



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Twenty Seventh day of June Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR

CMP (MD) No.2366 of 2018

IN

AS (MD) No.12 of 2018

- 1 HINDUSTAN PETROLEUM CORPORATION
REP BY ITS MANAGING DIRECTOR AND ANOTHER,
HAVING ITS REGIONAL MANAGER
OFFICE AT THALAMUTHU NATARAJAN BUILDING,
GANDHI IRWIN ROAD,
P.B NO.3045, EGMORE, CHENNAI- 600 008.
- 2 HINDUSTAN PETROLEUM CORPORATION,
REP BY ITS SOUTHERN REGIONAL MANAGER,
HAVING OFFICE AT SIDCO, KAPPALLUR, MADURAI-625 008.
- 3 HINDUSTAN PETROLEUM CORPORATION,
REP BY ITS CHIEF REGIONAL MANAGER
AND DULY CONSTITUTED ATTORNEY,
TIRUCHIRAPALLI DIVISION,
HAVING ITS OFFICE AT BHARATHIDASAN SALAI,
CANTONMENT, TIRUCHIRAPALLI. ... PETITIONERS/ APPELLANTS

Vs

- 1 A.MAHABOOB BASHA
- 2 KATHOON BEGAM
- 3 NOORJAHAN
- 4 SALIMA BIBI
- 5 AMEERUNISA
- 6 MOHAMMED YUSUF
- 7 GUL MOHAMMED
- 8 JAN BASHA
- 9 DILSHATH BEGUM
- 10 ASIA BEGUM
- 11 ABBAS
- 12 ABDULLA
- 13 S.MOHAMMED KALANJAM (DIED)
- 14 R.M.SETHU
- 15 M.MOHAMMED MANSOOR
- 16 M.MOHAMMED UBAYATHULLA
- 17 M.MOHAMMED ARIF
- 18 M.SAMSEENA
- 19 M.USMANIYAKANI

.. RESPONDENTS/ RESPONDENTS



Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to record the compromise between Hindustan Petroleum Corporation Limited/ the petitioners herein with the respondents, as per their letter dated 05.08.2016 as revised by the offer letter dated 07.03.2017, and as accepted by the petitioners, through the email dated 25.07.2017, and the letter dated 26.12.2017, agreeing to grant fresh lease to the petitioners in respect to 10,000 square feet, out of 18,731 square feet on the eastern portion in the land morefully annexed to the schedule hereto, for a period of 20 years, commencing from 01.04.2017 to 31.03.2017 on a monthly rend of Rs.35,000/- at 15% escalation every 5 years, and the petitioners paying the arrears of rent, at the rate of Rs.25,000/- flat for the period from 01.08.2010 to 31.03.2017, and the remaining 8731 square feet, of the land laying on the western side of the schedule property, being surrendered by the petitioner to the respondents, for their exclusive use and purpose, in any manner they like it, and other usual terms of the lease over the land forming the subject matter of the suit in O.S.No.24 of 2008 on the file of the 1st Additional District Judge(PCR) Tiruchirappalli, being the subject matter of A.S(MD) No.12 of 2018 on the file of this Honourable Court.

SCHEDULE OF PROPERTY

All that piece and parcel of land situates at Madras - Trichy Trunk Road, at No.1, Toll gate, Manachanallur Taluk, having survey number 64/5 part, ad-measuring 105ft X 35 ft., 95ft X 61ft X 97 ft X 138ft X 111 ft., are thereabout and bounded as follows:

On the East by : Madras - Trichy Trunk Road
 On the West by : Salam - Trichy Road
 On the North by : Canal Keeraimangalanathan vaikal and
 On the South by : Rice Mill

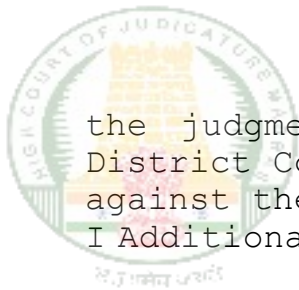
property lies in Bikshandarkovil, Manachanallur Taluk, Tiruchirappalli District.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.SUBBIAH, Advocate for Mr.M.SRIDHER, Advocate for the petitioner and of Mr.K.S.VAMSIDHAR, Advocate on behalf of the Respondents, the court made the following order:-

RESERVED ON : 26.03.2018
 PRONOUNCED ON : 27.06.2018

The petitioners are the appellants in A.S.No.12 of 2018 and the appellants have also filed other appeals in A.S.Nos.13 and 14 of 2018.

