HON'BLE SRI JUSTICE R.KANTHA RAO

Appeal Suit No.102 of 2013

Judgment:

This appeal is filed by Hindustan Petroleum Corporation Limited (HPCL)/defendants against the judgment and decree dated 08-11-2012 in O.S.No.103 of 2006 passed by the XIII Additional District Judge, Vijayawada, Krishna district decreeing the suit with costs directing the defendants to handover the vacant possession of the suit schedule property to the plaintiff within 3 months from the date of the judgment and further, directing to pay the arrears of rent and damages for use and occupation of the plaint schedule premises after the termination of the lease and further directing to work out the quantum of damages recoverable by the respondent/plaintiff by filing a separate application.

2. (a) The respondent/plaintiff is the owner of the plaint schedule premises. She leased out the schedule premises to the appellants/defendants under a lease deed dated 01-6-1970 for a period of 18 years on a monthly rent of Rs.150/- which was enhanced subsequently to an amount of Rs.400/-. As per the terms of the lease, if the agreed rent remained unpaid for a period of two months and after becoming due it further remained unpaid for a period of 30 days after demand, the respondent/plaintiff is entitled to re-enter the schedule

premises forthwith. Under the lease, right of pre-emption was also given to the respondent on certain terms mentioned therein.

(b) Coltex India Limited amalgamated with the 1st appellant-HPCL, a Government of India Enterprise with effect from 09-5-1978. As per Section 7(3) of CORIL Act, the 1st appellant is entitled to renew the lease for a further period of 18 months commencing from 01-6-1988 on the same terms and conditions of the lease agreement dated 13-11-1970. Accordingly, the lease was renewed for a further period of 18 years i.e. till 31-5-1988. The 1st appellant was remitting the monthly rent of Rs.400/- every month as agreed in the lease deed in the account of the respondent. But after 01-6-1988, the appellants failed to deposit the rents as agreed and the 2nd appellant was unilaterally sending cheques instead of remitting into the bank account of the respondent as agreed in the lease deed. According to the respondent, it is in violation of the terms of the lease deed. It is the version of the respondent that the appellants taking advantage of the statutory option of exercising the extension of lease sending cheques for Rs.400/- only even though the rental value in the locality is very high. It is submitted by the respondent in the plaint that after the expiry of the statutory lease period i.e. after 03-5-2006, she got issued a quit notice dated 25-5-2006 demanding the appellants to vacate the suit schedule property before the end of June, 2006 and stating therein that if they failed to vacate the schedule premises, their possession would be unlawful and they are liable to pay damages for use and occupation of the property from 01-7-2006 till the date of delivery for which, the appellants replied that they did not commit default in payment of rent and that they are entitled for further extension of lease.

(c) Nextly, it is submitted by the respondent/ plaintiff that she offered to sell the plaint schedule property to the appellants in 1995 but they did not come forward to exercise their option of pre-emption by paying the market value and consequently she dropped the proposal to sell the suit property and decided to construct her own complex in the suit property and the adjoining site which belongs to her in a total extent of 750 square yards. The version of the respondent is that without the suit property, she is not in a position to make use of the adjoining site and therefore informed the appellants that she dropped the proposal of sale of suit schedule property.

3. The version of the appellants/defendants is that they are statutory tenants doing the business of petroleum products which are essential commodities and when there is conflict between the interest of private individuals and interest of public at large, the public interest would prevail. The respondent gave consent for sale of suit property and

that the appellants have been apprising their higher officials for purchase of the suit property and in the meantime, the respondent issued notice to quit. Their further case is that as they are not in unauthorised occupation they are not liable to pay damages to the respondent for continuing in possession of the suit premises.

4. Both parties went on trial on the issues that whether the respondent is entitled to possession of the suit property after evicting the appellants therefrom and whether she is entitled for recovery of arrears of rent and damages.

5. On behalf of the respondent, P.W.1 was examined and Exs.A-1 to A-6 were marked. On behalf of the appellants, D.W.1 was examined and Ex.B-1 was marked.

