

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Second Appeal No. 142 of 2015
With
Civil Application No.4015 of 2015**

The Dhulia Motors Owners Cooperative
Consumers Stores Limited Dhule. .. **Appellant.**

Versus

Kishor Mohanlal Bafna
And Others. .. **Respondents.**

Shri. P.V. Mandlik, Senior Advocate, instructed by Shri.
Kishore C. Sant, Advocate, for appellant.

Shri. R.R. Mantri, Advocate, holding for Shri. Amol S.
Sawant, Advocate, for respondent No.1.

Shri. Sudhir D. Kulkarni and Shri. Sanket S. Kulkarni,
Advocates, for respondent Nos.2 and 3.

CORAM: T.V. NALAWADE, J.

DATE : 18th MARCH 2016

ORDER:

1) The appeal is filed against the judgment and decree of Special Civil Suit No.135/2009 which was pending in the Court of the Civil Judge Senior Division Dhule and also against the judgment and decree of Civil Appeal No.22/2012 which was pending in the Court of the

Ad-hoc District Judge-1, Dhule. The suit filed by the present appellant for relief of declaration that the decision of Special Civil Suit No.155/2005 decided by the Civil Judge Senior Division Dhule is not binding on him and for further relief of perpetual injunction to protect his possession over the suit property is dismissed by the trial Court and this decision is confirmed by the first appellate Court. Both the sides are heard.

2) To ascertain the main points involved in the litigation, the history of the litigation to some extent needs to be given. It is as follows, incident wise :

(i) The suit property is 28.33 R portion (30600 square feet) of Survey No.484/1 situated at Dhule. This property was owned by one Mehmood Majeed. On 29-7-1963 Mehmood Majeed executed lease deed in favour of Burma-Shell Company, the then oil company. The lease was for the period of 20 years and the yearly rent was Rs.1000/-. Right was given to the lessee to run petrol pump on this property and for that purpose make necessary constructions;

(ii) On 9-5-1963 Burma-Shell Company had executed licence to appoint the appellant/society to sell the products of the company (petrol, diesel etc.) at the site taken on lease basis by Burma-Shell Company. The suit property was mentioned as the property which was proposed to be given for this purpose;

(iii) During the lease period, Burma-Shell Company came to be merged in Bharat Petroleum Company Limited (hereinafter "BPCL") a corporation of the Central Government under the Act of merger made by the Central Government. Even after this incident, the appellant society continued to sell the petroleum products but of the BPCL (the principal) on the suit site;

(iv) During the period of lease, Mehmood Majeed died. His successors sold the suit property to 13 persons who include Kishore Bafna under registered sale deed dated 10-6-2003. Subsequently other purchasers transferred their rights in the property in favour of Kishore Bafna and by the end of May 2004, Kishore Bafna became exclusive owner of the suit property;

(v) the initial lease period of 20 years expired in the year 1981. In view of the provisions of the aforesaid Central legislature, the BPCL continued to exercise the rights as lessee on the suit property;

(vi) Special Civil Suit No.155/2005 was filed by Kishore Bafna against BPCL for the relief of possession of the suit property as lease period had expired and Bafna was the owner of the property. Other grounds like ground of default committed by the appellant society in making payment of the rent (prior to the year 1983) etc. were also given for termination of the lease. The lease was terminated in the year 2005 and the suit was filed;

(vii) the suit was contested by the BPCL by taking following defences :-

(a) only Court from Bombay had jurisdiction to decide the dispute as per the terms and conditions of the lease;

(b) the suit property is situated within the limits of Dhule Municipal Corporation and so provisions of the Bombay Rent Act are applicable to the suit property and the suit filed under the provisions of the Transfer of Property Act

is not tenable;

(c) no ground which is available under the Bombay Rent Act is mentioned in the suit and the suit is not tenable;

(d) the Central Government is necessary party and notice under section 80 of the Code of Civil Procedure was necessary. As the Central Government was not made party and notice was not given to it, the suit is not tenable;