2. The appeal in A.S.No.12 of 2018 is filed against the judgment of the Additional District Court, Thiruchirappalli in O.S.No.24 of 2008. The appeal in A.S.No.13 of 2018 is filed against

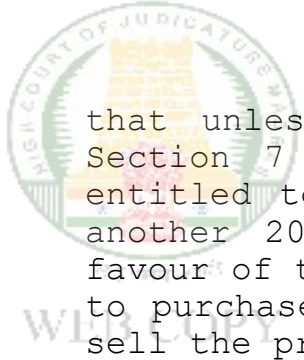


the judgment in O.S.No.110 of 2010 on the file of I Additional District Court, Thiruchirappalli. The appeal in A.S.No.14 of 2018 is against the judgment and decree in O.S.No.137 of 2010 on the file of I Additional District Court, Thiruchirappalli.

3.The plaintiffs in the suit in O.S.No.24 of 2008 are the appellants in A.S.No.12 of 2018. The suit in O.S.No.24 of 2008 was filed by the appellants for a direction to direct the defendants 1 to 14 to execute a sale deed in favour of the plaintiffs by receiving a sum of Rs.14,40,000/- from the plaintiffs and to direct the defendants to deposit the sale price under the sale deed dated 19.03.2005 into Court and to set aside the sale deed dated 19.03.2005 as void and for an injunction restraining the defendants from alienating the suit property.

4.The following facts are not in dispute. The suit property measuring to an extent of about 18,731 sq.ft. originally belongs to one Rahamath Bibi. During the life time of Rahamath Bibi, a lease deed was executed in favour of M/s.Caltex (India) Ltd., under a registered document dated 30.09.1970 for a period of 20 years. M/s.Caltex (India) Ltd., had established a Petrol Pump in the suit property. As per the provisions of Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the undertakings in India of Caltex (India) Ltd) Act, 1977 (Act 17 of 1977), the lease hold rights of Caltex (India) limited and of its undertakings have been transferred to Hindustan Petroleum Corporation Limited, a public sector undertaking and registered under Indian Companies Act, 1956. As per Section 7 of the Act (Act 17 of 1977), the leasehold right, by exercising the statutory option, can be renewed for a further period of 20 years with the same terms and conditions. In this case, there is a dispute whether the option was exercised by the plaintiffs at the appropriate time. However, after the expiry of the original lease in the year 1990, a suit came to be filed by the legal heirs of Rahamath Bibi for ejectment in O.S.No.169 of 1999 on the of the District Munsif Court, Lalgudi. The said suit is later transferred to I Additional District Court, Trichy and numbered as O.S.No.110 of 2010. Subsequently, the plaintiffs in O.S.No.211 of 2005 appeared to have purchased the suit property from the legal heirs of Rahamed Bibi in the year 2005. They have also filed a suit in O.S.No.211 of 2005 for a permanent injunction restraining the first appellant herein from putting up any wall on the western portion of the suit property, at the point of access on the eastern side of Salem-Trichy Main Road. All the three suits were tried together and disposed of by the common judgment by the learned First Additional District Judge, Trichy.

5.In the suit filed for ejectment, the appellants herein contested the suit on the ground that they have a statutory right of renewal for a further period of 20 years and that they have the lease hold rights till 2010. However, the trial Court found that the lessee, namely, the plaintiffs in the suit in O.S.No.24 of 2008 have not exercised their option to renew the lease beyond 1990 and

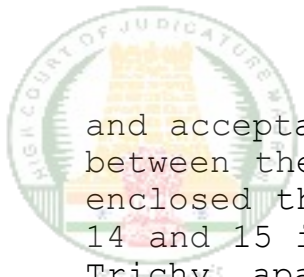


that unless the appellants herein exercised their option as per Section 7 of the Act (Act 17 of 1977), the appellants are not entitled to claim the privilege by getting the lease extended for another 20 years. Since the lease deed originally executed in favour of the appellants conferred a right on the lessee, an option to purchase the demised property in the event of lessor intends to sell the property to a third party, the appellants filed the suit to direct the defendant 1 to 4 to sell the property to the appellants.

