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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) No. 1082/2006

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19th November, 2015

M/S. TEJ BHAN JAMAN DAS

..... Plaintiff

Through: Mr. S.C. Singhal, Advocate

versus

BHARAT PETROLEUM CORPORATION LTD.

..... Defendant

Through: Mr. Anil K. Batra, Advocate with
Mr. Prins Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The plaintiff partnership firm/M/s Tej Bhan Jaman Das has filed this suit against the defendant/Bharat Petroleum Corporation Ltd. for a money decree for a sum of Rs.44,19,368/- along with interest @ 12% p.a. Plaintiff who is a dealer of the petroleum products supplied by the defendant claims that defendant has supplied the petroleum products at a higher rate by wrongly placing the plaintiff in category 1/A instead of category 2/B for which latter category a lower rate has to be charged for the petroleum products. Plaintiff therefore not only seeks a money decree for recovery of the excess amount which as per the plaintiff has been received by the

defendant from the plaintiff on account of higher charges wrongly paid for category 1/A, but the plaintiff also prays for a declaration and injunction that the plaintiff be held to fall in category 2/B and the defendant be restrained from claiming higher rate of charges in future from the plaintiff by putting the plaintiff in category 1/A.

2. The three categories under which the defendant supplies petroleum products to its various dealers, including the plaintiff, as on 17.01.1983 were as under:-

“LICENCE FEE RECOVERY PER KL.		
	<u>MS</u> <u>Rs.</u>	<u>HSD</u> <u>Rs.</u>
1. Where Oil Cos. own/lease the land/site and buildings and pumps/tanks etc.	12	10
2. Where Oil Cos. own/lease tanks and pumps only	3	3
3. Where the dealers own/lease the site/buildings and tanks and pumps	NIL	NIL”

3. The charges fixed in terms of the aforesaid Letter dated 17.01.1983, Ex. DW-1/C, issued by the defendant as a circular to all its dealers containing the three categories and the charges have subsequently changed so far as the rates of supplies are concerned, however, the three

categories have remained the same. The defendant is supplying petroleum products to the plaintiff under category 1 above whereas, plaintiff states that he should be placed in category 2 above and charged a lower rate.

4. The defendant has contested the suit and has pleaded that it has rightly placed the plaintiff in category 1/A and not category 2/B inasmuch as in the present case it is the defendant who has provided the land and building as also the pumps and tanks to the plaintiff. The case of the defendant is that from the predecessors-in-interest of the present plaintiff, and which predecessors were strangers to the partner of the present plaintiff Sh. Vinay Kumar Taneja, the defendant took the land on which the petrol pump is situated, by way of a lease way back in the year 1953 and thereafter it is the defendant who constructed the petroleum tanks and pumps besides a structure/building. The defendant relies upon the document Ex. DW-1/B, which is a schedule of facilities of handing over/taking over certificate, and which shows that it is the defendant which has constructed an RCC building of the size of 12 ft. x 8 ft. and which was handed over to the plaintiff along with constructed tanks and pumps. The defendant has therefore denied the case of the plaintiff that plaintiff falls in category 1/A simply because the

plaintiff has constructed the boundary walls on the land in question and has developed the land where the petrol pump is situated.

5(i). During the course of final arguments it transpired that one partner of the plaintiff namely Sh. Vinay Kumar Taneja since is the present owner of the land on which the petrol pump is situated and which land is situated in District Hapur in Uttar Pradesh, it required examination whether the tenancy of the defendant in the land had come to an end. There is no specific field number of the land on which the petrol pump exists but the land is known as situated at Arya Nagar, Garh Road, District Hapur, U.P. The issue which arose during the course of final arguments is that if plaintiff became the owner of the land on account of the partner of the plaintiff Sh.Vinay Kumar Taneja being bequeathed the subject property in terms of the Will dated 02.01.1977 executed by the last owner Sh. Jaman Dass Khanduja, whether then it is the plaintiff which occupies the land in its own rights i.e the land was not supplied by the defendant for the defendant to claim that plaintiff fell in category 1/A, i.e the aspect which arose was that even if predecessors-in-interest of Sh.Vinay Kumar Taneja were licencees of the land which was given by the defendant/lessee for the establishment of the petrol pump, however, once Sh.Vinay Kumar Taneja became the owner

