



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.525 OF 2019

1. Bharat Petroleum Corporation Ltd.
through its authorized Officer,
Registered Office at Bharat Bhavan,
3rd Floor, BPCL, 4 & 6, Currimbhoya Road,
Ballard Estate, Bombay,
through Power of Attorney Appellant No.2.
2. Territory Manager,
BPCL, Sunny Side, 7, Chitnis Marge,
Civil Lines, Nagpur.
3. The Sales Officer, BPCL,
Behind Vijay Miles, Badnera,
Tq. & Distt. Amravati.

...APPELLANTS

(Orig. Defts.)
(On R.A.)

...V E R S U S...

Pranay Ranapratap Malviya
Age 35 years, Occ: Professor,
R/o Camp, Amravati,
Tq. & Dist. Amravati.

...RESPONDENTS

(Orig. Plaintiffs)
(On R.A.)

Shri Abhay Sambre, Advocate for Appellants.
Shri P.R. Agrawal, Advocate for respondent.

CORAM :- M.W. CHANDWANI, J.

ARGUMENTS WERE HEARD ON :- 05.07.2024.
JUDGMENT IS PRONOUNCED ON :- 27.09.2024

JUDGMENT:

1. This second appeal challenges the judgment and decree dated 02.05.2011 passed by the 6th Joint Civil Judge,

Corrected as
Hon'ble Court's
order dated
19.3.2025.

Junior Division, Amravati in Regular Civil Suit No.87/2011 and confirmed by judgment and order dated 30.09.2019 by the District Judge-1, Amravati in Regular Civil Appeal No.113/2011, thereby directing the appellants-lessees to vacate the suit premises, leased out by the respondent.

The facts germane to dispose of this appeal can be summarised as under:

2. Appellant no.1– Corporation, dealing in distribution of petroleum products more particularly petrol, is a lessee of the land leased out by the respondent-owner of the land under registered lease-deed dated 24.04.2002 for the purpose of installing petrol pump for 29 years i.e. from 01.01.2002 to 31.12.2030. Under the lease agreement, the responsibility to pay municipal taxes is on the appellants. The appellants failed to pay the municipal taxes for the year 2005-06, therefore, Municipal Corporation, Amravati issued notice to the respondent-owner and demanded the property taxes of the suit property. The respondent informed this fact to the appellants by sending a telegraph. The appellants did not pay the municipal taxes, therefore, the respondent by notice dated 30.08.2007 terminated the tenancy of the appellant no.1. The appellants replied to the notice and

informed that the entire arrears of municipal taxes have been paid on 24.09.2007 and therefore, there is no question of termination of tenancy at all. The respondent filed the suit for eviction and possession against the appellants. By the impugned judgment and decree of the trial Court, the suit came to be decreed. The first appellate Court also confirmed the decree by its judgment and decree dated 30.09.2019 by dismissing the appeal of the appellants. Hence, the appellants approached this Court by filing this appeal under Section 100 of the Code of Civil Procedure.

3. The second appeal has been admitted on the following substantial questions of law:

“Whether the learned Courts below are justified in discarding the defence of correspondence with the municipal corporation about the exorbitant municipal taxes specifically when there is pleadings and the documents as secondary evidence, has been duly proved and exhibited by the defendants ?”

4. Mr. Abhay Sambre, learned counsel appearing on behalf of the appellants vehemently submitted that the Courts below did not consider the defence of the appellants that the appellants were pursuing the matter with the Municipal

Corporation, Amravati and for that purpose a letter dated 23.02.2006 (Exh.96) was written by the Assistant Manager of appellant no.1 to the Municipal Corporation seeking the rate and calculation on the basis of which, the tax was calculated. In response, the Municipal Corporation by its letter dated 28.06.2007 provided the details of the calculation and again by letter dated 11.08.2007 sent the relevant resolution of the Municipal Corporation, Amravati. Therefore, the appellants cleared the entire arrears of property tax on 24.09.2007. According to the learned counsel for the appellants, these aspects have not been considered by the trial Court as well as the first appellate Court and erroneously rejected the defence of the appellants on the ground that there is no pleading with regard to the correspondence made by the appellants to the Municipal Corporation, Amravati and by the impugned judgments and order passed the decree of eviction against the appellants.

