

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13148 OF 2023

Paramjitsingh Ghai And Ors

...Petitioner

Versus

Bharat Petroleum Corporation Ltd.

...Respondent

Mr. P. J. Thorat i/b Ms. Aditi Naikare for the Petitioner.

Mr. Aditya Thakkar, Adv. Roop Basu & Adv. Heenal Wadhwa i/b
The Law Point for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : NOVEMBER 30, 2023

P. C. :

1. The Petition take exception to the order dated 25th September, 2023 of the Appellate Court remanding the matter to the Trial Court to decide the Mesne Profit Application afresh.

2. Briefly stated the facts of the case are that, Mesne Profit Application came to be filed by the Petitioner in which the Petitioner and Respondent had produced their respective valuation reports. The Trial Court by its Judgment dated 12th October, 2022 disregarded the Respondent's valuation report for the reason that the report was not approved by the officer of the Respondent which is Bharat Petroleum Corporation Ltd.

The Trial Court held that in the absence of any approval by the Respondent-corporation, the valuation report submitted by the Respondent does not have any sanctity in law. The Trial Court decreed the Mesne Profit Application by taking into consideration only the Plaintiff's valuation report. As against this, the Respondent-corporation preferred Misc. Appeal No. 47 of 2023. The Appellate Court by the impugned order observed that the objection of the Trial Court to consider the valuation report of the Respondent does not have any legal basis. On this solitary ground the Appellate Court remanded the matter to the Trial Court to decide the Mesne Profit Application afresh.

3. Heard Mr. Thorat, learned counsel for the Petitioner and Mr. Thakkar, learned counsel for the Respondent.

4. Mr. Thorat, Learned counsel for the Petitioner submits that the power of the remand contained in the provisions of Order 41 of CPC empowers the Appellate Court to remand the matter only in certain contingencies. According to him, Rule 24 of Order 41 provides that where the evidence on the record is sufficient, the Appellate Court may determine the case finally. He would submit that, it is admitted position that the valuation report of both the parties as well as the entire evidence was before the Appellate Court. In such eventuality, the Appellate Court could have pronounced the Judgment on the basis of the evidence as well

as the valuation report and it was not necessary to remand the matter to the learned Trial Court. He relies upon the decision of this Court in the case of *Balkrishna Padmakar Joshi vs. Superintending Archeologist, Aurangabad & Anr.*, [2022 (2) Mh.L.J.].

5. *Per contra*, learned counsel for the Respondent submits that the provisions of Order 41 Rule 23 will apply and as the Trial Court has disposed of the suit upon a preliminary point, remand was necessary. He relies upon the decision of this Court in the case of *Bai Bai w/o Gyanoba vs. Mahadu Maruti*, [1959 SCC OnLine Bom 80]

6. Considered the submissions and perused the record.

7. The solitary ground on which the Appellate Court remanded the matter was that the Trial Court has not taken into consideration the valuation report of the Respondent-corporation for a reason which according to the Appellate Court did not have any legal basis. Mr. Thorat, rightly contends that the valuation report as well as the entire evidence produced before the Trial Court was before the Appellate Court and as such, the Appellate Court could have pronounced the judgment on the basis of evidence. The power of remand contained in Order 41 Rule 23, Rule 23A and Rule 24, if perused, would indicate that Rule 24 of Order 41 empowers the Appellate Court to determine the case finally when the

evidence on record is sufficient. Rule 23A of Order 41 provides that where the Trial Court has disposed of the case otherwise than on preliminary point and a retrial is considered necessary, the Appellate Court could have remanded the matter. It is only in case where the suit has been disposed of upon a preliminary point that the remand is permissible under Rule 23 of Order 41.

9. Conjoint reading of all the provisions would indicate that a remand is not permissible as a matter of ordinary course and it is only in specified contingencies the Appellate Court is empowered to remand the matter. In the present case, although contended by the learned counsel for the Respondent that the Trial Court had disposed of the same on a preliminary point, the Mesne Profit Application was decreed after taking into consideration the evidence of both the parties and after considering the admissibility of the evidence, the valuation report of the Respondent was disregarded and on basis of the Petitioner's valuation report, the Mesne Profit was determined. In my opinion, it cannot be said that the Trial Court had disposed of the Mesne Profit Application on a preliminary point. All the issues which were necessary for consideration of the Mesne Profit determination were taken into consideration and the judgment had followed. As such, I am not inclined to accept the submission of learned counsel for the Respondent that the provisions of

Rule 23 of Order 41 will apply. Considering the provisions of Rule 24 of Order 41 as the material before the Appellate Court was sufficient for pronouncing the Judgment, the Appellate Court ought to have decided the matter instead of remanding the matter. The impugned order is therefore unsustainable. There is no finding of the Appellate Court that the retrial is necessary and the matter has been remanded as matter of course considering the relevant statutory provisions governing remand.

10. In light of the above, the Petition succeeds and the impugned order dated 25th September, 2023 is quashed and set aside. The appellate Court is requested to decide the Appeal expeditiously and in any event within a period of three months from today.

12. Needless to clarify that the Appeal is required to be decided on its own merits and all rights and contentions of both the parties are expressly kept open. It is also clarified that the observations made herein are only for deciding the validity of the issue of remand.

(SHARMILA U. DESHMUKH, J.)