

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 176 OF 2014
WITH
CIVIL REVISION APPLICATION NO. 175 OF 2014

Hindustan Petroleum Corporation Limited .. Applicant

vs.

Sadiq Ali Abdulla Merchant and ors. .. Respondents

WITH

CIVIL REVISION APPLICATION NO. 169 OF 2014
WITH
CIVIL REVISION APPLICATION NO. 170 OF 2014

Mecloids Garage .. Applicant

vs.

Sadiq Ali Abdulla Merchant and ors. .. Respondents

Mr. G.S. Godbole i/b Ms Pallavi Dabholkar for the Applicant
in CRA 176/14 and 175/14.

Ms Neha Bhide for the Applicant in CRA 169/14 and 170/14.

Mr. Y.V. Sanglikar for the Respondents in all the Civil Revision
Applications.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 10th October 2017.

Date of Pronouncing the Judgment : 12th October 2017.

COMMON JUDGEMENT:-

1] Heard Mr. G.S. Godbole, learned counsel instructed
by Ms Pallavi Dabholkar, learned counsel for the applicant
in Civil Revision Application Nos. 175 and 176 of 2014,

Ms Neha Bhide, learned counsel for the applicant in Civil Revision Application Nos. 169 and 170 of 2014 and Mr. Y.V. Sanglikar, learned counsel for the respondents in each of the revision applications.

2] Learned counsel for the parties agree that the issues involved in each of these revision applications are identical and therefore, the same may be disposed of by common order by treating Civil Revision Application No. 176 of 2014 as the lead matter.

3] Rule, in each of the civil revision applications. With the consent of and at the request of learned counsel for the parties, Rule in each of the civil revision applications is made returnable forthwith.

4] The challenge in Civil Revision Application No. 176 of 2014 is to the judgment and decree dated 31st August 2009 made by the Small Causes Court and the judgment and decree dated 15th November 2013 made by the Division Bench of the Small Causes Court (Appeal Court), concurrently ordering the eviction of the applicant from the suit premises,

i.e., an open plot of land ad-measuring about 660 sq. yard at Ghodbunder Road, Khar (West), Mumbai.

5] The applicant- Hindustan Petroleum Corporation Limited (HPCL) is the successor in title to Standard Oil Company, which subsequently became CALTEX (India) Limited.

6] By Indenture of Lease dated 25th September 1953, the respondent-landlord, leased the suit premises to the Standard Vaccum Oil Company for a term of ten years commencing from 1st May 1953. After expiry of the term, the term of the lease was not renewed or extended. However, the lessee - Standard Vaccum Oil Company continued in possession of the suit premises, possibly, as tenant holding over.

7] The Standard Vaccum Oil Company, subsequently became CALTEX (India) Limited. The Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex ((India) Limited), Act, 1977 (1977 Act), which was given retrospective effect from 30th December 1976 made provisions for vesting of undertaking in

the Central Government and matters connected therewith. Section 7(3) of 1977 Act *inter alia* provided that on the expiry of any term of any lease, tenancy or arrangement referred to in sub-section (1) or sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into.

8] Some time in May 1999 the respondents-landlord instituted R.A.E. Suit No. 50/90 of 1999 against HPCL seeking their eviction from the suit premises, on the basis that lease in respect of suit premises had the protection of Bombay Rent Control Act, 1947. However, the Bombay Rent Control Act, 1947 was repealed with effect from 31st March 2000 and the Maharashtra Rent Control Act, 1999 came into force. For reasons which are not disputed, the lease in-question, does not enjoy the protection of Maharashtra Rent Control Act, 1999. Accordingly, the respondent-landlord issued notice dated 27th May 2004 to HPCL terminating the lease by furnish of notice. Since, the HPCL failed to hand over the possession of the suit premises to the respondent-landlord, T.E.& R Suit

No.48/62 of 2004 was instituted seeking eviction of HPCL from the suit premises on 25th October 2004.

9] HPCL raised several defences, including the defence that the notice of termination was improper, since, no six months notice was issued as required under the provisions of Transfer of Property Act, 1882. The issues were framed in the suit and evidence was lead by both the parties. Ultimately, the Trial Court, vide judgment and decree dated 31st August 2009, decreed the suit and ordered enquiry into *mesne* profits.

10] HPCL, aggrieved by the impugned judgment and decree dated 31st August 2009 made by the Trial Court instituted Appeal No. 240 of 2009 before the Appeal Court. By judgment and decree dated 15th November 2013, the Appeal Court has dismissed the appeal. Hence, the present petition.