5. Learned counsel for the appellants further submitted that the appellants have very well taken this defence in the written statement by mentioning that the appellants took up the matter with the Municipal Corporation to reduce the taxes and sought explanation regarding the manner of calculation of the tax and the

correspondence was going on between Municipal Corporation and the appellants. He took me to paras 13 and 18 of the written statement of the appellants. According to him, the trial Court as well as the first appellate Court lost sight of this factual aspect mentioned in the pleadings and erroneously recorded the finding that there is no mention of the letter dated 23.02.2006 and wrongly come to the conclusion that there is a breach of lease agreement on account of non-payment of Municipal Corporation taxes by the appellants.

6. Learned counsel for the appellants submitted that, inspite of the fact that correspondence is brought on record by way of secondary evidence permitted by the trial Court, it relied on the letter issued by the Municipal Corporation to the respondent under Right to Information Act stating that the appellants have not objected to the increase in the tax and erroneously held that there is a breach of express condition of the lease agreement. The trial Court failed to appreciate that taking a statutory objection under the Maharashtra Municipal Corporation Act which requires deposit of arrears of tax while taking the objection/appeal is different than seeking a clarification as well as manner of calculation in which the property tax was imposed. The

trial Court as well as the first appellate Court failed to appreciate this aspect of the case which resulted in passing of the decree in favour of the respondent. The sum and substance of the argument of learned counsel for the appellants is that, had the trial Court considered this defence of the appellants, it would not have recorded the finding that the appellants committed a breach of express condition of the lease agreement and would have dismissed the suit of the respondent. According to him, the finding recorded by the trial Court and confirmed by the first appellate Court does not sustain in the eye of law and requires to be set aside by allowing the appeal.

7. Conversely, Mr. Pravin Agrawal, learned counsel for the respondent contended that the entire written statement of the appellants does not whisper about or refer to the letter dated 23.02.2006 allegedly issued by the appellants to the Municipal Corporation demanding the manner and calculation of taxes. Rather, the respondent sought information from the Municipal Corporation, Amravati which reveals that no such objection to the tax was ever raised by the appellants before the Municipal Corporation, therefore, the trial Court and the first appellate Court rightly held that there is no pleading in respect of the letter dated

23.02.2006 and rightly appreciated the information received by the respondent from the Municipal Corporation with regard to the fact that no such objection was raised by the appellants, which goes to show that the said letter was never written by the appellants. Therefore, he sought rejection of the appeal.

8. Having considered the rival submissions as well as findings recorded by the trial Court as well as the first appellate Court that there is no pleading with regard to such correspondence by letter dated 23.02.2006, I have gone through the written statement filed by the appellant before the trial Court. Relevant paras 13 and 18 of written statement relied upon by the appellants are reproduced as under:

“13. That, after receipt of the information of the demand of taxes, the defendant took up the matter with the Municipal Corporation to reduce the taxes and the said proceeding was pending. That the defendant was also required to seek explanation about the manner of calculation of the taxes as there was phenomenal increased in the tax amount. That the copy of the documents entitling the corporation to collect the taxes at such a high rate was not received and the defendant pursued the said matter. That thereafter the defendant made efforts to challenge the amount of the tax demanded by the Municipal Corporation.

18. It is submitted that during the period, the correspondence, action for reduction of the taxes, moving of the application etc. were going on between the Municipal Corporation and the defendant. That inspite of repeated requests, the Municipal Corporation failed to supply the details and as soon as the clarification was received by the defendant, the payment was made to the Municipal Corporation.” (Emphasis supplied)

9. No doubt, the appellants have not mentioned specifically about the letter dated 23.02.2006 written to the Municipal Corporation in the exact words but, the fact remains that in para 13 of their written statement it has been specifically mentioned that the appellants took up the matter with the Municipal Corporation to reduce the taxes and persuaded the same. Rather, in para 18 of the written statement, it has been specifically mentioned that correspondence for reduction of taxes was going on between the Municipal Corporation and the appellants and inspite of multiple requests the Municipal Corporation failed to supply the details of taxes. Further, a statement has been made in the written statement that, as soon as the clarification was received by the appellants, the payment was made to the Municipal Corporation.

