



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13710 OF 2025

Bharat Petroleum Corporation Ltd.

...Petitioner

V/s.

Mugatlal Bhagwandas Shah and Ors.

...Respondents

Mr. Pankaj Savant, *Senior Advocate with Mr. S.R. Page for the Petitioner.*

Mr. S.C. Naidu *with Mr. Pradeep Kumar i/b. M/s. C.R. Naidu and Co. for Respondent Nos.1, 6, 10 and 12.*

Mr. Kunal Bhanage *with Mr. Vasim Siddiqui i/b. Mr. Akshay Pawar for Respondent No.13*

CORAM: SANDEEP V. MARNE, J.

DATED: 18 MARCH 2026.

Oral Order

1) Petitioner-Bharat Petroleum Corporation (**BPCL**) is aggrieved by the Order passed by the Executing Court reviewing its earlier decision of issuance of warrant of attachment for execution of the decree for mesne profits/interim compensation only against Obstructionist-Dealer and has now issued warrant of attachment against Petitioner-BPCL also.

2) Petitioner challenges the Order dated 15 October 2025 passed by the Executing Court allowing Application at Exhibit-13 taken out by the Decree Holders seeking review of the Order dated 18 June 2025, by which the Executing Court had issued warrant of attachment only against the Obstructionist-Dealer (Respondent No. 13). By the impugned order, dated 15 October 2025 the Executing Court has reviewed the order dated 18 June 2025 and has directed issuance of warrant of attachment both against the Petitioner- BPCL as well as against the Obstructionist Dealer.

3) I have heard Mr. Savant, the learned senior advocate appearing for the Petitioner (BPCL), Mr. Naidu, the learned counsel appearing for Respondent Nos.1, 6, 10 and 12 (Decree Holders) and Mr. Bhanage, the learned counsel appearing for Respondent No.13 (Obstructionist-Dealer).

4) Petitioner-BPCL has suffered an ejectment decree in T.E. and R. Suit No.86/96 of 2001. The Decree holders filed Misc. Notice No.185 of 2005 against BPCL for *mesne* profits enquiry, which was allowed by the Small Causes Court vide judgment and order dated 13 August 2009. Thus Petitioner-Defendant is the only entity against whom *mesne* profits are determined by the judgment dated 13 August 2009. Petitioner deposited *mesne* profits of Rs. 1,12,46,274/- for the period from 1 August 2000 to 31 July 2010 in the Small Causes Court, which the Decree Holders have withdrawn. It is the case of the Petitioner-BPCL that it has vacated the possession of the premises on 31 July 2010. However, BPCL's Dealer- M/s. Madhav Motors Stores Pvt. Ltd. obstructed

execution of the decree and continued to possess the same. Since the decree was obstructed by the Dealer, the Decree Holder was required to take out Obstructionist Notice No.12 of 2010.

5) During pendency of the Obstructionist Notice, the Decree Holders filed Execution Application No.7 of 2018 for execution of the *mesne* profit decree dated 13 August 2009. The said Execution Application No.7 of 2018 was withdrawn by the Decree Holders on 16 November 2018 after receipt of the amount of *mesne* profits of Rs.1,12,46,274/- from BPCL.

6) In the Obstructionist Notice, order dated 2 February 2019 was passed by the Executing Court fixing interim compensation @ Rs.54,700/- per month from the date of obstruction i.e. from August 2010 and the Obstructionist Dealer was directed to pay the same. The order dated 2 February 2019 was reversed by the Appellate Bench of the Small Causes Court. Therefore, the Decree Holders challenged the order of the Appellate Court by filing Writ Petition No.2398 of 2020 in this Court. The Obstructionist Dealer also filed Civil Revision Application No.430 of 2018 questioning its liability to pay interim compensation. By judgment and order dated 4 May 2021, this Court allowed the Writ Petition filed by the Decree Holders and set aside the order of the Appellate Court and restored the order dated 2 February 2019 passed by the Executing Court. The Civil Revision Application filed by the Obstructionist Dealer was dismissed. In paragraph 46(vi) of the judgment and order dated 4 May 2021, this Court directed as under:

46(vi) It is made clear that the petitioner/decreed holder would have the option to execute the order of mesne profits either against BPCL or from the respondent no.1/obstructionist.

7) Petitioner-BPCL challenged the judgment dated 4 May 2021 passed by this Court by filing Civil Appeal No.6857 of 2023 before the Hon'ble Apex Court on account of option granted to the Decree Holders to execute the order of *mesne* profits either against BPCL or against Obstructionist Dealer. The Civil Appeal was disposed of by Hon'ble Apex Court by order dated 18 October 2023. Paragraphs 6 to 8 whereof read thus:

6. As the order dated 2nd February, 2019 is restored, the liability to make payments under the said order will be only of the obstructionist as directed under the said order 2nd February, 2019. The first to fourth respondents sought relief by way of the application at Ex.12 before the Small Causes Court only against the obstructionist.

