

(2016) 04 PAT CK 0033
In the Patna High Court
Case No : Second Appeal No. 106 of 1998

Bharat Petroleum Corporation Limited APPELLANT
Vs
Chandra Deo Prasad and Others RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 5, Section 5(2), Section 7

Citation : (2016) 04 PAT CK 0033

Hon'ble Judges : Vijayendra Nath, J.

Bench : Single Bench

Advocate : K.N. Choubey, Sr. Advocate, Sanjay Singh and Uma Kant Prasad, Advocates, for the Appellant; Ganpati Trivedi, Sr. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vijayendra Nath, J.—1. Heard Mr. K.N. Choubey, learned senior counsel appearing for the appellant and Mr. Ganpati Trivedi, learned senior counsel appearing for the respondents.

2. The defendant in the suit for eviction is the appellant in the Second Appeal against the judgment and decree of reversal granting the decree of eviction to the plaintiff, as prayed.

3. The facts providing the context for adjudication of rival claim of the parties in short are that the fixed term tenancy was created between the plaintiff and the defendant through a registered lease deed on 20.07.1970 for a term of 20 years expiring on 20.07.1990 and on that basis the lessee -defendant which is now a Public Sector Oil Company is in possession over the suit property having an outlet for sale of petroleum products. The rental was fixed at Rs. 300/- per month. There was also a clause in the lease deed providing for renewal of the period of lease for further 10 years at the option of the lessee and also requiring the lessee to express the desire for renewal by giving notice to the lessor in writing prior to the expiry of the term of the lease. This right of renewal was

limited by the condition of performance of all the terms and conditions as stipulated in the lease deed by the lessee.

4. In November 1989, before the expiry of the period of lease, the lessor-plaintiff gave a notice to the lessee to vacate the suit premises and hand over the vacant possession of the same to the lessor on the expiry of the lease. However, registered letter dated 28.08.1989 is also said to have been sent by the lessee expressing the desire to renew the lease for a further term of 10 years invoking the renewal clause in the lease deed and later on a draft of lease agreement is also said to have been served upon the lessee for formal approval with request for renewal of the lease. But it is not in dispute that no renewal lease deed was executed and registered in accordance with law thereafter.

5. The lessor-plaintiff filed the suit on 12.09.1990 for eviction of the lessee-defendant on the ground of expiry of the term of the tenancy and also on the ground of personal necessity of the suit property. The lessee-defendant appeared in the suit and filed contesting written statement resisting the grant of relief to the plaintiff inter alia also on the ground that in terms of provisions contained in Sections 5 and 7 of the Burmah Shell (Acquisition of its Undertaking in India) Act 1976, the lessor-defendant were entitled to renewal of lease for a period equivalent to original lease period on the same terms and conditions.

6. The trial court dismissed the suit holding that the plaintiff had failed to establish the personal necessity of the suit premises as claimed and further also holding that in view of the renewal clause in the lease deed and exercise of the said option by the lessee, the lessor-plaintiff was not entitled to the decree of eviction as prayed. In appeal by the lessor-plaintiff, the appellate court below on reappraisal of the pleadings and evidence has come to the conclusion that there was no renewal of the lease by virtue of the renewal clause and therefore, after the expiry of the term of tenancy as fixed by the lessee, the lessor was not entitled to continue in possession over the suit premises. It has also been further held that in absence of the cogent evidence by the defendant to establish that the rent was paid and accepted by the plaintiffs after the expiry of the term of the lease or the plaintiff otherwise assented to continue the tenancy of the defendant over the suit premises after the expiry of the lease period, the defendant was not entitled to be in possession even by way of holding over. It has been finally also held that the possession of the lessee-defendant over the suit premises after the expiry of the period of lease on 20.07.1990 was illegal and the plaintiff was entitled to damages quantified at Rs. 400 per month from 21.07.1990 till the date of recovery of possession. The appeal has been accordingly allowed by the impugned judgment and decree.

7. This second appeal has been admitted for hearing on 05.05.1998, on the following substantial questions of law:--

"(i) Whether the appellate court erred in law by holding that the plaintiffs were entitled to the eviction despite the fact that the law recognizes that the lessee is

duly entitled to extension of lease if the lease agreement contains a renewal clause and demand for renewal was duly made!

(ii) Whether the appellate court below committed manifest error of law by ignoring to take notice that as per the parliamentary enactment i.e. Burmah Shell (Acquisition of its Undertaking in India) Act 1976, duly entitles the Company/appellant to demand a statutory renewal in terms of Section-7 of the Burmah Shell (Acquisition of its Undertaking in India) Act 1976 equivalent to the original lease period on the same terms and conditions!

(iii) Whether the court below committed a patent illegality by holding that the suit was maintainable as the lease was for a parti land, the B.B.C Act is not applicable, and in terms of the Hon"ble High Court Judgment, the suit is not maintainable."

