

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

WRIT PETITION NO. 12146 OF 2024

Bharat Petroleum Corporation
Ltd. And anr.

....*Petitioner*

: *Versus* :

Trade Centre Developers and Builders
Private Ltd.

....*Respondent*

Ms. Aarti Sonawane *i/by. Mr. Argus Partners, for the Petitioner.*

Mr. Drupad S. Patil *a/w. Mr. Dheeraj Patil, for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 9 September 2024.

P.C. :

1) Petitioner-Bharat Petroleum Corporation Limited (BPCL) has filed this petition challenging orders dated 3 August 2024 and 12 August 2024, by which application at Exhibit-28 seeking extension of time for deposit of costs imposed vide order dated 5 December 2023 is rejected. The application at Exhibit-29 was filed again seeking permission to deposit the costs which has also been rejected by order dated 12 August 2024.

2) It appears that in Misc. Application (Mesne Profit) No.3/2023 for conduct of *mesne profits* enquiry, *ex-parte* order came to be passed against Petitioner-BPCL on 21 June 2023. Defendant-BPCL applied for setting aside *ex-parte* order by filing application at Exhibit-22. The said application was allowed by the learned Judge by passing order dated 5 December 2023 by setting aside the *ex-*

parte order dated 21 June 2023 subject to payment of costs of Rs.2,000/- before the next date of hearing. Petitioner-BPCL once again exhibited negligence in not depositing minuscule amount of costs of Rs.2,000/-. It seeks to attribute the said negligence to the conduct of its advocate. The Misc. Application was thereafter listed on six different occasions, when no attempt was made to deposit the amount of costs. It is only in August 2024 that Petitioner-BPCL thought of moving application at Exhibit-28 seeking extension of time for deposit of amount of costs. The application at Exhibit-28 is rejected by order dated 3 August 2024.

3) As if the problems created by Petitioner-BPCL on account of its negligent attitude were not enough, Petitioner-BPCL has apparently invited one more order dated 19 August 2024 when the learned Judge has passed '*No cross*' order on account of absence on the part of the learned advocate engaged by Petitioner-BPCL. Ms. Sonawane, the learned counsel appearing for Petitioner-BPCL would pray for leave to amend the petition for challenging the order dated 19 August 2024. Leave granted. Amendment to be carried out forthwith.

4) Mr. Patil, the learned counsel appearing for the Plaintiff-decreeholder would invite my attention to the order dated 13 March 2024 passed by this Court while dismissing the Civil Revision Application by which this Court has directed decision of Misc. Application (Mesne Profits) No. 3/2023 by 31 March 2025.

5) Misc. Application (Mesne Profits) No.3/2023 is filed by the Plaintiff/decreeholder for determining the amount of mesne profits. In absence of any defence on the part of the Petitioner-BPCL,

the Court would otherwise be handicapped to determine the correct quantum of mesne profits payable for unauthorised occupation of the suit premises by the Petitioner-BPCL. In that sense, production of evidence by Petitioner-BPCL would infact enure to the benefit of the learned Judge in arriving at the correct quantum of mesne profits payable in the present case. Therefore, though Petitioner-BPCL is extremely negligent in defending Mesne Profits Application, in my view, an opportunity needs to be granted to the Petitioner-BPCL to put in its defence by setting aside the *ex-parte* order.

6) Considering the fact that decision on *mesne profits* application has been made time barred by this Court coupled with repeated negligence by Petitioner-BPCL, this Court would be otherwise loathe in showing any indulgence in its favour. However, as observed above, permitting Petitioner-BPCL to put in its defence would enable the learned Judge to arrive at correct quantum of mesne profits. This is the only reason why this Court is inclined to show another indulgence in favour of the Petitioner-BPCL. However, the same cannot be without imposition of exemplary costs on the Petitioner-BPCL.

7) Ms. Sonawane would submit that reply to the Civil Misc. Application No.3/2023 is ready and that the same would be tendered before the Court on/or before 30 September 2023.

8) Accordingly, the petition succeeds. The orders dated 3 August 2024 and 12 August 2024 passed by the learned Judge of the Small Causes Court, Pune are set aside. Petitioner-BPCL is permitted to deposit Rs.2,000/- imposed vide order dated 5 December 2023 on/or before 30 September 2024. In addition to costs of

Rs.2,000/- already imposed by the learned Judge, the Petitioner-BPCL shall pay costs of Rs.1,00,000/- to the Respondent-decreeholder by depositing the same in the Trial Court on/or before 30 September 2024. It is made clear that payment of total costs of Rs.1,02,000/- shall be a condition precedent for recall of the *ex-parte* order dated 21 June 2023. In order to enable the Petitioner-BPCL to effectively defend the mesne profits application, the order of 'No cross' passed on 19 March 2024 is also set aside.

9) With the above directions, the Writ Petition is partly allowed and **disposed of**.

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[SANDEEP V. MARNE, J.]