

(1992) 12 PAT CK 0031

In the Patna High Court

Case No : Letters Patent Appeal No. 139 of 1991

Hindustan Petroleum Corporation Ltd.

APPELLANT

Vs

Chandra Prakash Bubna and Others

RESPONDENT

Date of Decision : 22-12-1992

Acts Referred:

Citation : (1992) 12 PAT CK 0031

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This is a letters patent appeal arising from the judgment of a learned single Judge of this Court. By the judgment under appeal the learned Judge substantively affirmed the trial Court's decree of ejectment passed against the appellant and (proforma) respondent No. 12 (defendants 1 and 2 respectively before the trial court).

2. Respondents 1 and 2 and one Ramawtar Bubna (whose heirs and legal representatives are now on the record as respondents 3 to 7) sued as plaintiffs for the ejectment of defendants 1 and 2 from the suit premises which was in their occupation on the basis of a lease. In addition, decrees were also sought for different amounts as for (a) arrears of rent, (b) damages for use occupation of the premises after the determination of the lease and (c) future inesan profits. The plaintiffs claimed to have legally and validly determined the lease on grounds of (i) non-payment of moathly rent by the defendants from April, 1982 on false and untenable pretexts, (ii) failure to pay the entire municipal due which was one of obligations of the lessee in terms of the lease and (iii) putting the lease hold premises to a use other than those sanctioned by the lease. The defendants resisted the suit taking a common stand. They denied that the suit premises was used for a purpose constituting breach of the terms of the lease. They also denied that there were any municipal dues and stated that even in case there was any municipal due it would not amount to any breach of the lease. As regards non-payment of monthly rent, which fact was beyond dispute, the defendants pleaded relief against forfeiture in terms of Section 114 of the

Transfer of Property Act ("T.P. Act", for short) by offering to pay. in course of the trial, all arrears of rent along with interest (g) 18% and the cost of the suit.

3. The trial Court held (though for an erroneous reason) that the relief u/s 114 of the T. P. Act was not available to the defendants and found them liable to ejectment on all the three counts." It, accordingly, handed out decree for ejectment as also arrears of rent, damages and mesne profits against both the defendants.

4. In appeal, the learned single Judge affirmed the decree of ejectment against both the respondents ; the decrees for arrears of rent, damages and mesne profits, however, were confined to defendant No. 1 (the appellant) alone. The learned Judge held that determination of the lease for non-payment of monthly rent was quite legitimate and the defendants, on account of their unreasonable and persistent refusal to pay the monthly rent, had disentitled themselves to any relief in teims of Section 114 of T. P. Act. The learned, Judge also found that putting the lease hold premises to use for the sale of scooters etc. manufactured by Scooters India Ltd. was in breach of the terra of the lease and on this score also the defendants were liable to eviction. However, as regards the municipal dues the learned Judge held that the plaintiffs could not press it as a ground for ejectment because the plaintiffs had failed to give a notice in writing to the defendants requiring them to remedy this particular breach of the term of tenancy as provided u/s 114A of the T. P. Act. Thus the learned Judge affirmed the ejectment of the defendants, but on two grounds only whereas the trial court had decreed the suit on all the three grounds.

5. Conveniently in this appeal there is not much scope for the parties to differ on facts ; what they differ about, however, is the import and effect of the admitted facts. The pleadings of the parties and the evidences led by them unfold the following factual matrix that remains undisputed. On 15-4-1968 respondents 8 to II (proforma defendants 3 to 6) made a lease in respect of the suit premises in favour of Caltex (India) Ltd. The lease was for a period of 20 years commencing from 1-7-1965 and expiring on 30-6-1985. The demised land measured to an area of 16, 000 sq. ft. and the lessee was required to pay rent. Rs, 500 per month upon June, 1975 and thereafter @ Rs. 650 per month. Under the lease the lessee was given a right "to instal, erect and maintain is and upon the said piece of land, for the purpose of storing, selling or otherwise carrying on trade in petrol, petroleum products, oil and kindred motor accessories and any other trade or business that can conveniently be carried on therewith". The lease further provided that the lessee could let its local dealer or agent hold and use the premises for one or any of the purposes permissible under the lease without any consent of the lessors. It was in pursuance of the lease that Caltex (India) Ltd. carried on the business of running a petrol pump on the suit premises through its dealer, M/s Bindasaria Auto Service, defendant No. 2.

