
(2004) 02 AP CK 0095
In the Andhra Pradesh High Court
Case No : SA No. 94 of 2000

Hindustan Petroleum Corporation Limited	APPELLANT
Vs	
M.S. Kareem (died) by LRs.	RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Transfer of Property Act, 1882 — Section 105

Citation : (2004) 3 ALD 71 : (2004) 3 ALT 336

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P.V. Sanjay Kumar, for the Appellant; Meher Chand Noori, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Sri P.V. Sanjay Kumar representing the appellant, the unsuccessful defendant in both the Courts below—M/s. Hindustan Petroleum Corporation Limited, had raised the following substantial question of law:

2. Whether the Courts below had not misinterpreted the terms of the lease deed—Clauses 2(c) and 3 (d).

All other questions are only ancillary to the principal question involved in the Second Appeal.

3. The suit O.S. No. 137/92 on the file of Principal Junior Civil Judge, Hyderabad West and South, Ranga Reddy District, was filed by the plaintiff, M.A. Kareem for eviction and other reliefs, who died during the pendency of the suit and the legal representatives who were brought on record are at present prosecuting the present litigation. The suit was decreed on 23-12-1998 and aggrieved by the same, the defendant/Corporation preferred Appeal A.S. No. 44/98 on the file of I Additional District Judge, Ranga Reddy and the same was dismissed on 9-12-1999 and aggrieved by the same, the present Second Appeal is preferred.

Submissions of Sri P.V.Sanjay Kumar:

4. The learned Counsel representing the appellant/defendant/Corporation submitted that the right to have the renewal of lease is not in controversy between the parties. The Counsel also in all fairness submitted that the question whether M.A.Kareem alone or the legal representatives of him subsequent thereto can maintain this action or all other heirs also should be on record, cannot be agitated in this Second Appeal in view of the concurrent findings in this regard. The learned Counsel also maintained that the crucial question is whether there has been breach of covenants specified in Ex.A-1 and whether the terms of Ex.A-1 had been interpreted properly especially in the light of Clause 2(c) and Clause 3(d) of Ex.A-1. The learned Counsel explained the aforesaid clauses in detail and would maintain that there was no breach at all. The learned Counsel further submitted that the renewing period also lapsed long back and since no amendment was prayed for in this action, the cause of action does not survive and hence the respondents/plaintiffs" may have to institute yet another suit on the strength of fresh cause of action. The Counsel also would maintain that the time of 60 days and 30 days specified in Clause (d) would assume lot of importance and much emphasis was laid on the expression "after being demanded". Right to sue and cause of action were elaborately argued. Certain submissions also were made relating to subsequent events and certain interlocutory orders made during the pendency of the Appeal. Reliance was placed on Bhagwati Prasad Vs. Shri Chandramaul, , Jadu Gopal Chakravarty (Dead) by his Lrs. Vs. Pannalal Bhowmick and Others, , Nagumilli Narayanamurthy v. Gudimetla Gangaraju AIR 1958 AP 451, Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, , Bhusawal Borough Municipality Vs. Amalgamated Electricity Co. Ltd. and Another, and Hindusthan Petroleum Corporation Ltd. Vs. R.P. Agarwalla and Brothers (Pvt.) Ltd., .

Submissions made by Mr.Meher Chand Noori:

5. The learned Counsel representing the respondents would maintain that payment of rent with due diligence is the duty of the lessee and where the duty is not performed, that itself would amount to breach of covenant to pay the rent. The learned Counsel in detail had explained Exs.A-1 to A-15 and would contend that breach of covenant normally is a question of fact. Even otherwise, Ex.A-1 may have to be read as a whole for ascertaining whether breach was committed or not. The Counsel also had submitted that Ex.A-1 as such is not a completed document and it is only an agreement which would require registration to be construed as a completed lease transaction. The learned Counsel further submitted that Ex.A-1 was interpreted properly in the light of the evidence available on record, especially on the strength of admission made by DW-1 in relation thereto and hence there is no substantial question of law involved in the present Second Appeal and such concurrent findings cannot be disturbed while exercising jurisdiction by this Court u/s 100 of the Code of Civil Procedure. Strong reliance was placed on Veerayee Ammal Vs. Seeni Ammal, .

