

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

**SECOND APPEAL NO.826 OF 2022
WITH
INTERIM APPLICATION NO.30109 OF 2022
IN
SECOND APPEAL NO.826 OF 2022**

Indian Oil Corporation Ltd.
V/S

....Appellant/Applicant

Prashant Pandurang Satav

....Respondent

Ms. Sindhu Kotian a/w Mr. Venkat Rao, Mr. Akash Gaonkar i/b
M/s. Legalserve & Associates *for the Appellant/Applicant.*

Mr. A.V. Anturkar, Senior Advocate a/w Mr. Yatin Malvankar *for
Respondent.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 08 MAY 2024.**

P.C.:

1 By this Appeal, Appellant-Indian Oil Corporation Ltd. has challenged the decree dated 13 September 2022 passed by District Judge-1, Barshi, in Regular Civil Appeal No.21 of 2018. The First Appellate Court has allowed the Appeal and has modified the decree dated 16 November 2017 passed by the Trial Court. The First Appellate Court has decreed Plaintiff's Special Civil Suit No.78 of 2013 by directing Appellants/Defendants to put Plaintiff in vacant possession of the suit properties. So far as the direction of the Trial

Court for payment of interest at the rate of 6% per annum on the arrears of payment of Rs.19,382/- for a period from 3 December 2010 to 30 July 2014 is concerned, the said direction has been confirmed. In short, the First Appellate Court has decreed Plaintiff's suit for eviction of Appellants/Defendants on the ground of arrears of payment of rent.

2 There appears to be an arrangement of lease between the Plaintiff as Lessor and Defendant as Lessees in respect of the suit property, where Defendants has set up a retail outlet for sale of petroleum products. Plaintiff instituted Special Civil Suit No.74 of 2009 for recovery of possession of the suit property as well as for recovery of arrears of rent of Rs.47,31,570/-. The Trial Court rejected the prayer for eviction on the ground that Plaintiff had accepted rent amount from Defendant excluding the disputed portion during pendency of the suit. The Trial Court therefore proceeded to partly decree the suit directing Defendant to pay amount of Rs.41,76,570/- to Plaintiff with interest. The controversy before the Trial Court in the first round of litigation in Special Civil Suit No.74 of 2009 was about the defence raised by Defendants of sub-lease of land admeasuring 6023 square meters by Defendants to the Plaintiff for which Defendants were excluding/deducting rent amount of Rs.19,382/-. The Trial Court held that such deduction was improper and held Defendants liable for payment of the entire agreed amount of lease even by taking into consideration the entire leased area of 6023 sq. mts.

3 Shortly after the judgment and order dated 2 August 2012, Plaintiff served notice dated 2 March 2013 on Defendant for termination of lease on the ground of arrears of lease rent. He filed Special Civil Suit No.78 of 2013 in the Court of Civil Judge Senior Division, Barshi for recovery of possession and arrears of rent, damages and interest. The Trial Court, this time held that the prayer of Plaintiff for recovery of possession to be barred by *res judicata* on account of rejection of the said prayer in Special Civil Suit No.74 of 2009. The Trial Court recorded that during pendency of the suit, Defendant paid to Plaintiff amount of Rs.18,25,529/- on 16 October 2004 and statement made by Plaintiff that the earlier decree was satisfied on account of payment of arrears of rent. The Trial Court therefore partly decreed Special Civil Suit No.78 of 2013 by only granting interest at the rate of 6% per annum to Plaintiff in respect of arrears of payment of Rs.19,382/- from 3 December 2010 to 30 July 2013.

4 Plaintiff filed Regular Civil Appeal No.21 of 2018 before District Court, Barshi, which has proceeded to reverse and modify the decree passed by the Trial Court and granted the relief of eviction in favour of Plaintiff. Aggrieved by the decree of the First Appellate Court dated 13 September 2022, Defendant/Appellant has filed the present Appeal.

5 I have heard Ms. Kotian, the learned counsel appearing for Appellant, Mr. Anturkar, the learned senior advocate appearing for Respondent/original Plaintiff.

6 After having considered the submissions canvassed by the learned counsel appearing for parties, I am of the view that the Trial Court had erred in holding that Plaintiff's prayer for recovery of possession in Special Civil Suit No.78 of 2013 was barred by limitation. Plaintiff's suit for recovery of possession was based on arrears of rent which included rent in respect of period after 2 August 2012, when Special Civil Suit No.74 of 2009 was decided. It is an admitted position that during 2 August 2012 to 3 December 2013, Defendant failed to pay rent to Plaintiff. This is why after service of notice of termination, Special Civil Suit No.78 of 2013 was instituted on 3 December 2013. Once Defendant received suit summons alleging arrears of rent, it ought to have deposited the arrears of rent so as to save forfeiture of lease under section 114 of the Transfer of Property Act, 1882. However, it appears that till the issues were framed on 4 July 2014, the Defendants failed to pay the arrears of rent. An amount of Rs.18,25,529/- appears to have been paid by Defendant to Plaintiff only on 16 October 2014 after hearing of the suit had commenced.

7 Though the First Appellate Court has erroneously referred to the provisions of Maharashtra Rent Control Act, which have no application to the present case, in my view, even if provisions of section 114 of the Transfer of Property Act are to be applied in the present case, the Defendant clearly failed to avail an opportunity of depositing the arrears of rent before commencement of hearing of the suit.

8 Ms. Kotian's contention that the Trial Court has recorded satisfaction on the part of Plaintiff with regard to the arrears of rent and that therefore decree for recovery of possession could not have been passed does not cut any ice. Plaintiff may have recorded satisfaction with regard to the arrears of rent, but the same does not mean that he gave up his prayer for recovery of possession. Recovery of arrears of rent is an independent and additional relief than the relief of recovery of possession. Therefore, merely because arrears of rent are accepted by him, such conduct did not mean that decree for recovery of possession was not or could not be pressed. What ought to have been done by the Defendant was to deposit the arrears of rent before 4 July 2014 when issues were framed in the suit. In my view, therefore, the First Appellate Court has rightly decreed the suit for recovery of possession. No substantial question of law is involved in the Appeal. The Second Appeal is accordingly **rejected**.

9 After the order is pronounced, Ms. Kotian would request for time of six months for handing over possession of the suit property to the Plaintiff. Considering the fact that the Appellant operated Retail Outlet for sale of petroleum products at the suit property, time to vacate the suit property and to handover possession thereof to Plaintiff shall stand extended by period of six months from today, subject to payment of monthly compensation equivalent to applicable rent.

10 In view of rejection of Second Appeal, nothing would survive in the Interim Application. The same is also disposed of.

(SANDEEP V. MARNE, J.)

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