of the land on which petrol pump is situated in terms of the Will dated 02.01.1977, the owner and the licensee of the land was the same, and hence, could it be that the lease of defendant would come to an end, and if the lease came to an end, then as per the plaintiff it cannot be argued by the defendant that defendant was the provider of the land on which the petrol pump is situated. The defendant, however, argued that the rights of the lessee and lessor did not merge in Sh.Vinay Kumar Taneja because tenancy of the defendant was protected under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the 'U.P. Rent Act') inasmuch as the tenancy of the defendant was a protected tenancy as per Sections 20 and 29-A of the said Act. The defendant argued that merely because Sh.Vinay Kumar Taneja was the owner of the land on which the petrol pump is situated would not mean that he would still not be a licensee of the defendant which continued and was the lessee of the land on which the petrol pump is situated. In view of the aforesaid issue which arose, affidavits in this regard as to whether the defendant had protection under the U.P. Rent Act was called from the parties in terms of the Orders of this Court dated 18.09.2015 and 19.10.2015. Affidavits accordingly have been filed by the plaintiff and the defendant urging their respective stands

with respect to the tenancy having been ‘extinguished’ as per the case of the plaintiff and ‘not extinguished’ as per the case of the defendant.

(ii). The facts as stated in this para are being mentioned by this Court because this aspect of extinction or continuation of tenancy has not clearly come out from the pleadings of the parties and also that no such specific issue was framed, but since the continuation of tenancy or not was a material issue for determination of the disputes in the present case, parties have accordingly filed their respective affidavits with respect to tenancy rights on the plot of land on which the petrol pump is situated, pursuant to the Orders of this Court dated 18.09.2015 and 19.10.2015.

6. In the suit the following issues were framed on 05.09.2008:-

- “1. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts as mentioned in paragraph 1 of the written statement? OPD
2. Whether the suit of plaintiff is within time? OPP
3. Whether the plaintiff falls in category B and not in category A? Onus on parties
4. Whether the plaintiff is entitled for suit amount? OPP
5. Whether the plaintiff is entitled to the decree of declaration as prayed? OPP
6. Whether the plaintiff is entitled for interest, if so, at what rate and for which period? OPP

7. Relief.”

Issue nos.1 and 2

7. So far as issue no.1 is concerned, since the same has no consequence with respect to the relief which should be granted, it is not pressed on behalf of the defendant. So far as issue no.2 is concerned, counsel for the parties agree that it is only if the plaintiff falls in the category 2/B and not in category 1/A then plaintiff will be entitled to recovery of monies, but concededly only for a period of three years prior to filing of the suit and not from 1982 as was pleaded in the suit. This issue no.2 is accordingly disposed of by observing that if plaintiff succeeds, plaintiff would get the right of refund of excess amount paid by the plaintiff to the defendant only for the period of three years prior to filing of the suit and thereafter but not for a period before three years of filing of the suit.

Issue nos.3 and 5

8. This takes us to the main issues in the suit, which are issue nos.3 and 5, and decision on these issues will cause the actual determination of the disputes in the present suit. The main issue is issue no.3 as to whether the plaintiff falls in the category 2/B as is the case of the defendant or the

plaintiff falls in the category 1/A as is the case of the plaintiff. Let us examine this aspect.

9. I have already set out three categories and which are admittedly the three categories governing the parties, as is contained in the letter Ex.DW-1/C issued by the defendant as a circular to all its dealers. Before proceeding to discuss this issue as to under which category the plaintiff falls, the following admissions of the plaintiff are recorded and noted:-

(i) Defendant and not the plaintiff has constructed the petroleum tanks and the petrol pumps which exist on the site where the petrol pump is located.

(ii) The handing over and taking over certificate Ex.DW-1/B which is signed by both the parties shows that the defendant handed over to the plaintiff a building being an RCC structure of the size 12ft. x 8ft. ie it is the defendant who has in addition to supplying the petroleum tanks and the pumps, constructed and handed over a building/structure on the petroleum pump, to the plaintiff.