6. Heard both the Counsel and perused the oral and documentary evidence available on record and also the findings recorded by both the Courts below.

7. It was pleaded in the plaint in O.S. No. 137/92 on the file of Principal Junior Civil Judge, Hyderabad West and South, Ranga Reddy as hereunder:

8. The plaint schedule land originally belonged to Smt. Zahara Begum and her four sons M.A.Karim (1st plaintiff), M.A. Nizamuddin, Mohd.Shahabuddin and Kaja Moinuddin. The vacant part of land was leased out by the said persons to the defendant under registered lease deed on 8-11-1978. The purpose of the lease was to carry on trade in Petroleum products and kindred motor accessories of the defendant by installing in the schedule plot roadways, pathways, under ground tanks, delivery pumps, shelters, buildings etc., the period of lease was 10 years commencing from First Day of October, 1978. The rent stipulated was Rs. 800/- p.m. payable annually in advance each year on or before 7th day of October. The lease deed was duly executed and registered mentioning the terms and conditions of the lease. In terms of the lease agreement the defendant entered into possession of the land and is carrying on business in petrol through its dealer M/s. Lakshmaiah and Brothers. There was partition of properties in the family between Smt. Zahara Begum and her four sons prior to 31-12-1979 according to which the 1st plaintiff became sole and exclusive, owner of the suit property leased out to the defendant. By joint letter dated 31-12-1979 Zahara Begum and her four sons informed the same to the defendant requesting to pay the annual rent to the 1st plaintiff. The letter was acknowledged on 7-1-1980 by the defendant's employees by name M.V.S.Manian. Separately Zahara Begum and her four sons addressed letters to the defendant informing about the settlement of properties. As per the terms of the lease the defendant has to deposit the monthly rent annually in advance within stipulated period i.e., on or before 7th day of October after intimating to the lessors. But the defendant failed to do so. The rent of Rs. 9,600/- for 1986 was deposited on 11-11-1986 in part i.e., only 9,590/-, for 1987 the rent was deposited on 9-11-1987 to an extent of Rs. 9775/-, for 1988 only Rs. 795/- rent was deposited on 4-11-1988, for 1989 also only Rs. 795/- was deposited on 12-10-1989 and for 1990 no amount was deposited. Zahara Begum died on 12-1-1980. However, as usual the rent continued to be deposited in the joint savings account No. 9460 in Indian Overseas Bank of the 1st plaintiff and Zahara Begum. Upto 1985 the full amount of rent i.e., Rs. 9,600/- was being remitted into the Bank under intimation to the lessors. But subsequently since 1986 the practice of intimation was discontinued in consequence of which the lessor was kept in dark about actual rent deposited. The period of lease under lease deed dated 18-11-1978 expired on 30-9-1988. Ignoring the breaches and defaults committed by it, the defendant addressed a letter dated 22-6-1988 to Smt. Zahara Begum and her sons expressing its option to continue the lease for a future period of 10 years from 1-10-1988 to 30-9-1998 as per Clause 2(c) of the lease agreement. Mere intimating to the lessor about exercising the option of renewal was not enough. By the date of exercising the alleged option, two more conditions had to be complied with,

