

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

CIVIL REVISION APPLICATION NO. 1139 OF 2014

Bharat petroleum Corporation
Ltd.

..Applicants.

Vs

Narottam Shivji thakkar and Ors.

.. Respondents

Mr. Nikhil Sakhardande a/w Mr. S.R. Page, Advocates for
Applicants.

Dr. Nitin Thakkar, Senior Advocate, a/w Triveni Jani i/b M/s
Markand Gandhi & Co., Advocates for Respondents no.1,2, 4 and
5.

**CORAM : R.G.KETKAR,J.
DATE : 09/08/2016**

PC:

1. Heard Mr. Nikhil Sakhardande, learned counsel for the applicants and Dr. Nitin Thakkar, learned senior counsel for respondents no.1,2, 4 and 5 at length.
2. By this Petition under Article 227 of the Constitution of India, the applicants, hereinafter referred to as 'defendants', have challenged the Judgment and decree dated 3.2.2009 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.269/292 of 2003 as also the Judgment and decree dated 29.10.2014 passed by Appellate Bench of the Small Causes Court at Bombay in P.Appeal No.148 of 2009. By these orders, the

Courts below decreed the suit instituted by original plaintiffs and directed the defendants to hand over vacant and peaceful possession of the plot of land and tenement admeasuring 1561 sq.yards equivalent to 1305 sq.meters, situate at opposite Janata Market, Kaka Petrol Pump, Kanjur Village, Bhandup, Mumbai 400 078, more particularly described in Schedule of the property Annexure 'A' and as shown in site plan Annexure 'B' to the plaint (for short, 'suit property'), within three months from the date of the order. Annexures A and B shall form part of the Judgment and decree. Defendants are also directed to pay the mesne profits to the plaintiffs from the date of suit till the plaintiffs get the vacant possession of the suit property. The Courts below also directed inquiry under Order XX, Rule 12 of C.P.C. for determination of mesne profits for the said period.

3. In support of this application, Mr. Sakhardande has raised following contentions:

(i) As per the provisions of Burma Shell (Acquisition of Undertakings in India) Act, 1976 (for short, 'said Act') right, title and interest of Burma Shell in respect of all its assets including suit property were acquired by the Central government. The Central Government subsequently, by issuing notification under the said Act, transferred the right, title and interest of Burma shell in favour of Burma Shell Refining Limited and thereafter in

favour of Bharat Petroleum Corporation Ltd. The defendants have stepped into the shoes of Burma Shell and are entitled to occupy the suit property on the same terms and conditions for a further period of 20 years from 1.5.1977 under sections 5 and 7 of the said Act.

(ii) On 17.10.2000, meeting was convened between the official of the applicants and the plaintiffs. It was, inter alia, agreed in that meeting that the total lease period would be 33 years and 3 months with effect from 1.1.2000, i.e. lease period which expired on 31.3.2033. Applicants Bharat petroleum Corporation Limited Agreed to pay monthly rent of Rs.27000/- per month from 1.1.2000. The minutes of the meeting dated 17.10.2000 will clearly spell out a concluded contract between the parties in the light of recitals of minutes of the meeting. In fact, the defendants have instituted Suit No. 27 of 2003 in this Court for specific performance of the contract as evidenced by minutes of the meeting convened on 17.10.2000. Mr. Sakhardande, therefore, submitted that the Courts below were not justified in passing the impugned orders.

4. On the other hand, Dr. Thakkar supported the impugned orders. He submitted that registered lease deed was executed on 10.6.1957 for period of 20 years commencing from 1.5.1957 and ending on 30.4.1977. Clause 4(c) thereof contemplated renewal

of lease for a further period of five years. He submitted that in the present case, it is an admitted position that after the expiry of 20 years on 30.4.1977, fresh lease deed was executed in 1983. He further submitted that the defendants contended that in view of Sections 5 and 7 of the said Act, they are entitled to occupy the suit property on the same terms and conditions for a further period of 20 years from 1.5.1977. Even that period has expired in the year 1997. The present suit is instituted in the year 2003 on the ground that the defendants are exempt from application of Rent Act as per section 3(1)(b) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). Dr. Thakkar further contended that the contention that the minutes of meeting dated 17.10.2000 amounts to a concluded contract, is not borne out from the said minutes. In fact, the said minutes are not signed by plaintiff no. 1 Narottam Thakkar and plaintiff no.4 Sarla Ratanshi Thakkar. As per that minutes, no fresh lease deed was executed. In other words, the minutes were not acted upon. He, therefore, submitted that no case is made out for invocation of powers under section 115 of C.P.C.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is not disputed and rather is a matter of record that the lease deed was executed on 10.6.1957 for a period

of 20 years from 1.5.1957 to 30.4.1977. Clause 4(c) thereof contemplated renewal of lease for a further period of five years. It is also evident on record that lease deed was executed in the year 1983 and period thereunder expired on 31.3.2003. As far as the contention based on Sections 5 and 7 of the said Act is concerned, I do not find any merit in this contention.

6. In the case of Bharat Petroleum Corporation Ltd Vs. Kesavan, AIR 2004 Supreme Court 2206, in paragraph 13 of that decision, it was observed thus:

“The other possibility is that though in the renewal notice dated 17-10-1979 there is no reference to section 5(2) of the Act, the renewal must be deemed to have taken place under that provision because the Act had come into force on 24.1.1976 and by virtue of section 5(2) of the Act, the renewal clause of the existing lease stood superseded. If the “renewal” beginning from 1.3.1980 is to be deemed under section 5(2) of the Act that would be a legally valid and correct renewal even in the absence of a fresh deed being executed between the parties, as was held in P.Lesavan (2004) 9 SCC 772. if that be the position, then the appellant has already exercised and exhausted its right under section 5(2) of the Act and there can be no question of a second renewal in terms of the statutory provision. Thus, viewed from any angle, the appellant cannot claim any further renewal of lease beyond 28.2.2005.”

7. As noted earlier, fresh lease deed was executed in the year 1983 which expired on 31.3.2003. As the defendants have already exercised and exhausted its right under section 5(2) read with section 7 of the said Act, there can be no question of a second renewal in terms of the statutory provision. Defendants

cannot claim further renewal in terms of Section 5(2). In paragraph 32, the Appellate Court referred to Section 107 of T.P.Act as also Section 17(1)(b) of the Registration Act and observed that the document in question ought to have been registered. It is also not in dispute that the plaintiffs have issued termination notice on 16.9.2003 which is duly served on the defendants. As no fresh registered lease deed was executed in favour of the defendants, I do not find that the Courts below committed any error in decreeing the suit.

8. In the case of Hardesh Ores (P) Ltd Vs. Hede and Company, (2007) 5 Supreme Court Cases 614, it is held that in order to give effect to the renewal of an agreement or a lease, a document has to be executed evidencing the renewal of the agreement or lease, as the case may be. The grant of renewal is also a fresh grant. There is no concept of automatic renewal of lease by mere exercise of option by the lessee. In the present case, admittedly after the expiry of lease period on 31.3.2003, no fresh registered lease deed was executed in favour of the defendants. In view of Section 3(1)(b) of the Act the defendants are also exempt from application of provisions of the Rent Control Act. The Courts below have recorded the findings that by notice dated 16.9.2003, the plaintiffs have validly terminated the tenancy of the defendants. 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 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 view thereof, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

9. As noted earlier, the defendants have instituted Suit No. 27 of 2003 in this Court for specific performance of contract of Minutes of Meeting dated 17.10.2000. The observations made in the impugned orders and this order will not come in the way of the defendants in prosecuting the said suit.

(R.G.KETKAR, J.)