

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2019

PRONOUNCED ON : 17.12.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Suit No.628 of 2018 and Transfer Civil Suit No.560 of 2019 and
A.No.8840 of 2019 in C.S.No.628 of 2018
A.No.8841 of 2019 in Tr.C.S.No.560 of 2019

1.Mr.Vivekanandan
2.Ms.Kavitha Ravichandran
3.Ms.Deepa Uddakumar
4.Ms.Priyadarshini Vivekanandan
5.Mr.Hari Venkata Subramaniam ... Plaintiffs in C.S.No.628 of 2018

M/s.Indian Oil Corporation Limited,
Represented by its Chief Manager (RS)
and Power Agent,
Mr.K.Judson,
No.500, Anna Salai, Teynampet,
Chennai – 18. ... Plaintiff in Tr.C.S.No.560 of 2019

Vs

The Indian Oil Corporation Limited,
Southern Regional Office
at No.139, Nungambakkam High Road,
Chennai – 600 034
Rep. By its Chief Manager ... Defendant in C.S.No.628 of 2018

Mr.Vivekanandan ... Defendant in Tr.C.S.No.560 of 2019

Prayer in C.S.No.628 of 2018:- This Civil Suit is filed under Order IV Rule 1 of Madras High Court Original Side Rules r/w Order VII Rule 1 of C.P.C., for the following reliefs:-

"(a)directing the defendant to vacate from the suit schedule property and hand over the vacant possession of the suit schedule property to the plaintiffs in the same condition in which the defendant took possession subject to normal wear and tear.

(b)directing the defendant to pay the plaintiffs damages for its use and occupation of the suit schedule property computed at such amount as this Hon'ble Court may deem fit from the date of plaint till the date of actual delivery of possession and

(c)directing the defendant to pay the plaintiffs the cost of the suit."

Prayer in Tr.C.S.No.560 of 2019:- This Civil Suit is filed under Order VII Rule 1 of C.P.C., for the following reliefs:-

"(a) for a mandatory injunction directing the defendant to renew the lease for the "Schedule Property"

morefully mentioned in the Schedule hereunder for a period of 20 years with effect from 08.01.2018 subject to payment of payment of lease rentals;

(b)for a permanent injunction restraining the defendant his men, agents, servants or any person claiming through or under them from interfering with the plaintiff's possession/enjoyment and right to enter upon the "Schedule property" morefully mentioned in the Schedule hereunder without following and operate the retail outlet and deal with the equipments and materials stored/lying thereunder, without following due process of law.

In C.S.No.628 of 2018:-

For Plaintiffs :Mr.Uttam Joseph Cheriyan

For Defendant :Mr.Vijay Mehanath

In Tr.C.S.No.560 of 2019:-

For Plaintiff :Mr.Vijay Mehanath

For Defendant :Mr.Uttam Joseph Cheriyan

COMMON JUDGMENT

Two parties are before this Court namely M/s.Indian Oil Corporation Limited (IOCL) (in short "Lessee") and Mr.Vivekanandan and others (in short

"Lessor"). The dispute between the parties had emanated from the lease deed entered into between the Lessor and Lessee on 18.10.2000 in respect of vacant land situated at No.206, Purasawalkam High Road, Purasawalkam, Chennai, Parry R.S.No.318 admeasuring 3956 sq.ft.

2.Previously, Vivekanandan, being the owner of the vacant land had entered into an lease deed on 08.01.1968 with the IOCL to an extent of 4116 sq.ft, for 20 years, for setting up petrol retail outlet. By virtue of clause in the said lease deed, the lease was automatically renewed for a further period of 10 years (till 08.01.1998).

3.After the expiry of the said case, the IOCL and Vivekanandan entered into a fresh lease deed on 18.10.2000 registered as document No.37 in the Sub Registrar Office at Purasawalkam for a period of 20 years commencing from 08.01.1998 to an extent of 3956 sq.ft. One of the lease term was, the right of renewal for a further period of 20 years on mutually agreed terms. Besides, the preemptive right to the Lessee in case the Lessor intend to sell the property. Further, the Lessee was also given option of expressing his intention not to renew the lease one month prior to the expiry of the lease period.

