

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9482 OF 2017

Hindustan Petroleum Corporation Ltd.	...Petitioner
V/s.	
Hardevi P. Rajpal, since deceased	
through her L. Rs. – Triloksingh R. Rajpal & Ors.	...Respondents

Mr.G.S. Godbole, Senior Advocate with Mr.Akshay Petkar with Mr.Pranav Shah for the Petitioner.

Ms.Priyanka Kothari with Adv.Radhska Kulkarni i/b Dave & Co. for Respondent Nos.2 to 4.

CORAM : RAJESH S. PATIL, J.
DATE : 11TH OCTOBER, 2023.

P.C. :-

1. Heard.
2. This Writ Petition challenges the judgment and order dated 11 March 2016 passed by the Small Causes Court, Bandra, Mumbai in Marji Application No.290 of 2013 and the judgment and order dated 1 March 2017 passed by the Appellate Bench of the Court of Small Causes in Miscellaneous Appeal No.68 of 2016. The suit for eviction was filed by the Respondents against the Petitioner Corporation. The suit was decreed by the judgment and order dated 20 February 2004.

3. While the Appeal was filed before the Appellate Bench of the Court of Small Causes, challenging the decree passed by the Trial Court, an Application for *mesne profit* was filed on 10 October 2008. While the Application for Mesne Profit was pending, the Appeal filed by the Petitioner Corporation challenging the possession decree was also dismissed by the judgment and order dated 24 September 2009. No sooner thereafter, the Civil Revision Application filed challenging the decree of possession was also dismissed on 28 April 2010. Being dis-satisfied, the Petitioner Corporation filed Special Leave Petition (SLP) against the judgment and order passed by this Court in Civil Revision Application. The said SLP was also dismissed on 12 July 2010. However, in the order of Supreme Court, the Petitioner Corporation was granted time to vacate till 31 July 2011. Complying with the said direction, on 11 April 2011, the Petitioner Corporation handed over possession to the Respondents.

4. It seems that thereafter, the Respondents / Decree holder pursued their Mesne Profit Application before the Single Judge of the Court of Small Causes.

5. It is the case of the Respondents that the Petitioner Corporation were duly served on 7 January 2009. The Petitioner Corporation's case is that though service was effected on their office on 7 January 2009, but at the relevant time, the office of the

Petitioner Corporation was under repairs. Therefore, though served, no steps could be taken by them for representing them before the Executing Court.

6. Mr.Godbole, learned Senior Counsel appearing for the Petitioner Corporation submits that the Petitioner is a Government body and though they have a legal team and were duly served as repairs were in process, they completely lost track of this matter. He also states that at the relevant time, the Appeal before Small Causes Court challenging the eviction decree was pending, which was further carried by them to this Court by way of Civil Revision Application and ultimately before the Supreme Court by way of Special Leave Petition. Mr.Godbole, submits that the test would be whether the Petitioner Corporation were deliberate negligent in not attending the matter before the Executing Court ?

7. Ms.Kothari, advocate appearing for Respondent Nos.2 to 4 / Landlords states that though her clients have received possession of the suit premises, they had to wait as many as ten years to receive the possession after termination of agreement, and they had to pursue eviction proceedings from Small Causes Court to Supreme Court. She further states that there is no satisfactory reason given in the application for condoning the delay and setting aside ex-parte decree passed in Mesne Profit Application.

8. I have heard both the sides. The Petitioner is Corporation, who has stated in their application for delay in setting aside *ex-parte* decree of Mesne Profit that at the relevant time, the repair works were going on in their office, so also the proceedings for possession were pending. Only for this reason, the Petitioner Corporation lost track of the Mesne Profit matter. It is also to be noted that the part decretal amount of Rs.3,62,38,884/- has been deposited by the Petitioner Corporation. Therefore, according to me, in fairness and equity, even if the impugned order passed *ex-parte* is set aside and the Small Causes Court is directed to decide the matter in time bound manner and further the Respondents landlords are allowed to withdraw partial amount, it will do justice to both the sides.

9. I Therefore pass the following order :

i). The judgment and order dated 11 March 2016 passed by the Small Causes Court, Bandra, Mumbai in Marji Application No.290 of 2013 and the judgment and order dated 1 March 2017 Passed by the Appellate Bench of the Court of Small Causes in Miscellaneous Appeal No.68 of 2016 are quashed and set aside.

ii). Mesne Profit Miscellaneous Application No.19 of 2008 is restored back to the file of the Court of Small Causes, Mumbai. The Respondents and Petitioner Corporation to attend before the Small Causes, Mumbai in Mesne Profit Miscellaneous Application No.19 of

2008 on 23 October 2023 at 11.00 a.m.. The said Mesne Profit Miscellaneous Application No.19 of 2008 to be decided on its own merit, as per law.

iii). The written statement to be filed by the Petitioner Corporation by 6 November 2023.

iv). The Petitioner Corporation thereafter can cross-examine the two witnesses of the Respondents – Landlords which were already examined by the Respondents/landlords, on or before 18 December 2023.

v). After 18 December 2023, the Petitioner Corporation (if they so desire), can lead their evidence of only one witness by filing affidavit of evidence by 9 January 2024.

vi). The Respondents landlords can cross-examine the said witness on or before 29 January 2024.

vii). The Court of Small Causes, Mumbai shall thereafter decide the matter on its own merit preferably by 29 February 2024.

viii). Petitioner Corporation is permitted to examine the suit premises through their Valuer after giving 48 hours notice. The Respondents/landlords will co-operate with the said Valuer, they can also be present during inspection / examination of the suit premises.

ix). The Respondents/landlords are also permitted to withdraw 50% amount which was deposited by the Petitioner Corporation along

with accrued interest subject to filing an undertaking, that in case any adverse orders are passed in Mesne Profit Application, they will return back the monies withdrawn by them with interest, as may be fixed by Court.

10. All parties to act on the authenticated copy of this order.
11. Certified copy is expedited.

(RAJESH S. PATIL, J.)