interest as

interest is not a penalty or punishment at all, but is only the normal accretion on capital. For instance, if A had to pay to B a sum of Rs.100/- in the year 1991, and he pays Rs.100/- to B only in the year 2005, that means he has been pocketing the interest in between this period. Money doubles every seven years or so. Rs.100/- in the year 1991 will become Rs.200/- in 1998 and it will become Rs.400 in the year 2005. Hence, if A pays B Rs.100/- in the year 2005 when he was legally under obligation to pay it in 1991, this means that A has pocketed the interest which comes to Rs.300/-. That is surely not fair. Had he paid the money to B in time then B would have invested it somewhere and earned interest thereon. By retaining that amount, instead of paying it to B at the due time, A has earned interest thereon. Hence, he must, therefore, pay B not only the principal amount but also interest thereon vide South Eastern Coalfield Ltd. v. State of M.P., J.T.2003 (Supp2) S.C.443 (vide paragraphs 20 to 28). This does not amount to penalty or punishment at all, as stated above. It is for this reason, we are imposing interest, and we are of the opinion that ordinarily interest must always be awarded whenever there is delay in payment, unless the statute decrees otherwise, vide Collector, Dharampur v. N.Murugan (2005) 1 M.L.J. 405.

26. With these observations, this appeal is dismissed and any amount paid by the appellant shall be adjusted.

*M. Katju*  
**CHIEF JUSTICE**

*Madan Lokur*  
**MADAN B. LOKUR, J**

**NOVEMBER 29, 2005**  
**da**