

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

Civil Application No.11657 of 2017

In

Civil Application No.10239 of 2016

In

Review Application No.196 of 2017

In

First Appeal No.2228 of 2014

M/s. B.P. Jadhav,
Nagar Manmad Road, Shirdi,
Rahata, District Ahmednagar
Through its Partner
Kailas Baburao Jadhav.

.. Applicant.

Versus

Hindustan Petroleum Corporation
Ltd. & Others.

.. Respondents.

Shri. V.D. Hon, Senior Advocate, instructed by Shri.
Ashwin V. Hon, Advocate, for applicant.

Smt. Anjali Bajpai-Dube, Advocate, for respondent Nos.1
and 2.

Coram: T.V. NALAWADE, J.

Date : 18 SEPTEMBER 2017

ORDER:

1) The application is filed for recalling the order of disposal made by this Court in Review Application No. 196/2017 in view of the submission made by the present applicant that the applicant was withdrawing that

proceeding. Notice. Learned counsel for respondent Nos.1 and 2 - Corporation waives it. Both the sides are heard. There was no need felt to issue notice to other respondent, owner of the property.

2) First Appeal No.2228/2014 was filed by the respondent - Hindustan Petroleum Corporation Limited to challenge the judgment and decree of Special Civil Suit No.108/2007 which was filed by present respondent No.3 for recovery of possession of immovable property. The suit was decreed in her favour. In the suit, present applicant M/s Jadhav concern was a party defendant but the applicant preferred not to file appeal to challenge that decision. Review application was filed by present applicant by contending that the applicant was not served with notice of the appeal and behind back of the applicant the matter came to be decided. When in the review application this Court expressed that the present applicant had not filed appeal, the rights of the applicant were not separate or more than that of the Corporation and when this Court expressed that the Court was not inclined to grant any relief in the review proceeding, the

proceeding was withdrawn by the learned Senior Counsel who was representing the present applicant.

3) In the present proceedings now it is the contention of the present applicant that the applicant is interested in prosecuting the review application and the applicant has good case in review application. It is also contended that there was some misconception and due to that instructions were given by the applicant to the counsel to withdraw the proceeding.

4) The suit was filed by the owner mainly against the Hindustan Petroleum Corporation Limited for possession. The present applicant was made party defendant only because the applicant was running petrol pump of the said Corporation as the applicant was appointed as Agent by the said Corporation. Under a registered lease agreement the property was given in possession of Burmah Shell Company, original lessee. This company came to be acquired by the Central Government under Burmah Shell (Acquisition of Undertakings in India) Act, 1976 and then the respondent Corporation came in

existence. There was lease of fixed period. Due to the terms and conditions of the lease after completion of the period of first term, the term was extended and then the benefit of the aforesaid Acquisition Act was also availed by the respondent Corporation and there was lease for one more term due to the provisions of the Act. Thus, after completion of the lease period and the period given by the statute the suit was filed for possession by the owner and the suit came to be decreed.

5) The rights and liability of the present applicant, agent of the respondent Corporation have the basis of terms and conditions of the agency agreement with the Corporation. Owner has no concern with those terms. As soon as the owner gets decree against the Corporation the owner can recover the possession. If at all due to terms and conditions of the Corporation the applicant has suffered some loss the applicant can proceed against the Corporation. It needs to be again mentioned that the applicant did not prefer to file appeal against the decree of the trial Court given in favour of the owner, lessor. It can be said that the present applicant was a nominal

respondent in the appeal and the fate of the matter would not have changed due to the arguments advanced by the learned counsel of the present applicant. The matter was hotly contested by the Corporation and the decision is given on merit by this Court. It can be said that only to protract the things, the present applicant is playing such tactics. It is not possible to reopen the decision in view of the aforesaid circumstances and so the application stands rejected.

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

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