IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 91 OF 2013
IN
SUIT NO. 1196 OF 2012

Samir Naraian Bhojwani .. Applicant/Deft.No.5

In the matter between :

Ramesh Kundanmal .. Plaintiff
Vs.
Sumana Shamrao & Ors. .. Defendants

Mr.Arjun Srivastava i/b Desai and Diwanji for Plaintiff.

Mr.Sachin Rawool i/b Vaishali V.Bhamat for Defendant Nos.1 to 4.

Mr.Prasad Dani, senior advocate a/w. Mr.D.V. Deokar a/w. Mr.Pinakin Modi and Mr.Dhruvesh Parikh i/b M/s. Parimal K Shroff and Co. for Defendant No.5/Applicant.

CORAM : K.R.SHRIRAM, J.
DATE : 13TH JULY, 2017

P.C.

1 Plaintiff has filed this suit, *inter-alia,* for a declaration that Deed of Conveyance, dated 3rd September 2010 executed between Defendant Nos.1 to 4 on one hand and Defendant No.5 on the other hand is void; for specific performance of Indenture of Lease dated 6th November 1969 entered into between Defendant Nos.1 to 4 and the predecessor in title of Defendant No.6 including Clause 4(i) thereof whereby defendant no.6 had option to purchase suit premises; for declaration that plaintiff is in sole and exclusive

possession of the suit premises situated at East side of Peddar Road on Cumballa Hill admeasuring Malabar Hill area admeasuring 997.455 sq.mts. (suit premises); and for a perpetual injunction against Defendant No.5 (applicant herein) acting as landlord in respect of the suit premises.

2 Defendant Nos.1 and 4 were owners of the suit premises. Defendant Nos.1 to 4 entered into an Indenture of Lease dated 6th November 1969 (hereinafter referred to as 'Lease Agreement') with ESSO Standard Eastern, INC (ESSO), the predecessor in title of Defendant No.6. Defendant No.6, under the Lease Agreement, was permitted to run a Petroleum Fuel Dispensing Unit commonly known as 'petrol pump'. Defendant No.6 (which would include the predecessor in title ESSO) entered into Credit Operator Agreement-(Gasoline/ADO) dated 31st May 1971 (hereinafter referred to as 'Operator Agreement') with Plaintiff (referred to in the agreement as Operator) whereby Plaintiff was permitted by Defendant No.6 to operate the petrol pump (referred to as 'the outlet' in the Operator Agreement) and allotted certain rights in connection with the sale and disposal of 'the products' at the said outlet. The Operator Agreement provides that at the site, buildings, super structure and other facilities more particularly described in 'Schedule I' to the Operator Agreement called 'outfit' has been constructed for the sale of motor fuels and other petroleum and allied

products marketed by the Company (Defendant No.6) called 'the products'. 'The outfit' and 'the products' are, in the Operator Agreement, collectively called 'the said outlet'. In the Operator Agreement, Schedule I describes 'the outfit' as under :-

> *“Description of the outfit :*
>
> *3 x 13.5 KL tank; 6 x E.O.pump; 1 x 5 HP Air Compressor; 1 x 3 HP Air Compressor; 3 x 3 ton hoist; 1 battery charger; 1 No. spark plug cleaner; 1 No.3 HP car washer; 2 Nos. Chassis Lubricator, 1 No.Trolley Jack; 1 No. Intercom, 1 No. water cooler.”*

3 As per the Operator Agreement, Plaintiff was given permission and license to enter upon the suit premises to use the outfit for the purpose of selling 'the products' of Defendant No.6. The agreement initially was for a period of one year but it was also provided that thereafter it was continued until determined by either party by giving two months notice in writing. It is not clear whether any such notice has been given by Defendant No.6 to Plaintiff but the fact, it seems, is Plaintiff continues to be in possession of the outlet and continues to dispense 'the products' of Defendant No.6 using 'the outfit'. Since Plaintiff has approached this Court alleging that (a) the lease in effect has got transferred to Plaintiff; (b) Plaintiff is not a sub-tenant; (c) plaintiff is a deemed tenant; (d) plaintiff is an independent entrepreneur; (e) Plaintiff is not an agent of Defendant No.6; (f) Plaintiff was granted the land and structure for a monthly fee; and (g) Plaintiff has

right to exercise right of pre-emption as stated in clause 4.1 of the Lease Deed, it will be useful to reproduce certain clauses of the Operator Agreement. Those are paragraphs 1, 2, 4, 5, 11(1), (c), (f), (g), (i), (k), (m), (n), (o) and (p), 18, 19 and 22 which read as under :