firstly there should not have been any breaches on the part of the defendant of any of the covenant under the lease. Secondly the defendant was to obtain fresh grant of lease from the lessor for a fresh period of ten years. Neither of these requisites had been fulfilled or attempted to be fulfilled by the defendant. The defendant did not pay full amount of annual rents for the year 1987 and 1988 under intimation to the lessors as stated earlier as per Clause 3(B) of lease deed dated 8-11-1978. As the defendant failed to observe the covenants under the lease, it is not entitled for renewal of the lease as per Clause 2(C) in the agreement. The defendant also failed to pay the municipal and other taxes for the super structures put up by it. The defendant also accumulated huge arrears of electricity consumption charges. The unilateral presumption of extension of lease for a period of ten years from 1-10-1988 by the defendant is of no legal effect. The defendant is deemed to be a monthly tenant holding over from 1-10-1988 and is not entitled to claim the benefit of the renewal incorporated in the expired lease deed. The tenure of each tenancy month commences from the first of each month to the end thereof. The rents in the locality increased exorbitantly. There cannot be a one sided and unilateral exercise of option. In spite of repeated demands by the plaintiff, the defendant's stubborn refusal to adopt a reasonable attitude towards the plaintiff is illegal. The plaintiff therefore got issued a notice through his Advocate dated 29-9-1991 u/s 106 of Transfer of Property Act read with Section 80 of the CPC terminating" the tenancy of the defendant over the plaint schedule property calling upon it to vacate the same by first January 1992 after removing the structures, petrol pumps, under ground tanks etc. The defendant was also requested to pay all the arrears of rent upto date. The defendant received notice on 30-9-1991 and sent reply on 16-10-1991 admitting the breach of the terms of the lease and non-deposit of full amounts of rents and also sent arrears of rent till 30-9-1992. The plaintiff received cheque for Rs. 36,845/- remitted by the defendant to the plaintiffs" Advocate along with the reply, without prejudice to his right to evict the defendant from the premises. Taking into consideration the defiant and indefensible attitude of the defendant the plaintiff had no other alternative except to seek the eviction of the defendant from the plaint schedule property and recovery of damages for use and occupation at Rs. 3,000/- per month from 1-10-1991 onwards till the date of delivery of possession.

9. The appellant herein/defendant in the suit/Corporation filed, written statement pleading as follows:

10. It was pleaded that as per clause 2(C) of lease deed dated 8-11-1978, the defendant is entitled for extension of the lease for a further period of ten years from the expiry of the initial period of ten years covered by the lease deed. Unless the partition of properties in the family of Zahara Begum and her sons is proved or borne out by registered document, the plaintiff cannot, according to law claim exclusive entitlement to the leased property. No doubt by a joint letter the plaintiff, his mother and brothers requested for the payment of rent from 1-10-1980 onwards to the plaintiff. The defendant complied with the said request

as a matter of convenience for the lessors, but this act on the part of the plaintiff does not in any way give the plaintiff an exclusive right as the sole lessor or the sole owner of the suit property in the face of the mandatory requirement of law for recognizing a partition of the properties as valid. The correct amounts of Rs. 9,600/- per annum were remitted for the periods 1-10-1986 to 30-8-1987 and 1-10-1987 to 30-9-1988. But the deficit of Rs. 10/- and Rs. 25/- respectively were appropriated by the Bank towards collection charges. On account of computerization error the rents for subsequent periods from 1-10-1988 to 30-9-1988, 1-10-1989 to 30-9-1990 and 1-10-1990 to 30-9-1991 were remitted short wherein the Bank also appropriated collection charges, thus recording a remittance of only Rs. 795/- p.a. to the plaintiff. The last of the aforesaid remittances was in fact returned by the Bank as the joint account of the plaintiff and his mother was closed. For the first time these lapses were brought to the notice of the defendant on 29-9-1991 through plaintiffs' notice which was replied. As per requirement in Clause 3(d) of the lease deed the entire short remittances together with annual rent commencing from 1-10-1991 was sent by cheque to the plaintiff, There was no obligation on the part of the defendant to intimate the plaintiff of every remittance of rent in the account. The right of renewal of lease by the defendant is lawful and well founded as per Clause 3(d) of the lease deed. There were no breaches on the part of the defendant at the time of exercising the right of extension of lease. There was no necessity for a fresh lease for additional term nor the defendant has to comply any other conditions as alleged in the plaint. The deficit payment of rents were made good immediately after receipt of the notice. There were no arrears of taxes and electricity consumption charges payable by the defendant. It is denied that the defendant is a monthly tenant holding over from 1-10-1988. The defendant is a tenant for the entire additional term for ten years by virtue of the contractual option. The escalation of the rental values has no relevance whatsoever to the option for renewal of the lease under Clause 2(c). The plaintiff having executed the lease deed along with other lessors cannot now question the option clause and he is legally estopped from doing so. It was denied that the rents in the locality have gone up manifold. Notice u/s 105 of the Transfer of Property Act is not a valid notice and it does not terminate the lease according to law or any terms of the lease. The defendant is not liable to pay any damages. The plaintiff himself is not competent to institute any suit for eviction. The suit is bad for non-joinder of proper and necessary parties. There was no cause of action to file this suit and the defendant is entitled to continue in the premises as lessee.