(e) the previous suit bearing Regular Civil Suit No.481 of 1982 filed by the landlord for eviction of the Corporation was dismissed and so there is bar of principle of *res judicata*;

(f) the plaintiff is not the owner of the suit property;

(g) the Corporation had absolute right to renew the lease in view of the terms and conditions of the lease and it had exercised such right. After renewal of the lease period for further 20 years, the said period has not expired;

(h) the Corporation was not defaulter in making payment of rent. NA charges were not paid by the landlord and they were required to be paid by the Corporation and if

this amount is adjusted against the amount of rent, the Corporation cannot be called as defaulter. However, the Corporation is ready to make payment of rent due, if any;

(i) the Corporation was in possession of the property as lessee and so its possession cannot be called as unauthorised;

(j) the claim made by the plaintiff of Rs.25,000/- as rent per year was exorbitant and as in the past such offer which was given by the landlord was turned down, the suit was filed.

(viii) The issues were framed in the aforesaid suit viz Special Civil Suit No.155/2005 on the basis of aforesaid pleadings and both the sides had given evidence. The suit was decreed as against the Corporation and this decision was challenged by the Corporation by filing First Appeal No.1201/2005 in High Court. The matter was remanded back for fresh trial, for giving opportunity to the Corporation to lead evidence to defend the matter;

(ix) Issue Nos.8,9, 9A, 10 and 11 regarding the tenability of the suit, non joinder of necessary party, want of notice

under section 80 of the Code of Civil Procedure and bar of principle of *res judicata* due to decision of previous Suit No.481/1982 were decided as preliminary issues by the trial Court after remand of the matter. They were answered against the BPCL. Civil Revision Application No.130/2007 filed in this Court against the said decision by the BPCL was dismissed.

(x) When Special Civil Suit No.155/2005 was filed in the trial Court, at Exhibit 99 application was filed by the present appellant, society, agency of BPCL under Order 1 Rule 10(2) of the CPC for allowing it to join as defendant and for allowing to contest the suit. In the said application present appellant had contended that the suit property was sub let to it by Burma-Shell Company and so it was in possession of the suit property as sub tenant. It was also contended that in view of the provision of section 15 of the Bombay Rent Act, the society was entitled to be treated as tenant of the original landlord. It contended that in section 26 of the Maharashtra Rent Control Act, 1999 also there is similar provision. It was contended that there was right to the lessee under the aforesaid lease

document executed in favour of the Corporation to give property on sub lease. The application at Exhibit 99 was rejected on 19-4-2008. Writ Petition No.3484/2008 was filed by the present appellant to challenge this order but it came to be dismissed on 9th July 2008.

(xi) Special Leave Petition was filed in Supreme Court by present appellant to challenge the decision of this Court given in Writ Petition No.3484/2008 but the said proceeding came to be dismissed on 9-7-2008 as during pendency of the said proceeding the suit itself was disposed of by the trial Court. The Supreme Court had observed that it was open to the appellant to file appropriate proceeding like appeal against the decision given by the trial Court in the suit filed against the Corporation.

(xii) On 12-9-2008 Special Civil Suit No.155/2005 came to be decreed in favour of Kishore Bafna. In that decision the trial Court answered the preliminary issues like Issue Nos.8 and 10A in favour of the plaintiff and held that the suit was not required to be filed under the provisions of the Maharashtra Rent Control Act and held that lease

period was over and the plaintiff was entitled to get decree of possession.

(xiii) This Court granted leave to present appellant to challenge the decision of Special Civil Suit No.155/2005 by filing appeal and so the appeal of the society bearing First Appeal No.411/2009 was entertained. In First Appeal No.411/2009 the following two questions were considered :

(a) whether the appellant society was necessary party to the suit; and,

(b) whether the appellant society is entitled to protection of the provisions of Bombay Rent Act and whether it needs to be treated as the tenant.