> *1. <u>The Company hereby gives permission and licence to the Operator to enter upon the said site and to use the said outfit for the purpose of selling the products.</u> This permission/licence shall remain in force for a period of one year effective May 31, 1971 and thereafter continue to remain until determined by either party by giving two months notice in writing to the other provided, however, that the Company shall have a right to terminate this agreement during the first year at any time on giving the Operator two months notice in writing without assigning any reason for termination of this agreement.*
>
> *2. <u>The Operator shall pay to the Company a monthly compensation of Rs.10000/- per month for the use of the facilities provided by the company to the Operator</u>. This amount of compensation shall be paid by the Operator to the company at the end of each month. The Company shall have a right in its absolute discretion to vary the amount of the compensation upon giving to the Operator one month's notice in writing of such intended variation.*
>
> …..
>
> *4. <u>The Operator shall not use the said outlet except for the sole purpose of storing and selling the products purchased by the Operator hereunder from the Company. Save as aforesaid the operator shall have no rights, title or interest in the said outlet.</u>*
>
> 5. *<u>The said site and outfit shall at all times remain the absolute property and shall be in sole possession of the Company.</u> The use of the said site and outfit by the Operator for the purpose aforesaid shall be in connection with the business of the Company. <u>The agreement shall not be construed as creating any right, title or tenancy in favour of the Operator in respect of the said site and the Company may thru its authorised representatives :-</u>* …..............
>
> …..
>
> *11(a) During the currency of this agreement the Company shall sell and the Operator shall purchase from the Company the produce at the Company's wholesale not prices for the said outlet ruling on the date of delivery.*
>
> ….

(c) The delivery of the products by the Company to the Operator shall be against payment in cash by the Operator to the Company on or such other terms as the Company may from time to time decide.

….

(f) The Operator shall give to the Company at least 2 clear working days notice of the Operator's requirements of the products and shall take delivery in largest possible loads to be agreed with the Company, at any time during normal working hours.............

(g) The property in the products shall pass from the Company to the Operator at the time of delivery of the products to the Operator or his/their representative and the Company shall not in any way be responsible for loss or shortage thereafter. The Operator shall give a receipt signed by himself or his representative for each delivery and such receipt shall be conclusive evidence against the Operator for the products supplied.

..

(i) The grant of credit by the Operator to customers shall be at the Operator's risk and shall in no way affect the Operator's liability towards the Company.

….

(k) <u>The Operator shall provide and maintain at the said outlet standards of courtesy and service to the public in all respects as established by the Company</u> from time to time and at all times to the Company's complete satisfaction.

….

(m) The Operator shall undergo a comprehensive training course at least for two weeks at the Company's training station at Bandra.

(n) <u>The Operator shall not sell, mortgage,let, share, assign or part with the possession of the said outlet or any part thereof to any person, firm or company nor allow anyone except the duly authorized employee</u> of the Operator to use the same.

(o) <u>The Operator shall not change the constitution of the Operator's firm nor dissolve the partnership nor admit new members as partners nor allow any partner to withdraw</u> from the partnership or share with or assign the right conferred by this agreement without obtaining the previous written approval of the Company.

(p) The Operator shall make returns of Stock and sales and such other documents (including records of credit transactions) as may be required by the Company and in the manner and from approved by the representative at any time when called upon to do so. The Operator shall also send to the Company as may be required by the Company periodic reports of all sales effected by the

Operator and unsold stocks.

…

18 All invoices, cash receipts, statements of accounts and notices hereunder shall be posted by the Company to the Operator by ordinary post and shall be presumed to be received by him.