11. The following issues were settled in the Court of first instance:

1. Whether the plaintiff is entitled for ejectment of defendant from the suit property ?
2. Whether the plaintiff is entitled for damages for use and occupation for Rs. 4,400/- for January and February 1992 ?
3. Whether the suit is bad for non-joinder of necessary parties ?

4. Whether the plaintiff is entitled for future mesne profits at Rs. 3,000/- p.m. ?
5. Whether the eviction notice dated 29-9-1991 is valid notice u/s 106 of T.P. Act?
6. To what relief ?

On behalf of the respondents/plaintiffs, PW-1 and PW-2 were examined and Exs.A-1 to A-16 were marked and DW-1 was examined on behalf of the appellant/ defendant and the suit was decreed with costs directing the defendant/ Corporation to vacate the suit premises and handover vacant possession within three months and also directing the defendant/Corporation to pay Rs. 2,400/- towards damages for January and February and Rs. 2,000/- per month from March 1992 till delivery of possession on payment of Court fee. In the Appeal A.S. No. 44/98 on the file of I Additional District Judge, Ranga Reddy, preferred as against the said Judgment and decree, at para-6 the following Points for consideration were framed:

1. Whether the defendant is entitled for renewal of the lease ?
2. Whether the plaintiff alone is entitled to file the suit for recovery of possession ?
3. Whether the Judgment and decree passed by the learned Principal Junior Civil Judge is legal and sustainable ?
4. To what relief?

The said Points were discussed at paras 7 to 9 and ultimately at para 10 the appellate Court held that the findings of the trial Court deserve to be confirmed and dismissed the Appeal with costs giving two months time to vacate the premises.

12. The whole controversy revolves round the interpretation of Clauses 2(c) and 3(d) of Ex.A-1. Ex.A-1 is dated 8-11-1978. The said document is styled as agreement of lease and at the commencement itself it reads :

"AND WHEREAS the Lessee requested the Lessors to grant them a lease of the demised premises for a period of ten years on the terms and conditions herein contained and renewable in the manner hereinafter appearing.

AND WHEREAS the Lessors has agreed to grant to the Lessee a lease of the demised premises for the period of ten years and renewal thereafter as herein provided at a monthly rental and on the terms and conditions hereinafter referred to and contained.

NOW THIS DEED WITNESSETH that in consideration of the rent hereinafter referred and of the covenants and conditions hereinafter contained and on the part of the LESSEE to be paid, observed and performed, the Lessors hereby demise unto the Lessee ALL AND SINGULAR the land situated at Balanagar in the Registration Sub-District of Hyderabad West, District Hyderabad and more particularly described in the schedule hereto and delineated on the plan hereto

annexed being thereon surrounded by a red colour boundary line, and containing by admeasurement 1514.5 sq. meters or thereabouts, TO HOLD the demised premises together with all ways passages, lights, drains, sewers, water courses, rights, easement advantages and appurtenances whatsoever to the demised premises belonging or therewith usually held or enjoyed and TOGETHER also with the right for the Lessee to install, erect and maintain in and upon the demised premises roadways, pathways, and underground tanks and delivery pumps, shelters, building structure, tube wells, erection or equipment whether of a permanent or temporary nature as it may consider necessary from time to time without the permission of the Lessor, for purpose of storing, selling or otherwise carrying on trade in petroleum products, oil and kindred motor accessories or any other trade or business which the Lessee may think fit unto the Lessee for a term of 10 years commencing from First day of October 1978 renewable and determinable as hereinafter provided yielding and paying therefore unto the Lessors during the said term monthly and proportionately for any part of a month the rent of Rs. 800/-(Rupees eight hundred only) payable annually in advance each year on or before the seventh day of the month of October, subject however to the said monthly rent being reduced proportionately in the event of any portion of the demised land being acquired by any authority for road widening or for any public purpose."