6. On 30-12-1976 the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the undertakings in India of Caltex Ltd. Ordinance, 1976 (hereinafter

referred to as the Take over Ordinance") came into force. The Ordinance was replaced by Act No. 17 of 1977 on 23-4-1977. On the day appointed by the take over Ordinance, i. e., 30-12-1976 the undertakings of Caltex (India) Ltd. were transferred to and vested in the Central Government by virtue to Section 5 of the Ordinance. Section 7 contained special provisions as to certain rights and interest held by Caltex (India) Ltd. before the vesting of its undertakings in the Central Government; Sub-section (3) of Section 7, which has been the subject of considerable discussion in this case, provided that any lease in favour of Caltex (India) Ltd., on its expiry, shall be renewed, if so desired by the Central Government, on the same terms and conditions as the original lease. Section 9 (1) empowered the Central Government to direct vesting of the undertakings of Caltex (India) Ltd. in a Government company and Sub-section (3) of Section 9 provided that the provisions of Sections 5, 6 and 7 would also apply to such Government company in which the undertakings of Caltex (India) Ltd. may be vested by the Central Government.

7. On December 30, 1976 itself the Central Government issued a notification u/s 9 (1) of the Ordinance directing that the rights, title and interest and the liabilities of Caltex (India) Ltd. in relation to its undertakings in India shall vest in a Government company by the name of Caltex Oil Refining (India) Ltd. instead of continuing to vest in the Central Government. Finally, by an order dated May 9, 1978 passed by the Company Law Board in exercise of powers conferred by Sub-sections (1) and (2) of Section 396 of the Companies Act, 1956 the Caltex Oil Refining (India) Ltd. was transferred to and vested in Hindustan Petroleum Corporation Ltd. and it was further directed that it is the latter corporation which would be deemed to be the company resulting from the amalgamation. It was in this manner that M/s Hindustan Petroleum Corporation Ltd., the present appellant, became the successor of Caltex (India) Ltd. and it was in this capacity that the Corporation was sued and it has now preferred the present appeal.

8. At this stage it may be noted that defendant No. 2 who was a dealer or defendant No. 1 in the petrol pump business also obtained a dealership of M/s. Scooters (India) Ltd. (strangers to the suit) and started, from the suit premises, a business of storage and sale of scooters manufactured by the aforesaid company. It is in respect of carrying on the business of selling scooters from the suit premises that the plaintiffs allege a breach of the terms of the lease which, according to them was confined to trade in petrol, petroleum products, oil and kindred motor accessories only. It is the case of the defendants that the scooter business was started on the suit premises some time in the year 1977 and it was in the full knowledge of the proforma defendants, who were then the lessors and the owners of the premises. The plaintiffs do not admit this date but nothing much depends on this.

9. On 22-3-1982 the original owners, proforma defendants 3 to 6, sold the suit premises to the plaintiffs through four registered deeds ; each of the four former owners executed a separate sale deed in respect of his share in the suit premises

