

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

APPEAL (LDG.) NO. 459 OF 2017
WITH
APPEAL (LDG.) NO. 460 OF 2017

The Deputy Salt Commissioner and another. ... Appellants.

V/s.

Vikas Kamlakar Walawalkar and another. ... Respondents.

Mr.S.R.Rajguru with Mr.Ashish Mehta and Mr.Khorzan Irani I/b.
Ashish Mehta for the appellants in both the matters.

Mr.Milind Sathey, Senior Advocate with Mr.S.S.Pakale, Mr.Kunal
Dwarakadas and Mr.Saurabh Pakale i/b. Mahimtura & Co. for
respondent No.1 in both the matters.

Mr.Sandeep Patil with Ms.Sulakshana Kamble for respondent No.2.

CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 27th August 2018.

P.C.:

These two appeals are taken up for admission together as the same arise out of a common judgment and order dated 9th November 2017 passed by the learned single Judge. The appellants are the original defendant Nos.1 and 2 and the respondent No.1 is the original plaintiff. By the impugned order, the learned single Judge has decided Notice of Motion No.2481/2016 taken out by the appellants. By the same order, Chamber Summons No.1801/2016 taken out by the respondent No.1-plaintiff for amendment of the plaint has been allowed. Therefore, these

two appeals have been filed. There were two prayers made in the said Notice of Motion, out of which only one prayer viz. prayer clause (a) was pressed by the appellants. Prayer clause (a) was for dismissal of the suit. By the impugned order, the said prayer has been rejected.

2. With a view to appreciate the submissions made across the bar, a brief reference to the factual controversy in the suit will be necessary. The dispute is about two parcels of land on which salt works are situated. Initially, by a lease-deed executed on 22nd December 1921, the predecessor of the present appellants granted a lease in respect of the subject lands in favour of respondent No.1- plaintiff. Reliance is placed in the suit on the supplemental deed of lease dated 27th July 1994 under which, according to the case of the respondent No.1- plaintiff, the President of India continued and transferred and demised the lease in respect of the said lands in the name of the respondent No.1- plaintiff.

3. Show cause notices were issued by the appellants to the respondent No.1- plaintiff which were replied by him. It appears that an order was made on the basis of the show cause notice for termination/determination of lease. Earlier a writ petition was filed by the respondent No.1- plaintiff and the matter was taken up right up to the Apex Court. However, the said factual aspects are not necessary for consideration at this stage. The first prayer in the suit (prior to its amendment) is for declaration that the termination of lease is illegal and a prayer is made for setting aside the termination. The second prayer is for a declaration that the supplemental deed of lease read with two lease deeds executed in the

year 1991 were valid and subsisting. Prayer (c) is for declaration that on expiry of current term of the lease on 14th October 2016 in terms of the supplemental deed of lease read with deed of lease executed in the year 1921, the respondent No.1- plaintiff is entitled to a renewal and/or extension for a like term of 99 years and on the same terms including a term for further renewal.

4. The Notice of Motion was taken out by the appellants in September 2006. Prior to the date on which notice of motion was taken out, on 18th October 2011, the learned single Judge settled the issues by consent of the appellants and the respondent No.1- plaintiff. Three issues were settled under the said order dated 18th October 2011, which read thus:

a) Whether the Defendant No.1 proves that the termination of the lease of lands described in Exhibit “B” to the plaint, vide order dated 1st April, 2005 (Exhibit W to the plaint) is valid and/or legal?

b) Does the Plaintiff prove that he is entitled to renewal/extension of lease for a like term of 99 years on the same terms, (including a term for further renewals) as per Supplemental Deed of Lease (Exhibit E to the plaint) read with Deeds of Lease referred to in para 5 of the plaint?

c) Does the Plaintiff prove that the Defendant No.3 are required to make drains and sewers, to prevent sewage water and industrial effluent from flowing into the two inlets of the Plaintiff's salt lands ?

d) What order ?

We may note here that issue (a) and issue (c) were recasted under the orders dated 11th and 18th January 2012 passed by the learned single Judge. Further an additional issue on the bar of limitation was framed vide order dated 18th January 2012.

