

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 187 OF 2018
WITH
CIVIL APPLICATION NO. 288 OF 2018**

Bharat Petroleum Corporation Limited	...	Appellant
V/s.		
Sanjay Ramkrisna Mirajkar	...	Respondent

- Mr. Shivprasad R. Page for the Appellant.
- Mr. R.D. Soni a/w. Mr. V.R. Kasale i/b. Ram & Co. for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th APRIL, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent.

2] Against the concurrent finding of the fact recorded by the Court of Jt. Civil Judge Junior Division, Nashik, and confirmed by the Appellate Court i.e. Principal District Judge, Nashik, the present Second Appeal is preferred.

3] Admittedly, the suit filed by the Respondent against the Appellant for possession of the suit property came to be decided ex-

parte as despite the due service of summons on the Appellant vide Exhibit-6, the Appellant remained absent in the trial Court. As per bailiff report, even copy of the plaint was also served on the Appellant. As held by the Appellate Court therefore, as the Appellant has failed to prove sufficient cause for his absence before the trial Court, this ex-parte decree of possession which was passed under the provisions of the Transfer of Property Act was required to be confirmed and accordingly, confirmed by the Appellate Court. Against it, this Second Appeal is preferred.

4] The only question which is raised by learned counsel for the Appellant is on the basis of the provisions of The Burmah Shell (Acquisition Of Undertakings In India) Act, 1976, especially Section 5(2) of the Act, which reads as follows:

“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.”

5] It is urged that, in view of this provision, the Appellant was entitled for renewal of the tenancy. In the plaint itself it is stated that such letter for renewal of the tenancy was received and the meetings

were also held. Hence, according to learned counsel for the Appellant, in the light of these provisions of Section 5(2) of The Burmah Shell (Acquisition Of Undertakings In India) Act, 1976, there is a substantial question of law for admission of this appeal and for stay to the execution of the possession decree.

6] However, perusal of the impugned judgment shows that both the trial Court and the Appellate Court have considered this aspect also and found that, the initial renewal, which the Central Government was entitled and desired, is already granted. As to subsequent renewal there was no material on record like the letter or any meetings to show that the Central Government was desiring further renewal of such lease. In the absence of such evidence on record, both the trial Court and the Appellate Court decreed the suit. Therefore, no substantial question of law is raised in this appeal for its admission. Hence, the Second Appeal stands dismissed.

7] At this stage, learned counsel for the Appellant seeks stay to the operation of this order for a period of 8 weeks. Learned counsel for the Respondent strongly resisted the same.

8] Considering the fact that since the dismissal of the First Appeal on 6th October 2017, there is no order of stay running against

the Respondent, the prayer to that effect is rejected.

9] In view of disposal of the Second Appeal, the Civil Application does not survive and hence, it stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]