6. On appraisal of the oral and documentary evidence on record, the learned trial Court decreed the suit as prayed for by the respondent/plaintiff against which, the appellants/defendants preferred the present appeal.

7. The following points would arise for consideration in the present appeal:

(1) Whether the appellants are entitled for

further

extension of lease as per the terms of the lease and also under the provisions of the CORIL Act ?

(2) Whether the respondent is entitled for arrears of rent and damages ? and

(3) Whether the respondent is bound to sell the schedule premises to the appellants when they offer to purchase the property in exercise of their right of pre-emption ?

8. **Points 1 and 2**:- Initially, the rent payable by the appellants/defendants is Rs.150/- and the rent payable at the time of expiration of lease as in June, 2006 is Rs.400/-. Ex.A-6 is the photo copy of the lease agreement dated 13-11-1970. The monthly rent of the schedule property paid by the defendants in the year 1988 was Rs.400/-. Though the respondent did not adduce any evidence regarding the rental value of the property, the learned trial Court took notice of the fact that the rents in the locality where the suit premises is situate are very high. The rent was fixed at the time of entering into the lease deed in the year 1970 under

Ex.A-6 i.e. 30 years ago. Therefore, the trial Court taking into account the vast development in the area where the schedule property is situate, fixed the notional rent for the period 1988 to 1991 at Rs.800/-, notional rent for the period 1991 to 1994 is Rs.1,200/-, notional rent for the period 1994 to 1997 is Rs.1,600/-, notional rent for the period 1997 to 2000 is Rs.2,000/-, notional rent for the period 2000 to 2003 is Rs.2,400/- and the notional rent for the period 2003 to 2006 is Rs.2,800/-. Therefore, the trial Court arrived at the notional rent at the end of lease period at Rs.2,800/-, which is reasonable. The trial Court calculated the damages for use and occupation of the suit schedule premises after the expiration of lease at Rs.5,600/- per month and accordingly passed the decree for recovery of rents and also damages for unauthorised use and occupation.

9. On behalf of the respondent/plaintiff, her husband-General Power of Attorney Holder was examined. He has spoken to the fact that he is looking after all the transactions of his wife. The learned trial Court rightly held that under Section 120 of the Evidence Act, the spouse is competent witness to give evidence on behalf of the other spouse. The trial Court also took into consideration the fact that P.W.1 has personal knowledge about the facts of the case and considered him to be
a competent witness.

10. Whereas, on behalf of the 2nd appellant, its Area Sales Manager was examined-in-chief as D.W.1 and marked Ex.B-1, the letter of authorisation. But he did not turn up for cross-examination. On that, the learned Court below closed the evidence of D.W.1, heard arguments

and pronounced the judgment. Since D.W.1 did not turn up for cross-examination, his evidence cannot be taken into consideration. The pleas taken by the appellants in their written statement remained unsubstantiated. However, admittedly the lease period was extended only up to 31-5-2006. After 31-5-2006, the respondent did not receive any rents from the appellants. As rightly held by the learned trial Court, the possession of the appellants after the expiry of the lease period is unauthorised and therefore they are liable to pay damages.

11. In this context, it would relevant to refer to the judgment in **HINDUSTAN PETROLEUM CORPN. LTD. v. DOLLY DAS**[1], wherein the Supreme Court held as follows:

> "Under Sections 7 and 5 of the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India o Caltex (India) Ltd.] Act, 1977, when the option for renewal in terms of statute has been availed of by the lessee, the renewal can only be sought in terms of the statute. The appellant could seek renewal only in terms of Section 7 of the Caltex Act which enabled it to renew the deed for a period of one term as originally granted."

12. In the instant case, the lease was originally for a period of 18 years and was renewed for a further period of 18 years under the CORIL Act, 1977. Further renewal therefore could only be under an agreement between both the parties but the appellants cannot claim extension of lease as a matter of right. The extended lease period also

expired on 31-5-2006. After the said date, the appellants are under a duty to vacate the schedule premises unless it is extended under an agreement between both parties for which a fresh lease deed has to be executed.
The lease period expired by 31-5-2006 and the respondent issued notice to quit under Section 106 of the Transfer of Property Act on 25-5-2006 which is admitted by the appellants. Therefore, there is a valid notice to quit in the present case and the appellants are liable for eviction.