(xiv) This Court held that the appellant society was not necessary party to Special Civil Suit No.155/2005. It was held that it was necessary to decide the point raised “whether the society had become tenant in view of the provisions of the Bombay Rent Act”. This point was kept open.

(xv) First Appeal No.110/2008 was filed by the BPCL against the judgment and decree of Special Civil Suit No.155/2005. The Corporation had contended that no sufficient opportunity was given by the trial Court to contest the matter and the plaintiff was not cross-examined. Some other technical points were also raised. In view of the aforesaid circumstances and as in the past opportunity was given to the Corporation by remanding the matter in the previous appeal, this Court held that on the grounds raised, it was not possible to set aside the judgment and decree given by the trial Court. The first appeal filed by the Corporation came to be dismissed on merits on 14-9-2009.

(xvi) Then the present suit, suit of the appellant society, Special Civil Suit No.135/2009, came to be filed on 29-10-2009. In the suit, the main contention of the appellant is that it has become deemed tenant of the landlord in view of provision of section 14(2) of the Bombay Rent Act. It is further contention of the appellant that the decision of the Special Civil Suit No.155/2005 is not binding on it as it has become deemed tenant and so the decree of

possession given against BPCL cannot be executed against it.

(xvii) In the present suit, the trial Court held that present appellant was not licensee of BPCL and so it is not the deemed tenant. It is further held that decree of Special Civil Suit No.155/2005 given in favour of Kishore Bafna is binding on the appellant. The trial Court has held that evidence is given to the effect that the annual turnover of the BPCL is more than one crore rupees and so it is covered by provision of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999. It is held that in view of this circumstance, the Rent Act is not applicable as against the Corporation and so the provisions of the Transfer of Property Act need to be used and that was done in the previous suit. It is further held that in view of the aforesaid circumstances the benefit of provision of section 15-A of the Bombay Rent Act cannot be given even to the present appellant, society. It is held that rights of the appellant came to an end when the rights of the BPCL came to an end. This decision of the trial Court is confirmed in First Appeal No.22/2012 by the District

Court.

2) In short, the aforesaid history of litigation shows that in the previous suit like Special Civil Suit No.155/2005 filed against the Corporation by the landlord the defence was taken that provision of the Bombay Rent Act 1947 were applicable and so the provisions of the Maharashtra Rent Control Act are applicable against the Corporation. This defence was not accepted in the said matter and the decree was given against the Corporation by holding that the Corporation has no right to keep the possession. Learned counsel for the BPCL submitted in the present matter that the Corporation is not interested in giving or continuing the licence in favour of the appellant and the agency was terminated in the year 2008 itself.

3) Learned Senior Counsel for the appellant submitted that in the case reported as **2011 (3) CCC 1** (Supreme Court) (**BPCL v. Chambur Service Station**) similar point was involved and the matter is referred by the Bench of two Hon'ble judges of the Supreme Court to

larger Bench. There was disagreement at the Bench. This Court has carefully gone through the observations made by the two Hon'ble Judges in the case. Both the Hon'ble Judges have rejected the contentions of licensee / agent of BPCL that it had become deemed tenant in view of the provisions of section 15-A of the Bombay Rent Act, 1947. The facts were little bit different as follows :

- (i) the dispute was between BPCL and its agent / licensees.
- (ii) There was renewal of licence by BPCL in favour of the licensee / agent in the year 1995 and during the period of extension, BPCL wanted to take possession from the licensee/agent.
- (iii) The Corporation wanted to take possession from the licensee / agent without filing suit.
- (iv) One Hon'ble Judge held that it was unreasonable to require the Corporation to sue licensee for possession when as per the terms and conditions of the licence the licensee was permitted to enter the premises only for the

purpose of sale of goods of the principal, the Corporation. On the other hand the other Hon'ble Judge of the Supreme Court held that the Corporation ought to have approached the authority to recover the possession if the premises was to be treated as public premises. The facts show that the premises were taken on lease basis by BPCL like in the present matter. Thus, the point squarely involved was different in the said matter. In view of this distinction in the matters, the present matter need not be stayed due to the circumstance that in the aforesaid matter the Bench has referred the point to larger Bench. In the present matter there is decree of possession and it can be easily ascertained as to whether the present appellant society has become deemed tenant as against Kishore Bafna.

