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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 210 OF 2017

Bharat Petroleum Corporation & Anr.

..... Applicants

VERSUS

**Trade Centre Developers & Builders
Private Limited**

..... Respondent

Mr. S.R.Page for the Applicants.

Mr. Drupad S. Patil a/w. Ms.Ruchi Umrotkar, Ms.Archana
Joglekar for the Respondent.

CORAM: RAJESH S. PATIL, J.

DATE : 13 MARCH, 2024

P.C. :-

1. The applicants herein were lessee and defendant, before the Trial Court. The respondent is the owner and plaintiff before the Trial Court, of premises being open plot of land bearing CTS No. 10/1/A (Part) old 12 Cannought Road, Pune – 411 001, admeasuring 10952 sq.ft. The parties are referred to as per their nomenclature in Trial Court.

First Suit

2. The plaintiff had filed R.A.E. & R suit, in the year 1998 against the defendant/Corporation (for short “the first suit”). The said suit was filed under the Bombay Rent Act for eviction. The Trial Court passed a decree of eviction. However, an appeal filed by the defendant/Corporation was allowed and eviction decree was reversed. The plaintiff thereafter preferred Writ Petition No.6458 of 2001 against the judgment and Order passed by the Appellate Court, before this Court. The said Writ Petition was admitted by this Court. Subsequently, by an order dated 12 March, 2024, Writ Petition No. 6458 of 2001, was disposed of as infructuous.

Second Suit

3. In the meantime, during the pendency of Writ Petition No. 6458 of 2001, the plaintiff/landlord filed a second suit on 8 March 2002 being Civil Suit No.139 of 2002. The second suit was filed after the Maharashtra Rent Control Act came into force and

the defendant/Corporation had no protection under the said act as per the case of the plaintiff/landlord. The second suit was filed under Section 41 of the Provincial Small Cause Courts Act, 1887. By Judgment and Order dated 19 November, 2012, the said suit filed for eviction under Section 41 of the Provincial Small Cause Courts Act, 1887 was dismissed. Hence, the plaintiff/landlord preferred an appeal before the District Court, Pune. By Judgment and Order dated 9 February, 2017 the appeal filed by plaintiff/landlord was allowed.

4. The defendant/Corporation thereafter challenged the Judgment and decree passed by the District Court, by way of Civil Revision Application No.210 of 2017. This Court by its Order dated 12 September, 2017 admitted the Civil Revision Application subject to certain conditions. This Court further directed the defendant/Corporation to deposit in this Court every month a compensation at the rate of Rs.4,00,000/- per month from 1 March, 2017. By a further Order of this Court on 15

March 2018 the said amount payable at the rate of Rs.4,00,000/- was to be paid till pendency of the Civil Revision Application. Pursuant to the directions given by this Court, the defendant/Corporation, deposited the compensation amount in this Court. By an order dated 31 January, 2024, passed in Interim Application No. 2173 of 2023 in Civil Revision Application No. 210 of 2017, this Court allowed the plaintiff/landlord, to withdraw the amount deposited by the defendant/Corporation, subject to filing of Undertaking.

Third Suit

5. In the meantime, during the pendency of landlord's appeal before the District Court in Second Suit, since the plaintiff/landlord had not received the possession of suit premises he filed third suit being Civil Suit No.308 of 2013, under Section 41 of the Provincial Small Cause Courts Act. The third suit filed by the plaintiff/ landlord was decreed by the Trial Court. An Appeal preferred by the defendant/Corporation was also dismissed so also a Writ Petition filed in this Court by the

defendant/Corporation was also dismissed on 2 December, 2022.

6. Both the parties agree that thereafter on 4 February 2023 the possession of the suit premises has been received by the plaintiff/landlord by executing the decree in the third suit. The controversy now is only limited to the *mesne-profit* payable by the defendant/Corporation to the plaintiff/landlord.

Mense Profit

7. The dispute between the parties is whether such a *mesne-profit* if payable should be from the date of filing of the second suit i.e. 1 March, 2002, OR from the date of the filing of the third suit i.e. 10 September, 2013 ?

SUBMISSIONS :

8. Mr. Page, learned counsel for the applicants submitted that after the initial first period of 30 years, expired in the month of August 1983, pursuant to the renewal clause in the lease deed, the defendant/Bharat Petroleum Corporation Ltd. (for short

BPCL), by its letter dated 13 April, 1983 sought to renew of the lease for the further period of 30 years as per clause 3(d). However, the plaintiff/landlord refused to renew the lease, and further terminated the lease by its letter dated 18 April, 1983.