Clause (1) of the said agreement reads as hereunder:

The Lessee do hereby covenant with the Lessors as follows :

- (a) To pay the rent reserved at the time and in manner aforesaid
- (b) To obtain and renew all necessary licenses and permits in respect of the demised premises by reasons of its being used for storing, selling or otherwise carrying on trade in petrol petroleum products all and kindred motor accessories AND to observe and perform all local police and Municipal Rules and Regulations in connection with such uses.
- To pay all charges for Gas or Electricity consumed in or upon demised premises as shown by the separate meter or meters thereof and to pay the rent of such meter or meters.
- (d) To permit the Lessors and their agents duly authorized by them to enter into and upon the demised premises at all reasonable times for the purposes of viewing the conditions of the demised premises.
- (e) To indemnify and to keep indemnified the Lessors against all claims, demands, suits, decrees and awards whatsoever which may be brought or passed against the Lessors by reason of any damage caused to any adjoining owners or occupants and other by reasons of any explosion or other accident consequent upon such uses of the demised premises as aforesaid.
- (f) To deliver up the demised premises to the Lessors at the expiration or sooner determination of the said term or its renewal after restoring the demised

premises in its former condition.

Likewise, Clause (2) of Ex.A-1 agreement deals with Lessors' covenants with Lessee and Clause 2(b) specifies as hereunder :

"That if the Lessees shall punctually pay the rent and observe and perform the covenants and conditions on the part of the Lessee therein contained the Lessee shall quietly enjoy the demised premises during the period of the Lease or its renewal without interruption by the Lessors or any persons lawfully claiming under or in trust for the Lessors or otherwise howsoever."

Clause 2(c), which is very relevant for the present purpose reads as hereunder:

"That the Lessors shall on the written request of the Lessee made before the expiry of the term hereby created and if there shall not at the time of such request be any existing breach or non-observance of any of the covenants on the part of the Lessee hereinbefore contained grant to Lessee a lease of the demised premises for the further term of ten years from the expiration of the said term at the same rent and containing the like covenants and provisos as are herein contained."

Clause 3(d) specifies :

Provided always and it is mutually agreed as follows :

If any rent shall be 60 days in arrears (after being demanded) or if the Lessee shall omit to perform or observe any covenant or condition on the part of the Lessee herein contained and shall continue for 30 days after notice thereof to the Lessee the Lessors may reenter forthwith upon the demised premises or upon any part thereof in the name of whole and the lease shall thereupon determine but without prejudice to any claim which either parties hereto may have against the other in respect of any breach, non-performance of any of the covenants and conditions herein contained.

The words "....60 days in arrears (after being demanded)" and the words "....shall continue for 30 days after notice thereof..." in Clause 3(d) of Ex.A-1 had been stressed with all emphasis by the Counsel for the appellant and elaborate arguments were advanced in this regard. In the decision referred *Bhusawal Borough Municipality v. Amalgamated Electricity Company Limited, Bhusawal and Anr. (supra)*, the Apex Court held that misconstruction of a document which is not merely of evidentiary value but one upon which the claim of a party is based would be an error of law and the High Court in second appeal would be entitled to correct it. In the decision referred *Jadu Gopal Chakravarty v. Pannalal (supra)*, the Apex Court held that the construction of basic documents which go to the root of the matter would be a question of law and hence the same could be gone into in a Second Appeal.

13. There is no controversy relating to the right to seek renewal of lease. Ex.A-11 is dated 22-6-1988 to which option was exercised by the defendant/

