
(2011) 08 BOM CK 0073

In the Bombay High Court

Case No : Civil Rev. Application No. 363 of 2010

Hindustan Petroleum Corporation Ltd.

APPELLANT

Vs

Armaity Jamsheet Taraporevala and another

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Caltex Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 — Section 7, 7(1), 7(3)
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 107

Citation : (2012) 1 BomCR 679 : (2011) 5 MhLj 789

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : P.S. Dani instructed by Ms. Pallavi Dabholkar, for the Appellant; A.A. Kumbhakoni, along with Nikhil Sakhardande and Shailesh Shukla instructed by AZB and Partners For Respondent Nos. 1A to 1C and 2, for the Respondent

Final Decision : Dismissed

Judgement

J.H. Bhatia, J.—Rule. Rule made returnable forthwith. By consent of parties the revision application is taken up for final hearing immediately.

2. The respondents, who claim to be the landlords of the suit premises, filed the suit before the Small Causes Court for eviction and possession. That suit was dismissed. The plaintiffs preferred an appeal against the said dismissal of the suit. Said appeal was allowed by the Appellate Bench of the Small Causes Court and the decree for eviction and possession was passed. The said judgment and decree are challenged by the original defendant in the present revision application.

3. To appreciate rival contentions of the parties, it will be useful to state the facts in brief. The property in dispute is a piece of land admeasuring 1310 sq. yards, situated in Scheme No. 58 of Worli Estate, within the Municipal Corporation of city of Bombay. The said piece of land with structure thereon was leased out by

Mrs. Goolbanoo Merwan Irani, Mr. Farouk Merwan Irani and Mrs. Armaity Jamshed Taraporewalla by an indenture dated 4th March, 1966 for a period of ten years with effect from 1-5-1965 with liberty to the lessees to renew the same for three term on same terms and conditions. The lessees Caltex (India) Ltd. exercised the right of renewal and accordingly by an indenture dated 5th April, 1976, the lease was extended by further period of 10 years with an option of renewal of two terms more. By virtue of M/s Caltex [Acquisition of Shares of Caltex Oil Refining (India) Ltd., Ordinance of 1976 Caltex (India) Limited was nationalized and the said undertaking was taken over by the Government of India. An ordinance was later on passed into an Act as Act No. 17 of 1977 and all the property, rights and interest of said Caltex (India) Ltd. were acquired by the Government of India. As per proviso to section 9 of the said Act the Central Government vested the said undertaking of the Caltex (India) Ltd in Hindustan Petroleum Corporation Ltd., a government company, and thus, the defendant who is present applicant became the lessee over the suit premises. On 21st January, 1985 the defendant Hindustan Petroleum Corporation Ltd. addressed a letter to plaintiff/respondent No. 1 for renewal of the lease for further ten years from the date of expiry of lease tenure on 30-4-1985. According to the defendant, by letter dated 31st January, 1995 the defendant again exercised an option for renewal of lease for further term of ten years on expiry of the tenure on 30-4-1995. On 26th July, 2004 on behalf of plaintiff, notice was issued to the defendant terminating the lease agreement and the defendant was called upon to hand over the vacant possession of the suit premises by the end of the next month i.e. August, 2004. On 25th October, 2004 a suit for eviction and possession was filed by the plaintiffs against the defendant.

4. The defendant filed written-statement raising the several defenses. Firstly, it is contended that all the landlords had not been joined while filing the suit. Plaintiff No. 1 Mrs. Armaity Jamsheed Taraporewalla was one of the original lessors. The other two lessors are not the plaintiffs. Plaintiff No. 2 Mrs. Farida Randeep Patel had no right or interest in the property and therefore, she could not file the suit. Secondly, it is contended that as per the original lease-deed, the premises which were leased out consisted of 1310 sq. yards piece of land with structure thereon, but neither in the notice for termination nor in the suit there is any reference of termination of lease in respect of the structure. The notice as well as plaint are only restricted to the piece of land. It is contended that as lease on the structure has not been terminated, the termination is not valid. Thirdly, it is contended that as the option for renewal for further ten years was exercised by the defendant as per the letter dated 31st January, 1995, the tenure of lease would come to an end by 30th April, 2005 while the termination notice was issued and the suit was filed much before that. Therefore, termination is not valid and therefore, the suit could not have been decreed.