(iii) The land on which the petrol pump is situated was originally let out to the defendant by Smt. Munni Devi for 10 years w.e.f 1.4.1953 with a

monthly rental of Rs.40/-, and which lease was renewed from 1.4.1963 at a monthly rental of Rs.60/-. Smt. Munni Devi sold the land to Smt. Ved Vati and her son Sh. Krishan Chand and the defendant therefore started paying rent to Smt. Ved Vati and Sh. Krishan Chand. Sh. Jaman Dass Khanduja purchased the land on which the petrol pump is situated from Smt. Ved Vati and Sh. Krishan Chand and whereafter rent was increased from Rs.60/- per month to Rs. 100/- per month w.e.f 1.1.1967. Sh.Vinay Kumar Taneja the partner of the plaintiff relied upon the Will dated 2.1.1977 of the last owner Sh. Jaman Dass Khanduja in his favour and whereafter the rent was paid from around first half of 1977 at Rs.150/- per month and the rent thereafter further increased to Rs.200/- per month and which rate of rent of Rs. 200/- per month was received by Sh. Vinay Kumar Taneja upto March, 1990. After March, 1990 the cheques of rent given for quarterly payment of rent were not encashed by Sh. Vinay Kumar Taneja and the same were returned by Sh.Vinay Kumar Taneja to the defendant vide Letter dated 8.1.1996, Ex.P-6.

10. Since these relevant facts with respect to the rate of rent and payment of rent are contained in the two documents being Ex.P-6 dated 8.1.1996 and Ex.DW-1/D dated 6.9.2004, these are reproduced hereinbelow:

Ex.P-6 dated 8.1.1996

“To
The Manager Legal,
Bharat Petroleum Corpn. Ltd.
ECE House, Connaught Circus,
P.O. Box No.7,
NEW DELHI-110 001

Regd. A/D
Hapur, 8th January 1996

Dear Sir,

Ref: Site Rental at Hapur

I am herewith returning the cheques, enclosed as detailed below, alleged to have been sent as rent for the land of petrol pump at Hapur.

<u>Year</u>	<u>Sl. No.</u>	<u>Cheque No.</u>	<u>Dated</u>	<u>Bank</u>	<u>Amount</u>
1990-91	1.	151826	1.4.90	CBI, Bombay	600.00
	2.	154888	1.7.90	”	600.00
	3.	152597	1.10.90	”	600.00
	4.	166613	1.1.91	”	600.00
1991-92	5.	174227	1.4.91	”	600.00
	6.	179825	1.7.91	”	600.00
	7.	227250	1.10.91	”	600.00
	8.	228228	1.1.92	”	600.00
1992-93	9.	216125	1.4.92	”	600.00
	10.	283139	1.7.92	”	600.00
	11.	282705	1.10.92	”	600.00
	12.	284265	1.1.93	”	600.00
1993-94	13.	339261	1.4.93	”	600.00
	14.	178524	1.7.93	”	600.00
	15.	288209	1.10.93	”	600.00
	16.	330924	1.1.94	”	600.00
1994-95	17.	298731	1.4.94	”	600.00
	18.	457123	1.7.94	”	600.00
	19.	346844	1.10.94	”	600.00
	20.	501731	1.1.95	”	600.00
1995-96	21.	559685	1.4.95	”	600.00

22.	601023	1.10.95	”	600.00
23.	566358	1.7.95	”	600.00
24.	661129	1.1.96	”	600.00

As there is no lease in existence, hence the question of acceptance of any rent in the absence of any lease does not arise. The aforesaid cheques serially numbered from 1 to 24 are being returned to you. However in future any rent cheques should not be sent to me.

Thanking you,

Yours faithfully

Sd/-

Encl : Twenty four cheques.

(Vinay Kumar Taneja)
c/o M/s Tej Bhan Jaman Dass,
Dealers BPCLtd.
P.O. HAPUR-245101
Distt. Ghaziabad (UP).”

Ex.DW-1/D dated 6.9.2004

“REF: R.N.Mathura

DATE: 6.09.2004

**M/S. TEJ BHAN JAMAN DASS
DEALERS: BHARAT PETROLEUM CORPORATION LTD.
GARH ROAD,
P.O.HAPUR-245001
DISTT. GHAZIABAD(U.P)**

Sir,

DEALERSHIP AFFAIRS:

**M/s TEJ BHAN JAMAN DASS, HAPUR:REFUND OF
LFR**

We refer your letter dated 28.7.2004 addressed to our Chairman.