19 The Operator shall at all times fully indemnify the Company from and against all losses, damages, claims, suits or actions and otherwise arising out of short deliveries or by reason of the product becoming contaminated in any way or resulting from or in connection with injury to persons or property or from violation or non-observance of laws or rules or regulations, howsoever, in connection with matters covered by this agreement.

…

22 In the event of the termination of this agreement under the provisions hereinabove contained the Operator shall not be entitled to any compensation or claims any loss or damage from the Company in respect of goodwill or otherwise.

[emphasis supplied]

4 Based on this Operator Agreement, Plaintiff has come in possession of the suit premises, i.e., the outlet. This is the agreement on which Plaintiff is relying upon for relief as prayed for in this suit. None of the clauses in the Operator Agreement indicate that Plaintiff has acquired any right on the suit premises. Plaintiff was only appointed to operate 'the outlet' using 'the outfit' to sell 'the products' and nothing more. However, in paragraph 26 of the plaint, Plaintiff states as under :

"26 Plaintiff submits that under the said Indenture of Agreement, Plaintiff was given the exclusive possession of the said land and structures, including approximately 8000 square feet of built up area and the terrace car park upon the said built up area, that is used as a service station and repair workshop along with underground storage tanks, godown, sales office etc., with the said license being granted for a monthly license fee. Plaintiff states that the locks and the keys to all of the facilities are exclusively with Plaintiff alone. The said license being valid and subsisting as on 01/02/1973, with the Bombay Rent Act so being in force, converted all such licensees

as tenants/deemed tenants of their respective landlords."

The statement that Plaintiff was given the exclusive possession of the said land and structures with the said license being granted for a monthly license fee is *ex-facie* a false statement. Plaintiff is not a party to the License Agreement and Operator Agreement does not grant any license to Plaintiff. The Operator Agreement does not indicate anywhere that Plaintiff was a licensee of the suit premises. It does not even indicate that Plaintiff has to pay any license fees let alone monthly license fess for the suit premises. Clause 2 of the Operator Agreement provides for Plaintiff to pay to Defendant No.6 a monthly compensation of Rs.10,000/- for the use of the facilities provided by Defendant No.6 to Plaintiff and what are those facilities is reproduced earlier. No license has been granted to Plaintiff for a monthly fee. Further, Clause 1 of the Operator Agreement only gives access to Plaintiff to enter the site and to use 'the outfit' for selling 'the products' of Defendant No.6. That would not mean Plaintiff is a licensee of the suit premises. Moreover, in Clause 5 of the Operator Agreement, it expressly provides "This agreement shall not be construed as creating any right, interest or tenancy in favour of the Operator in respect of the said site" and Clause 4 says "the operator shall have no right, title or interest in the said outlet".

5 Plaintiff has disclosed in the plaint that before he approached this Court, Plaintiff has filed a suit being RAD Suit No.1436 of 2001 in the Small Causes Court, Mumbai. In that suit, Plaintiff sought a declaration that Plaintiff is a sub-tenant of his landlord Defendant No.6 or the direct tenant of the Owners of Defendant No.1 to Defendant No.4. Plaintiff's suit RAD Suit No.1436 of 2001 is still pending.

6 The Lease Agreement between Defendant No.1 to Defendant No.4 and Defendant No.6 was for a period of 10 years from 10th January 1970 to 31st December 1979 and the same was renewed upto 31st December 1989. The Lease Agreement came to an end by efflux of time on or about 31st December 1989 and was not extended thereafter. In any case, Defendant Nos.1 to 4 gave notice of termination to Defendant No.6 vide notices dated 15th December 2000 and 17th January 2001. It should be noted that it is at this stage, Plaintiff has filed the suit being RAD Suit No.1436 of 2001, as mentioned above. The attempt of Plaintiff is to hold on to the suit premises even if Defendant No.6 was evicted.

