

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.397 OF 2018
WITH
CIVIL APPLICATION NO.818 OF 2018

Hindustan Petroleum Corporation Limited	...Appellant
V/s.	
Suresh V. Patil & Anr.	...Respondents

Ms.Koshiki Bhugra with Mr.Sandeep Apte i/b Vidhi Partners for the Appellant.

Mr.Jaydeep Deo for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 17TH SEPTEMBER, 2019.

P.C. :-

1. By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant no.1) has impugned the judgment and decree dated 21st January, 2017 passed by the 4th Additional Judge, Small Causes Court, Mumbai and the learned Joint Civil Judge (Senior Division), Pune in Special Civil Suit No.517 of 2012 confirming the decree passed by the learned trial Court.

2. The defendant no.1 had executed a dealership agreement in favour of the respondent no.1 herein i.e. original plaintiff on 7th February, 1996 for a period of 15 years. On 11th July, 2002, the plaintiff executed a lease agreement in favour of the defendant no.1 for a period of 10 years on the terms and conditions recorded in the

said lease agreement. The said lease agreement expired on 10th July, 2012. On 10th September, 2011, the plaintiff terminated the lease agreement dated 11th July, 2002 as the plaintiff did not want to continue the lease agreement. Some time in the year 2012, the plaintiff filed a suit before the learned Civil Judge (Senior Division) *inter-alia* praying for declaration that the lease agreement dated 11th July, 2002 was duly terminated and applied for recovery of possession and *mesne-profit*. The plaintiff thereafter applied for amendment of the plaint and also prayed for declaration that the lease agreement has come to an end by efflux of time. The said suit was resisted by the defendant no.1.

3. Learned trial Court framed several issues for adjudication. Both the parties led oral as well as documentary evidence. Though the learned trial Judge answered the issue “ Does the plaintiff prove that the lease agreement dated 11th July, 2002 is not binding on the plaintiff and for breach of promise it was legally terminated “ in negative, learned trial Court rendered a finding in favour of the plaintiff that he had proved that the lease agreement was determined by efflux of time. The defendant no.1 failed to prove that by executing a lease agreement dated 11th July, 2002, the plaintiff had agreed to renew the said lease agreement. The defendant no.1 also failed to prove that it was always ready and willing to perform its part of contract. Learned trial Judge recorded a finding that the lease was determinable by efflux of time under section 111(a) of the Transfer of Property Act. The defendant no.1 had failed to opt the renewal

clause of the agreement within the time. Learned trial Court also dismissed the counter claim filed by the defendant no.1 *inter-alia* praying for specific performance of the renewal clause of the lease deed after recording various reasons.

4. The first Appellate Court in the appeal preferred by the defendant no.1 formulated eight points for determination and confirmed the findings rendered by the learned trial Court. The first Appellate Court held that the plaintiff had failed to prove that the lease agreement would not binding on the plaintiff. The first Appellate Court also held that the plaintiff had proved that the lease agreement was terminated by efflux of time and that the defendant no.1 had failed to prove by executing the lease agreement that the plaintiff had agreed to renew the agreement for further period of ten years.

5. Learned counsel appearing for the appellant (original defendant no.1) invited my attention to the clauses of the lease agreement and would submit that since the appellant had not committed any breaches of the lease agreement between the parties, the plaintiff was bound to renew the lease agreement in favour of the appellant. She submits that the amendment permitted by the learned trial Court in favour of the plaintiff to seek declaration that the lease agreement had expired by efflux of time has caused hardship to the appellant.

6. Mr.Deo, learned counsel appearing for the plaintiff on the other hand submits that the provisions of the lease agreement clearly provided that the renewal would be only if both the parties agree to the terms and conditions of such renewal. He submits that the lease agreement had already expired 10 years back. The parties did not agree on the fresh terms and conditions for execution of a fresh document. He submits that his client has not challenged the findings rendered by the learned trial Court insofar as the issue as to whether any breaches were committed by the defendant no.1 of the lease agreement or not. He submits that both the Courts below have rendered the findings in favour of the plaintiff on the issue whether the lease agreement had expired by efflux of time or not. Learned counsel placed reliance on the judgment of the Supreme Court in case of **Shanti Prasad Devi & Anr. vs. Shankar Mahto & Ors.** **(20050 5 SCC 543)** and in particular paragraphs 18 and 20 in support of his submission that since the terms and conditions for renewal of the lease agreement were not agreed upon and would be uncertain, no specific performance could be granted. He submits that in this case admittedly the terms and conditions for renewal of the lease agreement were not agreed upon by and between the parties and thus the plaintiff had rightly applied for declaration that the lease agreement entered into between the parties had expired by efflux of time and for possession.

7. A perusal of the provisions of the lease agreement entered into between the parties clearly indicates that before expiry of the

lease agreement of ten years, the defendant no.1 could have applied for renewal on the condition that there were no breaches of the lease agreement committed by the defendant no.1 and secondly on the terms and conditions to be mutually agreed upon. Both the Courts below have rendered the finding that the defendant no.1 had not committed any breaches of the lease agreement. However, after considering the oral and documentary evidence and after interpreting the terms of the lease agreement has rendered a positive finding that the renewal could be permitted only if both the parties could have agreed upon mutually and not otherwise. I do not find any infirmity in the findings rendered by any of the Courts below which are rendered after considering the oral as well as documentary evidence and upon interpretation of the terms and conditions of the lease agreement.

8. The Supreme Court in case of **Shanti Prasad Devi & Anr.** Supra) has considered an identical situation and has held that the clause of renewal of the lease agreement was required to be agreed mutually which was uncertain and incapable of specific performance. Learned trial Court thus rightly dismissed the counter claim filed by the defendant no.1 which judgment and decree is rightly upheld by the first Appellate Court. The principles of law laid down by the Supreme Court in case of **Shanti Prasad Devi & Anr.** (supra) applies to the facts of this case. I am respectfully bound by the said judgment.

9. The findings of fact rendered by the two Courts below being not perverse, cannot be interfered by this Court in this second appeal filed under section 100 of the Code of Civil Procedure, 1908. No substantial question of law arises in this appeal. The second appeal is devoid of merit and is accordingly dismissed.

10. In view of dismissal of the second appeal, Civil Application No.818 of 2018 *inter-alia* praying for stay of the judgment and decree passed by two Courts below does not survive and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)