- I. You are aware that by a Dispensing Pump & Selling License Agreement commencing from 5.08.1977 between you (i.e., M/s Tej Bhan Jaman Dass, Hapur) and Bharat Refineries Ltd. which was later on renamed as Bharat Petroleum Corporation Ltd., we, at your request, agreed to permit you to use Petroleum Corporation Ltd., we, at your request, agreed to permit you to use Motor Spirit and/or HSD pump/s of the design from time to time adopted by the Corporation

including storage tanks, pipes and fittings belonging thereto for storage and sale of the company's petroleum products viz. Motor Spirit and/or HSD, Motor Oils, Greases and other Motor Accessories in the manner and upon the terms and conditions referred therein.

- 2(a) The Licensees shall pay to the Company in respect of the Licence aforesaid a monthly Licence Fee of such sum as may be fixed by the Company which shall be payable in advance before the commencement of every month or as directed by the Company. The Company shall have the right to vary at any time this Fee payable by the Licensees upon giving to the Licensees not less than thirty days' notice in writing of its intention to do so.

II You are aware that the retail outlet land was taken on lease

- a) from one Smt. Munni Devi for a period of 10 years effective 1.4.1953 with a renewal option for another 10 years at a monthly rental of Rs. 40/-.
- b) The lease with one Smt. Munni Devi was renewed for another 10 years effective 1.4.1963 for 10 years on a monthly rent of Rs.60/-.
- c) As per notice dated 15.6.1965, land was purchased by one Smt. Vedwati w/o Sh. Multani Ram alongwith her son Sh. Krishan Chand s/o Sh.Multani Ram.
- d) Further as per letter dated 2.11.66 from you intimating us that said land was purchased by Sh. Jaman Dass Khanduja without enclosing proof of ownership of said purchase.
- e) Although you were assuring us to produce certified copy of title/ownership documents but till date you have not provided any document proving your title/ownership.
- f) Pending production of ownership/title document by you, an agreement to lease was signed between Sh. Jaman Dass and us for 5 years effective 23.7.1968 at a monthly rent of Rs.100/-. Subsequently, lease agreement was sent to you for your signature and execution. You had neither signed the lease agreement nor returned the same.

g) Later on another agreement to lease was signed between one Sh. Vinay Kumar Taneja s/o Late Sh. Narain Dass Taneja (who claimed ownership of the land by the virtue of unregistered will without production of probate of will and thereafter of ownership) and us for 5 years on monthly rent of Rs.150/- with a renewal option of another 5 years on a monthly rental of Rs.200/-. Rent @ Rs.200 p.m. were accepted by the said Sh. Vinay Kumar Taneja upto March 1990. Thereafter, Sh. Taneja refused to accept rental.

You may be aware that to claim the lower rate of LFR, the land and the facilities should have been leased to us besides other conditions.

You are aware that

a) You have not produced even till today the ownership document proving your title to the land claimed by you.

b) You have not signed and executed any lease agreement for land and facilities in spite of the fact that all efforts have been made by us but you are not cooperating in execution of lease for the reasons best known to you.

In view of above, you are not entitled to claim lower rate of LFR. You are advised to fulfill your part of performance before seeking any benefit from us.

Thanking you,

Yours faithfully,

For Bharat Petroleum Corporation Ltd.

Sd/-

(D.K.SAINI)

Sr. Mgr. Dealer Training, North”

(underlining added)