8. Mr. Choubey, learned senior counsel appearing for the appellant has submitted that the appellate court below has ignored the provisions of Burmah Shell (Acquisition of its Undertaking in India) Act 1976 which is a special statute and by virtue of Section 5(2) of the said Act, the lease in question would stand renewed on the same terms and conditions on which the lease was held by Burmah Shell before the appointed day i.e. 24.01.1976. It has been therefore, propounded that in view of the fact of the contemplated automatic renewal of the lease, the decree for eviction as sought for by the plaintiff in the suit filed in the year 1990 could not have been granted. The learned counsel in support of the submission has placed reliance upon the decision of the Apex Court in the case of Bharat Petroleum Corporation Ltd. v. P. Kesavan & Another reported in , 2004 (9) S.C.C 772. It has been next contended by pressing the interlocutory application (I.A. No. 6890 of 2015) filed on behalf of the appellant that the appellant is entitled to restoration of possession over the suit premises because the plaintiff has taken forcible possession of the suit premises on 07.08.2013 during the pendency of this appeal. It has been submitted by placing reliance upon the decision of this Court in the case of Smt. Indrawati Devi v. Bulu Ghosh & Another reported in , AIR 1990 Pat. 1, that in this peculiar and exceptional circumstance, this Court must exercise its inherent power by issuing mandatory injunction for restoration of possession of the appellant over the suit premises.

9. Mr. Trivedi, learned senior counsel appearing for the plaintiff-respondents, in his turn has submitted that no relief can be granted to the appellant in this second appeal in the fact-situation when even the period by automatic renewal of the lease by virtue of Section-5(2) of Burmah Shell (Acquisition of its Undertaking in India) Act 1976, has also expired and the appellant is now not entitled to legally continue in possession of the suit premises after the expiry of the statutorily renewed period of lease. It has been canvassed that under similar facts and circumstances, the Apex Court in the case of Bharat Petroleum Corporation Limited v. Rama Chandra shekhar Vaidya & Another reported in , 2014 (1) S.C.C 657, has held that the appellant could not be granted another inning by invoking the aforesaid provision of renewal. In reply to the prayer and

submission made on behalf of the appellant in the context of the interlocutory application (I.A. No. 6890 of 2015), it has been argued that no such relief can be granted to the appellant in the second appellate jurisdiction as the allegations made in the interlocutory application involves determination of disputed questions of fact which are still under investigation by the police on the basis of the first information report said to have been lodged by the appellant. It has also been pointed out that the plaintiff-respondents have filed Execution Case No. 02 of 2012 for execution of eviction decree which is still pending but no such objection has ever been raised by the appellant in the said execution proceeding. It has also been argued that apparently the alleged dispossession of the appellant from the suit premises took place as far back as on 07.08.2013, but the appellant did not file any petition promptly either before this Court or before the executing court and the present interlocutory application (I.A. No. 6890 of 2015) has been filed only on 20.08.2015 in the midst of ongoing argument in this appeal which fact clearly indicates that the present application is only by way of ploy to prolong the litigation arising out from the suit for eviction.

10. From the perusal of the judgments of both the courts below and after consideration of the rival submission of the parties, it is pellucid that the tenancy was created in favour of the appellant for the suit premises by registered lease deed (Exhibit-1). The term of the lease was for 20 years ending on 20.07.1990. There was also a renewal clause in the lease deed providing for renewal of the lease for a further period of ten years. It is the case of the defendant-appellant that the option for renewal of the lease in terms of the renewal clause was exercised before the expiry of the period of lease. But the admitted position is that no fresh deed of lease was executed in pursuance to the said renewal clause. This Court however does not propose to enter into this issue in view of the provision of Section-5(2) of the Burmah Shell (Acquisition of its Undertaking in India) Act 1976 which provides for automatic renewal of such lease as held by the Apex Court in the case of P. Kesavan (supra) as the fact is luminescent that even after the said automatic renewal of the lease for a further period of 20 years, the renewed period has also admittedly expired on 20.07.2010 during the pendency of this appeal. The provisions of the aforesaid Burmah Shell (Acquisition of its Undertaking in India) Act 1976 do not contemplate second renewal and this position has been succinctly noticed by their Lordships in the case of Ram Chander shekhar Vaidya (supra) as follows:--

".....The other possibility is that though in the renewal notice dated 17.10.1979 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 24.01.1976 and by virtue of section 5(2) of the Act, the renewal clause of the existing lease stood superseded. If the "renewal", beginning from 01.03.1980 is to be deemed under section 5 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. 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 other further renewal of lease beyond 28.02.2005....."

