

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.689 OF 2025**

Hindustan Petroleum Corporation Ltd. .. Petitioner

Vs.

Bassein Catholic Co-operative
Bank Limited & Ors. .. Respondents

...

Mr. Venkatesh R. Dhond, Senior Advocate with Mr. Ashwin Shete,
Mr. Rohit Jain i/by Jayakar & Partners, Advocates for the
Petitioner.

Mr. Nitin Thakkar, Senior Advocate with Mr. Agnel Carneiro, Mr.
Vipul Blive, Ms. Gayatri Sathe i/by Mulla & Mulla & Cragie Blunt
& Caroe, Advocates for the respondent nos.1 & 2.

Mr. Nilesh S. Bagade, Advocate for the respondent no.3.

Mr. Arjun S. Pawar, Advocate for the respondent no.7

...

**CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ**

DATE : 23rd JANUARY 2025.

P.C. :

1. Heard. The challenge raised in this writ petition is to the order passed by the Debts Recovery Appellate Tribunal (for short, 'DRAT') dated 08/01/2025 in Interim Application No.4 of 2025. By the said order, the learned Chairperson, DRAT recorded a finding that in the absence of any prima facie case being made out by the petitioner so as to enable it to continue in possession of the subject premises as a Lessee, no interim relief could be granted and its possession could not be protected.

2. Mr. Venkatesh R. Dhond, learned Senior Advocate for the

petitioner by referring to the lease deed dated 01/04/2005 entered into between the respondent no.3-Lessor and the petitioner-Lessee submitted that Plot No.1 was granted on lease to the Lessee for a period of fifteen years with an option of renewal for a further period of fifteen years in the manner specified in the lease deed. At the expiry of the initial period of fifteen years on 31/03/2020, the Lessee in accordance with the term of renewal of the lease continued its occupation as a Lessee for a further period of fifteen years. The period of the renewed lease was yet to expire and notwithstanding aforesaid, a notice for seeking possession came to be issued by the respondent no.1-Creditor pursuant to steps taken by it to recover its dues from the Lessor under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'Act of 2002'). He submitted that a notice under Section 13(2) of the Act of 2002 was passed on 12/09/2019 and an order under Section 14 of the Act of 2002 was passed on 13/07/2021. Since the Lessee faced the threat of dispossession, it approached the Debts Recovery Tribunal (for short, 'DRT') by filing a Securitisation Application alongwith an application for interim relief. Without considering various material aspects, especially the terms of the lease deed providing for a renewal of the lease on the expiry of the

initial period of fifteen years, the learned Presiding Officer, DRT refused to grant any interim relief on 06/09/2024. In the appeal preferred by the Lessee, the learned Chairperson, DRAT incorrectly held that in absence of a registered lease deed of renewal, it was not entitled for any protection. He submitted that on a misreading of the ratio of the decision in *Bharat Petroleum Corporation Limited Vs. Rama Chandrashekhar Vaidya and another*, (2014) 1 SCC 657 it was held that even for the purposes of renewal, registration of the lease deed was necessary. It was his submission that since the renewal of the lease was an inherent condition in the grant of lease and the Lessee continued in occupation at the expiry of the initial period of fifteen years, it could be inferred that the grant stood renewed. The relevant material on record was not considered in the proper perspective and the interim relief was refused. To substantiate his submissions, the learned Senior Advocate placed reliance on the decisions in *Govind Impex Private Limited and others Vs. Appropriate Authority, Income Tax Department*, (2011) 1 SCC 529, *Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others*, (2014) 6 SCC 1 and *Bajarang Shyamsunder Agarwal Vs. Central Bank of India and another*, (2019) 9 SCC 94. It was thus submitted that since the

Lessee was operating a petroleum outlet at the leased premises a case for grant of interim relief had been made out. He therefore submitted that the impugned orders be set aside and the prayer for grant of interim relief of protecting the possession of the Lessee be granted.

3. Mr. Nitin Thakkar, learned Senior Advocate for the Creditor opposed aforesaid submissions and supported the impugned orders. According to him, the learned Chairperson, DRAT rightly held that for the purposes of claiming the benefit of the renewal clause, a registered lease deed pursuant to such renewal ought to have been executed. He pointed out that the Lessee was operating the petroleum outlet through its Dealer who was in actual physical possession of the leased premises. The Dealer did not challenge the order passed by the DRT refusing to grant any interim relief and on the contrary he had submitted an undertaking dated 09/01/2025 in which it was stated that he was willing to handover possession of the Lessor and had denied having renewed the lease after 31/03/2020. It therefore it could not be said that the Lessee continued in lawful possession. The notice under Section 13(2) of the Act of 2002 had been issued prior to the expiry of the lease period and even on that count there

was no question of any renewal for being inferred. He referred to the decision in *Bharat Petroleum Corporation Limited (supra)* to submit that the learned Chairperson rightly applied the ratio of the decision to the facts of the present case. He prayed for dismissal of the writ petition.