7 Defendant Nos.1 to 4 have sold the suit premises to Defendant No.5 by a Conveyance Deed dated 3rd September 2010. Defendant Nos.1 to 4 had, prior thereto, filed an Eviction Suit being T.E. & R. Suit No.351/371/2001

(eviction suit) against Defendant No.6 and Plaintiff. Defendant No.6 was Defendant No.1 and Plaintiff was Defendant No.2 in the eviction suit. In the eviction suit, the stand of Plaintiff as Defendant No.2 was :

(a) Plaintiff became statutory tenant since the Defendant No.6 herein is protected under the Bombay Rent Act ;

(b) Plaintiff is a lawful sub-tenant;

(c) Plaintiff is a deemed tenant since he was in exclusive use and possession of the premises.

(d) Plaintiff is the direct tenant of the Defendant Nos. 1 to 4 or was a lawful sub-tenant of the Defendant No. 6;

(e) Plaintiff is not a dealer but an agent of the Defendant No. 6;

(f) Plaintiff was paying rent through Defendant No. 1;

(g) the Notice of Termination addressed by Defendant Nos. 1 to 4 is invalid because it has not been addressed to Plaintiff being the sub-tenant of Defendant No. 6; and

(h) Defendant Nos.1 to 4 are not entitled to recover possession as they continued to accept rent and this amounted to waiver of their rights.

8 The eviction suit came to be decreed in favour of Defendant No.1 to Defendant No.4 by an order and judgment dated 5th May 2016. The Small Causes Court found :

(a) The provisions of the Maharashtra Rent Control Act are not applicable to the premises in view of Section 3 (1) (b) ;

(b) Plaintiff is not a tenant or sub-tenant as long as his long standing use and occupation is not independent of Defendant No. 6;

(c) Plaintiff is a dealer of Defendant No. 6 ;

(d) The rent under the Lease Agreement is paid by Defendant No. 6;

(e) No illegality or infirmity pointed out by Defendants (Plaintiff and Defendant No.6 herein);

(f) Notice has been addressed on behalf of all co-owners;

(g) Defendant Nos.1 to 4 herein accepted rent without prejudice to their rights and contentions; and

(h) Plaintiff herein is selling petroleum products of Defendant No. 6 on the suit premises.

9 Three of the ten issues framed in the eviction suit were :

(a) Whether the defendants (Plaintiff and Defendant No.6 herein) prove that the notice of termination was illegal;

(b) Whether Defendant No.2 (plaintiff herein) is lawful sub-tenant in respect of the suit premises and

(c) Whether the Defendant No.2 (plaintiff herein) is entitled to be a direct tenant of Plaintiff on termination of tenancy of Defendant No.1?

All the three issues were answered in 'negative'. Since the suit was decreed with costs, Defendant No.6 and plaintiff herein were directed to hand over vacant and peaceful possession of the suit premises within 90 days. The Court also ordered inquiry into mesne profits to be conducted under Order 20, Rule 12 of CPC.

10 Against this order and judgment, Plaintiff and Defendant No.6 preferred an Appeal in the Court of Small Causes at Mumbai (Appellate Bench). In the Appeal filed by Plaintiff herein, the Appeal Court was pleased to stay the operation and execution of the impugned judgment and also directed Plaintiff herein to deposit a sum of Rs.300 per sq.ft. for the total area of the suit premises admeasuring 6855 sq.ft. (Rs.20,56,500/-) per month from the date of decree within two months. This order included Defendant No.6 as well to pay the amount of compensation.

11 Against this order, Plaintiff herein, filed a Writ Petition being Writ Petition No. 6018 of 2017 in the Civil Appellate Jurisdiction of this Court. That Writ Petition came to be dismissed by an order/judgment dated 16th June 2017. At the time of hearing of the said Writ Petition, counsel for Defendant No.6 made a statement that Defendant No.6 will not be pressing its Appeal in the Small Causes Court, Bombay (Appellate Bench) and will be withdrawing the same. Mr.Dani states that Defendant No.6 withdrew its Appeal on 6th July 2017.