11. We will now turn to examine the three categories with the aforesaid admitted aspects as stated in the immediately previous paragraph. When this is done it is seen that definitely the plaintiff does not fall in category 3/C inasmuch as, this third category would be where the dealer owns a land and is in possession of land as the owner and which dealer has also constructed the building for the petrol pump and has also constructed his own tanks and pumps for the supply of petroleum products. That leaves us with category 1/A and category 2/B. So far as category 2/B is concerned, it is clear that in order to fall in the same, plaintiff had to show that the defendant company owns the tanks and pumps only and not the land and building which is owned by the dealer i.e category 2/B envisages a situation where the ownership of land and the building is of the dealer such as the plaintiff and the defendant company has only constructed/supplied the petrol tanks and pumps. Thus, category 1/A deals with third category of cases where the land is provided by the defendant company; building/structure is also provided by the defendant company; and even the petroleum tank and pumps are provided by the defendant company. As already noted, there is no dispute that the defendant has supplied the petroleum tanks and pumps as also the building and the issue which now to be only decided by this Court is whether it is the defendant who has supplied the land to the plaintiff as

licensee because the defendant is and continued to be the lessee of the land or it is that the tenancy of defendant stood terminated when Sh.Vinay Kumar Taneja became the owner of the land because he was bequeathed the same in terms of the Will dated 2.1.1977 of Sh. Jaman Dass Khanduja. On this aspect essentially what is required to be discussed is whether the lease which was originally created of land in favour of the defendant by Smt. Munni Devi in 1953 continued and this lease was not terminated by Sh. Vinay Kumar Taneja at any point of time either under Section 106 of the Transfer of Property Act, 1882 or that the lease could not have been terminated and thus was never determined because lease of the defendant had statutory protection as per Sections 20 and 29A of the U.P. Rent Act. These two aspects as to protection of the defendant under the U.P. Rent Act or even assuming U.P. Rent Act does not apply whether plaintiff at any point of time terminated the tenancy of the defendant of the land on which the petrol pump is situated by notice under Section 106 of the Transfer of Property Act, 1882 will now be hereafter taken up.

12. The issue is that whether tenancy of the defendant with respect to the land which was leased out to it originally in 1953 by Smt. Munni Devi continued and has continued in terms of the statutory protection to the

defendant under Sections 20 and 29 A of the U.P. Rent Act. Sections 20 and 29 A of the U.P. Rent Act read as under:-

Section 20

“20. Bar of suit for eviction of tenant except on specified grounds.—

(1) Save as provided in sub-section(2),no suit shall be instituted for eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner:

Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in Court or otherwise reduced to writing and signed by the tenant.

(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:

(a) that the tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:

Provided that in relation to a tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925), has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act or where he has died by enemy action while so serving, then in relation to his heirs, the words “four months” in this clause shall be deemed to have been substituted by the words “one year”;

(b) that the tenant has willfully caused or permitted to be caused substantial damage to the building;

(c) that the tenant has without the permission in writing of the landlord made or permitted to be made any such construction or structural alteration in the building as is likely to diminish its value or utility or to disfigure it;

(d) that the tenant [has without the consent in writing of the landlord used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or otherwise done any act which is inconsistent with such use], or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be used for illegal or immoral purpose;

(e) that the tenant has sub-let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building;

(f) that the tenant has renounced his character as such or denied the title of the landlord, and the latter has not waived his right of re-entry or condoned the conduct of the tenant;

(g) that the tenant was allowed to occupy the building as part of his contract of employment under the landlord, and his employment has ceased.

[Sub-section 3 omitted by U.P. Act 37 of 1972 (w.e.f 20-9-1972)]

(4) In any suit for eviction on the ground mentioned in clause (a) of sub-section(2), if at the first hearing of the suit the tenant unconditionally pays of [tenders to the landlord or deposits in Court] the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in

lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground:

Provided that nothing in this sub-section shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

[*Explanation*- For the purposes of this sub-section—

- (a) the expression “first hearing” means the first date for any step or proceeding mentioned in the summons served on the defendant;
- (b) the expression “cost of the suit” includes one-half of the amount of Counsel’s fee taxable for a contested suit.]
- (5) Nothing in this section shall affect the power of the Court to pass a decree on the basis of an agreement, compromise or satisfaction recorded under Rule 3 of Order XXIII of the First Schedule to the Code of Civil Procedure, 1908.
- (6) Any amount deposited by the tenant under sub-section (4) or under Rule 5 of Order XV of the First Schedule to the Code of Civil Procedure, 1908 shall be paid to the landlord forthwith on his application without prejudice to the parties’ pleadings and subject to the ultimate decision in the suits.]”

Section 29A.