11. The aforesaid dictum reinforces the conclusion that in any view of the matter the tenancy of the appellant over the suit premises was over on 20.07.2010 and now there is no possible defence to ejectment available to the appellant. Though this event has happened during the pendency of this appeal, this Court according to the well settled principles can take notice of the same in order to shorten litigation. The law in this regard has been encapsulated in a Bench decision of this Court in *Tata Iron & Steel Co. v. Abdul Ahad* reported in , AIR 1970 Pat. 338 as follows:--

"19..... It is a well settled principle of law that to shorten the litigation court can take into consideration the facts or events which have happened during the course of the pending litigation. Although ordinarily and generally rights of the parties are to be determined with reference to the date of the institution of the suit, subsequent events giving rise to new rights or even to new cause of action can also be taken into account for final adjudication of the dispute between the parties provided, of course, the subsequent event either of fact or law is such that there could not be possibly any valid defence if a new suit would be instituted on the said new fact, event or cause of action....."

12. Similar view has been spelt out in a later Bench decision of this court in the case of *R. Shahi v. Bala Prasad Motani* reported in , AIR 1978 Pat. 91 as follows:--

"18-A. Applying the principle to the facts of the present case, it appears that even if the clause for renewal had been given effect to, the lease would have been extended for a further period of five years only. There is no clause for any further subsequent renewals. That being so, the lease would again terminate after the renewal on 1st Sept. 1972. That date also to the misfortune of the appellant has gone by long since. Counsel for the appellant has not been able to tell us that there can be any valid probable defence to the ejectment on the ground of termination of the present lease. It is a well-settled principle that a Court takes supervening and subsequent events into consideration only for the purpose of making an adjudication final so as to dispose of the dispute between the parties finally and thus shorten the litigation. In that view of the matter, in the present case there can be no possible defence, justifying any right in the appellant to continue as a lessee after the termination of the lease. An order of eviction has, therefore, to be granted."

13. In view of the dictum in the aforesaid Bench decisions, this Court comes to the conclusion that a decree for eviction can also be passed on this additional and new ground taking in view the fact that the tenancy of the defendant stood determined on 20.07.2010 after the expiry of even the renewed period of lease.

14. In the result, the substantial questions of law as framed in this appeal are answered accordingly against the appellant and this Second Appeal is dismissed.

The judgment and decree of eviction passed by the appellate court below is affirmed with only alteration to the extent that the entitlement of the plaintiff for damages @ Rs. 400/- per month would be from 21.07.2010 till the date of recovery of possession of the suit premises from the appellant.

15. Before parting, it is necessary to take into notice the interlocutory application (I.A. No. 6890 of 2015) which has been filed during the course of hearing of this appeal on behalf of the appellant praying for restoration of the suit premises to the appellant. It has been alleged in the application that the plaintiff-respondents have raided the suit premises on 07.08.2013 along with illegal mob and took over the forcible possession of the suit premises along with the valuable properties of the appellant. It has also been stated that Raxaul P.S. Case No. 231 of 2013 has been registered for the offences under the Indian Penal Code against the accused persons including the respondents.

16. It transpires from the record that the aforesaid interlocutory application has been filed on 20.08.2015 when the hearing of this appeal was going on. It however also transpires from the records that prior to this, the interlocutory application (I.A. No. 4983 of 2012) was filed on behalf of the respondents on 02.08.2012, wherein, the prayer was made for issuing an order directing the appellant to stop the work of making ditch in portion of the disputed land and also from cutting sesame trees. From order dated 22.08.2012, it appears that nobody on behalf of the appellant appeared to contest the prayer made in the said application which was then directed to be considered at the time of hearing of the appeal. However, nobody again appeared on behalf of the appellant on 12.09.2012 when the appeal was taken up for final hearing and the appeal was dismissed for default with observation that no order on the I.A. No. 4983 of 2012 filed by the respondents was required in view of the dismissal of the appeal. After the restoration of appeal the interlocutory application (I.A. No. 3139 of 2015) was filed on behalf of the appellant on 05.04.2015, wherein, though the statement with regard to institution of the Raxaul P.S. Case No. 231 of 2013 relating to forcible dispossession of the appellant from the suit premises was mentioned but no prayer for restoration of possession was made by the appellant. Furthermore on behalf of the appellant the pendency of the Execution Case No. 2 of 2012 for execution of the impugned eviction decree has not been disputed but it could not be shown that the fact regarding the alleged dispossession from the suit premises has been brought to the notice of the executing court. It also appears from the averments made in the interlocutory application (I.A. No. 3139 of 2015) that the prayer of the appellant for a direction to the district officials to act on the complaint of the appellant and to free the premises in question from the illegal occupation of the respondent did not find favour by this court in C.W.J.C No. 1591 of 2014 filed by the appellant.

17. In this backdrop, after the dismissal of the present appeal affirming the eviction decree passed against the appellant and also in view of the pending execution case for execution of the eviction decree as well as pending criminal

proceeding relating to the present allegation, this Court is not inclined to enter into the disputed questions of fact, after allowing the additional prayer of the appellant for restoration of possession over the suit premises. The interlocutory application (I.A. No. 6890 of 2015) accordingly stands disposed of with liberty to the appellant to seek appropriate relief in any other way that may be available to the appellant in law.

18. The second appeal is dismissed but without cost.