12 Mr.Dani submitted, (a) Plaintiff to primarily seeing to be protected from being evicted from the suit premises;

(b) Plaintiff cannot claim dual rights that of tenant as well as try to claim ownership;

(c) Plaintiff is not a successor or assignee of either Defendant Nos.1 to 4 or Defendant No.6;

(d) Plaintiff is not and has not claimed to be a representative in interest or principal of any party to the Lease Agreement of which specific performance is being sought;

(e) the plaint does not disclose any cause of action and in any event, the Court should exercise its power under Order VII, Rule 11 of CPC and see if a clever drafting has created an illusion of cause of action as observed by Justice V.R.Krishna Iyer, J. (as he then was) in ***T. Arivandandam vs. T.V. Satyapal and Anr.***[1];

(f) the suit is barred by law of limitation on the ground that the Lease Agreement was for a period of 10 years which was extended and expired on 31st December 1989 on which date, the right if any of Defendant No.6 to purchase the suit premises came to an end. In any event by notices dated 15th December 2000 and 17th January 2001, Defendant Nos.1 to 4 terminated the Lease Agreement by which the option which Defendant No.6 had to

1 (1977) 4 SCC 467

purchase the suit premises under Clause 4.1 of Lease Agreement also came to and end and therefore, the suit is barred by limitation; and

(g) the main thrust, Plaintiff has made a false and dishonest statement and any party which comes to Court with unclean hands should be shown the door.

13 The counsel for Plaintiff asked for an adjournment. It was declined by this Court. Shri Dani on instructions stated settlement talks have failed. When the notice of motion was listed on 5th July 2017, a statement was made that settlement talks were going on and joint request to stand over the matter by one week was made for filing consent terms. While granting time of one week as requested, as the notice of motion has been pending for more than 4½ years, it was made clear in the order of 5th July 2017 that on 13th July 2017 the parties will either file consent terms or will go on with the matter. Therefore, Plaintiff was aware that if the matter was not settled, Plaintiff will have to go on with the matter. Hence adjournment was refused. Counsel for Plaintiff rested his case by stating that he reiterates whatever is stated in the affidavit in reply filed by Plaintiff. He did not make any submissions.

14 I have gone through the plaint with the assistance of Mr.Dani, senior

advocate appearing for Applicant. There was no assistance from Plaintiff's counsel. As quoted above in paragraph 26, a patently false statement has been made by Plaintiff. The plaint also proceeds on the basis that Plaintiff is a protected tenant of the suit premises and entitled to all benefits of Lease Agreement, dated 6th September 1969 entered into between Defendant Nos.1 to 4 and Defendant No.6. The plaint also proceeds on the basis that the Lease Agreement has been extended. It is also stated that meaning of the word '*lessee*' in the Lease Agreement would include successor, assignees and sub-lessees and that would also include persons inducted by the lessee. Plaint also says (i) Plaintiff is a deemed tenant ; (ii) Plaintiff is an independent entrepreneur ; (iii) Plaintiff is not an agent of the Defendant No. 2; and (iv) Plaintiff was granted the land and structure for a monthly fee.

15 The effect of the averments in the plaint and the prayers sought, as rightly submitted by Mr.Dani, is to continue to occupy the suit premises without any right or title or interest and to protect himself from being evicted and/or removed from the suit premises.

16 Considering the documents annexed to the plaint as well, it is very clear Plaintiff has obtained no right or title or interest in the suit premises.

Plaintiff was only appointed as an operator to operate the outlet (the petrol pump) and to dispense 'the products' of Defendant No.6 using 'the outfits'. The Operator Agreement based on which Plaintiff claims to have come into possession also expressly states that Plaintiff shall have no right, title or interest in the said outfit. It also states that the said site and outfit shall at all times remain the absolute property and shall be in sole possession of Defendant No.6 and the use of the said site and outfit by the operator, namely Plaintiff herein, is only for the purpose of selling the products of Defendant No.6 and the agreement shall not be construed as creating any right, interest or tenancy in favour of the operator (Plaintiff herein) in respect of the said site and the outlet. Plaintiff, therefore, has obtained no right with respect to the suit premises let alone being entitled to be declared as a tenant or a protected tenant or a sub-tenant or deemed tenant or having any right to exercise the option under clause 4.1 of the Lease Agreement.