“29A. Protection against eviction to certain classes of tenants of land on which building exists—

- (1) For the purposes of this section, the expression “tenant” and “landlord” shall have the meanings respectively as-signed to them in clauses (a) and (j) of Section 3 with the substitution of the word “land” for the word “building”.
- (2) This section applies only to land let out, either before or after the commencement of this section, where the tenant, with

the landlord's consent has erected any permanent structure and incurred expenses in execution thereof.

(3) Subject to the provisions hereinafter contained in this section, the provisions of section 20 shall apply in relation to any land referred to in sub-section (2) as they apply in relation to any building.

(4) The tenant of any land to which this section applies shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties, and in the absence of agreement, the rent determined in accordance with sub-section (5).

(5) The District Magistrate shall on the application of the landlord or the tenant determine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market-value of the land, and such rent shall be payable, except as provided in sub-section (6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later.

(6)(a) In any suit or appeal or other proceeding pending immediately before the date of commencement of this section, no decree for eviction of a tenant from any land to which this section applies, shall be passed or executed except on one or more of the grounds mentioned in sub-section (2) of Section 20, provided the tenant, within a period of three months from the commencement of this section by an application to the court, unconditionally offers to pay to the landlord, the enhanced rent of the land for the entire period in suit and onwards at the rate of ten per cent per annum of the prevailing market value of the land together with costs of the suit (including costs of any appeal or of any execution or other proceedings).

(b) In every such case, the enhanced rent shall, notwithstanding anything contained in sub-Section (5), be determined by the court seized of the case at any stage.

(c) Upon payment against a receipt duly signed by the plaintiff or decree-holder or his counsel or deposit in court of

such enhanced rent with costs as aforesaid being made by the tenant within such time as the court may fix in this behalf, the court shall dismiss the suit, or, as the case may be, discharge the decree for eviction, and the tenancy thereafter, shall continue annually on the basis of the rent so enhanced.

(d) If the tenant fails to pay the said amount within the time so fixed (including any extended time, if any, the court may fix or for sufficient cause allow) the court shall proceed further in the case as if the foregoing provisions of this section were not in force.

(7) The provisions of this section shall have effect, notwithstanding any-thing to the contrary contained in any contract or instrument or in any other law for the time being in force.

Explanation-For the purposes of sub-sections (6) where a case has been decided against a tenant by one court and the limitation for an appeal therefrom has not expired on the date immediately before the commencement of this section, this section shall apply as it applies to pending proceedings and the tenant may apply to that court for a review of a judgment in accordance with the provisions of this section”

13(i). A reading of the provision of Section 29A shows that before the said provision was brought in by amendment to U.P. Rent Act by the U.P. Act 28 of 1976 w.e.f 5.7.1976, there was a protection to the tenant of a building but there was no protection to a tenant of the land. It is only by virtue of the legislature bringing in Section 29A of the U.P. Rent Act that the tenant of the land received protection, provided however that the tenant had constructed upon the land.

(ii) Besides the aspect that tenant should construct upon the land, counsel for the plaintiff has further argued by placing reliance on sub-sections 4 and 5 of Section 29A of the U.P. Rent Act, that even if the tenant had constructed on the land, such a tenant still would not have protection unless in terms of sub-sections 4 and 5 of Section 29A the tenant had paid mutual agreed enhanced rent after 5.7.1976 when Section 29A came into force or the such higher rent as was determined by the District Magistrate in terms of sub-section 5 of Section 29A of the U.P. Rent Act. Counsel for the plaintiff has argued that in the present case since provisions of sub-sections 4 and 5 of Section 29A of the U.P. Rent Act were not complied with by the defendant in the present case because there was no mutually agreed rent which was paid by the defendant to Sh. Vinay Kumar Taneja after 5.7.1976 and admittedly the District Magistrate had not determined the enhanced rent on an application either of the landlord or of the tenant and which was paid to Sh. Vinay Kumar Taneja, hence, the defendant derives no statutory protection under Section 29A of the U.P. Rent Act, and for which purpose reliance has been placed upon a judgment of a Single Judge of the Allahabad High Court in the case of *Bharat Petroleum Corporation Ltd. (M/s) Vs. Dinesh Kumar Gupta and others (2008) 3 ARC 502*. In this judgment which was in the case of the defendant itself it was held by a Single Judge of *CS(OS) 1082/2006*

the Allahabad High Court relying upon an earlier judgment of the Full Bench of the said court, that, merely because the tenant had constructed on the land, such a tenant would not have protection under Section 29A of the U.P. Rent Act, unless the tenant had paid either the mutually agreed enhanced rent after 5.7.1976 in terms of sub-section 4 of Section 29A or the higher rent which is determined pursuant to the proceedings before the District Magistrate under sub-section 5 of Section 29A of the U.P. Rent Act.

