IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.216 OF 2024

Hindustan Petroleum Corporation Ltd. through its Deputy General Manager/ duly constituted attorney Chappa Satyanarayana ***....Applicant (orig. Defendant No.1)***

V/s.

1. Vilas Madhavrao Paygude
2. Dilip Madhavrao Paygude
3. Rajiv Madhavrao Paygude

....Respondents (Respondent Nos.1 to 3 original Plaintiff Nos.1 to 3.)

4. M/s. Highway Services Centre ***....(Respondent No.4 Orig. Defendant No.2)***

5. Bharat Shivlal Shah
(since deceased through legal heirs)
Milind Bharat Shah
(since deceased through legal heirs)
5A) Usha Bharat Shah
5B) Neha Milind Shah
5C) Varad Milind Shah

....(Respondent Nos.5A to 5C are original Defendant No.3)

Mr. Ashwin Shete *with Ms Nandita Shah i/b. M/s. Jaykar Partners for the Applicant.*

Mr. S.S. Patwardhan *with Ms Mrinal Ashwin Shelar for Respondent No.1.*

Mr. Tejas D. Deshmukh *for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

Dated : 27 August 2024.

MEGHA SHREEDHAR PARAB
Digitally signed by MEGHA SHREEDHAR PARAB Date: 2024.08.31 15:35:49 +0530

JUDGMENT:

1) The Applicant-Hindustan Petroleum Corporation Ltd. **(HPCL)** has filed this Revision Application challenging the concurrent

decrees passed by the Trial and the Appellate Court decreeing Plaintiffs' Suit for eviction. Accordingly, the Applicant has challenged decree dated 29 January 2018 passed by the Additional Small Cause Judge and Jt. Civil Judge, Senior Division, Pune in Civil Suit No.10 of 2014 and judgment and order dated 30 December 2023 passed by the District Judge-5, Pune in Regular Civil Appeal No.157 of 2018.

2) The land bearing Survey No.732-B, CTS No.1909 admeasuring 15000 sq.ft. situated at Bibvevadi, Munjeri, Pune city is the suit property. An Agreement of Lease dated 16 April 1962 was executed by one Shri R.M. Paygude granting lease of the land admeasuring 22,500 sq.ft. in favour of M/s. ESSO Standard Eastern Inc. (**ESSO**), which started operating a fuel station thereon. ESSO came to be acquired by Government of India under the provisions of ESSO (Acquisition of Undertaking in India) Act, 1974 (**the ESSO Act).** The said land was thereafter granted by the Government of India to HPCL. Mr. R.M. Paygude transferred the ownership in respect of the said land to his son Mr. Mahadev Rambhau Paygude. The Lessors demanded possession of the said land from HPCL by filing a Suit in the Court at Pune. However**,** during pendency of the Suit, the Lessors restricted their claim for vacant possession of part of the land admeasuring 7500 sq.ft. vide application dated 5 January 1991 and not disturbing the lease in respect of the balance land admeasuring 15,000 sq.ft. on which HPCL continued operating its fuel station.

3) An Agreement for Lease dated 14 October 1992 was executed between Mahadev Rambhau Paygude and his three sons Vilas, Dilip and Rajiv described therein as Lessors and HPCL described as Lessee, under which Lease in respect of the suit property (admeasuring 15,000 sq.ft.) was granted in respect of the HPCL for a period of 20 years. The tenure of lease expired on 14 October 2012 and apparently the Lease

was also terminated by issuance of a separate notice. By letter dated 6 November 2012, Plaintiff No.2 Dilip Mahadev Paygude gave 'without prejudice offer' to HPCL for extension of tenure of Lease by further tenures upto 13 October 2022 on payment of rent @ 10% of market value of the suit land. It appears that the HPCL insisted for extension of tenure of Lease by 20 years at monthly rent of Rs.1,50,000/-. By further offer letter dated 5 February 2014 Plaintiffs offered renewal of the Lease for 15 years by payment of monthly rent of Rs.2,50,000/- with further escalation @ 10% at the end of every three years. It appears that the said negotiations between the parties did not fructify in execution of any document extending or renewal of the tenure of Lease. Plaintiffs therefore filed Civil Suit No.10 of 2014 seeking recovery of possession of the suit property and payment of *mesne* profits. The Suit was resisted by Defendant-HPCL by filing written statement. Both the parties led evidence in support of their respective claims. The Trial Court proceeded to decree the Suit on 29 January 2018 holding that the Lease was validly terminated and that Defendant-HPCL committed breach of terms and conditions of Lease Agreement and that it remained in unauthorised possession of the suit property. The Trial Court therefore directed the Defendant-HPCL to handover vacant possession of the suit property to Plaintiffs within one month from the date of the order. The Defendant-HPCL challenged the decree of the Trial Court by filing Regular Civil Appeal No.157 of 2018 before the Court of District Judge, Pune. However, the Appellate Court has proceeded to dismiss the appeal filed by the Defendant-HPCL vide judgment and order dated 30 December 2023. The decrees passed by the Trial Court and the Appellate Court are subject matter of challenge in the present Revision Application.