4.The IOCL which has taken possession of the land from the year 1968 had been continuously in possession and enjoyment of the land by establishing his petrol retail outlet. While so, in the year 2017, when the lease period was nearing completion, the IOCL initiated talk with the Lessor for renewal of the lease for a further period. However, the Lessor refused to negotiate for renewal of lease.

5.The IOCL issued a letter dated 14.11.2017 expressing in writing its intention to renew the lease on the mutually agreeable terms. The Lessor – Vivekanandan in turn, issued termination notice dated 15.11.2017 calling upon the IOCL to vacate and hand over the schedule property by 08.01.2018.

6.In the said circumstances, the IOCL has filed suit before the City Civil Court, Chennai on 05.01.2018 which was taken on file on 06.01.2018 as O.S.No.111 of 2018 (hereinafter referred to as “the senior suit”). In the said suit, the IOCL sought for mandatory injunction directing Vivekanandan (Lessor) to renew the lease for the schedule property for a period of 20 years with effect from 08.01.2018 subject to payment of lease rent and permanent injunction restraining the defendant his men, agents, servants or any person claiming through or under them from interfering with the

plaintiff's possession/enjoyment and right to enter upon the "Schedule property" morefully mentioned in the Schedule hereunder and operate the retail outlet and deal with the equipments and materials stored/lying thereunder, without following due process of law.

7. Pending suit, the Lessor along with four others who are the vested interest holders of the property have filed a suit before the Original Side of the High Court under the Commercial Courts Act, by virtue of the settlement deed dated 31.12.2014 executed by Vivekanandan in their favour retaining the life interest have preferred C.S.No.628 of 2018 (hereinafter referred to as "the Junior suit"). The said suit was taken on file on 07.09.2018. The reliefs sought for the in the said suit are as follows:-

"(a) directing the defendant to vacate from the suit schedule property and hand over the vacant possession of the suit schedule property to the plaintiffs in the same condition in which the defendant took possession subject to normal wear and tear.

(b) directing the defendant to pay the plaintiffs damages for its use and occupation of the suit schedule property computed at such amount as this Hon'ble Court may deem fit from the date of plaint till the date of actual delivery of possession and

(c)directing the defendant to pay the plaintiffs the cost of the suit."

8.Based on the memo filed by Vivekanandan, the defendant in the Senior suit, the suit pending in the City Civil Court was transferred to High Court and re-numbered as Transfer Civil Suit No.560 of 2019.

9.While fact being so, the IOCL, defendant in the Junior Suit failed to file written statement despite several opportunity and suit being filed under the Commercial Courts Act, on expiry of 120 days from the date of receiving the suit summon, this Court recorded the failure of the defendant (IOCL) in filing the written statement and forfeited the right of filing written statement vide order dated 22.10.2019.

10.As far as the senior suit filed before the City Civil Court and later transferred to High Court is concerned, the defendant Vivekanandan has filed his written statement.

11.At this juncture two applications A.Nos.8840 & 8841 of 2019 were filed by the Lessor Vivekanandan and the persons who have vested interest in the schedule property for the following reliefs:-

“(i)A.No.8840 of 2019 has been filed to pass a summary judgment and decree in favour of the applicants/plaintiffs in C.S.No.628 of 2019.

(ii)A.No.8841 of 2019 has been filed to dismiss the suit summarily in Tr.C.S.No.560 of 2019.”

12.The sum and substance of these two applications are that, the lease deed entered between the Lessor and Lessee on 18.10.2000 with effect from 08.01.1998 is for a period of 20 years. As per the terms of the lease, renewal of lease is on mutual agreement of terms. Since, the Lessor and the persons having vested right with the schedule property are not interested in renewal of the lease, the same has been expressly intimated to the IOCL (Lessee) by legal notices dated 15.11.2017 and 01.12.2017. They have categorically expressing their intention not to renew the lease. When the Lessor and the persons having vested right over the schedule property had no intention to renew the lease, the Lessee (IOCL) cannot force the Lessor to renew the lease contrary to the terms of the lease agreement.