6.The suit in O.S.No.24 of 2008 was filed by the appellants to direct the defendants to execute the sale deed in favour of the appellants was dismissed by the trial Court holding that there is no subsisting lease for the appellants to exercise their right of option. Even in the written statement filed by the lessors in O.S.No.110 of 2010 filed (O.S.No.169 of 1999, the District Munsif Court, Lalgudi) for ejectment, the appellants have not relied upon the statutory renewal as contemplated under Section 7 of the Act (Act 17 of 1997). It is also not their case that they had exercised their option for the statutory renewal to renew the lease for a further period of 20 years. However only in the written statement filed in O.S.No.211 of 2005, they have raised their legal issue claiming a right under Section 7 of the Act. Relying upon several judgments of this Court as well as the Hon'ble Supreme Court, the trial Court ultimately dismissed the suit filed by the appellant in O.S.No.24 of 2008 and decreed the suit which was originally filed in O.S.No.169 of 1999 on the file of the District Munsif Court, Lalgudi and subsequently, transferred to I Additional District Court, Trichirappali and renumbered as O.S.No.110 of 2010. The suit filed by the subsequent purchasers in O.S.No.211 of 2005 also was decreed as they are entitled to prevent the appellants to put up any constructions denying access from the suit property to reach the main road. Aggrieved by the judgment and decree in all the three suits, the appellants have preferred three appeals, namely, A.S.(MD) Nos.12,13 and 14 of 2017.

7.After commencement of the argument in the main appeals, the learned Senior Counsel submitted that there was a compromise at the time when the suit was pending. According to him, there was an offer by the lessors and the appellants have accepted the offer by sending a draft lease agreement containing the terms of fresh lease. Since there was a compromise based on agreed terms it is submitted that the compromise can be recorded and the appeals can be disposed of in terms of the compromise. Sum and substance, the learned Senior Counsel submitted that it is permissible in law to draw an inference regarding the agreement through correspondence and communications.

8.Though the fact that there was some negotiation among the parties during the trial of the suit, it is submitted by the learned Counsel for the respondents that there was no compromise as such. In these circumstances, the appellants have filed the above miscellaneous petition to record the compromise which is the offer



and acceptance as evident from the correspondence and communications between the parties. Along with the petitions, the appellants have enclosed the letters and few communications sent by the respondents 14 and 15 in these appeals to the Chief Regional Manager of M/s.HPCL Trichy, apart from the draft lease agreement.

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9.The learned Senior Counsel appearing for the petitioners submitted that even during the pendency of the suit before the trial Court, the negotiation started between the parties, for an amicable settlement which should be in the interest of both sides. It is further stated that the respondents 14 and 15 herein (15th respondent on behalf of the legal heir of 13th respondent) by a letter dated 05.08.2016 made their offer, wherein, it is stated as follows:

"(i) The total area of the property is 18,731 sq.ft.

(ii) Out of this, we are ready to execute a fresh lease to you for 10,00 sq.ft. on eastern portion.

(iii) you shall vacate the remaining area of 8,731 sq.ft on the western side so that we shall be entitled to use or sell it in any manner deemed fit by us.

(iv) we are ready to lease the area of 10,000 sq.ft., for 15 years renewal by another 15 years at a monthly rental of Rs.40,000/- with escalation @ 15% every 3 years from 01.08.2016.

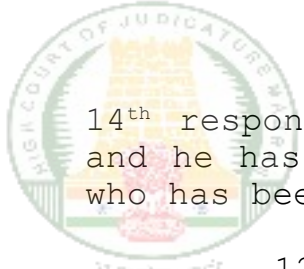
(v) You shall pay arrears of rent from 01.08.2010 till 31.07.2016 at the flat rate of Rs.35,000/- per month.