14(i). In my opinion, plaintiff cannot argue by placing reliance upon sub-sections 4 and 5 of Section 29A of the U.P. Rent Act, inasmuch as, the factual position which has emerged in the present case is that after 5.7.1976, the rent was by mutual agreement first enhanced to Rs.150/- per month from around the first half of January, 1977 and thereafter at some later stage after 1977 to Rs.200/- per month and which rent was paid by the defendant to the plaintiff till the end of March, 1990 i.e for approximately a period of 12 years enhanced rent was paid to the plaintiff by the defendant after 5.7.1976. I have already reproduced above the documents being Ex.P-6 dated 8.1.1996 showing the return by the plaintiff of the cheques issued by the defendant for rent at Rs.200/- per month i.e Rs.600/- quarterly from 1.4.1990, and the Letter Ex.DW-1/D dated 6.9.2004 and which shows as per its para II(g) that

up to March, 1990 Sh. Vinay Kumar Taneja received a sum of Rs.200/- per month as rent.

(ii) Therefore, after 5.7.1976, the defendant is found to have paid to the plaintiff mutually agreed enhanced rent firstly at Rs.150/- per month and thereafter at Rs.200/- per month and therefore the requirement of sub-section 4 of Section 29A of the U.P. Rent Act stands duly satisfied in the facts of the present case i.e both the requirements of Section 29A stand satisfied by the defendant that the defendant had paid enhanced rent after 5.7.1976 and it had constructed a structure/building on the land and which was handed over to the plaintiff as seen from the Ex.DW-1/B. Thus, the defendant's tenancy of the land had statutory protection in terms of Section 29A of the U.P. Rent Act and the defendant therefore continued to be the tenant in legal possession of the site on which the petroleum pump is situated and which was handed over by the defendant to the plaintiff as a licensee. This would mean that the plaintiff continues only as a licensee on the land on which the petrol pump is situated i.e as a licensee of the defendant who was/is the tenant of the land. Putting it in other words, the land on which the petrol pump is situated has been provided by the defendant to the plaintiff and consequently since land, petrol tanks and pumps and the building all are

supplied by the defendant to the plaintiff, plaintiff necessarily has to fall in category 1/A and not in category 2/B as is argued on behalf of the plaintiff.

15. Once the plaintiff falls in the category 1/A, the defendant was clearly justified in putting the plaintiff in such category 1/A and charging the plaintiff accordingly for petroleum products as per that category. Plaintiff therefore is not entitled to a declaration or the relief of injunction or for recovery of monies on the ground that defendant has wrongly charged the plaintiff higher rates by putting plaintiff wrongly under category 1/A instead of plaintiff being put and charged rates at category 2/B.

16. In view of the aforesaid discussions, the issue nos. 3 and 5 are decided in favour of the defendant and against the plaintiff. For the sake of completion it is observed that in view of the defendant having protection under U.P. Rent Act, 1972, I need not discuss the aspect of continuation of tenancy of the defendant of the land as no notice is given in terms of Section 106 of the Transfer of Property Act, 1882.

Issue no.4 and 6

17. In view of the issue nos. 3 and 5 having been decided in favour of the defendant and against the plaintiff these issue nos.4 and 6 will also

automatically stand decided against the plaintiff and in favour of the defendant.

Relief:

18. In view of issue nos.3 to 6 in the suit having been decided in favour of the defendant and against the plaintiff, plaintiff is not entitled to seek any of the reliefs as claimed in the suit whether of recovery of money or for declaration or for injunction or for interest.

19. The suit is accordingly dismissed, leaving the parties to bear their own costs. Decree sheet be prepared.

NOVEMBER 19, 2015
nn/ib

VALMIKI J. MEHTA, J.