Corporation seeking renewal even before the expiry of the lease on 30-9-1988. The property in question was taken on lease from Zahara Begum and sons in 1978 for ten years on a monthly rent of Rs. 800/- payable only in advance on or before 7th October, Ex.A-13 dated 29-9-1991 is quit notice issued by the 1st plaintiff to the defendant/Corporation. Ex.A-14 is the reply by the Corporation dated 16-10-1991. The 4th plaintiff was examined as PW-1 and another witness was examined as PW-2. To Ex.A-14, the defendant/Corporation attached a list showing details of payment from 1-10-1986 to 30-9-1987 which would definitely show that the payment was not regular. The admission made by DW-1 that rent is payable by every year by 7th October also would show that payments were highly irregular. No doubt after receipt of notice, the defendant/Corporation paid arrears by way of cheque received by the plaintiffs under protest. DW-1 also admitted that the non-deposit of rents punctually would amount to breach of covenant. Clear findings concurrently had been recorded that during the period of lease of ten years coming to end by 30-9-1988, there was breach of covenant relating to deposit and hence the defendant/Corporation cannot exercise the option of renewal under Clause 2(c) of Ex.A-1 read along with Clause 3(d) of the said Ex.A-1. Now, the Corporation intends to put forth a too technical interpretation of the terms of Ex.A-1 to ward off the decree of eviction, which in my considered opinion, is impermissible. The document as a whole must have to be read while understanding the intention of the lessor and the lessee as well in a lease transaction and a particular Clause cannot be read in isolation. Hence, the Courts below had not misinterpreted the terms of Ex.A-1.

14. On the aspect of right of renewal in relation to the lease transaction, strong reliance was placed on the decision referred H.P, Corporation Limited v. R.P. Agarwalla and Bros. (P) Limited (supra), wherein it was held at paras 29 and 30 as hereunder:

"Admittedly, the lease (Ext.1) was due to expire with effect from 31st Jan, 1980 and there was or has also been no doubt that an employee of the defendant appellants was in possession of the said flat, even after such expiry. It was the claim and contention of the plaintiff/respondents, in the facts and circumstances as indicated hereinbefore viz., that the lease was not extended or the extension of the same was not having been duly asked for by the defendant/appellants, they were not entitled to any protection against their eviction. Such claim, was of course denied and disputed by the defendant/appellants and their specific case was that, by Ext.3, before the expiry of the term of the concerned lease, they had duly applied and asked for renewal of the same and they were in possession of the said flat on the basis of renewal under Clause 10 of Ext. 1, as well as under the provisions of the said Act, as indicated hereinbefore. The terms of the said Clause 10 of Ext.1 have been fully indicated hereinbefore and there is no doubt that on completion of those terms, after the expiry of the lease in question, the lessee was to have the first option of renewal of the lease after the first period of 25 years was over. There was or has been no doubt or any dispute about the concerned renewal clause as contained in Clause 10 of the said Ext. 1

and thus, on the pleadings before us, the first and foremost question to be considered is whether the renewal in the instant case was appropriately exercised and asked for by the parties viz., the defendant/appellants ? By the letter (Ext.3), they had asked for the renewal, not only under Clause 10 of Ext.1 but such claim was also made under Sections 5 and 7 of the said Act. We are of the view that the terms of the said Clause 10 cannot be exercised or obtained in piecemeal and in isolation of any part and portion and when any option is exercised under the said clause, the entire provisions of the same must be followed and complied with. From the contents of Ext.3 or the terms thereof, it would not appear that the defendant/appellants had adopted the provisions of the said Clause 10 in its entirety, but really they had exercised the option of renewal for a further period of 25 years on existing terms only. There is also no doubt or any dispute that after the said Ext.3, there has been several correspondence between the parties for the sale of the property in favour of the defendant/appellants, which again has held and found by the learned Court below, to have given a clear go by to the renewal clause. Since there has been no due and proper exercise of option or renewal, in terms of Clause 10 of Ext.1 in its entirety, so, agreeing with the findings of the learned Court below, we also hold that there has been in fact, no renewal duly asked or opted for, in terms of the renewal clause as in Clause 10 of Ext.1. In fact, we hold that Ext.3, not having contained the due expression of the intention to have the lease (Ext. 1) renewal and that too in due and full compliance of Clause 10 of Ext.1 and more particularly when, the defendant/appellants have not fulfilled their obligations to pay mesne profits amongst others, there was or has neither been any appropriate claims for renewal of the lease nor the lease has been actually renewed. While on the point, we have also considered the inaction of the defendant/appellants, to pay market rent or any offer for the same, which was also a necessary prerequisite for renewal of the lease on the expiry of the same. The said Ext.3 was not also addressed to the proper authority, who could grant the renewal of the lease or in other words, the said Ext.3 not having been addressed to a person duly authorized to grant the renewal, there was also and in fact, no proper and due claim for such renewal. We further hold that mere sending of the said Ext.3 would not create a lease or allow renewal of the same in terms of Section 107 of the T.P. Act and requirements of necessary execution of such a lease in terms of the observations in the case of *Asiff v. Jadunath* (supra). In fact, the tests as indicated therein have not been satisfied and complied with in this case.