7. In terms of the decree of eviction, on 13th August 2009 a direction was issued against the appellant-defendant to pay mesne profit. The said order has become final. However, whether under the said order, the appellant is liable to pay any amount or the first to fourth respondents are entitled to recover any amount, are the issues which were not the subject matter of the High Court proceedings and therefore the said issues will have to be left open to be decided in appropriate proceedings.

8. Subject to what is observed above, we set aside clause (vi) of the impugned judgment and order with a clarification that the liability to pay the amounts in terms of the order dated 2nd February, 2019 will be of obstructionist and not the present appellant.

8) In the meantime, since the Obstructionist failed to deposit the amount of interim compensation, its defence was struck off and the Obstructionist Notice was made absolute vide order dated 18 September 2021 directing the Obstructionist to handover vacant and peaceful

possession of the suit premises to the Decree Holders. The Decree Holders were also granted liberty to recover *mesne* profits from the Obstructionist as per order dated 2 February 2019.

9) The Decree Holders filed fresh execution proceedings being Execution Application No.48 of 2024 for execution of both *mesne* profit decree dated 13 August 2009 as well as order dated 18 September 2021 passed in Obstructionist Notice No.12 of 2010. In the fresh execution proceedings, Order dated 18 June 2025 was passed by which the Executing Court had issued warrant of attachment only against the Obstructionist-Dealer. By the impugned order dated 15 October 2025, the Executing Court has reviewed the order dated 18 June 2025 and has directed issuance of warrant of attachment both against the Petitioner-BPCL as well as against the Obstructionist Dealer.

10) Petitioner has filed the present Petition challenging the Order dated 15 October 2025 holding it liable for payment of *mesne* profits/interim compensation for the period, the premises were occupied by the Obstructionist.

11) In view of the above developments, a unique conundrum is created in the present case where *mesne* profits decree dated 13 August 2009 is passed against BPCL making it solely liable to pay *mesne* profits in respect of the premises from 1 August 2000. Petitioner-BPCL has complied with the said order and has paid *mesne* profits from 1 August 2000 to 31 July 2010. After 1 August 2010, the Petitioner-BPCL has not claimed possession in respect of the suit premises. Possession is exclusively by Obstructionist Dealer, on account of which Decree

Holders have required to take out Obstructionist Notice and in which Executing Court passed order dated 2 February 2019, which reads thus:-

1. Application (Exhibit No.12) is allowed.
2. The obstructionist is directed to deposit in the Court the interim compensation/mesne profits in respect of the suit premises at the rate of Rs.54,700/- per month since since the date of obstruction i.e. from the date of filing of the obstructionist notice i.e. from August 2010 to January 2019 on or before next date.
3. The obstructionist is further directed to deposit in the Court interim compensation/mesne profits in respect of the suit premises at the rate of Rs.54,700/- per month from February 2019 onwards on or before 10th day of each succeeding month till final disposal of the obstructionist notice.
4. Plaintiffs are at liberty to withdraw the amount as and when deposited by the obstructionist in the Court.
5. Costs in cause.

12) By subsequent order dated 18 September 2021 while making the Obstructionist Notice absolute, the Executing Court directed as under:-

- 1.The application vide Exhibit No.22 is allowed.
2. The defence of the obstructionists is hereby struck off.
3. The obstructionist notice is made absolute and the obstructionists are hereby directed to handover the vacant and peaceful possession of the suit premises to the plaintiffs within 30 (thirty) days from the date of this order.
4. The plaintiffs are also entitled to mesne profits from the obstructionists as per the order dated 02.02.2019 passed below application vide Exhibit No.12.
5. The obstructionists are hereby directed that they shall pay the costs of this application to the plaintiffs within 30(thirty) days from the date of this order.
6. Both parties to note the order.

13) Decree Holders have sought execution of both the *mesne* profits order dated 13 August 2009 as well as of the order dated 18 September 2021 granting them liberty to recover *mesne* profit from the Obstructionist in terms of order dated 2 February 2019. Thus, there are twin liabilities here. First liability is to pay *mesne* profits against the Petitioner-BPCL from 1 August 2000 and the second direction is to pay interim compensation against Obstructionist w.e.f. 1 August 2010. The Hon'ble Apex Court has clarified that the entire liability to pay *mesne* profits from 1 August 2010 is only against the Obstructionist and not against the BPCL. As observed above, the Hon'ble Apex Court has set aside Clause (vi) of the judgment and order dated 4 May 2021 and has directed that liability to pay amounts in terms of order dated 2 February 2019 will only be of the Obstructionist and not of Petitioner-BPCL. However, so far as the *mesne* profit order dated 13 August 2009 is concerned, the Hon'ble Apex Court has held that the issue of liability to pay *mesne* profits between the Petitioner-BPCL and Obstructionist Dealer is left open to be decided in the appropriate proceedings.