13. As per Clause (e) of the lease agreement, if any rent remained unpaid for two months after becoming due and shall continue to remain unpaid for a period of 30 days after a demand for the same has been made by the Lessor, the Lessor may re-enter forthwith upon the demised premises. Therefore, in the instant case, as the rent was not paid after 31-5-2006, the respondent has a right under the aforementioned clause to re-enter the premises. Thus, the learned trial Court rightly held that the appellants are liable for eviction and are also liable to pay arrears of rent and damages.

14. **<u>Point No.3</u>**:- Clause (f) of the lease agreement stipulates that,

> "The Lessor hereby grants unto the Lessee an exclusive right at the Lessee's option to purchase the demised premises on the terms and conditions subject however to the marketability of the title of the Lessor to

> the demised premises and at the same price as any bona fide offer for the demised premises received by the Lessor and which offer the Lessor desires to accept. Upon receipt of a bona fide offer and each time such offer if received the Lessor shall immediately intimate to the Lessee in writing the details of such offer including the relationship of the offeror with the Lessor and the name and address of the offeror. Thereupon,the Lessee shall within thirty (30 days) from the receipt of such intimation elect to exercise the Lessee's prior right to purchase the demised premises. No sale or transfer of title to the demised premises shall be binding on the Lessee unless and until the foregoing requirements are completely complied with. ... ... Upon election by the Lessee to purchase the demised premises the Lessor shall forthwith enter into an agreement of sale with the Lessee, agreeing to sell the demised premises free from all encumbrances whatsoever at the same price at which any bona fide purchaser had offered to purchase the demised premises as aforesaid. ... ..."

15. Basing on the above said clause, the appellants contend that they have a right to purchase the schedule premises, the respondent in fact offered them to sell the property and while the matter was placed before the higher officials of the appellants, the respondent issued notice to quit and thereafter filed the suit. It is true that there is some exchange of letters between the parties regarding the purchase of the land, but the said correspondence is not in conformity with Clause (f) of the lease agreement. The lease agreement does not state that if the appellants offer to purchase the land, it is obligatory on the part of the respondent to sell the schedule premises to them. The clause only provides that if the respondent wants to sell the property, she has

to intimate the price offered by a *bona fide* purchaser and the details thereof to the appellants and if the appellants agree to purchase the property at that price, the respondent has to enter into an agreement of sale with the appellants. But, in the instant case, there is no evidence to show that the appellants agreed to purchase the property at the rate any other *bona fide* purchaser offered to the respondent. The correspondence was very vague as to the terms of purchase.

16. It is the version of the respondent that as the appellants did not offer reasonable price, she dropped the proposal to sell the land to the appellants. Therefore, this is not a case where the respondent wants to sell the property to some third parties. The specific case of the respondent is that she wants to build a complex in the schedule premises and for that purpose, the schedule premises is required. Clause (f) of the lease agreement does not preclude the respondent to seek eviction of the appellants when the appellants offered to purchase the premises. If the respondent desires to sell the premises, it is obligatory on her part to intimate the price offered by a *bona fide* purchaser. Therefore, the respondent is not bound to sell the schedule premises on the mere ground that the appellants offered to purchase the same in exercise of their right of pre-emption. Thus, this point is also answered in favour of the respondent and against the

appellants.

17. The learned trial Court, on a proper appraisal of the evidence with reference to the contentions urged by both parties, decreed the suit filed by the respondent. The findings recorded by the trial Court do not call for any interference in the appeal. The appeal, therefore, fails and the same is dismissed. The miscellaneous petitions, if any, pending in this appeal suit shall stand closed. No costs.

R.KANTHA RAO, J.

19th January, 2016.
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HON'BLE SRI JUSTICE R.KANTHA RAO

Appeal Suit No.102 of 2013

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[1] (1999) 4 SCC 450