(vi) Upon the expiry of the first tenure of 15 years of lease, the rental shall be mutually decided and concluded for the second tenure of 15 years.

(vii) All the pending cases will be withdrawn."

10.It is stated that this offer was taken to the Managing Board of the petitioners. It is also stated that the appellants have further discussed with the respondents 14 and 15 and both of them were convinced with the request of the petitioners to give some concession and gave revised offer by letter dated 07.03.2017. The revised offer according to the petitioners was relating to the period of lease, rent for the period from 31.03.2017 and the rent payable for the period from 01.08.2010 to 31.03.2017. It is the case of the petitioners that the revised offer made by the respondents through respondents 14 and 15 was made after mutual discussions and deliberations.

11.The learned Senior Counsel further submitted that the revised offer through their letter dated 07.03.2017 was once again taken up to the petitioners head office and got approval from the higher officials which was also communicated to the respondents 14 and 15 verbally. Since the respondents 14 and 15 agreed to execute a fresh lease on the concluded terms, at their request, a draft lease and a lease deed agreements have been sent through E.Mail I.D., of the 14th respondent along with the covering letter. The



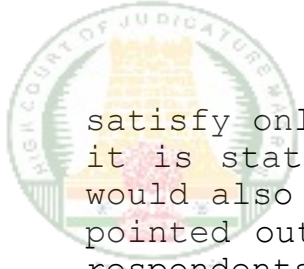
14th respondent confirmed the receipt of the draft lease agreement and he has also met the Deputy General Manager of HPCL, at Trichy, who has been frequently having telephonic conversation.

12. It is further stated in the affidavit that the meeting of the parties was arranged so that necessary documents can be prepared and registered to put an end to the pending litigation which commenced in the year 1989. It is further stated that the 14th respondent was however avoiding and therefore, the Deputy General Manager of HPCL, Trichy, wrote a letter on 26.04.2017 to the respondents 14 and 15. It is further stated that in the meanwhile to avoid filing appeal within the period of limitation, the three appeals were presented on 10.04.2017. Since the petitioners and the respondents have agreed for compromise and the respondents have accepted, the draft lease agreement sent to the 14th respondent by E.Mail on 25.07.2017 containing the concluded terms of the contract, the learned Senior Counsel further submitted that the compromise on the basis of the concluded contract can be recorded in the manner as provided under Order 23 Rule 3 C.P.C.

13. The contesting respondents filed a counter denying the averments made in the petition. Except admitting that a proposal was sent earlier during the pendency of the suit, the further contentions in the affidavit are specifically denied in the counter affidavit filed by the 16 respondent. It is one of the contentions that there can be a compromise only if the lease deed had been entered into between the parties and unless the agreement is in writing, the petitioners cannot invoke Order 23 Rule 3 of C.P.C. It was further stated that the original proposal was made before the disposal of the suit and it was never agreed by the petitioners.

14. The 16th respondent in his counter affidavit further submitted that only negotiations were going on between the parties and that there was no compromise or concluded contract, as stated in the petition. Further, it is stated that the property belongs to several persons and all of them are co-owners. They were not involved in the talks or agreed to give authority to the respondents 14 and 15 to finalise the settlement on behalf of all co-owners. It is further stated that the other co-owners have not agreed to negotiate for settlement. It was also pointed out that there was not even an offer by any other sharers to compromise the matter. Since the other co-owners were not parties to the offer or revised offer, the compromise which was at the instance of two of the co-owners cannot bind the other co-owners and no compromise or concluded contract can be inferred from the facts narrated in the petition. It was further pointed out that a compromise in terms of Order 23 Rule 3 C.P.C should be in writing and signed by the parties.