9. By a subsequent letter dated 20 December 1997, the landlord issued a notice to the BPCL. In the said letter dated 20 December, 1997, in paragraph no. (3), it is specifically stated *“that the lease period is renewed for the further term of 30 years, ending on 17 February, 2014”* and called upon them to handover vacant and peaceful possession of the suit property on the ground of *bona fide* requirement. Further in the evidence led by one Mr.Eshwarlal Parmar PW-1, on 8 April, 1999 of the plaintiff in paragraph no.4, it is specifically stated that *“the defendants have extended the period of lease for 30 years. The said extended period is yet to be expired”*. Further on 16 April, 1999, when cross examination was conducted of PW-1 he further stated that the lease period of defendant was in existence in the year 1990.

Mr. Page submitted that this proves that the lease was to come an end, in the year 2014.

10. Mr. Page further submitted that even though in all the three documents/evidence the date of expiry of lease is mentioned as February 2014, his client's claim of expiry of lease period is till September 2013. Therefore, according to him if at all *mesne-profits* is payable, the same has to be calculated from 1 September, 2013 (date of filing of third suit), till the handing over of possession by BPCL to the landlord i.e. 4 February, 2023.

11. Mr. Patil, appearing for the respondents/landlords, made his submissions. He submitted that he has two lines of arguments :

(A) Whether by reason of Section 5 (2) read with Section 7 (3) of the Burmah Shell (Acquisition of Undertaking in India) Act, 1976, BPCL can be said to have an uncontrolled statutory right to exercise its option for renewal of the lease, which in terms thereof would be deemed to have been renewed for another term

of 30 years from 1953?

i. Action on the part of the BPCL should confirm to the doctrine of fairness and in that view of the matter, the impugned judgment cannot be interfered with.

ii. The Act, Burmah Shell (Acquisition of Undertakings in India) Act, 1976, (ACT 2/1976), Similarly ESSO (Acquisition of Undertakings in India) Act. (Act 14/1974) and Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and Undertakings in India of Caltex (India) Limited Act, (Act 17/1997) were enacted in order to give effect to the directive principles contained in Article 39 (b) and (c) of the Constitution to secure the ownership and control of the production of nation's petroleum resources and to secure ownership and control of the undertakings carrying on the business of distributing and marketing of petroleum products which would sub-serve the common good. All

three enactments the provisions are in pari materia.

iii. Defendant-company is a 'State' within the meaning of Article 12 of the Constitution of India. It is, therefore, enjoined with a duty to act fairly and reasonably. Just because it has been conferred with a statutory power, the same by itself would not mean that exercise thereof in any manner whatsoever will meet the requirements of law. The statute uses the words "if so desired by the Central Government". Such a desire cannot be based upon a subjective satisfaction. It must be based on objective criteria. Indisputably, the 1976 Act is a special statute. It overrides the provisions of Section 107 of Transfer of Property Act. The action of the State must be judged on the touchstone of reasonableness.

iv. By the letter dated 13.4.1983 a renewal was sought. The said request for renewal was not supported

by any reason. It is thus clear that the decision to have renewal was not supported by any reasons, therefore, the said action was simply unfair or unreasonable. Therefore, would not be sustained.

v. Mr. Patil also referred to the judgment of the Supreme Court in the matter of *Bharat Petroleum Corporation Ltd. vs. Maddula Ratnavalli & Others*, reported in *2007(6) SCC 81*.

He referred to paragraph nos. 13 and 16 of the said judgment. He submitted that when the State is acting as the landlord or as tenant it is required to be act *bona fide* and not arbitrary.

vi. Mr. Patil further submitted that the observations made in *Maddula Ratnavalli* (supra) were after the Court having considered the effect of a three Judge Bench decision of the Supreme Court in *Bharat Petroleum Corporation Ltd., Vs. P.Kesavan and Another*

reported in **2004 (9) SCC 772** case.

vii. Apart from showing that the BPCL had acted statutorily, it should also show that it had acted fairly and reasonably.