10. No doubt it is a settled principle of law that the party should not be permitted to travel beyond its pleadings and that all necessary material facts should be pleaded by the party in support of the case set-up by it. In absence of pleadings, the evidence led by the party cannot be considered. A new plea cannot be allowed to be raised which was, infact, not made in the written statement. At the same time, it is to be noted here that the object and purpose of pleadings is to enable the rival party to know the case it has to meet. If a plea was not expressly pleaded but, the pleadings in substances contain the necessary averment to make out a particular case and parties proceeded on that basis and has led evidence in that case, it would not necessarily disentitle the party to reply upon it if satisfactorily proved by evidence.

11. The Supreme Court way back in 1965, in the case of *Bhagwati Prasad Vs. Shri Chandramaul*¹ has observed in para 10 of the decision as under:

“10. But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew

¹ AIR 1966 SC 735

that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issue, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it ? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and had had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.”

12. Reference can also be made to para 6 of the decision of the Supreme Court in the case of *Ram Sarup Gupta (Dead) By LRs Vs Bishun Narain Inter College & Ors and others*¹, wherein the Supreme Court has observed in para 6 as under:

¹ 1987 (2) SCC 555: AIR 1987 SC 1242

“6.The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties

knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.”

13. The above view expressed in above referred decision also finds support from the decision of Supreme Court in case the *Bachhaj Nahar Vs. Nilima Mandal*¹, wherein in para 17 the Supreme Court held in para 17 as under :

“17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contains the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon.”

14. In the present case, though, there is no reference of the letter dated 23.02.2006 in the written statement, nevertheless, the appellants have specifically mentioned in para 18 of the written statement that correspondence between the appellants and the Municipal Corporation, Amravati was going on. Thus, the appellants have broadly and in substance pleaded the material particulars, to enable the respondent to get the substance of the pleading that the matter was being persuaded with the Municipal

¹ (2008) 17 SCC 491

Corporation, Amravati and therefore, municipal tax could be paid only in the month of September 2007. That apart, it is case of the respondent that he received the information under Right to Information Act that the appellants did not file any objection with the Municipal Corporation, Amrvati. This fact itself goes to suggest that the respondent was very much aware of the case of the appellants. Rather, the entire defence of the appellants was that they paid the municipal taxes in the month of September 2007 and prior to that they were in touch with the Municipal Corporation, Amravati to know the calculation and to reduce the taxes. The respondent also filed document to disprove the fact in substance pleaded by the appellant. Therefore, I find substance in the argument of the learned counsel for the appellants that the trial Court as well as the first appellate Court were not right in discarding this defence for want of pleading.

15. This takes me to the submission of the learned counsel for the respondent that the trial Court as well as the first appellate Court have considered the information received by the respondent from the Municipal Corporation, Amravati under Right to Information Act, which goes to show that no objection on the tax imposed by the Municipal Corporation, Amravati on the suit

property was raised by the appellants and rightly discarded the letter dated 23.02.2006 allegedly issued by the appellants. According to him, this material is sufficient to disbelieve the defence set-up by the appellants in their written statement that the tax was not paid since the appellants made correspondence with the Municipal Corporation seeking clarification and the manner of calculating property tax. The Courts below and decreed the suit of the respondent/plaintiff holding that there is a breach of lease agreement.

16. *Per contra*, learned counsel for the appellants vehemently submitted that the appellants never objected to the tax imposed by the Municipal Corporation, Amravati but only a clarification with regard to the calculation and the period for which the tax is imposed was sought by the letter dated 23.02.2006. There is a statutory right under the provisions of the Maharashtra Municipal Corporations Act to file an appeal/objection to the tax imposed by the Municipal Corporation by filing a formal appeal alongwith deposit of the entire tax with the Municipal Corporation, but, since no formal appeal/objection was filed by the appellants, the Municipal Corporation is bound to reply to the query raised by the respondent informing that no

objection was filed against the tax imposed on the suit property. But this aspect has not been considered by the appellate Court which resulted in miscarriage of justice.

17. Record reveals the appellants made attempt before the trial Court for direction to the Municipal Corporation, Amravati to produce the original letter dated 23.02.2006 which was refused by the trial Court. Even the reply given by the Municipal Corporation to the letter of the appellants has been filed on record. These aspects have not been considered by the Court below for want of pleadings. Be that as it may, perusal of the said letter shows that the appellants sought a clarification from the Municipal Corporation, Amravati asking for the period for which the tax has been levied and the rate and calculation on the basis of which the tax is calculated. Thus, by said letter, the information regarding imposition of tax has been sought by the appellants with readiness to pay the tax after clarification. Therefore, the contents of the letter sent by the appellant cannot be treated as a statutory objection or statutory appeal under the provisions of the Maharashtra Municipal Corporations Act. These aspects have been ignored by the trial Court as well as the appellate Court.