Then comes the question as to whether the defendant/appellants have acquired the right of the necessary renewal under Sections 5 and 7 of the said Act ? We have quoted the provisions of the said Act, which would be of relevant consideration on the point in issue. On the basis of the evidence of PW-1 Krishnukanta Jha and PW-3 Benoy Kumar Agarwalla, there is no other way but to hold that the said flat was let out for residential purposes only and at all material times, the same was used as such or held for the purposes of the residence of

the officers of the defendant/ appellants or on their behalf, has come to depose to the effect, that the said flat was not used as residential purposes as mentioned above or the same appertained to the business, carried on by Esso, in India. We have indicated hereinbefore, the meaning of the word "appertains" in terms of Oxford's Dictionary and on the basis of the meaning as mentioned therein, it would be very difficult for us to hold that if the said flat is used for the residential purposes of the officers of the defendant/appellants, that would become or can be considered as a part and parcel of the business of Esso in India. On construction and consideration of the provisions of the said Act, it appears to us that the undertaking of Esso in India, has only vested and not any lease as held by them and that being the position, any lease as held by them are required to be duly and legally renewed and there cannot be an automatic renewal, as claimed, and if such view as indicated by us, is not accepted or given effect to, there would be grave and innumerable complications in future, The expression "appertains to" in our view and applying the tests and the meaning as in Oxford Dictionary, should mean part of the business of Esso in India and holding of the said flat, in view of the evidence in this case, would not come within such meaning and on the basis of the available evidence it cannot be held that the said flat was or is a part and parcel of the business of Esso in India. Even on a reference to Section 5(2) of the said Act, we also find that for the purpose of having the necessary renewal in terms of Clause 10 of Ext. 1, the lessee was to pay a sum of Rs. 45,000/- every year or to offer such payment for obtaining the renewal as a condition precedent and such offer was also not there in Ext.3 and such being the admitted position, the terms of Sections 5(2) and 7(3) of the said Act have also been abrogated."

Further, elaborate submissions were made relating to the cause of action and the survival of cause of action and the right of the respondents/plaintiffs to continue the present litigation in the light of the changed circumstances during the pendency of the litigation. It is no doubt true that the period of renewal of further ten years also had lapsed during the pendency of the present litigation. But on that ground, it cannot be said that the cause of action does not survive and since fresh cause of action had accrued in favour of respondents/ plaintiffs they should be driven to yet another fresh suit for praying for the relief of eviction and the ancillary reliefs. It is no doubt true that the lease deed Ex.A-1 is dated 8-11-1978 and it is for a period of ten years with a Clause of renewal, provided the conditions are satisfied, and not otherwise. The said lease period initially expired by 1988 and subsequent thereto during the pendency of the litigation, by 1998 a further renewal period of ten years also had lapsed and no doubt the litigation is pending. No doubt, there is some controversy relating to letter which was addressed to Zohra Begum, but however, the Counsel for the appellant had stated that this letter was addressed not only to Zohra Begum, but also to her sons, intimating her option to claim for renewal. Certain submissions were also made that though the Corporation had knowledge of the death of Zohra Begum, letter was addressed to a dead person. This question need not

detain this Court any longer in the light of the view taken by this Court referred to supra, In the decision referred Nagumilli Narayanamurthy v. Gudimetla Ganga Raju (supra), a Division Bench of this Court while dealing with cause of action and right to sue held :

"Cause of action is a bundle of essential facts which the plaintiff has to prove in order to sustain his action. This connotes that both the right to sue and cause of action are the same and the cause of action is synonymous with the right to sue."