13.The learned counsel appearing for the IOCL (plaintiff in Tr.C.S.No.560 of 2019 and defendant in C.S.No.628 of 2018) would submit that as per the lease agreement, the IOCL has three options exclusively

conferred on it viz., (i)to purchase from the Lessor free from encumbrance the reversionary right, title, estate and interest of the Lessor in the demised premises; (ii)at the expiration of the lease term of 20 years, seek for a renewal of further period of 20 years, on mutually agreeable terms and (iii)the Lessee (IOCL) shall prior to the expiration of last mentioned term given to the Lessor one calendar month, a previous notice in writing of their intention is not to take any renew lease.

14.In this case, the Lessee (IOCL) wanted to exercise the second option of seeking renewal of lease period through letter dated 14.11.2017. Having invested a huge money for erecting equipments, the Lessee (IOCL) has a legitimate expectation of renewal of lease for a further period of 20 years. Depriving the said legitimate expectation and forcing the Lessee (IOCL) to vacate the premises is contrary to law.

15.In any event, this is not a fit case to pass a summary judgment under Order XIII Rule (3) of C.P.C. when there is counter suit and in which, the Lessor (Vivekanandan and others) have filed an application (A.No.8840 of 2019).

16.The learned counsel for the applicants/plaintiffs in C.S.No.628 of 2018 (Junior Suit) representing the Lessor would submit that the subject land to an extent of 4106 sq.ft was given to IOCL (Lessee) in the year 1968 initially for a period of 20 years and subsequently, extended by another 10 years. Later, for a lesser extent of 3756 sq.ft., for another twenty years, a fresh lease agreement was entered upon on 18.10.2000 with effect from 08.01.1998. The lease period got expired on 07.01.2018. Much prior to the expiry of the lease period, the Lessor has expressed their intention not to renew the lease period any further. The property initially owned by Vivekanandan, the first plaintiff in C.S.No.628 of 2018 has settled the property in favour of his family members on 31.12.2014. The beneficiaries of the settlement deed are plaintiffs 2 to 5 in C.S.No.628 of 2018. The plaintiffs in C.S.No.628 of 2018 have no intention to sell the property or lease out the property to any other third party. The land is required for them to establish their family business. The said intention was made clear to the defendant (IOCL) vide notices dated 15.11.2017 and 01.12.2017.

17.The Lessee (IOCL) continued to remain in the land even after the expiry of lease period cannot claim that he is holding over as per Section 116 of Transfer of Property Act. Since, there is no real prospect of succeeding their claim in the Transfer Civil Suit (C.S.No.560 of 2019), and

no real prospect of succeeding in defending the claim in Junior Suit (C.S.No.628 of 2018) pray for allowing Junior Suit (C.S.No.628 of 2018) and dismissing Senior Suit (Tr.C.S.No.560 of 2019).

18.The defendant in C.S.No.628 of 2018 (IOCL) would strengthen its case on the recital of the lease deed which is document No.2 in C.S.No.628 of 2018. The said deed was entered on 18.10.2000 and duly registered at the Sub Registrar Office, Purasawalkam. The recital of lease agreement to fix the date of commencement and term of lease as below:-

".....YO HOLD UNTO the Lessee for a term of 20 (twenty years) commencing from 08.01.1998 but renewable and determinable as hereinafter provided. "

19.Clauses I (i) and (j) of the lease deed dated 18.10.2000 deals with the obligation of the parties on the expiration on determination of the lease which reads as under:-

"(i)The Lessee shall at the expiration or sooner determination of the said term yield up and deliver peaceful and vacant possession of the demised premises and in the event of any installation, erection, alteration or

substitution having been made thereon or underneath the surface restore the same to their original state and conditions in which the same has been demised. All buildings, structures, installations, fittings, fixtures and reaction of whatsoever kind and nature whether in, upon or underneath the demised premises shall during the said term and at the expiry thereof entirely belong to and revert to the Lessee who shall be entitled to take away the same provided that the demised premises are restored in their original state and condition. The Lessor will not have any right title or interest thereon nor shall they be entitled to appropriate or retain the same or any part thereon.

