

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.538 OF 2023
WITH
INTERIM APPLICATION NO.18440 OF 2023**

Bharat Petroleum Corporation Limited ... Applicant

V/s.

Dattatray Shankar Taware ... Respondent

Mr. Atul Damle Senior Advocate i/by Adv. S. R. Page a/w Ruchi Umrotkar, Adv. Archana Joglekar, Advocate for the Applicant.
Mr. S. S. Patwardhan i/b Ms. Mrinal Shelar, Advocate for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 21 FEBRUARY 2024

P.C.:

1. This Civil Revision Application is filed under Section 115 of the Civil Procedure Code, by original defendant corporation challenging the concurrent findings recorded of eviction by Trial Court and by the First Appellate Court. Before this matter could have been argued by the parties to the proceedings, Mr. Pradip Kadam appearing for the dealer of petitioner corporation made his submissions that he had preferred an Application before the Trial Court for joining as a party to the proceedings.

2. Mr. Kadam submits that said application of the dealer was rejected by the Trial Court. The said order was passed on 10

October 2019. Mr. Kadam submits that only yesterday a Writ Petition Stamp No.5446 of 2024 has been preferred by his client (dealer of the petitioner), challenging the order passed on 10 October 2019.

4. The Writ Petition filed by the dealer is not before this Court. Therefore, I have proceeded with the hearing of the Civil Revision Application filed by the original defendant/ Corporation.

5. The respondent (original plaintiff) had preferred a suit against the defendant corporation for handing over vacant and peaceful possession of a plot of land situated at Parvati, Pune, admeasuring about 13,400 sq.ft (for short “suit land”), and also mesne profit was sought from the defendant. The defendant corporation appeared in the matter and file their written statement. On behalf of the plaintiff, the plaintiff himself entered the witness box and lead his evidence. The plaintiff was cross-examined by the advocate appearing for the defendant. On behalf of the defendant corporation one Mr. Vinod Haridasha, territory Manager entered the witness box on behalf of the defendant. The said witness was cross-examined by the plaintiff’s advocate.

6. The Trial Court thereafter heard both the parties and by Judgment and Order dated 16 October 2019 decreed the suit of the plaintiff and directed the defendant to give vacant and peaceful possession of the suit premises. So also it was directed that the plaintiff is entitled to a mesne profit from the date of the decree till actual possession.

7. Being dissatisfied with the judgment and decree passed by

the Trial Court, the defendant corporation preferred an appeal before the District Court at Pune. The District Judge Pune heard the parties in the appeal preferred by the defendant corporation and by its Judgment and Decree dated 15 June 2023 dismissed the appeal filed by the defendant corporation.

8. Hence, the present Civil Revision Application is preferred by the original defendant corporation challenging the judgment and decree of eviction passed by the Trial Court and as confirmed by the Appellate Court.

(9) Mr. Atul Damle, Learned Senior Counsel appeared on behalf of the Original defendant / Corporation, and made his submissions:-

(i) Mr. Damle submitted that the lease period though expired on 7 March 2016, there was an oral understanding between the parties that there will be a further extension of the lease period, therefore according to him the renewal clause No.(4) (b) was scratched from the lease deed.

(ii) Mr. Damle submitted that so also the State Government had issued a notification dated 3 December 2009.

(iii) Mr. Damle submitted that as per the notification issued by State Government through urban development department, there was a restriction imposed from closing the existing petrol pump and also there was a restriction from changing the use of the suit land wherein the petrol pump was existing.

(iv) He therefore submitted that taking into consideration that

there was a oral agreement of extension of the lease period and in view of this State Government notifications the present Civil Revision Application requires consideration and same should be admitted and there should be stay to the execution of the impugned Judgments and Orders passed by both the Courts.

(10) Mr. Patwardhan appeared on behalf of the original plaintiff (the owner) and made his submissions :-

(i) Mr. Partwardhan submitted that there is an admission of behalf of the defendant corporation in their written statement wherein very clearly they have stated that the lease deed has come to an end on 30 September 2016. The execution of the lease deed has not been disputed by the parties.

