IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 427 OF 2012
WITH
CIVIL APPLICATION NO. 73 OF 2019
IN
CIVIL REVISION APPLICATION NO. 427 OF 2012

Hindustan Petroleum Corporation Ltd. …Applicant

Versus

Bai Failabai Wife of Abdul Satar Suleman Oomer & Ors. …Respondents

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Ms. Ashiya Shaikh i/b M/s Rustamji & Ginwala – Advocate for the applicant.
Vikram Deshmukh Ms. Shreni Shetty & Navankar Pathak i/b ANB Legal – Advocate for Respondents 2, 3(a)- 3(c) & 4 -6

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 8th JULY, 2019.

P.C. :

The Hindustan Petroleum Corporation is the tenant, and Abdul Rashid Suleman Oomer and a few others are the landlords. The landlords' predecessor-in-interest filed Suit No. 362/383 of 2001 for eviction. After his death, his wife and children brought themselves on record. Of those legal representatives, the mother too died. Now the children are the landlords. The suit was decreed on 4.09.2004.

2. With the decree on hand, the landlords filed Miscellaneous Application No. 101 of 2005 for having the mesne profits fixed. Eventually, the trial Court, through its order dated 6th May 2010, allowed the Miscellaneous Notice, fixing the mesne profits at Rs. 4,56,617/- with interest at 8%.

3. The tenant filed a statutory appeal against the eviction decree dated 4.09.2004. But when it was pending, the landlords succeeded in regaining the possession. Eventually, the appeal too was dismissed. Thus, the concurrent findings, it seems, have attained finality.

4. Against the trial Court's mesne profits order, dated 06.05.2010, the tenant filed Appeal No. 272 of 2010. That one also was dismissed on 27.01.2012. Eventually, the tenant, a public sector undertaking, filed this Civil Revision Application. This Court admitted the application on 05.09.2012 on the condition that the tenant should deposit the arrears as per the trial Court’s decree. And the amount came to more than four crore rupees. The amount deposited, the landlords were allowed to withdraw one crore.

5. In the above factual background, Ms. Ashiya Shaikh, the learned Standing Counsel for the tenant, has advanced her arguments. She submits that the mesne profits fixed by the trial Court, as affirmed by the Appellate Court, are exorbitant. According to her, though the tenant placed on record the valuation report from a panel engineer, the trial Court has disregarded that report.

6. To elaborate, Ms. Shaikh has submitted that the tenant took on lease a vacant land from the landlords for setting up a filling station. As numerous statutory regulations beset the business of fuel retail outlet, the tenant Corporation hardly earned any profit. According to her, it was earning about Rs. 70,000/- per month as profit. So the trial Court and the Appellate Court ought to have ensured that the mesne profits have not exceeded the profits the tenant had been earning. She has submitted that the interest the courts below awarded is also excessive. Thus, Ms. Shaikh urges this Court to allow this Civil Revision Application.

7. Shri Vikram Deshmukh, the learned counsel for the respondent-landlords, submits that the trial Court, in fact, has disregarded the valuation report submitted by both the tenant and the landlords. It has, instead, taken an objective view of the issue, considered all the relevant factors, and fixed Rs. 4,56,617/- per month, though the landlord claimed Rs. 10,00,000/- per month.

8. To elaborate, Shri Deshmukh has submitted that the property is in a commercially well-exploited area and could have earned much more than what the trial Court fixed. In that context, he has submitted that the trial Court has granted less than what the landlords sought. Yet, only to give a quietus to the litigation have the landlords accepted the amount fixed by the trial Court.

9. Shri Deshmukh has also taken me through the pleadings

and also the evidence on record. According to him, the panel engineer, deposing as the tenant’s witness, has admitted that he has no proof about the nature of the property. Nor has he ever visited it. The engineer has also further admitted, Shri Deshmukh stresses, that the ready reckoner forms the basis for fixing the mesne profits.

10. Shri Deshmukh has first brought to my notice the engineer’s opinion that 40% should be reduced from the value shown in the ready reckoner. On that count, when the engineer was questioned in the cross-examination, he has further admitted, as Shri Deshmukh contends, that he has no material to support his claim about 40% deduction. In the end, Shri Deshmukh admits that viewed from any perspective, the impugned order calls for no interference. He has also submitted that one of the landlords was examined. In the cross-examination, the tenant's counsel himself suggested that the land could not, otherwise, be earning more than Rs.4,00,000/- per month as rent.

11. Heard the learned counsel for the applicant and the learned counsel for the respondent.

12. To begin with, I remind myself that it is a revision under Section 115 of the CPC. This Court’s adjudicatory ambit under this provision is, indeed, limited. Both the courts below have concurrently held a question of fact essentially; that is, what could be the damages or the mesne profits the landlords would get from the tenant’s use and occupation of the property

beyond the lease period. Unless I find perversity or manifest error in the impugned order, it is impermissible for me disturb those findings of fact.

13. The tenant’s valuer assessed the damages at Rs. 85,000/- per month. On the other hand, the landlord’s valuer fixed it at Rs. 10,55,000/-. As rightly contended by the landlords’ counsel, the trial court disregarded both the valuations. Instead, it has relied on the ready reckoner and then fixed Rs. 4,56,617/- per month. True, the ready reckoner essentially determines the land rates for fixing the stamp duty on conveyances and, so, remains unaltered for a considerable time. Thus we can as well assume that the periodic upward revision of the land prices does not readily get reflected in the ready reckoner. That accepted, the tenant’s insistence that the trial court should have reduced the amount by 40% holds no water.

14. Though the tenant maintains that it had not been earning any profits, the tenant’s profit or loss hardly affects the damages or mesne profits it should pay to the landlord. In any venture, profit is an uncertain factor and is intrinsic to every business “venture”, as the very name suggests.

15. Eventually, addressing the issue of interest, I hold that tenant’s is a business activity; that is a filling station. And 8% cannot be regarded as excessive if we take the usual commercial lending rates.

16. Under these circumstances, as I find no merit in the

Civil Revision Application, I dismiss it. Consequently, Civil Application No. 73 of 2019, too, stands disposed of.

The landlords are free to withdraw the remaining amount lying with the Court.

[DAMA SESHADRI NAIDU, J.]