11] Mr. Godbole, learned counsel for HPCL made the following submissions in support of its civil revision applications:

(a) That the lease in present case was granted for manufacturing purposes and therefore, in terms of

Section 106 of the Transfer of Property Act, the notice for determination of lease should have been of six months. Since, in the present case, admittedly, the notice for determination was less than six months, there is no valid determination of the lease and the suit as instituted was required to be dismissed;

(b) In terms of 1977 Act, the lease stood renewed in perpetuity. This is because the clause providing for renewal stands incorporated in the lease for the renewed period. The effect is that the lease of this nature, which has protection of 1977 Act, continues in perpetuity; and

(c) The term of the initial lease expired on 30th April 1963. Thereafter, lessee continued as a lessee holding over, since, admittedly, the lease was never terminated. In 1963, the lease was protected under the Bombay Rent Control Act, 1947. Such protection continued right up to 30th March 2000 when, the provision of Bombay Rent Control Act, 1947 stood repealed and the Maharashtra Rent Control Act, 1999 entered into force. Until the year 2000, therefore, there was no occasion for the Central

Government, in whom, the undertaking of the lessee stood vested, to exercise the options of renewal of the lease for an additional term of ten years. In fact, there was no necessity for the Central Government to exercise such option, until 30th March 2000, since the lease, had the protection of the Bombay Rent Control Act, 1947. For the first time, the necessity to exercise such option arose in the year 2004, when, the respondent-landlord, served notice of termination of lease. In terms of Section 7(3) of 1977 Act, therefore, the lessee was entitled, as a matter of right to renewal of the lease period for a further term of ten years commencing from date of receipt of notice of termination of lease dated 27th May 2004. This means that the lease stood renewed up to at least 27th May 2004 by virtue of provisions of Section 7(3) of 1977 Act. Since the right of renewal under Section 7(3) of 1977 Act is a statutory right, the same, prevails over any handicap in terms of the actual covenants in the Deed of Lease dated 25th September 1953 or for that matter even the provisions of Transfer of Property Act, 1882. This is because 1977 Act is a Special Act whereas, the Transfer of Property Act 1882 is

only a general Act. As on date of institution of the suit, i.e., 25th October 2004, the respondent-landlord, had no cause of action to institute such suit. Since the impugned decrees have been made in suits, which were premature, the same are nullities and therefore, warrant interference in the exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (CPC).

12] Ms Bhide, learned counsel for the applicants in Civil Revision Application No(s). 169 of 2014 and 170 of 2014, adopts the aforesaid submissions of Mr. Godbole, in support of the civil revision applications in which she appears.

13] Mr. Y.V. Sanglikar, learned counsel for the respondents, submits that there is absolutely no merit in the first and second contentions raised by Mr. Godbole. He submits that the two Courts, upon appreciation of the evidence on record have held that the lease in the present case, was not for some manufacturing purpose and therefore, there was no requirement of issuing six months notice. He submits that the argument that such lease is by virtue of Section 7(3) of 1977

Act continues in perpetuity has been rejected by the Hon'ble Supreme Court in virtually identical circumstances. He submits that there is absolutely no merit in such pleas.

14] Mr. Sanglikar further points out that the third contention now raised by Mr. Godbole was at no stage ever raised by any of the applicants. Such contention was never raised in the reply to the notice for termination of lease, in the written statement, in the memo of appeal to question the decree dated 31st August 2009 or for that matter in the present civil revision applications. He submits that the contention, apart from being untenable, involves mixed question of law and fact. Therefore, Mr. Sanglikar submits that the applicants may not be permitted to raise such contention for the first time in the civil revision applications that too, without setting out any ground to this effect in the memo of civil revision applications.

15] Without prejudice, Mr. Sanglikar submits that the contention now raised is entirely misconceived because, even upon receipt of notice dated 27th May 2004 for determination of the lease, HPCL, or the Central Government, chose not to

exercise any option for renewal of the term of lease. This is because both the Central Government as well as HPCL were aware, that in law, the opportunity for such exercise of such option had long expired. Mr. Sanglikar submits that in terms of 1977 Act, at the highest, the term of the lease, stood renewed for a further term of ten years with effect from 30th December 1976. This means that, at the highest, the term of the lease stood renewed up to 30th December 1986. Mr. Sanglikar submits that there are several rulings of the Hon'ble Supreme Court which clarify the position that the renewal in terms of Section 7(3) of 1977 Act or analogous provisions, applies only for one time renewal and not for renewal in perpetuity. Accordingly, Mr. Sanglikar submits that the third contention now raised by Mr. Godbole, is entirely misconceived and warrants summary rejection.

16] The rival contentions now fall for determination.

17] Insofar as the first contention is concerned, the Trial Court as well as the Appeal Court, upon examining the Deed of Lease as well as the evidence on record have rightly concluded that this was not a case of lease of immovable

property for manufacturing purposes. Accordingly, there was no obligation for issuance of six months notice for valid determination of lease. There is no error, much less, any perversity demonstrated in the matter of record of such concurrent findings of fact by the two Courts.