(j)The Lessee has paid to Lessor Rs.1,08,000/- (Rupees One Lakh and Eight Thousand Only) sum equivalent to 12 months rent by DD No.826885 dated 22.09.2000 drawn on State Bank of India, Thousand Lights Branch, as an advance which will be returned to the Lessee on the determination of the lease. The Lessor acknowledge the receipt of the said amount.

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One proviso to this Clause is as follows:-

PROVIDED ALWAYS AND IT IS AGREED AND

DECLARED that at the expiration of the said term of 20 (twenty) years this lease will be renewed for a further period of 20 years on mutually agreed terms from the expiration of the said term hereby granted unless the Lessee shall prior to the expiration of the last mentioned term give to the Lessor one calender month a previous notice in writing of their intention not to take any renewed lease."

20.Clause III (b) of the Lease deed dated 18.10.2000 gives preemptive right of purchase to the Lessee. The said clause reads of below:-

"b) The Lessee shall by three months previous notice in writing to the Lessor have the first option to purchase from the Lessor free from encumbrances the reversionary right title estate and interest of the Lessor in the demised premises and upon marketable title being made and deducted thereto at the rate prevailing per square feet of the actual area of the demised premises."

21.Reading of Clause III (b) of the lease deed dated 18.10.2000 would clearly indicate that only if the Lessor intend to sell the property, the Lessee can exercise the first option to purchase and if such option is exercised, they will have the first preference. Such a situation has not arisen

in this case. Clause I (j) of the Lease deed dated 18.10.2000 deals with renewal of lease period for further period of 20 years if both the parties mutually agree. In this case, the plaintiffs in the Junior Suit has obviously made clear to the defendant (IOCL) through their legal notices dated 15.11.2017 and 01.12.2017 that they have no intention of renewing the lease since, the land requires for them to establish their family business.

22.It is also necessary to note that under the terms of lease, the defendant (IOCL) has expressly retained the right of determining the lease prematurely by issuing three months prior notice in writing and in the event of such determination, the Lessor cannot claim compensation whatsoever. Though there is no reciprocal provision, the same right of termination or determination should vest impliedly. The Lessor also have the right of determination refusal to extend the lease. The legal notices dated 15.11.2017 and 01.12.2017 are the notices of determination issue to the Lessee.

23.In **Shanthi Prasad Devi and Others v. Shankar Mahto and others** (AIR 2005(SC) 2905), the Hon'ble Supreme Court has held as follows:-

*"In respect of the cross-suits of the lessee seeking specific performance of the contract of renewal of the lease, it is submitted that the relevant contract clauses (7) and (9) of the lease deed should have been construed reading them with other clauses therein to hold that option for renewal could have been exercised within a reasonable period which in the present case was 35 days from the date of the expiry of the original lease. It is also argued that the suit for specific performance of the agreement of renewal could not have been rejected on the ground that the clause of renewal was vague and incapable of specific performance. Reliance is placed on [Bhawanji Lakhamshi v. Himatlal Jamnadas Dani](#) 1972 1 SCC 388 and **Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden AIR 1949 FC 124.***

16. In reply, we have heard learned counsel Shri Prabhash Kumar Yadav assisted by Dr. Krishan Singh Chauhan, Advocate who supported the view taken by the High Court and the courts below in decreeing the suit for ejectment.

17. [Section 116 of the Transfer of Property Act](#) reads thus:

"116. Effect of holding over.—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106."

