

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 489 OF 2016

Bharat Petroleum Corporation
Ltd.

..Applicants

Vs

M/s. Sundeeep Constructions

.. Respondents

Mr. S.R.Page, Advocate for Applicants.

CORAM : R.G.KETKAR,J.
DATE : 29/08/2016

PC:

1. Heard Mr.S.R.Page, learned counsel for the applicants at length.
2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as 'defendants', has challenged the Judgment and decree dated 10.10.2008 passed by the learned Judge presiding over Court Room no. 19 of the Court of Small Causes at Mumbai in T.E.&R. Suit No. 17/17 of 2002 as also the Judgment and decree dated 5.7.2016 passed by the Appellate Bench of the Small Causes Court in Appeal No.759 of 2008. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as 'plaintiffs', and directed the defendants to hand over premises admeasuring about 7200 sq.ft in the

larger plot of land, bearing Old Survey No.43, 104, 205-B& C and 424 (Part), Plot No. 598 of S.S.No.III bearing C.T.S.No. 424 to 429 and 439, situate at Jaswant Baug, Sion-Trombay Road, Chembur, Bombay 400073, (for short, 'suit premises') to the plaintiffs within three months from the date of the order.

3. In support of this Application, Mr. Page raised following contentions:

(i) Plaintiffs have no title in respect of the suit premises. Plaintiffs are not landlords of the suit premises. The Courts below decreed the suit on the ground that original owners addressed a communication dated 2.11.1981 to the defendants. By this letter, original owners requested the defendants to attorn as tenants of the plaintiffs and further requested to pay rent from 1.2.1981 to the plaintiffs.

(ii) Lease was executed in favour of the defendants on 1.8.1964 for a period of 12 years and at the instance of the defendants, the lease was renewable for a period of 50 years.

4. Mr. Page submitted that the original owner Bhawoorao Harishchandra Chemburkar executed development agreement in favour of the plaintiffs on 22.1.1981. Clause 9A thereof provided that the entire transaction of sale and transfer of property shall be completed within a period of 42 months from the date of execution of the development agreement. The owners were

entitled to address a notice in writing to Developers or their nominees making the time essence of the contract. It was further agreed and declared that the owners on receipt of the entire purchase price prior to completion of the said transaction shall execute a Power of Attorney in favour of the Developers or their nominees for executing and registering the conveyance or other documents of transfer of title in favour of the developers or their nominees. Relying upon clause 9A, Mr. Page submitted that the plaintiffs have not produced on record sale deed or conveyance deed showing transfer of property in their favour. In short, he submitted that the plaintiffs have no locus to maintain the suit as they are neither the owners nor landlords of the suit premises.

5. He further submitted that lease was executed by erstwhile owners in favour of the defendants on 1.8.1964 for 12 years. That period expired on 31.7.1976. Option was reserved with the defendants for renewal of lease for a further period of 50 years. He submitted that the period of 50 years from 31.7.1976 did not expire and, therefore, the plaintiffs were not justified in instituting the suit.

6. Alternatively, he submitted that assuming for the sake of argument without conceding that the lease provided for renewal of further period of 25 years, the said period expired on 31.7.2001. However, the notice terminating the tenancy was

issued on 25.4.2000, that is to say, prior to expiry of the lease period. Even on this ground, the Courts below were not justified in decreeing the suit on the basis of communication dated 2.11.1981. In fact, in the cross examination of plaintiffs' witness, PW 1 Subhash Runwal admitted that the development agreement between the plaintiffs and owners is not registered instrument and the suit property is not conveyed to the plaintiffs. He has taken me through the deposition of the plaintiffs' witness. He, therefore, submitted that application requires consideration.

7. I have considered the submissions advanced by Mr. Page. I have also perused the material on record. It is not in dispute that original owners have executed lease deed dated 1.8.1964 in favour of the defendants. Though the defendants contend that it was agreed between the parties that the lease shall be renewed for a further period of 50 years, no material is produced to substantiate the said plea. On the other hand, perusal of the lease deed shows that it was agreed between the parties that the lease deed shall be renewed for a further period of 25 years and the said period will come to an end on 31.7.2001. It is no doubt true that the notice was issued on 25.4.2000. Suit is, however, instituted in December, 2001. Perusal of communication dated 2.11.1981 shows that by that communication the landlords called upon the defendants to pay rent with effect from 1.2.1981 to the

plaintiffs. It has come on record that accordingly sometimes the defendants have paid rent to original owners and even to the plaintiffs. Section 7(3) of the Act defines the expression 'Landlord' to mean any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of, any other person, among others. The Courts below have recorded a categoric finding that the defendants were paying rent to the plaintiffs. The Courts below have held that the plaintiffs are landlords of the suit premises. In particular, this aspect is considered by the Appellate Court in paragraphs 13 and 14. After considering the material on record, the Appellate Court recorded a finding that the plaintiffs have established the relationship of landlord and tenant between the parties. In view thereof, I do not find any merit in the first submission of Mr. Page that the plaintiffs have no locus to maintain the suit as they are neither owners nor landlords of the suit premises.

8. As far as the second contention that the lease was to be renewed for a further period of 50 years is concerned, equally, I do not find any merit in this submission. Perusal of the lease deed shows that it was executed on 1.8.1964 for a period of 12 years. Period of 12 years expired on 31.7.1976. Notice was issued on 25.4.2000 and the suit is instituted in December, 2001,

that is to say, after expiry of 25 years from 31.7.1976. The Appellate Court has considered provision of Section 5(1) and 5(2) of Burmah-Shell (Acquisition of Undertakings in India) Act, 1976 and the decision of the Apex Court in Bharat Petroleum Corporation Limited Vs. Rama Chandrashekhar Vaidya, (2014) 1 S.C.C. 657 and observed that statutory renewal provisions will not be resorted to repeatedly and renewal of lease in terms of statutory renewal provisions containing in Section 5(2) is held to be possible only for once. Applying the test laid down in this case to the facts of the present case, the defendants have got one renewal from 1976 to 2001.

9. After appreciating the evidence on record, the learned trial Judge held:

1. that it has jurisdiction to entertain and try the suit;
2. that the plaintiffs are the landlords in respect of the suit premises;
3. that the suit premises are exempted from the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act, 1994;
4. that the defendants failed to prove that the termination notice was waived by the plaintiffs;
5. that the defendants failed to prove that their possession is being protected by virtue of Section 53A of the T.P. Act;
6. that the defendants are protected under the provisions of

the Act.

In so far as the Appellate Court is concerned, the Appellate Court held:

1. that the defendants are not entitled to get lease deed renewed in view of Section 5(1) and 5(2) of the Burma-Shell (Acquisition of Undertakings in India) Act, 1976;
2. that the possession of the defendants is not protected by virtue of section 53A of T.P.Act.

In view thereof, I do not find that the Courts below committed any error in decreeing the suit. The defendants were not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to the evidence on record. Defendants were not in a position to show that on the basis of material on record, no reasonable person would have come to the conclusions arrived at by the Courts below. No other contention was raised. In the light of the aforesaid discussion, I do not find that the applicants have made out any case for invocation of powers under section 115 of C.P.C. In the result, Application fails and the same is dismissed.

(R.G.KETKAR, J.)