18] In this case, the Trial Court, upon appreciation of the evidence on record including, in particular, the evidence on behalf of defendant No.2, who is said to be a dealer/agent of HPCL has held that there is absolutely no material on record to suggest that the suit premises were leased out for manufacturing purposes. The Trial Court has observed that defendant No.2 has only deposed that he was carrying on business of servicing, repairing of motor vehicles and selling of petroleum products. The witness has nowhere even stated that the suit premises were being used for manufacturing purposes, much less is there any statement that the suit premises were leased out for any manufacturing purposes. The Appeal Court, has once again, evaluated the evidence and confirmed this finding of fact. Accordingly, there is no case made out to disturb such concurrent findings of fact, in the absence of any perversity. The contention as raised is not

backed either by documentary or oral evidence. Accordingly, in the exercise of writ jurisdiction under Article 227 of the Constitution of India, there is absolutely no case made out to interfere with the impugned orders on the first ground urged.

19] The second contention as regards renewal in perpetuity is also untenable, in the facts and circumstances of the present case. In the present case, the contention, as raised, cannot be sustained either on the perusal of the terms of Deed of Lease dated 25th September 1953 or on the basis of provisions of 1977 Act. There is neither any documentary nor legal evidence to sustain such a contention. Such a contention, in the facts and circumstances of the present case, is not sustainable even in law. Accordingly, on the basis of such a contention, it is not possible to upset, the concurrent findings recorded by the two Courts.

20] In *State of Uttar Pradesh and ors vs. Lalji Tandon (dead) through Lrs. - (2004) 1 SCC 1*, the Supreme Court has ruled that where a covenant for renewal exists, its exercise is, of course, a unilateral act of the lessee, and the consent of the lessor is unnecessary. Where the principal lease

executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, whether the renewed lease shall also contain similar clause for renewal would depend on the wordings of the covenant for renewal contained in the principal lease, the intention of the parties as reflected therein and is determinable in the light of the surrounding relevant circumstances. The Supreme Court whilst approving the principle in *Sayed Jaleel Zane vs. P. Venkata Murlidhar – AIR 1981 AP 328* has held that the court always leans against a perpetual renewal and hence where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous.

21] In the facts of the present case, in the lease Deed dated 25th September 1953, there was neither any clear clause for renewal nor is it the case of lessee that any option for renewal was exercised in terms of Lease Deed dated 25th September 1953. Applying, therefore, the law in *Lalji Tandon (supra)*, the second contention cannot be accepted.

22] The provisions of 1977 Act were also pressed into service to claim this was a lease in perpetuity. The contention is no longer *res integra*.

23] In series of decisions, the Supreme Court, in the context of 1977 Act as also Acts, which are *pari materia* to 1977 Act, have rejected the contention that the leases in favour of such undertakings stand renewed in perpetuity by virtue of Section 7(3) of 1977 Act or analogous provisions. Accordingly, there is no merit in the second contention raised by Mr. Godbole that lease in the present case, stood renewed in perpetuity.

24] In ***Hindustan Petroleum Corporation Ltd. and anr. vs. Dolly Das – (1999) 4 SCC 450***, a some what identical contention was rejected by the Supreme Court in the case of HPCL itself. The relevant observations in paragraph 12 reads as follows:

“12. The lease had been granted with effect from 1-10-1969 in favour of M/s Caltex (India) Ltd. and on the coming into force of the Act on 23-4-1977 the appellant had stepped into its shoes and from that day onwards the appellant has been in possession of the same till now. The crucial question whether the option for renewal either in terms of the lease deed or in terms of the Act had been availed of or not is the controversy between the parties

now. Litigation between the parties has been going on from 1993 onwards. On the expiry of the term the deed provides for renewal for two terms of 10 years each on the same terms and conditions except for enhancement of rent and execution of fresh deed modifying the clause relating to renewal. The appellant gave notice of renewal in terms of the provisions of (i) the deed in the letter dated 23-5-1979, and (ii) the Act in the letter dated 13-9-1989. Now it is not necessary to examine the effect of renewal for the earlier period as even on the appellant's own showing it is invoking the statute in the latter notice and not the terms of the deed. If that is so, the appellant could seek for renewal only in terms of Section 7 of the Act which enabled it to renew the deed for a period of one term as originally granted. A covenant for renewal is not treated as a part of the terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only be for one term and no more, but nevertheless it could be contended that the covenant for renewal was also part of the lease and, therefore, stood incorporated in the renewed lease arising under the Act. However, in the peculiar facts of this case, we think that it is not necessary to enter upon the merits of the controversy regarding the effect of clause 3(g) of the lease deed or the rights available under the Act for renewal of the lease period. We are of the opinion that the ends of justice in this case will be met if we modify the order of the High Court in the following terms:

- (1) The appellant does not have power to claim exercise of option for any renewal of the lease beyond 30-9-1999;
- (2) The appellant seeks for and is granted time to hand over vacant possession of the premises in question to the respondent on or before 31-3-2000, however, subject to filing of the usual undertaking in this Court within a period of four weeks from today;
- (3) Rent payable is as per the terms of the lease deed, that is, Rs 1920 per month which shall be paid till the date of handing over the vacant possession;
- (4) If any arrears of rent, as stated above, have not been paid, the same shall be paid within a period of three months from today; and

(5) The order made by the High Court to the extent it is inconsistent with our order shall stand set aside”.

25] Insofar as third contention raised by Mr. Godbole is concerned, Mr. Sanglikar is right in submitting that such a contention finds no mention, even in the memos of civil revision applications. The record indicates that such a contention was never raised in response to the notice for determination of lease. Such a contention was never raised in the written statement filed in the suit. Such a contention was never raised in the memo of appeal to question the Trial Court's decree dated 31st August 2009 and such a contention finds no mention even in the memo of civil revision application. Mr. Godbole is not right in his submission that this contention raises a pure question of law. At the highest, the contention raises a mixed question of law and fact. Therefore, it is impermissible to raise such a contention for the first time in a civil revision application and that too in the course of arguments.

26] Be that as it may, in this case, there is absolutely no material on record to even suggest that the Central

Government or for that matter the HPCL at any stage, indicated any desire to seek renewal of the lease. In ***Depot Superintendent, H.P. Corpn. Ltd. and anr. vs. Kolhapur Agricultural Market Committee, Kolhapur – (2007) 6 SCC 159***, the Hon'ble Supreme Court, in the precise context of the provisions in Section 7(3) of 1977 Act has held that there is no automatic renewal and there can be renewal if the Central Government so desired. Since, there was no material placed before the Courts below in that regard by the Central Government, plea of renewal of lease, was entirely misconceived and therefore, was rightly rejected by the High Court.

27] There is no merit in the submission of Mr. Godbole that the occasion for exercise of option of renewal accrued to the Central Government only in the year 2004, when, the respondent-landlord, served notice dated 27th May 2004 to HPCL determining the lease. The expression “*desire to renew*” in Section 7(3) of 1977 Act, is subject matter of judicial interpretation. In several cases including in ***Bharat***

Petroleum Corporation Ltd. vs. P. Kesavan and anr. - (2004) 9 SCC 772.

28] The Central Government, at the highest, if it so desired, could have opted for renewal in 1976, when 1977 Act came into force, with effect from 1976. Had it opted for such renewal, the lease, might have stood renewed up to 1986, but not any further. The purpose for including the expression “*if so desired by the Central Government*” in Section 7(3) of 1977 Act, was *inter alia* to avoid any foisting of lease, either upon the Central Government or the undertaking which it had taken over, i.e., HPCL. In the absence of such an expression, it is possible that some landlord insists that the term of lease stands renewed on the same terms, even though, the Central Government or the HPCL, may not be desirous of such renewal. The expression also indicates that renewal in such matters is not automatic but subject to expression of desire. In this case, at no stage, whether in 1977 or for that matter in 2000 was any such option ever exercised or desired, ever expressed. There is, even otherwise therefore, no merit in the third contention raised by Mr. Godbole.

29] Since, no other contentions were raised, this civil revision application is liable to be dismissed and is hereby dismissed.

30] For the aforesaid reasons, the other three civil revision applications are also liable to be dismissed and are hereby dismissed.

31] Rule is accordingly, discharged in each of the civil revision applications. There shall, however, be no order as to costs.

32] The interim compensation amount deposited by the applicants in pursuance of ad-interim/interim orders made by this Court to be transmitted by the Registry to the Trial Court where inquiry for determination of *mense* profit is pending. The Trial Court, to make appropriate orders as regards such deposited amount, in terms of the determination of *mense* profit.

(M. S. SONAK, J.)

33] At this stage, Ms Neha Bhide, applies for extension of interim order for a period of twelve weeks, on behalf of the revision applicant for whom she appears and also on behalf of HPCL. Subject to furnish of usual undertakings within a period of four weeks from today and further, subject to continuance of deposit of interim compensation amount before the Trial Court, the eviction orders shall not be executed for a period of eight weeks from today. Copies of the undertakings to be furnished learned counsel appearing for the respondent-landlord before the same are actually filed before the Trial Court.

(M. S. SONAK, J.)