(ii) He further submitted that in the lease deed the renewal clause para no. 4 (b) has been specifically scratched and both the parties have initial on the said page at the left side margin.

(iii) He further submitted that in the evidence also the witness appearing on behalf of the corporation has admitted that the renewal clause has been scratched.

(iv) He further took me through the cross-examination recorded of the corporation witness. The witness of the respondent corporation as even though, denied the fact that “under ground storage tank” has been constructed on the property of Murlidhar Todkar.

(v) He submitted that in any case the under ground storage tank is not on the suit premises, in fact the under ground storage tank is

in the adjacent land to the premises, which belongs to one person Mr. Murlidhar Todkar with whom the defendant corporation has a separate lease agreement.

(vi) He further submitted that the present lease deed were executed on 5 August 1988, for period of 30 years which expired on 7 March 2016. And only thereafter as the corporation did not vacate the suit premises, the owners of the suit premises filed the eviction suit. He submitted that even before 5 August 1988, admittedly there was lease agreement between the parties. Therefore which began some where in the year 1956. Therefore, Mr. Patwardhan submitted that even the corporation can't make an argument that there should be a renewal because in any case it will be a second renewal. He further submitted that the argument that one renewal is allowed, can't be taken by the corporation in the present proceedings because the lease period in the present proceedings is not prior to the year 1977.

(vii) Mr. Patwardhan further submitted as as far as the notification dated 3 December 2009 is concerned the Pune Municipal Corporation has not adopted the said notification. Therefore, according to him the corporation can't take advantage of the said notification dated 3 December 2009. He further submitted that even if it is presumed there is such notification, applies to the present proceedings even then the said notification could not change the relationship between the parties and in any case after an eviction decree is passed the said notification will come into play only if the owner decides to use the premises in a particular way.

ANALYSIS AND CONCLUSION :-

(11) I have heard the learned counsel for both the sides and I have gone through the documents on record and the impugned Judgments passed by both the Courts.

(12) Admittedly the lease deed came to an end on 7 March 2016. It is the case of the corporation (original defendant) that there was an oral arrangement between the parties whereby the lease period was extended. Admittedly the renewal clause on the lease deed was strike down by the parties. As far as the argument of oral arrangement between the parties for extension of lease period is concerned, there is a denial from the plaintiff that any such arrangement was their between the parties. Both the Courts have held that the defendant corporation was not able to prove that there was an oral arrangement between the parties for renewal of the lease period. Even today before me the defendant corporation was not able to show anything on record that there was an oral arrangement between the parties for renewal. The argument about oral arrangement between the parties for renewal of the lease period was for the first time taken only in written statement. Therefore, I do not find any reason to disbelieve the finding recorded by both the Courts regarding non existence of the oral arrangement between the parties.

(13) As regard the notification issued by the government on 2 December 2009.

(14) Mr. Patwardhan has made submissions that the said

notification has not been adopted by the Pune Municipal corporation. The cross-examination recorded of the defendant corporation witness on 7 September 2019 states that “ *I admit that the letter in exh 24 there is no whisper about the alleged oral agreement as stated by me on oath. I admit that letter exh 25 plaintiff has turned our request of extension of our lease. I have traveled on Tilak Road. I am not seen 17 storied building on construction on Tilak Road near Abhinav Kala Collage. I am not aware that previously on that site two different petrol pumps of different company were functioning and with in two years a huge building under constriction this site.*” Presuming that the notification dated 3 December 2009 applies to the suit premises the fact remains that notification will have no bearing on the present proceedings because the present proceedings is for eviction filed by owner of the premises against the lessee. The lease period is expired on 7 March 2016 there is an admission to that effect. The relation between the parties has not been disputed. The lease agreement is a registered agreement. Therefore, according to me, no case is made to entertain this Civil Revision Application.

(15) This Civil Revision Application stands dismissed, No costs. In sequel Interim Application also stands dismissed.

(RAJESH S. PATIL, J.)