15. The learned Senior Counsel appearing for the petitioners submitted that there can be a concluded contract or compromise on the basis of offer and acceptance stating that the compromise has to



satisfy only the requirements of a valid agreement. In other words, it is stated that ingredients or requirements of a valid agreement would also establish a valid compromise. The learned Senior Counsel pointed out that the communications between the petitioners and the respondents 14 and 15 would clearly show that there was an offer and acceptance. Since the offer dated 07.03.2017 was not revoked at any point of time before the communications of its acceptance is informed, the learned Senior Counsel submitted that the compromise is binding on the respondents.

16.The learned Senior Counsel further submitted that, since the respondents have not withdrawn from their offer dated 07.03.2017, they cannot revoke their proposal and bound by the compromise. Further, the learned Senior Counsel submitted that the draft lease deal and the verbal communication would certainly prove that there was acceptance by the petitioners, the proposals of respondents 14 and 15 regarding the terms of lease. Since the draft lease agreement was mailed to the 14th respondent and he has not raised any objections for the clauses in the draft agreement, it is stated that the contract can be taken as concluded by the communication of acceptance of the offer of the respondents (by sending the draft).

17.The learned Senior Counsel further referred to the provisions of Indian Contract Act and Order 23 Rule 3 of CPC, apart from Section 7 of the Arbitration Act, for the purpose of interpreting the two judgments relied upon by the learned Senior Counsel in the case of M/s.Shakti Bhog Foods Limited Vs. Kola Shipping Limited reported in 2009-2-Law Weekly 309 and the judgment of the Hon'ble Supreme Court in the case of M/s.Unissi (India) Pvt. Ltd. Vs. Post Graduate Institute of Medical Education and Research reported in 2009 (1) SCC 107 . The learned Senior Counsel relying upon the judgment of Hon'ble Supreme Court in the case of M/s.Shakti Bhog Foods Limited Vs. Kola Shipping Limited reported in 2009-2-Law Weekly 309 submitted that the concluded contract or agreement can be inferred from exchange of letters. In this case, from the communications showing the offer and acceptance between the parties regarding the existence of an agreement has been inferred.

18.The learned Senior Counsel further relied upon the judgment of this Court in the case of Duraiswamy Mudali Vs. K.Jeyarama Mudali and others reported in (2001)3 MLJ 137 for the proposition that the Appellate Court can conduct an enquiry under Order 23 Rule 3 C.P.C for the purpose of ascertaining the truth and validity of a compromise. However, this Court finds that the facts of the case is different, where an order of remand was challenged before this Court. This Court has set aside the order of remand directing the Appellate Court to go into the truth and validity of the compromise by itself, instead of remitting the matter to the Lower Court, for ascertaining whether the compromise is true and



19.The learned Senior Counsel further relied upon a judgment of the Hon'ble Supreme Court in the case of Powertech World Wide Limited Vs. Delvin International General Trading LLC reported in (2012) 1 SCC 361, wherein, the Hon'ble Supreme Court held that though no formal agreement was executed to prove that there is an agreement for arbitration by communication, it can be inferred. However, the previous judgment of the Hon'ble Supreme Court in the case of Rickmers Verwaltung GMBH Vs. Indian Oil Corporation Limited reported in 1999 (1) SCC page (1) was referred to and wherein it has been held as follows:

"Unless from the correspondence, it can unequivocally and clearly emerge that the parties ad idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence".

20.The legal position that a valid contract can be made or inferred from the correspondence by showing that there was an offer and acceptance is not questionable. However a compromise as contemplated under Order 23 Rule 3 CPC cannot be inferred from mere offer and acceptance in view of the specific provisions under Order 23 Rule 3 CPC, which reads as follows:

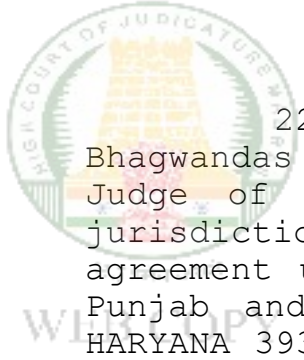
ORDER XXIII- WITHDRAWAL AND ADJUSTMENT OF SUITS

.....

"3 . Compromise of suit- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [303][in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith [304][so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]."

.....