in favour of the three plaintiffs. On the same date (22-3-1982) the former owners sent separate letters of attornment to defendant No. 1 giving intimation regarding the sale and advising defendant No. 1 to pay the monthly rent in respect of the demised premises to the plaintiff from the date of the sale. The appellant, however, denies having received those letters. On 3-4-1982 a lawyer on behalf of the plaintiffs wrote to the appellant informing that the plaintiffs had purchased the suit premises from its former owners and requesting the appellant to pay the monthly rent from the month of April, 1982 to the three plaintiffs. The letter furnished the details regarding their names and address etc. Copies of the letters of attornment written by the proforma defendants on March 22, 1982 were also enclosed with this letter. The appellant accepts having received this letter. Further, when a cheque for the monthly rent for April, 1982 was sent by the appellant to proforma defendant No. 5, (who under the previous arrangement used to receive the monthly rent on behalf of all the former owners) he returned the cheque to the appellant along with his letter dated 2-4-1982 clearly stating that the suit premises had been sold to the plaintiffs on 22nd March, 1982. He further advised in this letter that the cheque for April, 1982 may be sent to the purchasers (i.e. the plaintiffs). An officer of the appellant corporation gave reply to proforma defendant No. 5 by letter dated April 19, 1982, saying in substance that unless they received a letter from the purchasers along with a copy of the sale deed it would not be possible for them to effect payment to the new landlords. Similarly on 15-5-1982 a letter was sent to the plaintiff's lawyer in acknowledgment of his letter of March 30, 1982. In this letter also the appellant made a demand for the supply of a certified copy of the purchase deed and asked for the details regarding the shares of each of the plaintiffs so as to enable the appellant to take further action to attorn the tenancy in favour of the plaintiffs. By letter dated July 10, 1982 the plaintiffs' lawyer, determined the leave for non-payment of rent for the months of April to June, 1982 also for breach of the terms of tenancy by reason of the scooter business being carried on the lease hold land and municipal taxes for the last four years not having been paid by the leases and asked the appellant to give vacant possession of the demised premises by 31st July, 1982. On 17-7-1982 the appellant responded, once again asking for the sale deeds as also for details regarding the extent of the interest of each of the plaintiffs in the property. Whereupon a second notice dated 14-8-1982 was sent by the plaintiff's lawyer detesting the tenancy on the aforesaid three grounds and asking the appellant to deliver vacant possession of the suit premises by September 30, 1982. Regardless of this notice, the appellant sent a series of letters to the plaintiffs relentlessly asking for the certified copies of the sale deeds.

10. On 6-10-1982 the appellant filed an interpleader suit irapleading both the plaintiffs and the proforma defendants and prayed for permission to deposit the rent for the suit premises in court. This was registered as Title Suit No. 18 of 1987 in the court of Munsif III, Patna. This interpleader suit was dismissed as not maintainable on 29-10-1983. Against this order the appellant preferred a civil

revision before this Court on 24-2-1984. This civil revision application registered as Civil Revision No. 362 of 1 84 and admitted in this Court on 2-3-1984 was finally dismissed as not maintainable by order dated 21-12-1988

11. Shortly after the filing of the interpleader suit by the appellant, the plaintiffs, on 25-11-1982, instituted title suit No. 452 of 1982 (which has led to, this appeal) for the eviction of the appellant from the suit premises. In this suit the appellant, appeared and filed its written statement on 24-8-1983 contesting the suit. It was much later on 22-3-1984 while the appellant's civil revision against the order of dismissal of the interpleader suit was pending before this Court, that an application u/s 114 of the T. P. Act was filed in the suit offering to pay the arrears of rent along with interest and costs of the suit. The plaintiffs filed their rejoinder to the petition and the matter was heard and rejected by the trial court vide its order dated 24-8-1985. The appellant came to this Court in civil revision No. 1916 of 1985 against this order rejecting their petition u/s 114 of the T. P. Act. This civil revision was disposed of by order dated 18-12-1985 wherein this Court observed that the question of granting any relief in terms of Section 114 of the T. P. Act would be available to the defendant petitioner (appellant; subject to its depositing the current month to month rent by 5th of the next succeeding month. Finally by judgment and decree dated 21-12-1984 the trial court decreed the suit on all the three grounds. In appeal a learned single Judge of this Court affirmed the decree substantially as already indicated above.

12. Before concluding the facts of this case it is also to be noted that in purported exercise of the option in terms of Section 7(3) of the Take Over Act the appellant gave notices for renewal of the lease to the plaintiffs on 20-4-1985 and also filed a petition before the trial court on 12-6-1985 enclosing the copies of the notices sent to the plaintiffs.

13. Mr. S. S. Ray, learned Counsel for the appellant, placed considerable reliance upon Section 7 (3) of the Take Over Ordinance/Act contended that the mandate of this provision protected the appellant from ejection at this juncture and entitled the appellant to hold the demised premises for another period of 20 years which was the term specified in the lease dated 15-4-1968. The relevant provisions contained in Sub-sections (1) and (3) of Section 7 of the Take Over Act are reproduced belows:

7(1) 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 in which Caltex (India) would have held it if no negotiation had taken place for the requisition by the Central Government of the undertakings of Caltex (India) in India or, as the case may be, if this Ordinance had not been promulgated.