4) Mr. Shete, the learned counsel appearing for the Revision Applicant -HPCL would submit that the Trial and the Appellate Court

have erred in decreeing the suit of Plaintiffs without appreciating the fact that the Lease in respect of the suit property had not expired. He would submit that the covenants of the Lease Agreement dated 14 October 1992 are required to be interpreted to mean that the HPCL was granted right to seek renewal of Lease. He would submit that the conduct of Plaintiffs after expiry of all initial Lease Agreement would leave no manner of doubt that the parties specifically agreed for extending the tenure of Lease. He would take me through various correspondence entered between the parties in that regard. He would also take me through the evidence of Plaintiffs to demonstrate that there has been exchange of offers between the parties and acceptance thereof, thereby resulting in concluded contract between the parties.

5) Mr. Shete would further submit that apart from covenants of the Lease Agreement, Defendant-HPCL was statutorily entitled to secure renewal of the Lease on same terms and conditions at least on one occasion upon expiry of the Lease on 14 October 2012. He would rely upon provisions of the ESSO Act in that regard. He would submit that the Appellate Court has recorded a finding of fact that a Notification within the meaning of Section 7 of the ESSO Act has been issued transferring the right, title and interest of M/s. ESSO in favour of HPCL. That once a Government Company (HPCL) has become lessee under the provisions of Section 7 of the ESSO Act it becomes entitled to seek renewal of lease on same terms and conditions under Section 5 of the ESSO Act. That therefore, HPCL is otherwise entitled to continue the lease upto 14 October 2022. That therefore, the Trial Court and the Appellate Court have erred in holding that the tenure of the Lease has expired.

6) Without prejudice to the above submissions Mr. Shete would lastly contend that after the decree of the Appellate Court, Plaintiff

No.2-Dilip Paygude, who was actually driving entire litigation on behalf of the Plaintiffs has agreed to renew the Lease in respect of the suit property in favour of the Defendant-HPCL by executing affidavit-cum-indemnity dated 12 February 2024. He would therefore submit that since the main Plaintiff who drove the entire litigation is agreeable for extension of Lease, the decrees passed by the Trial Court and the Appellate Court cannot be permitted to be operated. He would accordingly pray for setting aside the said decrees by allowing the revision application.

7) Mr. Patwardhan, the learned counsel appearing for Respondent No.1 would oppose the Revision Application by submitting that in absence of any perversity in the findings recorded by the Trial and the Appellate Court, this Court need not interfere in their concurrent findings in exercise of revisionary jurisdiction under Section 115 of the Code of Civil Procedure, 1908. He would submit that the Lease Agreement dated 14 October 1992 does not contain any covenants for extension of Lease. That the Lease has expired on 14 October 2012 and Defendant-HPCL is unlawfully occupying the suit property. That the offers made by Plaintiff No.2-Dilip Paygude were on 'without prejudice' basis and the same cannot be construed to mean an agreement between the parties for extension of Lease period. So far as the provisions of the ESSO Act are concerned, Mr. Patwardhan would submit that continuation of the Defendant-HPCL in the suit property is not by virtue of any subsisting Lease in favour of M/s. ESSO and transferred in the name of HPCL. That upon expiry of the initial Lease, Defendant -HPCL, chose to enter into separate contract with the owners and secured a fresh lease under the Agreement dated 14 October 1992. Now it cannot turn around and seek any rights under the provisions of Section 7 of the ESSO Act. That even if it is assumed that any right existed in favour of Defendant-HPCL under Section 5 of the

ESSO Act, the same is deemed to have been exhausted by seeking Lease vide Agreement dated 14 October 1992. He would submit that situation in the present case is squarely covered by ***Bharat Petroleum Corporation Limited V/s. Rama Chandrashekhar Vaidya and Another.***[1] He would pray for dismissal of the Revision Application.