(emphasis supplied)

18. We fully agree with the High Court and the first appellate court below that on expiry of period of lease, mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying "assent" to the continuance of the lease even after expiry of lease period. To the legal notice seeking renewal of lease, the lessor gave no reply. The agreement of renewal contained in clause (7) read with clause (9) required fulfilment of two conditions: first, the exercise of option of renewal by the lessee before the expiry of original period of lease and second, fixation of terms and conditions for the renewed period of lease by mutual consent and in absence thereof through the mediation of local mukhia or panchas of the village. The aforesaid renewal clauses (7) and (9) in the agreement of lease clearly fell within the expression "agreement to the contrary" used in [Section 116 of the Transfer of Property Act](#). Under the aforesaid clauses option to seek renewal was to be exercised before expiry of the lease and on specified conditions.

19. The lessor in the present case had neither expressly nor impliedly agreed for renewal. The renewal as provided in the original contract was required to be obtained by following a specified procedure i.e. on mutually agreed terms or in the alternative through the mediation of Mukhias and Panchas. In the instant case, there is a renewal clause in the contract prescribing a particular period and mode of renewal which was "an agreement to the contrary" within the meaning of [Section 116 of the Transfer of Property Act](#). In the face of specific clauses (7) and (9) for seeking renewal there could be no implied renewal by "holding over" on mere acceptance of the rent offered by the lessee. In the

instant case, option of renewal was exercised not in accordance with the terms of renewal clause that is before the expiry of lease. It was exercised after expiry of lease and the lessee continued to remain in use and occupation of the leased premises. The rent offered was accepted by the lessor for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was "holding over" as a lessee within the meaning of [Section 116 of the Transfer of Property Act.](#)"

24.Order XIII A of C.P.C., as amended in the light of the Commercial Courts Act deals with issuance of summary judgment. Order XIII A of C.P.C., indicates the grounds for summary judgment. When one of the parties have no real prospect of succeeding on the claim of the defence, summary judgment may be given against that party. In this case, the Lessee who has first initiated the suit before the City Civil Court has made a claim of specific performance contrary to provision and public policy. It has also failed to file written statement in the suit filed by the Lessor.

25.In the counter affidavit filed in response to the applications for passing summary judgment in C.S.No.628 of 2018 and to dismiss the C.S.No.560 of 2019 respectively, the Lessee (IOCL) through its Chief Manager (RS) and Power Agent Mr.R.Rajeswaran, has stated that, it has

erected the petrol outlet, underground sump and tank for storing fuel, buildings for storing the petroleum products, dispensers and instruments by investing huge cost and several lakhs of rupees. Further, equipments worth Rs.2 crores are lying in the demised premises. The Lessee (IOCL) in occupation of the property since 1968 and it has the first option to purchase the property under the lease deed. Therefore, it cannot be thrown out of the lease premises when the lessee (IOCL) is protected with the option to renew the lease for further period of 20 years.

26.As pointed out earlier as clarified by the Hon'ble Supreme Court in **Shanthi** case (cited supra) terms of lease agreement does not give power of unilaterally renewal of lease period overriding the consent of the Lessor. Continuous existence of the Lessee (IOCL) in the demised premises since 1968 *per se* will not confer any right to continue in possession beyond the expiry of lease period. Likewise, huge investment in the property also will not give any protection to over stay in the land beyond expiry of lease period. Therefore, on all force, the Lessee (IOCL) who has no real prospect of succeeding is bound to suffer summary judgment. Under Order XIII A of amended C.P.C., the Court is empowered to pass conditional order.

27.In the result,

(i)A.Nos.8840 & 8841 of 2019 filed by the Lessor and others are allowed;

(ii)Taking note of the other attending circumstances and the plea of the Lessee (IOCL) stating about the huge investment made in the demised premises and difficulty in vacating immediately, the time for handing over the vacant possession is deferred till 30.06.2020.

(iii)The plaintiffs in C.S.No.628 of 2018 are granted liberty to file separate suit for claiming damages for the use and occupation of the suit schedule property. Civil Suit No.628 of 2018 is decreed accordingly.

(iv)Tr.C.S.No.560 of 2019 is dismissed with costs.

17.12.2019

jbm

Index: Yes

Speaking order/non speaking order

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G.JAYACHANDRAN.J.,

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Pre Delivery Common Judgment made in
C.S.No.628 of 2018 and
Tr.C.S.No.560 of 2019

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17.12.2019