THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.113 OF 2017

JUDGMENT:

This Second Appeal is filed under Section 100 of C.P.C., by the defendants assailing the decree and judgment dated 17.01.2017 in A.S.No.52 of 2014 on the file of the Court of XI Additional District and Sessions Judge, Krishna, Gudivada, wherein and whereby the decree and judgment dated 17.11.2014 in O.S.No.28 of 2011 on the file of the Court of the Principal Junior Civil Judge, Gudivada, directing the defendants to vacate the suit schedule property, was confirmed. `

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: The plaintiff purchased the plaint schedule property from Katari Yedukondalu and his sons under a registered sale deed dated 20.08.1981. The plaintiff became the absolute owner of the plaint schedule property by virtue of the registered sale deed dated 20.08.1981. By the time of purchase of the plaint schedule property, it was under the possession of the defendants as being lessees. The plaintiff purchased the plaint schedule property subject to lease in favour of the defendants. As per the recitals of the sale deed, the plaintiff is entitled to receive rent from the defendants. The defendants filed O.S.No.150 of 1990 on the file of the Court of the Junior Civil Judge, Gudivada, against the plaintiff and one Moturu Purnachandra Rao for specific performance of lease agreement for a period of 20 years commencing from

01.09.1987 as renewal of the earlier lease agreement. The trial Court granted decree in favour of the defendants on 30.03.1995 to renew the lease for a period of 20 years commencing from 01.09.1987 on same terms and conditions of the earlier lease deed. The defendants took the plaint schedule property and also the site belonged to the said Moturu Purnachandra Rao on lease for establishment of petrol pump in both the sites. As per the terms and conditions of the decree in O.S.No.150 of 1990, the defendants are liable to pay Rs.1,000/- per month towards rent. But the defendants paid rent to the plaintiff only at the rate of Rs.125/- per month till 31.03.2006. The defendants made last payment of Rs.1500/- to the plaintiff on 18.04.2006 towards rent for the year 2005-06 i.e., commencing from 01.04.2005 to 31.03.2006 through cheque bearing No.144131. Subsequently, the defendants stopped payment of rent. Hence, the plaintiff is constrained to file the suit.

4. The defendants filed written statement denying all the averments made in the plaint *inter alia* contending that after expiry of the lease period on 31.08.2007, the plaintiff and her co-lessor expressed their willingness to negotiate for the renewal of the lease in favour of these defendants for further period under new terms and conditions. Therefore, the plaintiff requested the defendants to keep the premises with the defendants only since the defendants company is a public sector unit and the valuable properties like pumps, tanks, buildings, mechanical and other electrical fittings are situated in the leased property. The plaintiff has no right to seek eviction of the defendants from the plaint schedule property. Hence, the suit may be dismissed.

5. Basing on the above pleadings, the trial Court framed the following issues:

1) Whether the defendants have committed default in payment of rents from 01.12.2007 onwards?

2) Whether the lease period was expired by 31.08.2007?

3) Whether the quit notice dt.07.07.2010 is binding on the defendants?

4) Whether the plaintiff is entitled for eviction as prayed for?

5) Whether the plaintiff is entitled for damages as prayed for?

6) To what relief?

6. Before the trial Court, on behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the defendants, DW.1 was examined and Ex.B.1 was marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court decreed the suit directing the defendants to vacate the plaint schedule property within two months from the date of order by removing all the constructions raised by the defendants for the purpose of their business and for arrears of rent at Rs.1,000/- per month from 01.12.2007 to 31.07.2010 and recovery of Rs.45,000/- towards arrears of rent from 01.08.2010 till 30.11.2010 at Rs.15,000/- per month with interest at the rate of 12% per annum on the amount of Rs.45,000/- from the date of suit till the date of realisation and damages at Rs.15,000/- per month from the date of suit till the date of delivery of possession. Feeling aggrieved by the decree and judgment of the trial Court, the defendants have preferred A.S.No.52 of 2014 on the file of the Court of XI Additional District and Sessions Judge, Krishna, Gudivada. The first appellate Court, after reappraising the oral, documentary evidence and other

material available on record afresh, arrived at a conclusion that the plaintiff is entitled to seek eviction of the defendants from the suit schedule property and dismissed the appeal. Hence, the second appeal is preferred by the defendants.

8. Heard Sri O.Manohar Reddy, the learned counsel for the appellants-defendants and Sri Ramesh Katikineni, the learned counsel for the respondent-plaintiff.

9. At the time of admission, this Court framed the following questions of law:

> 1. Whether the interpretation placed by the Courts below with regard to the provisions of Section 5(2) of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 is legally sustainable? and
>
> 2. Whether the Courts below acted legally in holding that the provisions of Section 5(2) of the Burmah Shell (Acquisition of Undertakings in India) Act has no application on the ground that there was no request made is legally sustainable?