21.Even for treating the proposal as a valid agreement, the acceptance must be absolute and unqualified. In this case, acceptance of proposal is doubtful as the appellants has not produced any letter to prove an unqualified acceptance as the draft lease deed contain certain terms which are not agreed when the respondents sent the revised offer. The terms regarding renewal of lease in the draft lease deed and other clauses only indicate that the draft lease deed is again a counter offer and no concluded contract can be inferred in this case. The draft agreement was stated to have been sent on 25.07.2017 after the execution petition in E.P.No.194 of 2017 is filed on 01.06.2017. The filing of Execution petition would indicate that the respondents have not kept their offer open thereafter.



22. In the case of Sri Sri Iswar Gopal Jew and others Vs. Bhagwandas Sha reported in AIR 1982 CALCUTTA 12, learned single Judge of Calcutta High Court has held that the Court has no jurisdiction to pass a consent decree on the basis of an oral agreement under Order 23 Rule 3 C.P.C. Again a Division Bench of Punjab and Haryana High Court, reported in AIR 1983 PUNJAB and HARYANA 393 has held that it was to correct the abuse of setting up of an oral agreement or compromise outside the Court and the attempts to prolong the matters by leading evidence thereof that the legislature mandated that such agreements or compromise must not only be written but equally that they must be signed by the parties. However in this case, there is no compromise in terms of Order 23 Rule 3 C.P.C.

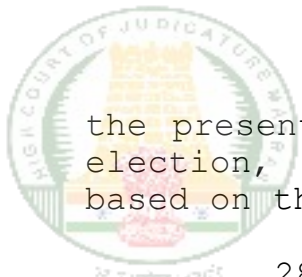
23. This Court is unable to accept the submission of the learned Senior Counsel appearing for the petitioners that an agreement which can be inferred from the offer and acceptance can be termed as a compromise in terms of Order 23 Rule 3 C.P.C.

24. Secondly as pointed out by the learned counsel for the respondents that there is no consensus among the parties, in the sense that all the sharers are not parties to the correspondence. When, it is also the case of the respondents that the other co-sharers were never consented, this Court, at this stage, cannot accept the case of the petitioners to record the compromise on the basis of mere correspondence between the authorised representatives of the petitioners and some of the sharers, unless, it is proved that there is meeting of minds among all the parties concerned.

25. The learned counsel for the respondents further submitted that the draft agreement which was sent to the respondents 14 and 15 is only a counter offer and it cannot be taken as acceptance of the offer of some of the respondents, by the communication, dated 07.03.2017.

26. This Court find some force in his arguments. Each term of the contract as per the draft agreement, is significant and has legal implications. The right of the lesser and lessee has been circumscribed by various clauses provided in the draft agreement. In such circumstances, unless there is a proof that all the respondents agreed with the terms and clauses of draft lease agreement, it is not possible for this Court to accept the draft lease deed as a valid and concluded contract between the parties.

27. It is pertinent to mention that it is stated in the petition that the petitioners made revised offer on 07.03.2017. All the three suits were disposed of by the common judgment, dated 19.12.2016. The appeals have been filed on 12.04.2017. In fact there is no whisper about the agreement or compromise in the memo of grounds. Hence, it is not the case of the petitioners that the appeals should be decided in terms of the concluded contract or compromise. When the petitioner elected to file appeal on merits,



the present petition has no merits and by applying the doctrine of election, the petitioners are also estopped from laying a claim based on the alleged compromise.

28. In such circumstances, this Court finds that the petitions lack bona fide. For all the above reasons, the Civil Miscellaneous Petition is dismissed.

sd/-
27/06/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO
THE 1ST ADDITIONAL DISTRICT JUDGE (PCR),
TIRUCHIRAPPALLI.

+1. C.C. to Mr. M. SRIDHER Advocate SR.No.11549
+1CC TO Mr. K. S. VAMSIDHAR, Advocate, SR NO.11406

ORDER
IN
CMP (MD) No.2366 of 2018
IN
AS (MD) No.12 of 2018
Date : 27/06/2018

MS/CM/VK/04.07.2018/10P.4C