5. Chamber Summons No.1801/2016 was taken out by the respondent No.1- plaintiff for amendment of the plaint. The chamber summons was taken out on the basis of the events which have allegedly happened after the institution of the suit. By the proposed amendment apart from incorporating factual averments, the respondent No.1- plaintiff prayed for incorporation of additional prayers. The first prayer which was sought to be added seeks a decree against the appellants to execute the a lease deed of the subject lands by renewing the lease from 15th October 2016. The consequential prayer which is sought to be added is for challenging notification dated 9th October 2013 published in the Government of India Gazette as well as letter dated 11th July 2016 addressed by the Deputy Secretary, Government of India to the Salt Commissioner, Jaipur. Again this prayer is founded on the basic contention of the respondent No.1- plaintiff that he is entitled to renewal of lease.

6. As stated earlier, by the impugned order, prayer clause (a) of the Notice of Motion which was the only prayer which was pressed by the appellants was dismissed and the chamber summons was made absolute.

7. The learned counsel appearing for the appellant submitted that the respondent No.1- plaintiff is disentitled to renewal of lease. He submitted that in view of the law laid down by the Apex Court in the case of *Navin Chand v. Nagarjuna Travels & Hotels Pvt.Ltd.*¹, the respondent No.1- plaintiff is disentitled to renewal of lease. He submitted that there is no clause in the supplemental deed of lease which entitles the respondent No.1- plaintiff to renew the lease. He would, therefore, submit that in absence of any such clause, the respondent No.1- plaintiff is not entitled to renewal of lease. He submitted that on his own showing, the lease granted to the respondent No.1- plaintiff has come to an end on 14th October 2016 and, therefore, the suit has become infructuous.

8. Without prejudice to the contentions in the Notice of Motion, he submitted that the amendment ought not to have been permitted as the respondent No.1- plaintiff has no right to seek renewal of the lease.

9. We have considered the submissions. As stated earlier, the Notice of Motion was taken out by the appellants nearly five years after the issues were settled and that also by consent of the parties. Issue (b) which is not yet amended or recasted is on the entitlement claimed by the respondent No.1- plaintiff that he is entitled to renewal/ extension of lease as pleaded in the plaint and, in particular in prayer clause (c) (unamended). The prayer (a) of the Notice of Motion on which the impugned order has been passed proceeds on the assumption that the respondent No.1- plaintiff has no right to pray for or to claim renewal/ extension of lease. As issue (b) has already been framed on this aspect,

1 AIR 2002 SC 2870

the same will have to be decided after the parties adduce evidence. Therefore, the learned single Judge was right in rejecting prayer (a) made in the Notice of Motion. It is true that the learned single Judge has decided the issue of applicability of the decision of the Apex Court in the case of **Navin Chand** (supra). However, suffice it to say that by the impugned order, the issue (b) pertaining to the right of the respondent No.1- plaintiff to seek renewal/ extension of lease has not been decided and the said issue remains open which will be decided on its own merits at the time of final hearing of the suit. Therefore, we find no error in the view taken by the learned single Judge when he declined to dismiss the suit on the ground that the same has become infructuous and, therefore, there is no merit in Appeal (Ldg.) No.460/2017. While we say so, we make it clear that all contentions of the parties on issue (b) framed under the order dated 18th October 2011 are kept open.

10. Now coming to the order passed on the chamber summons which is the subject matter of challenge in Appeal (Ldg.) No.459/2017, we have already quoted issue (b) which very much arises in the suit. Perusal of the averments sought to be added by way of amendment and the additional prayers sought to be incorporated show that the proposed amendment is not at all inconsistent with the contentions already raised in the suit. Moreover, the proposed amendment is based on certain events which have occurred subsequent to the filing of the suit. The prayers which are sought to be added are concerning the right claimed by the respondent No.1- plaintiff of renewal/ extension of lease. Therefore, it cannot be said that any new case or any inconsistent case is sought to be

made out by the respondent No.1- plaintiff. Even if the amendment is allowed, all contentions of the parties in relation to the issue (b) remain open. All objections to the proposed amendment including objection regarding bar of limitation can always be raised by the appellants by filing additional written statement. Now we are informed that additional written statement has already been filed. The impugned order passed both on the Notice of Motion and the Chamber Summons does not finally decide the rights claimed by the parties.

11. Subject to what is observed above, there is no merit in the appeals. Both the appeals are, accordingly, dismissed.

12. In view of dismissal of appeals, pending notices of motion, if any, do not survive and stand disposed of accordingly.

(M.S.SONAK, J.)

(A.S.OKA, J.)