4) Reliance was placed on some more reported cases by learned counsel for the appellant as under :-

- (1) **AIR 1997 SC 404 (Nalanikant Ramadas Gujjar v. Tulasibai).**
- (2) **AIR 2007 Bombay 80 (Taherbhai T. Poonawala v. S. Hamid H. Patel).**
- (3) **2015 (3) Mh.L.J. 459 (Maharashtra Rajya Veej**

Vitaran Company, Malkapur v. Manoj Abarao Deshmukh).

- (4) **2005 Bom. C.R. 276 (Kamalabai P. Lalji v. M/s J. Hirji And Co.).**
- (5) **(2003 (5) Bom. C.R. 790 (Hindustan Ferrodo Ltd. v. Hari Lachman Hasija).**
- (6) **AIR 1989 SC 2193 (Bhailal Hukamchand Shah v. Narandas Shamji).**
- (7) **AIR 1987 SC 117 (Chandavarkar Sita Ratna Rao v. Ashalata S. Guram).**
- (8) **(1991) 1 SCC 533 (Indian Oil Corporation Ltd. v. Amritsar Gas Service).**
- (9) **(1989) 4 SCC 603 (Southern Roadways Ltd Madurai v. S.M. Krishnan).**
- (10) **(2004) 3 SCC 595 (C.M. Beena v. P.N. Ramachandra Rao).**
- (11) **AIR 1959 SC 1262 (Associated Hotels of India Ltd. v. R.N. Kapoor).**

The facts of the aforesaid reported cases were different than the facts of the present matter.

- 5) Learned counsel for the respondent, Kishore Bafna, placed reliance on a case reported as **2012 (5)**

Mh.L.J 212 (Kersi Commissariat v. Ministry of Food & Civil Supplies). The facts of the reported case were similar to the facts of the present matter. Insurance Company was lessee and it had inducted one sub tenant in the year 1959 (allegedly without consent of the landlord of the Insurance Company). It was held by the Supreme Court that in view of the provisions of section 3(1)(b) of the Maharashtra Rent Control Act, 1999 the provisions of the Bombay Rent Act are not applicable. It was further held that once the Insurance Company, lessee was not the tenant for the purpose of the Rent Control Act, the sub tenant cannot enjoy the better protection or privilege. It is laid down that section 3(1)(b) applies to the “premises” and not to the 'relationship'. The learned Senior Counsel for the appellant submitted that as the sub tenancy was created without permission by the Insurance Company, such decision was rendered by the Apex Court. This submission is not acceptable in view of the ratio of this case cited for the landlord.

6) In the present matter also on facts it is proved that the Corporation falls in the categories mentioned in

section 3(1)(b) of the Maharashtra Rent Control Act, 1999. On this point findings given by the two Courts below are concurrent. Further in the previous suit, Special Civil Suit No.155/2005, it is already held that provisions of Bombay Rent Act are not applicable in favour of the Corporation and that decision has become final. The decree is given under the provisions of Transfer of Property Act against the Corporation and so in any case the present appellant cannot say that only as against it the provisions of Rent Control Act are applicable. Thus, no substantial question of law as such is involved in the matter.

7) In the result, the appeal stands dismissed. Civil Application No.4015/2015 stands disposed of.

8) Learned Senior Counsel for appellant requests for time as the appellant wants to challenge the decision of this Court in Supreme Court. Time of five weeks is granted and within this period the decree of possession is not be executed against the appellant.

Sd/-
(T.V. NALAWADE, J.)

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