5. The trial Court held that plaintiff No. 2 Mrs. Farida Patel is the present owner of the property, being the daughter of Merwan Irani and also under a will in her favour. Nothing was produced before the trial Court by the defendants to show

that the original lessors Goolbanoo Merwan Irani and Farouk Merwan Irani were still owners of the said property when suit was filed. In view of this, it was held that plaintiffs were entitled to file the suit for eviction. The trial Court also held that after 1986 there were no renewal of the lease on agreed terms and conditions by executing any document and therefore, there was statutory extension which could be for one term of ten years only. On both these points, the learned Appellate Court also agreed with the trial Court. The trial Court, however, held that lease was in respect of piece of land with structure while notice terminating the tenancy as well as the suit was only in respect of piece of land and there is no reference to the structure and therefore, termination is not valid. The trial Court dismissed the suit on that count. However, the Appellate Court did not agree with the trial Court on this point and held that description of the land and the rent was properly given. The rent was agreed to be Rs. 2,200/- per month for the area of land admeasuring 1310 sq. yards. About that property the lease was terminated and neither there was a separate agreement about the structure nor any separate rent was agreed about the structure. Merely because there is no reference about the structure on the said land, the notice cannot be invalid. In the result the appeal was allowed, and the suit was decreed.

6. Heard the learned counsel and perused the record. Both the Courts below have dealt with the question of joining the proper parties to the suit. As far as plaintiff No. 1 Mrs. Armaity Taraporevalla is concerned, she is one of the original three lessors. Plaintiff No. 2 Mrs. Farida Patel was not party to that agreement. Out of three original lessors Goolbanoo Merwan Irani and Farouk Merwan Irani were not made parties to the suit. They had executed the lease-deed dated 3-4-1966 as well as 5-4-1976. Mrs. Goolbanoo was wife and Farouk was son of Merwan Irani. Goolbanoo irani and Merwan Irani both expired. Under the will executed by Merwan Irani this property was bequeathed in favour of two daughters, namely plaintiff No. 2 Mrs. Farida Patel and plaintiff No. 1 Mrs. Armaity Taraporevalla. Under the said Will, the property was not given to their son Farouk, who was one of the signatory to the lease-deeds. In view of this position, plaintiff Nos. 1 and 2 only could claim to be the land ladies of the property. Goolbanoo was now not alive and Farouk, though signatory to the lease-deed, was no more owner of the property and therefore, none of them could be joined in the suit. The Appellate Court dealt with this question in detail and also pointed out that in their correspondence, the defendant had also accepted the plaintiffs as the land ladies and they did not produce any document to show to the contrary. In view of this, I find no fault in the concurrent finding of both the Courts below.

7. In the lease-deed of 1966, Schedule-A describes the larger property, which had come in the possession of the lessors from the previous lessor and under an arrangement to the Municipal Corporation. Schedule-B refers to the property which was given on lease, out of the land described in Schedule-A. The total area of the land is 2838 sq. yards or thereabout and out of that a piece of land admeasuring 1310 sq. yards was leased out together with the structure standing

thereon to Caltex India Ltd. The rent of the suit property was fixed at Rs. 2,200/- per month. After the option of renewal was exercised on 5th April 1976, a fresh indenture was executed and registered. The description of property as well as rent was the same except that, under the original agreement there was option of renewal for three terms while in the renewed lease-deed, the option was for further two terms, which was consistent with the original contract. None of these two documents show that there was any separate agreement of lease in respect of the structure over the land or that certain rent was fixed for the structure besides the rent fixed for the piece of land. Therefore, the premises, consisting of the land with structure, were leased out on rent at Rs. 2,200/- per month.