8) Mr. Deshmukh, the learned counsel appearing for Respondent No.2-Dilip Paygude would submit that Respondent No.2 desires to stand by the contents of the affidavit-cum-indemnity dated 12 February 2024. In short, Respondent No.2-Dilip Paygude stands by the offer for renewal of Lease in favour of Defendant-HPCL.

9) Rival contentions of the parties now fall for my consideration.

10) There is no dispute to the position that tenure of Lease under Agreement of Lease dated 14 October 1992 has come to an end on 14 October 2012. It appears that some negotiations took place between Plaintiff and Defendant-HPCL for extension/renewal of the Lease, but the negotiations did not fructify into a valid Agreement. This led to filing of Suit by Plaintiffs seeking recovery of possession of the suit property from Defendant-HPCL.

11) First contention raised by Mr. Shete is about right of the Defendant-HPCL to seek renewal of Lease under Agreement of Lease dated 14 October 1992. I have gone through the covenants of the said Agreement and I am unable to find any specific covenant under which parties agreed to extend /renew the lease on its expiry after period of 20 years. Mr. Shete has attempted to link the Lease Agreement with the original Lease executed in favour of M/s. ESSO on 16 April 1962. He has also sought to contend that since possession of land

[1] (2014) 1 SCC 657

admeasuring 7,500 sq.ft. is handed back to Plaintiffs in pursuance of compromise decree, the land admeasuring 15,000 sq.ft. continues to be in possession of Defendant-HPCL and various clauses of the Agreement must be interpreted to mean existence of agreement between parties for renewal or extension of Lease. I am unable to agree. To draw an inference of existence of Agreement between parties for renewal/extension of Lease, presence of specific stipulation to that effect in the Lease Agreement is necessary. As observed above, there is no stipulation under which parties either agreed for extension of tenure of Lease or any right was conferred on Defendant-HPCL to seek renewal of the Lease. In my view therefore, the Agreement did not provide for renewal /extension of Lease and that the same came to an end on 14 October 2012.

12) Second submission of Mr. Shete is about conduct of parties as well as correspondence demonstrating existence of agreement for extension /renewal on Lease. Reliance in this regard is placed on letters dated 6 November 2012 and 13 March 2014 of Plaintiffs. No doubt, Plaintiffs were negotiating /dealing with Defendant-HPCL for extension of Lease for 10/ 15 years. However, both the offers given vide letters dated 6 November 2012 and 13 March 2014 were on 'without prejudice' basis. Therefore, mere addressing of the said letters did not mean that Plaintiffs agreed for renewal/ extension of Lease. There is nothing on record to indicate that offers made in the said letters were accepted by Defendant-HPCL or a valid contract was executed either formally or informally between the parties. I am therefore, unable to infer existence of Agreement for further extension /renewal of Lease on the basis of the said two letters dated 6 November 2012 and 13 March. 2014.

13) The next submission of Mr. Shete is about right of Defendant - HPCL to seek renewal of Lease on same terms and conditions under the provisions of the ESSO Act. He has relied upon provisions of Section 7 under which, the right, title and interest of M/s. ESSO, instead of continuing to vest in Central Government, could be vested in Government Company upon issuance of a Notification. Once such vesting occurs in favour of Government Company under Sub Section 1 of Section 7, such Government Company automatically becomes a Lessee. Furthermore, provisions of Sub Section (2) of Section 5 applied to lease or tenancy, which vests in Government Company as they applied to lease or tenancy vested in the Central Government. Section 7 of the ESSO Act provides thus:

> 7. (1) Notwithstanding anything contained in sections 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.
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> (2)Where the right, title and interest and the liabilities of Esso in relation to its undertakings in India vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.
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> (3)The provisions of sub-section (2) of section 5 shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government company.

14) Mr. Shete has strenuously submitted that Notification under Section 7(1) of the ESSO Act was issued by the Central Government. Findings recorded by the Appellate Court in paragraph 52 of its judgment do indicate that Notification dated 14 March 1974 was issued

by the Central Government vesting the right, title and interest of M/s. ESSO in HPCL.

15) Section 5 of the ESSO Act provides for Central Government becoming lessee or tenant in respect of the property in which M/s. ESSO was a lessee or tenant. Section 5 of the ESSO Act reads thus:

> 5 (1)Where any property is held in India by Esso under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government.
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> (2)On the expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day.