10. Point Nos.1 and 2 are interlinked with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

11. The following admitted facts can be culled out from the pleadings of both parties: The defendants are the lessees of the suit schedule property. Originally, the vendors of the plaintiff let out the suit schedule property to the defendants for running a petrol bunk and the same was continued even after the plaintiff purchased the suit schedule property in the year 1981. The lease period was renewed in the year 1987 for a period of 20 years.

12. Prior to coming into force Burmah Shell (Acquisition of Undertakings in India) Act, 1976, (for short, Burmah Shell Act), Burmah Shell Oil Storage and Distributing Company of India Limited (for short, Burmah Shell) used to distribute and market petroleum products in India. In order to acquire the right, title and interest in Burmah Shell and to ensure coordinated distribution and utilisation of petroleum products in India, the Government of India brought into existence the Burmah Shell Act with effect from 24th day of January, 1976. As per Section 3 of the Act, the right, title and interest of Burmah Shell, in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government.

> **5. Central Government to be lessor or tenant under certain circumstances**.
>
> (1) Where any property is held in India by Burmah Shell under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to, and vested in, the Central Government.
>
> (2) On the expiry of the term of any lease or tenancy referred to in sub- section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately before the appointed day.

A perusal of Sub-section (1) of Section 5 of the Burmah Shell Act, makes it clear that if Burmah Shell was a lessee in respect of a property situated in India as on 24.01.1976 (appointed day), from that day onwards, the Central Government would become the lessee in place of Burmah Shell. According to Sub-section (2) of Section 5 of the Burmah Shell Act, if the Central Government desires to continue as lessee, such lease had to be renewed on the same terms and conditions of the earlier lease, as if the same was renewed prior to appointed day i.e., 24.01.1976.

13. In the case on hand, the defendants filed O.S.No.150 of 1990 on the file of the Court of the Junior Civil Judge, Gudivada, to extend the lease for a period of 20 years. By virtue of the decree and judgment dated 01.09.1987, the lease was accordingly extended for a period of 20 years commencing from 01.09.1987. The said lease expired by 31.8.2007.

14. DW.1, in the cross-examination, categorically admitted that as per the terms and conditions of the decree and judgment in O.S.No.150 of 1990, the lease period was expired in 31.08.2007. The trial Court arrived at a conclusion that the lease period was expired on 31.08.2007, basing on the decree and judgment in O.S.No.150 of 1990 coupled with the oral testimony of DW.1. After expiry of the lease period, the defendants are not entitled to continue in the suit schedule property.

15. The trial Court considered the scope of Sub-sections (1) and (2) of Section 5 of the Burmah Shell Act and arrived at a conclusion that these two provisions are not applicable to the facts of the case on hand as once the lease was extended for a period of 20 years. The first appellate Court also concurred with the findings recorded by the trial Court, so far as applicability of Sub-sections (1) and (2) of Section 5 of the Burmah Shell Act, are concerned. Both the Courts below constructed the provisions of Sub-sections (1) and (2) of Section 5 of the Burmah Shell Act in right perspective and came to the conclusion that the said provisions are not applicable to the facts of the case on hand. As

observed earlier, these provisions have no application for renewal of the lease period for second time. Viewed from any angle, I am unable to accede to the contention of learned counsel for the appellants that the findings recorded by the Courts below are perverse.

16. In **Municipal Committee, Hoshiarpur v. Punjab SEB**[1], while dealing with the scope of Section 100 of C.P.C., the Hon'ble apex Court held at paragraph No.16 as follows:

> 16. ... ... A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. ... ...

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the questions of law urged by the learned counsel for the appellants will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law is involved in this appeal.

18. At the time of arguments, learned counsel for the appellants submitted that one year time may be granted for the defendants to vacate the suit schedule property.

19. Learned counsel for the respondent-plaintiff submitted that if at all this Court comes to a conclusion to grant time to the

---

[1] (2010) 13 SCC 216

defendants, three months time may be granted to them to vacate the suit schedule property.

20. The fact remains that the defendants have been carrying on the petrol business in the suit schedule property. If the defendants are directed to vacate the property without giving any time, it may cause untold hardship to them and at the same time, the defendants are not entitled to continue in the suit schedule property by paying the old rent.

21. Taking into consideration the facts and circumstances of the case, this Court is inclined to grant six (6) months time to the defendants to vacate the suit schedule property on a condition that the defendants have to pay future rent at the rate of Rs.30,000/- per month with effect from 01.11.2017. The defendants are further directed to pay the arrears of rent upto 31.10.2017 within eight (8) weeks from today. If the defendants fail to comply with the above directions, the plaintiff is at liberty to take appropriate steps in accordance with law.

22. With the above observations, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 28.11.2017
Ivd