8. The termination notice dated 26th July, 2004 issued on behalf of the plaintiffs to the defendant gives history of the lease agreement. The area of the land and agreed rate of rent were given in paragraph 4. It was stated that defendant being incorporated under the Companies Act having paid up share capital of more than Rs. One crore, the suit premises are exempted from protection of the Maharashtra Rent Control Act, 1999. Having said so, in paragraph 5, the defendant was informed about the termination of tenancy with effect from end of the next month and they were called upon to hand over vacant possession of the said premises. Only the word "structure" was not used in the said notice and similarly in the plaint also the word "structure" was not mentioned. Otherwise, the property as shown in the lease-deed was described, rent was shown and by the same notice, the plaintiffs called upon the defendant to hand over vacant possession of the premises. Similar claim was made in the suit. In my opinion, the learned trial Court was not right in holding that termination of lease was not proper as it did not terminate the complete lease in respect of land as well as structure thereon. In my opinion, the learned Appellate Court was right in holding that in the given circumstances the complete lease in respect of suit premises was properly terminated and the suit premises included the structure on the land though the structure was not specifically mentioned in the notice or in the plaint because once lease on the land is terminated and the defendant is called upon to hand over vacant possession of the land. Naturally, they cannot claim to continue their possession over the structure which cannot stand without the land beneath.

9. The learned counsel for the defendant/ revisional applicant has relied on the decision of the Apex Court in the case of - Chimanlal Vs. Mishrilal, in support of his contention that when the termination of the lease is not for complete property, it is not valid. In the case of Chimanlal (supra), before the Supreme Court the notice terminating the tenancy was not relating to the entire accommodation let to the tenant but only for lesser part of it and therefore, it was held that the notice of demand was not valid and the suit was not maintainable. It was held that mere fact that the amount of arrears was admitted between the parties is of no consequence and merely by such admission by a tenant the termination of lease does not become valid. In the present case lease has been terminated about complete piece of land admeasuring 1310 sq. yards

and therefore, it cannot be said that termination is not for the complete property but only for a part of it.

10. As per the original lease agreement of 19.66 the tenure of the lease was for ten years and it was renewable for three terms at the option of the lessee. The original lessee Caltex (India) Ltd. had exercised that option once and accordingly, a fresh indenture of lease was executed and registered on 5th April, 1976 for a period of ten years and thereafter the lessee had an option of renewal for two more terms. According to the defendant, by letter dated 21st January, 1985, the option for second renewal for a period of ten years was exercised and by a letter dated 31st January, 1995 option for renewal for third term was exercised, and therefore, the period of lease was continued till 30-4-2005. Admittedly, on the basis of the letter dated 21st January, 1985 for renewal of lease for further term of ten years, no fresh lease agreement was executed or registered. Similarly, in 1995 also on the basis of the letter dated 31st January, 1995 no fresh lease-deed was executed or registered. As per section 107 of the Transfer of Property Act, 1882, a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by registered instrument. As per section 17 of the Registration Act, 1908 also such a lease is compulsorily required to be registered. In the present case as there was no written registered lease agreement of 1985 or 1995, it cannot be said that the option of renewal was properly exercised as per the contract and as per the provisions of the Transfer of Property Act and the Registration Act.

11. Sub-sections (1) and (3) of section 7 of the Caltex (Acquisition of Shares etc.) Act, 1977 read as under :-

7. Special provisions as to certain rights and interests held by Caltex (India) before the appointed day. - (I) Every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose), which Caltex (India) held immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in and be held by, the Central Government on and after the appointed day on the same terms and conditions on which Caltex (India) would have held it, if no negotiations had taken place for the acquisition by the Central Government of the Undertakings of Caltex (India) in India or, as the case may be, if this Act had not been passed.

(2)...

(3) On the expiry of the term of any lease, tenancy or arrangement referred to in sub-section (1) or sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same conditions on which the lease or tenancy or arrangement was originally granted or entered into.

