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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 792 OF 2024
WITH
INTERIM APPLICATION NO. 15485 OF 2024
IN
SECOND APPEAL NO. 792 OF 2024

Bharat Petroleum Corporation Limited through the Manager … Appellant/Applicant

vs.

Khed Municipal Council … Respondent

Mr. Shivprasad R. Page, for the Appellant.

CORAM : GAURI GODSE, J.
DATED : 11th DECEMBER 2024

ORDER:

1. Heard learned counsel for the appellant. This second appeal is preferred by defendant no.1 to challenge the judgment and decree passed by the first appellate court in the appeal preferred by the plaintiff to recover the deficit octroi amount. The trial court had decreed the suit directing payment of octroi amount from 23rd September 1992 onwards along with the interest at the rate of 12% per annum. The trial court's decree was accepted and defendant no.1, paid the decretal amount. Being aggrieved by the trial court's

decree granting octroi amount only from 23rd September 1992, the plaintiff preferred the first appeal. The first appellate court modified the trial court's decree and directed defendant no.1 to pay octroi amount for the entire period from 1986 to 1993 along with interest at the rate of 12% per annum. This modified decree is challenged by defendant no.1 in the second appeal.

2. Learned counsel for the appellant submits that as per the agreement, *inter se* between the defendants, defendant no.1 was made to understand that the liability of the octroi upon defendant no.1 would be from the year 1992. He, therefore, submits that in view of the internal agreement between the defendants, the liability of the octroi should be imposed upon defendant no.2. He further submits that defendant no.2, failed to file any written statement denying the octroi claim made by the plaintiff. He, thus, submits that the first appellate court erred in modifying the decree and directing defendant no.1 to pay the octroi amount for the entire period. He further submits that there is no justification for awarding interest at the rate of 12% per annum.

3. Learned counsel for the appellant, therefore, submits that the second appeal would require consideration on the grounds that the liability to pay the octroi amount should have been imposed upon

defendant no.2 and on the ground that there is no justification for awarding interest at the rate of 12% per annum.

4. I have perused both judgments. There is no dispute raised on the octroi claim made by the plaintiff. The dispute raised on behalf of the appellant, i.e. defendant no.1 is based on the *inter se* agreement between the defendants. There is also no dispute about supplying diesel by defendant no.1 within the municipal limit of the plaintiff. A perusal of the reasons recorded by the first appellate court indicates that the internal communication between the defendants was examined by the first appellate court. A letter dated 3rd March 1999 at Exhibit 119, issued by defendant no.2 to defendant no.1 includes computation of the cost of diesel and octroi rate calculated from March 1986 to August 1993, year wise. As per the said letter, the total cost of diesel includes octroi amount to be paid by defendant no. 1 to plaintiff. The first appellate court, in paragraph 27, has recorded the particulars of the letter, which indicates that defendant no.2 had intimated defendant no.1 to remit the octroi amount to the plaintiff. No dispute was raised on behalf of the appellant regarding the *inter se* communication between the defendants.

5. Since there is no dispute on the claim of octroi made by the plaintiff, the only ground to be considered is about imposing liability

to pay octroi on defendant no.1. Considering the grounds of objections raised on behalf of the appellant, the first appellate court has thoroughly examined the internal communication and agreement *inter se* between the defendants. The internal communication between the defendants indicates that the liability to pay the octroi was on defendant no.1 as is evident from the letter at Exhibit-119 relied upon by the first appellate court. Since there is no dispute on the *inter se* agreement between the defendants, the grounds raised on behalf of the appellant would not require any consideration by this court in the second appeal. The grounds argued on behalf of the appellant pertain to the findings of facts recorded by the first appellate court. I do not find any illegality or perversity in the reasons recorded by the first appellate court. Hence, the first ground argued on behalf of the appellant would not raise any substantial question of law.

6. With regard to the second argument raised on behalf of the appellant on 12 % interest awarded by the first appellate court, it is not necessary for this court to elaborate on the applicability of the rate of interest. The trial court awarded 12% interest, which was accepted by the appellant; there was no objection raised on behalf of the appellant regarding the rate of interest awarded by the trial court. The only modification done by the first appellate court is with

reference to the period of octroi amount claimed by the plaintiff. Hence, in the second appeal, the ground on the applicability of the rate of interest need not be examined for the first time. Hence, even the second ground would not raise any substantial question of law.

7. The second appeal does not raise any other substantial question of law. Hence, the second appeal is dismissed. In view of the dismissal of the second appeal, the pending application is disposed of as infructuous.

(GAURI GODSE, J.)