

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9141 OF 2014

Syed Qader Passha s/o Syed Waheedulla Huaini,
Age: 70 years, Occu: Mutawali & Sajjada Nasheer,
R/o. Dargah Hazrat Qader Aulia,
Jafar Gate, Aurangabad

...PETITIONER

VERSUS

- 1) The State of Maharashtra
- 2) Indian Oil Corporation Ltd.,
(Earth while Indo Burma Petroleum Co. Ltd.),
Through its power of attorney holder,
Nitin s/o Keshav Dharmik
Age: 40 years, Occ. : Service as Manager,
(Retail Sales Indian Oil Corporation Ltd.),
Plot No.99, Jyoti Nagar,
Aurangabad

..RESPONDENTS

Formal Parties

- A) Quadri Begum w/o Late Baquar Husain,
Age: 84 years, Occ. : Hosue hold,
R/o. Dargah Hazrat Qader Aulia,
Jafar Gate, Aurangabad
- B) Haji Begum w/o Mehdi Hasan,
Age: 81 years, Occ. : House hold,
R/o. As above
- C) Syed Akbhar s/o Baquar Husain,
Age: Major, Occ. : Agent,
R/o. As above

Mr Quazi Sayed Salahuddin, Advocate for petitioner;
Mr D.R. Korde, Asstt. Govt. Pleader for respondent No. 1

CORAM : N.W. SAMBRE, J.

DATE : 7th April, 2015

ORAL ORDER :

This petition questions the legality and validity of the order dated 29th January, 2014, passed by Ad hoc District Judge-2, Aurangabad, in M.A.R.J.I. No.204 of 2011, i. e. an application for condonation of delay, caused in preferring an appeal questioning the decree for possession passed against respondent no.2 oil company. By the said order, the learned Ad hoc District Judge-2 has condoned delay of 2 years, 5 months and 27 days.

2. The present petitioner-respondent no.3 to MARJI No.204 of 2011 claimed that he is holding a decree for possession, passed in Regular Civil Suit No.200 of 2004 on 11th December, 2008, by the learned 9th Joint Civil Judge Junior Division, Aurangabad. According to him, the respondent – oil company has preferred the appeal against the said decree after prescribed period of limitation was over, which has prompted the Court below to pass an order condoning the delay, adverse to the interest of the present petitioner. Mr Quazi, learned Counsel appearing on behalf of petitioner would urge that no sufficient reasons are furnished in the application for condonation of delay and the cause in support thereof was not established.

3. In addition to above, learned Counsel has urged that the suit property was given on lease to Indo Burma Petroleum Co. Ltd., which got amalgamated with Indian Oil Corporation Ltd. The said amalgamation and transfer of property of the brother of the petitioner to the Indian Oil Corporation Ltd., according to Mr Quazi, is without consent of the land owner. He would urge that the amalgamation as is claimed by the said oil company is not identified under the provisions of the Code of Civil Procedure. According to him, such transfer of property, particularly having regard to the provisions of section 52 of the Transfer of Property Act, does not give any right in the respondent – oil company to prefer the application for seeking condonation of delay.

4. In addition to above, learned Counsel would urge that respondent – oil company cannot have better right and protection of law than that of the earlier lessee. According to him, as Indian Oil Corporation Ltd. lacks locus, the M.A.R.J.I. should have been dismissed by the learned Ad hoc District Judge.

5. Perusal of the order passed by the learned Ad hoc District Judge reflects that the petitioner has executed lease in favour of Indo Burma Petroleum Co. Ltd. and the said company was put in possession of the suit property. The said company thereafter was amalgamated with Indian Oil Corporation Ltd. by virtue of the provisions of Chapter 15 of the

Companies Act. The scheme of the said provision contemplates approval of such amalgamation by the Courts and in absence of any objection at the relevant time, the scheme of amalgamation is given effect to.

6. In the present case, the scheme of amalgamation, at the relevant time, was never objected to by the present petitioner.

7. Apart from above facts, the fact remains that by virtue of scheme of amalgamation, the lease rights which were created in favour of Indo Burma Petroleum Co. Ltd., stood vested in Indian Oil Corporation Ltd. and in my opinion, Indian Oil Corporation Ltd. was right in contending before the Lower Appellate Court to condone the delay upon preferring the appeal against the order of possession. The said fact of amalgamation was duly given weightage to by the learned Court below, while ordering condonation of delay.

8. The learned Court below has also taken into account the date of filing of the suit, the date of filing of Regular Darkhast No.261 of 2009 and the fact of amalgamation, which has resulted into imposing of the proceedings in question, at the relevant time.

9. The Court below has saddled costs on the respondent – oil company to the tune of Rs.15,000/-, i.e. Rs.5,000/- each, payable to the

present petitioner.

10. In the light of above, the contentions which are sought to be raised by Mr Quazi, i.e. section 52 of the Transfer of Property Act and Rule 102 of Order XXI of the Code of Civil Procedure, has hardly any application.

11. In view thereof, no case for interference is made out. The writ petition being devoid of merit stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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