12. In view of sub-section (1) every right or interest in respect of any property

including a right under a lease or tenancy or any right under arrangement to secure any terms which the Caltex (India) Ltd. held immediately before the appointed date shall stand vested in and be held by the Central Government on or after the appointed day on same terms and conditions on which the Caltex (India) Ltd. would have held it. These rights were vested in the government company i.e. Hindustan Petroleum Ltd. by virtue of powers u/s 9. If sub-section (t) and sub-section (3) are read together it would become clear that under sub-section (1) of section 7 the government company got the same rights and interests Under contracts which the previous company i.e. the Caltex (India) Ltd. had held. Therefore, if the defendant, being the government company, wanted to avail the rights under the agreement, it would be u/s 7(1), and therefore, it would be necessary to exercise the option of renewal as per the terms of the contract by executing a valid document, as required under the provisions of section 107 of the Transfer of Property Act read with section 17 of the Registration Act.

13. However, if the term of the lease or agreement has expired and if the Central Government so desires, the lease, tenancy or arrangement may be continued or renewed on the same terms and conditions on which the lease or arrangement was originally granted or entered into. The exercise of powers u/s 7(3) depended on the desire of the Central Government and not on the terms of the agreement u/s 7(1) and this would be the statutory renewal or continuation for which execution of registered document would not be necessary. In the case of - Hindustan Petroleum Corporation Ltd. and anr., Appellants vs. Dolly Das, (1994) 4 SCC 450, the Supreme Court held that extension, renewal or continuation of the lease at the desire of the Central Government u/s 7(3) could be only for one term and no more. Similar view was taken in Civil Revision Application No. 756 of 2009 in the case of -Hindustan Petroleum Corporation Ltd. vs. Navjeevan Co-operative Housing Society Ltd. and ors. by the judgment dated 29th April, 2010 [since reported in 2010 (4) Mh. LJ. 517], wherein I had taken a view that this extension can only be for one term and not beyond the period under the lease deed. The learned counsel for the respondent/plaintiffs pointed out that the view taken by this Court is upheld in the SLP filed by the Hindustan Petroleum Corporation Ltd. while dismissing said SLP.

14. In view of this legal position, it must be held that till 30-4-1985 the defendant was entitled to be in possession as lessee as per the agreement executed between the parties. However, after 30-4-1985 the defendant could have availed the option of renewal under the original agreement also but that could be done u/s 7(1) which would necessarily require execution of the registered document under the provisions of the Transfer of Property Act and the Registration Act. But as no such document was executed, it must be held that the said option under the agreement was not exercised. However, as the notice was given for renewal without any execution of the document, that must be treated as a desire of the Central Government or the Government Company for continuation or renewal u/s 7(3). That continuation was statutory without

execution of a document. The term of that statutory renewal came to an end on 30th April, 1995, as per the view taken by the Supreme Court and by this Court in several cases and there could not be any further renewal u/s 7(3).

15. After the enactment of Maharashtra Rent Control Act, 1999, in case of a company incorporated under the Companies Act and having paid up share capital of more than Rs. One crore, the premises are exempted from protection of the said Act. In view of this, the defendant had no protection of the Maharashtra Rent Control Act after 1999 as there was no valid contract of lease and hence, it must be held that by the notice issued in July, 2004, the plaintiffs had lawfully terminated the lease. Therefore, I find that the concurrent finding of both the Courts below on this point is also correct.

16. In view of the facts and the legal position discussed above, I find no substance in the revision application. In the result, the revision application is dismissed. Rule is discharged.

17. The learned counsel for the defendant/revision applicant seeks some time. Therefore, the defendant is hereby granted time of four months from this date to vacate the premises and to hand over vacant possession of the leased premises to the plaintiffs on or before the expiry of said period, subject to the undertaking to be filed before this Court within three weeks to that effect and also that defendant shall not create any third party interest in the property in any manner.