18. Now, let me deal with the sheet anchor argument of the

learned counsel for the respondent. According to him, xerox copy of the letter dated 23.02.2006 has been produced, which is not a secondary evidence at all. According to him, a photostat document cannot be received as secondary evidence. To buttress his submission, he seeks to rely on the decision of Supreme Court in the case of *Smt. J. Yashoda Vs. Smt. K. Shobha Rani*¹ wherein the High Court of Andhra Pradesh had held that a photocopy cannot be received as secondary evidence under Section 63 of the Indian Evidence Act and therefore, they ought not to have received the photocopy of the documents as secondary evidence. However, the Supreme Court while deciding the case in appeal did not make any observation in this regard but dismissed the appeal on the ground that the condition under Section 65 (a) of the Indian Evidence Act i.e. issuance of notice to produce the document before placing reliance on secondary evidence has not been issued complied with, therefore, the view taken by the High Court of Andhra Pradesh need not be interfered with. The judgment in the case of *J. Yashoda* (supra) will not be any assistance to the learned counsel for the respondent as it does not state that photocopy of a document cannot be received as secondary evidence. It states that secondary evidence is admissible when conditions laid down in Section 65 are satisfied.

¹ 2007 AIR (SC) 1721

19. In the present case, initially, the appellants moved an application before the trial Court for directing the Municipal Corporation, Amravati to produce the correspondence, particularly, the letter dated 23.02.2006 which came to be rejected on the ground that the defendant can take aid of the office copy of the said document. Thereafter, permission to lead secondary evidence was sought, which was allowed and the appellant was permitted to produce the document in the form of secondary evidence. Thus, proper compliance of section 65(a) has been done. A reference can also be made on the decision of *Bank of Baroda Vs. Shree Moti Industries* ², wherein while answering Question-B, this Court in para 25 has held as under:

“25. Let me now deal with the photo copies of some of the documents filed on record. Section 63 of the Evidence Act provides – for leading secondary evidence. Secondary evidence cannot be accepted without sufficient reason being given for non-production of the original. The loss of original document must be established in order to lead secondary evidence. Secondary evidence of the document can be allowed to be lead only where original is provided to have existed but was lost or misplaced (see Filmistan Private Ltd Vs. The Municipal Corporation for Greater Bombay, 1972 Mh.L.J 896 = AIR 1973 Bombay 66). The document

² 2009 (1) MhLJ 282

unless shown to have been compared with original one, mere copy of the document does not become secondary evidence. The person giving oral evidence, who accounts for the contents of the document, must have himself seen the original document and not a mere copy. "Seen" here will obviously mean "read". A person who proposes to testify the contents of a document, either by copy or otherwise, must have read it. The contents of private documents may be proved as secondary evidence by any witness who has in fact read them. The secondary evidence is required to be proved in the same manner in which primary evidence is proved."

20. In the present case, the witness of the appellant, who wrote the letter, has specifically mentioned in his evidence that he has written the contents of the document i.e. the letter dated 23.02.2006. Therefore, I do not find force in the argument of the learned counsel for the respondent that the letter cannot be admitted in evidence.

21. Having gone through letter dated 23.02.2006, it reveals that the appellant was ready to pay the tax but for want of period of tax and calculation, a clarification was sought by the appellant. It is further substantiated by the facts that after receipt of the details from the Municipal Corporation, Amravati vide Exhibits 97 and 98, the amount of tax has been duly paid by the appellants. In

view of this, the finding of the trial Court, confirmed by the appellate Court that the appellant breached the condition of the lease agreement does not stand and is required to be set aside. Hence, the substantial question of law is answered accordingly.

22. In view of the above, the judgment and decree of the trial Court, confirmed by the appellate Court is required to be set aside by allowing the appeal.

23. Accordingly, the appeal is **allowed**. The impugned judgment and decree dated 30.09.2019 passed by the 6th Joint Civil Judge, Junior Division, Amravati in Regular Civil Appeal No.87/2011 and confirmed by judgment and decree dated 30.09.2019 by the District Judge-1, Amravati in Regular Civil Appeal No.113/2011 are hereby set aside. The suit filed by the respondent is dismissed.

JUDGE

Wagh