17 V.R. Krishna Iyer, J. (as he then was), in his inimitable style has, in ***T. Arivandandam*** *(supra)* at paragraph 5, 6 and 7 observed :

> *5 We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, be should exercise his*

power under Or. VII r. 1 1 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi

"It is dangerous to be too good."

6 The trial court in this case will remind itself of s. 35-A C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

7 We regret the infliction of the ordeal upon the learned Judge of the High-Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions.

18 Plaintiff has, by clever drafting, created an illusion of a cause of action when actually Plaintiff has no cause of action. Plaintiff has also made a patently false statement in the plaint. The observations of the Hon'ble Supreme Court in the case of ***S.P. Chengalvaraya Naidu v/s. Jagannath (Dead) by LRS. and Ors.***[2] are relevant in this context. *"The Courts of law are meant for imparting justice between the parties. One who comes to the*

2. (1994) 1 SCC 1

Court must come with clean hands……….. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation".

The Apex Court also observed in paragraph 6 of the said judgment that *"A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another".*

19 The above shows that plaintiff sought to play a fraud on this Court to cling on to the suit property in case the eviction suit went against Plaintiff. This is a flagrant misuse and gross abuse of the Court. The eviction suit has been decreed against the Plaintiff. Plaintiff's Appeal is pending in the Small Causes Court and the decree has not been stayed. Only execution of decree has been stayed against payment of monthly compensation of Rs.20,56,500/-. Mr.Dani said this amount also has not been paid, as this Court while dismissing the Writ Petition granted some extra time to Plaintiff to pay.

20 The Apex Court, in ***I.T.C. Ltd. vs. Debts Recovery Appellate Tribunal and Ors.***[3] , has held, relying upon T. Arivandandam (supra), that the Court should consider whether real cause of action has been set out in

3. (1998) 2 SCC 70

the plaint or something purely illusory has been stated and clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue be shown in the plaint. Paragraphs 16 and 27 of the said judgment read are relevant :

> *"16. The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 C.P.C. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. (See T. Arivandandam vs. T.V. Satyapal.)*
>
> *27. As stated above non-movement of goods by the seller could be due to a variety of tenable or untenable reasons, the seller may be in breach of the contract but that by itself does not permit a plaintiff to use the word "fraud" in the plaint and get over any objections that may be raised by way of filing an application under Order 7 Rule 11 CPC. As pointed out by Krishna Iyer,J. in T.Arivandandam's case, the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11(a). Inasmuch as the mere allegation of drawal of monies without movement of goods does not amount to a cause of action based on 'fraud', the Bank cannot take shelter under the words 'fraud' or 'misrepresentation' used in the plaint."*

21 The Apex Court and this Court have, on many occasions, stated that if a party comes to the Court with unclean hands, which in this case plaintiff has, the party should be dealt with very strongly and substantial costs also should be imposed on the parties. The conduct of plaintiff intend to impede and prejudice the administration of justice. Judiciary is the bedrock and handmaid of orderly life and civilized society. In ***M/s. Sciemed Overseas Inc. V/s. BOC India Ltd. & Ors***.[4], the Apex Court in Paragraph 2, has

4. 2016 AII SCR 370

lamented about the unhealthy trend in filing of pleadings which are not truthful. The Court noted :

> *"2. A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This is illustrative of the malaise that is slowly but surely creeping in. This 'trend' is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair."*

22 Justice Kuldip Singh (as he then was) in ***S.P. Chengalvaraya Naidu*** *(supra)*, in paragraph 5 observed :

> *"5 …...............................We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank loan-dodgers and other unscrupulous persons from all walks of life find the Court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."*

23 In ***Oswal Fats and Oils Limited v/s. Additional Commissioner (Administration), Bareilly Division, Bareilly and Ors.***[5] the Apex Court followed the same principle that if a person is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.

24 In ***Dalip Singh v/s. State of Uttar Pradesh & Ors.***[6], the Court bemoaned that a new creed of litigants have cropped up who do not have

5. (2010) 4 SCC 728
6. (2010) 2 SCC 114

any respect for truth and they shamelessly resort to falsehood and unethical means for achieving their goals. Such a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief.