14) The BPCL has already paid *mesne* profits upto 31 July 2010. Obviously, the Decree Holder cannot recover *mesne* profits as well as the interim compensation in respect of the same period. The Hon'ble Apex Court has left the issue of liability to pay payment in respect of the period from August 2010 to be decided in appropriate proceedings. In my view, therefore in order to avoid any confusion, it would be necessary to decide the said issue.

15) Since the period in respect of liability of BPCL to pay *mesne* profits and liability of Obstructionist to pay interim compensation overlaps and considering the fact that the Decree Holders are entitled to receive only one out of the two payments, it would be appropriate to clarify that in respect of period from 1 August 2010 onwards, the liability to pay would only be against Obstructionist Dealer, without going into the nomenclature of the such payment. The Obstructionist has incurred the liability to pay the interim compensation @Rs.54,700/- per month in respect of period after 1 August 2010 onwards. If the Obstructionist was not to obstruct execution of the decree and was to vacate the premises with BPCL on 31 July 2010, there would not have been any question of making any payment to the Decree Holders. The Order dated 2 February 2019 directs only the Obstructionist to pay the compensation for the period after 1 August 2010. That liability is confirmed till the Apex Court. Para (vi) of this Court's Order granting option to the Decree Holders to recover the compensation payable after 1 August 2010 is set aside by the Apex Court. Therefore, there is no question of BPCL making any payment for the period after 1 August 2010 onwards.

16) Mr. Naidu has relied upon judgment of this Court in ***Bharat Petroleum Corporation Limited V/s. Paramjitsingh Ghai***¹. No doubt, this Court has held that since Dealer is inducted into the premises by BPCL, the responsibility to pay *mesne* profits till recovery of possession of the premises is on BPCL even though the actual physical possession may be with the Dealer. Ordinarily the principle of agency becomes applicable,

¹ Civil Revision Application No.328 of 2024, decided on 8 July 2024

and the principal becomes liable for the acts of the principal. However, the present case involves unique circumstances, which have been discussed above. Order passed by the Hon'ble Apex Court fixes the liability in respect of interim compensation for period from 1 August 2010 only against the Obstructionist. The option given to the Decree Holders to recover payment for the period after 1 August 2010 from either BPCL or from Obstructionist is already set aside. Since the Decree Holders are entitled to revive only one payment, the usual principle of principal's liability to pay for acts of agent cannot be applied in the peculiar facts of the present case. Also, the second execution proceedings are for execution of orders dated 18 September 2021 and 2 February 2019 which fixes liability only against Obstructionist. Ordinarily the principal liability to pay the mesne profits for the entire period would be on BPCL. However the Decree Holders have adopted the remedy of fixing and recovering interim compensation from the obstructionist. They ultimately got the Obstructionist Notice absolute on the strength of the order of fixation of interim compensation. Since the interim compensation was not deposited, the defence of the Obstructionist got struck off and the Notice was made absolute. Thus ultimate recovery of premises by the Decree Holders has linkage to order of fixation of interim compensation. Also, the Executing Court has altered and reviewed its own order which initially envisaged recovery of amount only from the Obstructionist. Considering the peculiar facts of the case, the ratio of judgment in ***BPCL V/s. Paramjitsingh Ghai*** (supra) cannot be applied in the present case.

17) In my view, therefore, the Decree Holders would be entitled to recover interim compensation / *mesne* profits for the period from 1 August 2010 only against the Obstructionist-Dealer. It is however clarified that this course of action is adopted in the light of peculiar facts of the present case.

18) In view of the clarification given above, the impugned order dated 15 October 2025 will have to be necessarily set aside and the earlier order passed by the Executing Court on 18 June 2025 will have to be restored.

19) Writ Petition accordingly succeeds, and I proceed to pass the following order:

- (i) Decree Holders shall be entitled to recover *mesne* profits / interim compensation in respect of the period from 1 August 2010 only from Obstructionist-Dealer and not from BPCL.
- (ii) Consequently, order dated 15 October 2025 passed by the Executing Court is set aside and order dated 18 June 2025 is revived.

20) Writ Petition is allowed in above terms. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]