Under Section 5(2) of the ESSO Act Central Government has been given a choice to seek renewal of any lease or tenancy on same terms and conditions on which the lease or tenancy was held by M/s. ESSO.

16) As observed above, by virtue of provisions under Section 7(3), reference to the term Central Government under Section 5(2) is required to be construed as Government Company. Thus upon combined reading of Sections 5 and 7 of the ESSO Act, it is clear that HPCL had a statutory right to seek renewal of the lease on same terms and conditions on which the lease was held by M/s. ESSO.

17) In my view however, statutory right, of seeking renewal of lease under Section 5(2) of the ESSO Act could have been exercised by the Defendant-HPCL upon expiry of the original Lease dated 16 April 1962. The exact date of expiry of the said Lease dated 16 April 1962 is not known. However, it appears that the same expired sometime in the year 1992, on account of which a fresh Agreement of Sale dated 14

October 1992 was executed between the parties. The HPCL thus, had a right to seek renewal of entire piece of land admeasuring 22,500 sq.ft. on payment of some lease rent to Plaintiffs by virtue of provisions of Section 5(2) of the ESSO Act. In the facts of the case, it appears that Defendant -HPCL did not exercise the said right. This is clear from variety of factors. Firstly, HPCL entered into a separate, distinct and independent Agreement of Lease dated 14 October 1992 without making any reference to its statutory right under Section 5(2) of the ESSO Act. Secondly, it secured a fresh Lease in respect of the lesser area of land of 15,000 sq.ft. under the Agreement dated 14 October 1992. Thirdly, it agreed to pay different amount of lease rent than the one which was payable under ESSO agreement. Thus, it cannot be said that Agreement for Lease dated 14 October 1992 is on same terms and conditions on which the lease was granted in favour of ESSO. Having consciously not exercised the right under Section 5(2) of the ESSO Act by seeking renewal of Lease on same terms and conditions, Defendant -HPCL cannot now take a *volt face* and contend that it must be granted Lease as a matter of right upon expiry of tenure of Lease under Agreement dated 14 October 1992.

18) Furthermore, the right to seek renewal of Lease was only one time affair and said right did not accrue in favour of Defendant-HPCL concurrently or endlessly upon expiry of tenure of each Lease. Therefore, such right was required to be exercised prior to expiry of tenure of original Lease executed in favour of ESSO which was continued in favour of HPCL. The said statutory right under Section 5(2) of the ESSO Act cannot be exercised for extending the tenure of Lease under Agreement dated 14 October 1992.

19) Even if, the statutory right of renewal of Lease under Section 5(2) of the ESSO Act is deemed to have been exercised by the

Defendant -HPCL, the Lease Agreement dated 14 October 1992 will have to be construed as having been executed towards exercise of such statutory rights. Since the said right can be exercised only once, there is no question of exercising the same once again after 14 October 2012.

20) Therefore, seen from any angle, provisions of Section 5(2) of the ESSO Act does not come to the aid of Defendant -HPCL. Present case appears to be fully covered by judgment of the Apex Court in ***BPCL V/s. Rama Chandrashekhar*** (supra) in which the Apex Court held in paragraphs 9, 10, 11, 12 and 13 as under:

> 9. The original 1955 lease (which, as a matter of fact, is the only lease deed that came into existence between the parties) was for a period of 25 years and was due to expire on 28-2-1980. On 17-10-1979, the appellant gave the notice of renewal invoking the renewal clause in the lease deed. In the renewal notice, there is no reference at all to any provision, much less section 5(2) of the Act. After 28-2-1980, the appellant admittedly continued in occupation of the suit premises but it is undeniable that no fresh deed of lease was executed and registered renewing the terms of the previous lease.
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> 10. Now, let us examine what would be the position in the absence of a fresh deed being executed and registered between the parties. There are only two possibilities; one, that the renewal notice was in exercise of the renewal clause in the lease deed. If that be so, the execution and registration of a fresh deed of lease was essential for the renewal of lease to take place. (See: State of U.P. and others v. Lalji Tandon (dead) through Lrs.[(2004) 1 SCC 1] paragraphs 13 and 14: Anthony v. K.C. Ittoop & Sons (2000) 6 SCC 394 , paragraphs 8 to 11 and Hardesh Ores (P) Ltd. v. Hede and Company,(2007) 5 SCC 614].
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> 11. In case the renewal was claimed in terms of the stipulation in the lease deed (described as the "contractual right" by Mr. Sundaram), in the absence of a fresh deed of renewal, the appellant's status became that of a month to month tenant and after twenty five years, in that relationship it would be ludicrous for the appellant to turn around and claim renewal of lease under section 5(2) of the Act.
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> 12. Mr. Sundaram made an attempt to argue that it was not a case of renewal of lease but a case of extension of the term of the lease and in that case no fresh deed was required to be executed and registered between the parties. In support of the submission, he relied upon two decisions of Calcutta High Court, one by a division bench in Syed Ali Kaiser v. Mstt. Ayesha Begum[AIR 1977 Cal 226] and the other by a learned single Judge of the same court in Ranjit Kumar Dutta v. Tapan Kumar Shaw[AIR 1997 Cal 278]. We need not go into the question whether an extension of lease is permissible in the absence of any fresh deed for the simple reason that this is unquestionably a case of renewal