(2)...

(3) On the expiry of the terms of any lease, tenancy or agreement 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, on, the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into.

(emphasis added)

14. "Mr. Ray contended that by virtue of the aforequoted provisions the lease in question was to be statutorily renewed for a further period of 20 years.

15. In my opinion the appellant in this case cannot derive any benefit from Section 7(3) of the Take Over Act, It is plain that a right u/s 7(3) would accrue only after a lease had survived for the entire period stipulated therein with the lessee faithfully observing, the terms and conditions contained therein. It may be noted that there are several ways for the determination of a lease ; it may determine by efflux of time limited thereby vide Section 111(a) of the T. P. Act) or it may determine by forfeiture (vide Clause (g) of Section 111 of the T. P. Act). Section 7(3) of the Take Over Act contemplates right for renewal only in case of the expiry of the term of the lease, that is to say, when a lease indetermined in terms of Clause (a) of Section 111 of the T. P. Act. In case the lease is determined in any manner other than by efflux of time, Section 7(3) of the Take Over Act shall have no application had certainly not in case of forfeitures of lease for breach of the terms of tenancy.

16. In this regard Mr. Ray took an extreme stand that Section 7(3) of the Take Over Act read with Article 39(2) of the Constitution would have the effect of wiping off any misdoings on the part of the Central Government or the successor Government company. I am afraid it is not possible for me to accept such an extreme contention. It is to be noted that both Sub-sections (1) and (3) give due respect to the terms and conditions of the existing lease. The demised premises held by Caltex (India) Ltd. under an existing lease is to be held by the Central Government, in terms of Sub-section (1), on the same terms and conditions on which Caltex (India) Ltd. would have held it. Also, the lease on its expiry is to be renewed on the same terms and conditions on which the lease was originally granted. It is, thus, manifest that the provisions contained in Section 7 of the Take Over Act are not intended to be a licence to flout all the material terms and conditions of an existing lease and yet claim the statutory right for renewal when the lease is sought to be determined by forfeiture.

17. Mr. Ray, next submitted that the expression "expiry of the term" in Section 7(3) of the Take Over Act was wide enough to include determination of a lease by any mode as provided in Section 111 of the T. P. Act, whether under Clause (a) or (g) or any other Clause thereof. According to him, determination of a lease by forfeiture was also included in Section 7(3), It is true that Section 7(3) of the Take Over Act used the expression "on the expiry of the term of any lease"-

which is different from the expression "by efflux of time limited is a lease used in Clause (a) of Section 111 of the T. P. Act. However, in substance the two expressions convey exactly the same meaning and "expiry of the term of lease" is used to mean a determination of lease by efflux of time specified therein. I have carefully considered the submissions advanced by Mr. Ray and I am of the opinion that if Mr. Ray's interpretation of Section 7(3) is accepted, it would make the provision so unreasonable as to make it difficult to justify its constitutionality.

18. In support of his contention Mr. Ray has placed reliance on an unreported decision of the Bombay High Court, Nagpur Bench in Special Civil Application No. 225 of 1979 (Bharat Petroleum Corporation Ltd. v. State of Maharashtra and Ors. date of disposal, January 9, 1990). This decision is hardly of any avail to him as in this case the Corporation had applied for renewal after two years of the expiry of the initial lease. The demised premises was a Nazul land the initial lease was granted by the Collector, Vardha in favour of Burmah Shell Oil Distributing Company of India Limited. The renewal of the lease was refused on the ground that the petrol pump was situated on a highway and was causing great inconvenience to the traffic. It was further stated that the existence of the petrol pump on the site in question had become a public hazard and its continuance there was highly undesirable. The court rejected the objections of the Collector and held that Section 5(2) of the Take Over Act "granted a right to the leasee to have the renewal of the lease on the same terms and conditions on which the lease was held by Burmah Shell and directed the Collector to renew the lease for a further period of 5 years from 1-8-1976. This case is no authority that Section 7(3) of the Take Over Act is also applicable in case of determination of lease by forfeiture.