25 In the case of ***T. Arivandandam*** *(supra),* the Apex Court observed that *"if on a meaningful – not formal – reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist judge is the answer to irresponsible law suits."*

26 In the present case plaintiff has come to Court with a false case that he was a deemed tenant when the Operator Agreement expressly provides no right, title or interest was created in favour of Plaintiff. Plaintiff has also stated that he was granted the land and structure for a monthly fee, when Operator Agreement does not have any such provision and the monthly compensation Plaintiff was paying Defendant No.6 was for using 'the outfit' and nothing more. Plaintiff has also averred that he was given exclusive possession of the suit premises and structures, when Plaintiff is not even a party to the Lease Agreement and Clause 5 of the Operator Agreement expressly provides the said site and outfit shall at all times remain the absolute property and shall be in sole possession of Defendant No.6. Such a

plaint filled with false statements ought to be summarily thrown out and suit dismissed.

27 Plaintiff is also seeking specific performance of Lease Agreement and in particular Clause 4(i) of the Lease Agreement. The basis for this prayer is that Clause 4(i) of the Lease Agreement provided for right of pre-emption and therefore, Defendant Nos.1 to 4 cannot sell to Defendant No.5. But the fact is Plaintiff is not a party to this Lease Agreement and therefore, Plaintiff cannot claim to have any right under Clause 4(i). Moreover, Defendant No.6, who could have probably exercised rights under this Clause 4(i) and agitate the issue itself, has decided to vacate the premises by accepting the notice of termination and the decree of the Small Causes Court in the eviction suit. Admittedly, Defendant No.6 is the successor of ESSO. There is nothing to show and it is not Plaintiff's case also that Plaintiff was a party to the Lease Agreement or that the Lease Agreement was assigned to Plaintiff by Defendant No.6 or Plaintiff was a successor of Defendant No.6. There is no agreement to show that even the premises was sublet to Plaintiff or sub-tenancy was created in favour of Plaintiff. The only agreement by which Plaintiff could enter the suit premises is the Creditor Operator Agreement dated 31st May 1971. Therefore, Plaintiff cannot even seek specific performance of the Lease Agreement. So far as the prayer to declare

the Deed of Conveyance dated 3rd September 2010 between Defendant No.1 to Defendant No.4 and Defendant No.5 as void and to injunct Defendant No.5 from acting as landlord in respect of the suit premises such prayers, in the facts and circumstances of the case, cannot be even granted. There is nothing to prevent Defendant Nos.1 to 4 sell their interests to Defendant No.5. When a Plaintiff has come up with such a false case, it makes no sense in the Court asking the parties to go through a trial, where by mere reading of the plaint, it is clear that there is no cause of action against Defendant Nos.1 to 4 and Defendant No.5. The garb or cloak which is wrapped around the pleadings by an astute draftsman must kept aside to deduce the pith and substance of the pleadings.

28 In my view in addition to the above, the Small Causes Court has already directed eviction of Plaintiff. Of course, the operation of the order has been stayed upon plaintiff paying compensation. Defendant No.6, with whom Defendant Nos.1 to 4 had entered into a Lease Agreement, has vacated the premises by withdrawing their Appeal challenging the decree of eviction. Plaintiff being in the premises is not independent of Defendant No.6. Plaintiff is in the suit premises only by virtue of the Operator Agreement. When a person who could have asked for continuing in possession himself has vacated, the person, who was only appointed to

operate the outlet with no other right, title or interest cannot seek any protection. In my view, precious judicial time could be saved if this bogus litigation is shot-down.

29 In view of the above, I see no reason to go into the issue of limitation raised by Applicant.

30 The suit stands dismissed with costs in the sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to be paid to Applicant by Plaintiff. This Rs.5,00,000/- to be paid by way of cheque drawn in favour of Advocates for Applicant within four weeks from today.

31 In view of the dismissal of the suit, the notice of motion also stands disposed.

(K.R. SHRIRAM, J.)