4. Mr. Nilesh Bagade, the learned counsel appearing for the respondent no.3-Lessor submitted that in terms of the lease deed dated 01/04/2005, its renewal at the expiry of the initial period of fifteen years was not automatic. It was dependent upon the option of the Lessor and that the Lessor in clear terms had denied granting any such renewal of the lease. It was submitted by the learned counsel that even otherwise the Lessee after 31/03/2020 was irregular in the payment of lease rent. The initial Dealership that had been granted to the Lessor continued till the year 2019 and after the Dealership was cancelled, the respondent no.7 was appointed as a Dealer. In absence of any renewal of the lease, the DRAT was justified in refusing to grant any interim relief.

After the learned counsel for the parties were heard on 17/01/2025, Mr. Arjun Pawar, the learned counsel for the respondent no.7 tendered a short affidavit on behalf of said respondent. It was stated in the said affidavit that the respondent

no.7 was willing to clear the outstanding dues of the Creditor but there was no response to the offer made by her. It was stated that interim relief be granted in favour of the Lessee so as to protect the possession of the Dealer.

5. The learned Senior Advocate for the Lessee in rejoinder submitted by referring to the provisions of Section 116 of the Transfer of Property Act, 1882 that the status of the Lessee as a tenant holding over ought to be taken into consideration. Such possession was therefore lawful in nature. The undertaking given by the Dealer was of no consequence since his status was merely as a contractual licensee and nothing further. Referring to the decision in *Bajarang Shyamsunder Agarwal (Supra)* it was submitted that the interim relief as prayed for by the Lessee before the DRT be granted.

6. We have heard the learned counsel for the parties at length and with their assistance we have perused the documents on record. The Lessee claims its right to remain in occupation of the leased premises on the basis of lease deed dated 01/04/2005. The initial period of the lease was for fifteen years and this period was to come to an end on 31/03/2020. The lease deed contains

renewal option at the expiry of initial period of fifteen years. While the Lessee contends that such renewal for a further period of fifteen years from 31/03/2020 inheres in favour of the Lessee, it is urged by the Lessor as well as the Creditor that such renewal is not automatic and that it is subject to the consent of the Lessor as well as execution of a registered lease deed indicating such renewal. In this regard, the learned Chairperson, DRAT has relied on the decision in *Bharat Petroleum Corporation Limited* (supra) to hold that such renewal has to be evinced by a registered lease deed. Perusal of the aforesaid decision indicates that therein a registered deed of lease was executed on 22/09/1955 and the period of lease was twenty five years. There was a right of renewal stated in the lease deed for further period of twenty five years, after giving notice. It was found that at the expiry of initial period of twenty five years, no fresh lease deed was executed between the parties. In that regard, the Supreme Court held that in absence of any fresh deed of lease renewing the lease being executed and in the absence of any such registered document, it could not be said that there was any renewal of the lease.

In our view, ratio of this decision would apply to the facts of the present case. The terms of the lease executed on 01/04/2005 contain a renewal option. This would indicate that though there

was a stipulation for renewal of the lease, the same was required to be done through a renewed lease deed executed between the parties. Admittedly, there is no such document executed by the Lessor. It is further to be noted that the Lessor has in clear terms exercised his option and has refused to renew the lease after 31/03/2020. He has stated so in paragraph 13 of his affidavit dated 17/01/2025. Thus, in the absence of the lease deed being renewed after the initial period of fifteen years, it cannot be said that Lessee continued in lawful possession on that basis.

7. Yet another aspect to be noted is that shortly prior to the expiry of lease period on 31/03/2020, the creditor issued a notice under Section 13(2) of the Act of 2002 to the Lessor on 12/09/2019. In view of this notice, the provisions of Section 13(13) of the Act of 2002 would be attracted on the expiry of the initial lease on 31/03/2020. In other words, in the light of the notice issued under Section 13(2) of the Act of 2002, there could not have been any renewal of the lease without involving the Creditor who had issued such notice. Even this aspect would be relevant while considering the entitlement of the Lessee to seek protection.

8. For the aforesaid reasons therefore we find that no case has been made out by the Lessee warranting grant of any interim relief to it so as to protect its possession. The same has rightly been refused. Though the learned Senior Advocate for the Lessee raised a grievance that the impugned order fails to consider various relevant aspects as urged before the DRAT, we find that in the facts of the present case the refusal to grant any interim relief in favour of the Lessee does not call for any interference for the reasons given by us.

9. Hence, we do not find any merit in the writ petition. It is accordingly dismissed with no order as to costs.

At this stage, the learned counsel for the petitioner seeks stay of the operation of this order. This request is opposed by the learned Senior Advocate for respondent nos.1 and 2. He submits that as of today no notice proposing to take over possession has been given to the petitioner. He further submits that a notice when given would be for a period of ten days. The statement is accepted. Hence, the request for stay made on behalf of the petitioner stands rejected.

[M.M. SATHAYE, J.]

[A.S. CHANDURKAR, J.]