19. Mr. Ray also relied upon decisions reported in Mustafa Hussain Vs. Union of India (UOI) and Another, and Manohar Singh and Another Vs. Caltex Oil Refining (India) Ltd., Bombay and Others, . These two decisions considered the vires of the Esso (Acquisition of Undertakings in India) Act (14 of 1974) and the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and all. Undertakings in India of Caltex (India) Ltd.. Act, 1977 and found them to be intra vires. These decisions too are no authority on the point that a case of forfeiture is also covered by Section 7(3) of the Take Over Act.

20. Mr. Ray then submitted that in case it was held that forfeiture was not covered by Section 7(3) of the Act then the plaintiffs could not rely on any forfeiture for, in the facts and circumstances of the case, relief u/s 114 of the T. P. Act should have been granted to the appellant. This leads us to the main controversy in this case.

21. Mr. Ray strenuously tried to persuade us that the appellant was entitled to relief against forfeiture in terms of Section 114 of the T. P. Act. No contention was made that the trial court and the learned single Judge of this Court materially erred in not allowing the appellant relief against forfeiture even though the appellant had offered to pay all the arrears of rent along with interest and costs of the suit and,

in fact, had deposited the amount the trial court as directed by this Court vide order dated 18-12-1985 passed in Civil Revision No. 1916 of 1985. Trying to seek help from the decisions reported in AIR 1949 Patna 475 and Praduman Kumar Vs. Virendra Goyal (Dead) by L. Rs., , Mr. Ray contended that the covenant for forfeiture of tenancy for non-payment of rent is to be regarded as nothing more than a Clause for securing payment of rent and once the leasee offered to pay all the arrears of rent along with interest and costs of the suit the courts had no real discretion and must allow relief against forfeiture. Mr. Ray also submitted that the decision reported in Namdeo Lokman Lodhi Vs. Narmadabai and Others, , relied upon by the learned single Judge to hold that the appellant was not entitled to relief against forfeiture was on facts quite uncomparable to the instant case.

22. For considering the appellant's claim for relief in terms of Section 114 of the T. P. Act it will be necessary to examine the material facts relating to non-payment of monthly rent by the appellant in some detail. The former owners (proforma defendants 3 to 6) transferred the suit land to the three plaintiffs by registered sale deeds dated 22-3-1982. On the same date each of the former owners sent separate letters of attornment to the appellant. However, according to the appellant, these letters were not received at its office, On 30-3-1982 the plaintiffs, through their lawyer, intimated the appellant that the demised land had been jointly purchased by the three plaintiffs from its former owners. This letter also requested the appellant to send the monthly rent for the month of April, 1982 and for the future months directly to the plaintiffs giving their names and their common address. This letter also enclosed photo stat copies of the letters of attornment dated 22-3-1982 earlier sent by the former owners to the appellant directly. It is an admitted position that this letter along with its enclosures was duly received by the appellant. Regardless of this letter, the monthly rent for April, 1992 appears to have been sent to Paritosh Mazumdar (proforma defendant No. 5) who under the previous arrangement used to receive rent on behalf of all the four former workers. Not much exception can be taken to this as, according to the appellant's case, till then to communication from the former owners was received regarding any change of ownership in relation to the demised land. The cheque for the monthly rent of April, 1982, however was returned by Paritosh Mazumdar to the appellant along with his letter dated 2-4-1982 clearly stating that the former owners had sold the land vide registered sale deed dated 22-3-1982. It was further advised that the appellant should send the monthly rent directly to the purchasers, who were entitled to the rent from the date of purchase. This is a straight forward letter and leaves no room for doubt regarding the change of ownership in respect of the demised land. An officer of the appellant then answered Paritosh Mazumdar by letter dated 19-4-1982. In this letter it was stated that till that date the appellant had "neither received the details of the new purchasers of this land, nor a copy of the sale deed". It was further said that unless the appellant received a letter from the new purchasers along with a copy of the sale deed it would not be possible to