(B) When the original Lease Deed itself contemplates renewal, whether, non execution of fresh lease deed for renewal would defeat the option for renewal?

i. Covenant for renewal contained in the lease does not *ipso-facto* extend the tenure or term of the lease but only entitles the lessee to obtain a fresh lease in accordance with and in due satisfaction of the law governing the making of leases.

ii. Clause 3 (d) of Lease Deed provides for renewal of the lease on certain conditions and renewal could not be obtained in piecemeal and in violation of any part and portion and when an option is exercised under

the said clause the entire provisions of the same must be followed and complied with.

iii. In the present case, the claim for renewal of the lease was not followed up by execution of Deed and, therefore, lease had not been actually renewed. Mere sending of a letter for renewal of lease would not create a lease to allow renewal of the same. The clause requiring execution of the lease deed incorporating the terms and conditions is a condition which needs to be fulfilled when option for renewal is acted upon.

iv. In the absence of a fresh Lease Deed, the Clause 3 (d) in the original deed cannot be said to be acted upon though BPCL has attempted to exercise its option by letter dated 13.4.1983.

(C) Mr. Patil, submitted that there is no merit in the civil revision application. The same should be dismissed.

ANALYSIS AND CONCLUSION

12. In this proceedings, the trial Court, by judgment and decree dated 19.11.2012 had dismissed the plaintiff's Civil Suit No.139 of 2002, seeking the defendant's/BPCL's eviction from the suit premises. However, by the impugned judgment and decree dated 09.02.2017, the appeal Court has reversed the trial Court order of the eviction of the defendant/BPCL.

13. From the perusal of impugned judgment and decree dated 09.02.2017 it appears that the appeal Court, by referring to clause 3 (d) of the Lease Deed (Exh.26) has held that this clause provides for "renewal" and not for "extension". The Appeal Court has further reasoned that since renewal involves a bilateral act and the landlords had refused to renew the lease, the respondent herein had the cause of action to institute the suit in the year 2002 and such Suit, is required to be decreed.

14. I pause here to observe that the plaintiff/landlord after

initially refusing to renew the lease by letter dated 18 April, 1983, by a subsequent letter dated 20 December, 1997 in paragraph (3) submitted that the lease period is renewed for a further term of 30 years, ending on 17 February, 2014 and further in the examination in chief of PW-1, the said witness admitting that they have extended the lease for 30 years and the said extension period is yet to be expired. The said evidence was recorded on 8 April, 1999 and even in the cross examination PW-1 it was admitting that the lease period of defendant was in existence in the year 1990 and further that the lease period comes to an end in the year 2014. Hence, I am of the view that the plaintiff/landlord had themselves admitted that the lease period was in existence till February 2014. However, today while arguing the matter Mr. Page on instructions from his client has submitted that the said lease period even though the documents and evidence suggest was to end on 17 February, 2014, however as per his client's calculation the lease period was supposed to end 31 August, 2013.

15. Taking into consideration the facts stated by me above, I am of the view that the *mesne-profit* would be decided on its own merits and if the Court is of the view that the quantum of the *mesne-profit* would be payable to the respondent landlord, then I conclude it would be for the period from 1 September, 2013 (filing date of third suit) to the date when the defendant/Bharat Petroleum Corporation Ltd. handed over the possession to the landlord i.e. 4 February, 2023.

15.1 The said quantum of *mesne-profit* will be decided by the Trial Court in Misc.Application No. 3 of 2023. The hearing of the same is expedited and the Trial Court will make an endeavour to dispose of the same after hearing both the parties by 31 March, 2025.

15.2 Both the parties will co-operate with the Trial Court in the hearing of the Misc. Application No. 3 of 2023, and would not seek any unnecessary adjournments.

15.3 The trial Court will also take into consideration, the amount deposited by the Bharat Petroleum Corporation Ltd., pursuant to the order passed by this Court as regards the interim compensation payable as per ratio of the judgment of Supreme Court in case of ***Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd., (2005) 1 SCC 705*** while calculating the quantum of *mesne-profit* payable.

15.4 The undertaking given by the plaintiff/landlord pursuant to the directions given by this court on 31 January, 2024 will further continue till disposal of the Misc Application no. 3 of 2023.

15.5 Civil revision application is accordingly disposed of.

16. Mr.Patil, on instructions from his client submits that the *mesne-profit* Application No. 2 of 2023, will stand withdrawn in view of the order passed today.

[RAJESH S. PATIL, J.]