of lease and not of extension of lease. Thus, in case, renewal was claimed under a clause of the previous lease, the appellant has no case and the lessor cannot be faulted for terminating the tenancy by a notice under the Transfer of Property Act, 1882.

13. The other possibility is that though in the renewal notice dated October 17, 1979 there is no reference to section 5(2) of the Act, the renewal must be deemed to have taken place under that provision because the Act had come into force on January 24, 1976 and by virtue of section 5(2) of the Act, the renewal clause of the existing lease stood superseded. If the "renewal", beginning from March 1, 1980 is to be deemed under section 5(2) of the Act that would be a legally valid and correct renewal even in the absence of a fresh deed being executed between the parties, as was held in P. Kesavan (2004) 9 SCC 772. If that be the position, then the appellant has already exercised and exhausted its right under section 5(2) of the Act and there can be no question of a second renewal in terms of the statutory provision. Thus, viewed from any angle, the appellant cannot claim any further renewal of lease beyond 28-2-2005.

21) In my view therefore, Defendant-HPCL cannot seek any further renewal of lease by relying on provisions of Sub Section (2) of Section 5 of the ESSO Act.

22) This leaves the last submission made by Mr. Shete about offer made by Plaintiff No.2-Dilip Paygude for renewal of Lease. Plaintiff No.2-Dilip Paygude is not the sole owner in respect of the suit property It appears that all the Plaintiffs were jointly prosecuting the Suit and it was Plaintiff No.2 -Dilip Paygude, who mainly prosecuted the same on behalf of other two Plaintiffs. The appeal was also opposed by him by appearing before the District Court in-person. Plaintiff No.2-Dilip relied on as many as 14 judgments for seeking dismissal of the Appeal. It is therefore incomprehensible as to why Plaintiff No.2-Dilip Paygude agreed to renew the Lease in favour of HPCL in absence of any support from Plaintiff Nos.1 and 3. Since the land is indivisible as of now and since Defendant-HPCL requires the entire plot of land admeasuring 15,000 sq.ft. for operation of fuel station, offer made by Plaintiff No.2-Dilip Paygude in respect of his 1/3rd undivided share in the suit property does not enure to the benefit of the Defendant-HPCL. In fact, in the affidavit-cum-undertaking Plaintiff No.2-Dilip Paygude stated

that he would make efforts to resolve the dispute with his brothers and in the event of his failure to do so, he would get his shared partition for being leased to HPCL. Thus, Plaintiff No.2-Dilip Paygude will have to first seek partition of the property for fructification of offer made by him to Defendant -HPCL. The offer made by Plaintiff No.2-Dilip Paygude after passing of decree by the Appellate Court cannot be a reason for interfering in the concurrent findings recorded by the Trial Court and the Appellate Court.

23) In the facts of the present case, the tenure of Lease has expired on 14 October 2012. The Defendant -HPCL is in unlawful possession of the suit property after expiry of lease. The Trial Court and the Appellate Court have rightly directed Defendant-HPCL to handover possession of the suit property to Plaintiffs. I therefore, do not see any patent error in the decrees passed by the Trial Court and the Appellate Court. Civil Revision Application deserves to be dismissed and is accordingly dismissed.

[SANDEEP V. MARNE, J.]

24) After the order is pronounced, Mr. Shete would request for continuation of the interim order granted by this Court on 30 April 2024 for a period of 4 weeks. The request is opposed by Mr. Patwardhan. Since a fuel station is being operated at the plot in question, the interim order passed by this Court on 30 April 2024 shall continue to operate for a period of 4 weeks from today.

[SANDEEP V. MARNE, J.]