make payment to the new land lords. It is to be noted that the statement that the appellant had till then not received the details relating to the new purchasers was quite incorrect as the letter from the plaintiffs lawyer dated 30-3-1982 had already been received by them. As regards the demand for a certified copy of the sale deed, the appellant had no legal sanction to make such a demand for making payment of the monthly rent to the plaintiffs the sale of the demised land had already been confirmed by Paritosh Mazumdar on behalf of the former owners. The letter dated 30-3-1982 from the plaintiffs was answered by the appellant by letter dated 15-5-1982. In substance it was stated that the payment of rent for the demised land could be made to the plaintiffs only after they supplied the certified copies of the sale deeds and also apprised the appellant regarding their respective shares in the land. In reply the appellant received a notice dated 10-7-1982 from the plaintiffs lawyer determining the lease for non-payment of the monthly rent from April to June, 1982 and for other reason as indicated earlier (the suit was, however, filed on the basis of a subsequent notice u/s 106 of the T. P. Act). This time the appellant too replied through lawyer by letter dated 17-7-1982. This letter makes interesting reading and the material paragraph from it is reproduced below:

That it is also true that your clients, namely, Shri Ramawtar Bubna, Shri Chandra Prakash Bubna and Shri Prashant Kumar Bubna became the owners of the properties in question and one of the owner Shri Paritosh Mazumdar informed my client about the said sale of the property and change in ownership but he did not mention the names and addresses of the purchasers nor a quantum of share in the property under consideration. Hence in response to the letter dated 2-4-1981 of Shri Paritosh Mazumdar my client through their registered A/D letter bearing No. 5150 HB, dated 19-4-1982 requested him to furnish the necessary details of the new purchasers and also asked him for a copy of the sale deed but the letter remained unresponded.

Having admitted that the plaintiffs became the new owners, wholly untenable excuses were advanced for not making payment to the plaintiffs. As regards the names address of the new owners the same was supplied to the appellant by letter dated 30-3-1982 and as regards the demand for certified copies of the sale deeds and information regarding the extent of shares of each of the plaintiffs the same was quite unwarranted. The plaintiffs, then gave a notice u/s 106 of the T. P. Act through their lawyer on 14-8-1982 determining the lease and demanding vacant possession of the demised land with effect from 30-9-1982. The appellant regardless, of the determination of the lease persistently went on refusing to make payment of the monthly rent and did not give up its demand for the certified copies of the sale deeds and advice regarding the extent of shares of each of the plaintiffs in the demised land.

23. Mr. Ray sought to justify the stand taken by the appellant by submitting that the appellant after all was a public sector undertaking and its officials were subject to a most stringent check and control by the audit and they could not

have possibly made payment to complete strangers without first satisfying themselves. He further pointed out that there were certain discrepancies in the letters of Paritosh Mazumdar and the one from the plaintiff's lawyer inasmuch as Paritosh Mazumdar had mentioned sale of the demised land by one sale deed whereas the plaintiff's lawyer (sic) had stated that the land was purchased through four registered sale deeds. The appellant was demanding certified copies of the sale deeds simply to clarify these minor points.

24. I am far from impressed by this explanation. Paritosh Mazumdar had refused to accept the rent for the month of April, 1982 confirming, the sale to the plaintiff. The photostat copies of the four separate letters of attornment under the hands of the four former owners had also been furnished to the appellant: the details regarding the names and address of the purchasers plaintiffs were also supplied to the appellant vide letter dated 30-3-1982. I see no reason why the appellant should not have issued an account payee cheque in the joint names of the three plaintiffs for the monthly rent of the demised premises. How was the amount to be apportioned among the plaintiffs, whether in equal measures or disproportionately was no concern of the appellant. Neither was the appellant justified in making the rigid demand for the certified copies of the sale deeds. To me it appears that with characteristic apathy it took it into head to make a demand for which it had no legal sanction. The appellant seems to have forgotten that it had a relationship of lessor and lessee with the plaintiffs and treated them as one of its clients who must satisfy all its whims and fancy.

25. The appellant went to the extent of filing an interpleader suit inter-pleading the plaintiffs and proforma defendant Nos. 3 to 6. The suit failed on the first date of hearing as the proforma defendants fairly stated that there was no dispute between them and the plaintiffs and they acknowledged the sale and confirmed the plaintiffs as the lawful owners of the demised land. The appellant crowned its recalcitrance by not being contented even at that stage and thought it fit to take the trial court's order dismissing the interpleader suit to the High Court in a civil revision which also was finally dismissed as not maintainable. While this revision arising from the interpleader suit was pending in the High Court, the appellant filed a petition u/s 10 of the CPC in the instant suit before the trial Court praying that the proceedings in the suit may be stayed till the disposal of the civil revision by the High Court. The trial Court directed that order on the petition u/s 10 of the CPC shall be passed after the arguments in the title suit were concluded. This order by the trial Court was also brought to the High Court by the appellant in Civil Revision No. 1236 of 1988 which too was dismissed on 28-9-1988 and the High Court directed that the hearing of the suit should proceed on a day to day basis.