In the decision referred Nair Service Society v. K.C. Alexander (supra), the Apex Court held at para-29 as hereunder :

"Now it is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of suits but also appeals. Indeed the appeal being a continuation of the suit new pleas are not considered. If circumstances change they can form the subject of some other proceedings but need not ordinarily be considered in the appeal. To this proposition there are a few exceptions. Sometimes it happens that the original relief claimed becomes inappropriate, or the law changes affecting the rights of the parties. In such cases Courts may allow an amendment pending the changed circumstances. Sometimes also the changed circumstances shorten litigation and then to avoid circuitry of action the Courts allow an amendment. The practice of the Courts is very adequately summarized in Ram Ratan Sahu v. Mohant Sahu (1907) 6 Cal.LJ. 74, Mookerjee and Holmwood JJ, have given the kind of changed circumstances which the Courts usually take notice, with illustrations from decided cases. The judgment in that case has been consistently followed in India. In Raicharan Mandal v. Biswanath Mandal AIR 1915 Cal 103, other cases are to be noticed. The same view was taken by the Federal Court in AIR 1941 5 (Federal Court) following the dictum of Hughes C.J. in Patterson v. State of Alabama (1934) 294 US 600 . In Surinder Kumar and Others Vs. Gian Chand and Others, this Court also took subsequent events into account and approved of the case of the Federal Court. In view of these decisions it is hardly necessary to cite further authorities."

In the decision referred Bhagwati v. Chandramuli (supra), the Apex Court at paras 9 and 10 was pleased to observe as hereunder:

"There can be no doubt that if a party asks for a relief on a clear and specific ground, and in the issues or at the trial, no other ground is covered either directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new. The same principle was laid down by this Court in Sheodhari Rai and Others Vs. Suraj Prasad Singh and Others, . In that case, it was held that where the defendant in his written statement sets up a title to the disputed lands as the nearest reversioner, the Court cannot, on his failure to prove the said case, permit him to make out a new case which is not only not made in the written statement, but which is wholly inconsistent with the title set up by the defendant in the written

statement. The new plea on which the defendant sought to rely in that case was that he was holding the suit property under a shikmi settlement from the nearest reversioner. It would be noticed that this new plea was in fact not made in the written statement, had not been included in any issue and, therefore, no evidence was or could have been led about it. In such a case clearly a party cannot be permitted to justify its claim on a ground which is entirely new and which is inconsistent with the ground made by it in its pleadings.

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 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 when the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, 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 has 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."

On appreciation of all the facts and circumstances, the contention that the right to sue does not survive because of the lapse of the further period of ten years and the respondents/plaintiffs should be driven to yet another litigation cannot be accepted for the reason that inasmuch as the defendant/ Corporation has been fighting the litigation all along, respondents/plaintiffs were unable take possession in execution of the said decree obtained by them. That cannot be taken advantage by the appellant/defendant-corporation. Hence, on construction of the terms and conditions of Ex.A-1 in general and Clauses 2(c) and 3(d) in particular, the concurrent findings recorded by both the Courts below that there was breach of covenants and hence the right of renewal cannot be exercised by the appellant/ Corporation, need no disturbance at the hands of this Court. Hence, they are hereby confirmed. Strong reliance also had been placed on the decision referred *Veerayee Ammal v. Seeni Ammal* (supra) wherein the Apex Court had explained the scope and ambit of High Court in interfering with concurrent findings of fact in Second Appeal prior to amendment of the CPC in 1976 and subsequent thereto also.

15. Hence, viewed from any angle, this Court is of the considered opinion that the Second Appeal is devoid of merits and the same shall stand dismissed, with costs.

16. Heard Sri P. V. Sanjay Kumar and Sri Meher Chand Noori.

17. Sri P. V. Sanjay Kumar representing the appellant-Corporation states that inasmuch as the Corporation has been continuing on the plaint schedule property for a long time, even to make alternative arrangements sufficient time is required by the appellant-Corporation. Sri Meher Chand Noori however, opposes the same on the ground that all the arrears also had not been paid by the appellant-Corporation. It is needless to say that the appellant-Corporation is bound to pay the arrears if any, and it is made clear that respondents are at liberty to put the decree into execution in accordance with law and it may not be difficulty to realize the amount from the appellant-Corporation.

18. In view of the facts and circumstances explained, six months time is granted to vacate the premises.