26. On the basis of the facts as narrated hereinabove I unhesitatingly find that the action of the appellant in not making payment of the monthly rent to the plaintiff was wholly unreasonable, without any justification and calculated to harass the plaintiffs.

27. As regards the legal position, the Supreme Court in the case of *Namdeo Lokman Lohi v. Narmada Bat and Ors.* MR 1953 SC 228, besides dealing with the facts of the case also laid down the law relating to entitlement to relief in terms of Section 114 of the T. P. Act; Paragraphs 28 to 30 of that decision are reproduced hereinbelow:

Mr. Dephtary contended that the High Court failed to appreciate the rule applicable for the exercise of the discretion in such cases and that the rule is that if at the time relief is asked for the position has been altered so that relief cannot be given without causing injury to third parties relief will be refused, but if that position is not altered so that no injustice will be done there is no real discretion and the Court should make the order and give the relief. Reference was made to the decision of Page J., in *Debendra Lal Khan Vs. F.M.A. Cohen*, wherein it was said that the Court normally Could grant relief against forfeiture for nonpayment of rent u/s 114, T. P. Act, and that if the sum required under the Section was paid or tendered the lessor at the hearing of the suit the Court has no discretion in the matter and must grant relief to the tenant We do not think that the learned Judges intended to lay down any hard and fast rule. Indeed the learned Judge proceeded to observe as follows:

In exercising the discretion with which it is invested u/s 114 a Court in India is not bound by the practice of a Court of Chancery in England, and I am not disposed to limit the discretion that it possesses. Those who seek equity must do equity, and I do not think merely because a tenant complies with the conditions laid down in Section 114 that he becomes entitled as of right to relief.

In our opinion, in exercising the discretion, each case must be judged by itself, the delay, the conduct of the parties and the difficulties to which the landlord has been put should be weighed against the tenant. This was the view taken by the Madras High Court in *Appayya Shetty v. Mohammad Bean* AIR 1916 Mad 680 (2) (U) and the matter was discussed at some length. We agree with the ratio of that decision. It is a maxim of equity that a person who comes in equity must do equity and must come with clean hands and if the conduct of the tenant is such that it disentitles him to relief in equity, then the Court's hands are not tied to exercise it in his favour. Reference in this connection may also be made to AIR 1914 Mad. 706 (H) and *Ramabrahmam v. Rami Reddi* AIR 1928 Mad. 250 (V).

The argument of Mr. Daphtary that there was no real discretion in the Court and relief could not be refused except in case where third party interests intervene is completely negated by the decision of the House of Lords in *Hyman v. Rose* 1912 AC 623 (W). Relief was claimed in that case under the provisions of Section 14 (2) of the Conveyancing Act, 1881 against forfeiture for breaches of covenant in the lease. The appellants offered as the terms on which relief should be granted to deposit a sum sufficient to ensure the restoration of the premises to their former condition at the end of the terra and make full restitution. It was argued that the matter was one of discretion and the Court should loan to relieve a tenant against forfeiture and its full re-compense can be made to the landlord

the relief should be granted. Lord Loreburn in delivering the opinion of the House observed as follows:

It desire in the first instance to point out that the discretion given by the Section is very wide. The Court is to consider all the circumstances and the conduct of the parties. Now it seems to me that when the Act so express to provide a wide discretion, meaning, no doubt, to prevent one man from forfeiting what in fair dealing belongs to some one else, by taking advantage of a breach from which he is not commensurately and irreparably damaged, it is not advisable to lay down and right rules for guiding that discretion. I do not doubt that the rules enunciated by the Master of the Rolls in the present case are useful maxims in general and that in general they reflect the point of view from which Judges would regard an application for relief But I think it ought to be distinctly understood that there may be cases in which any or all of them may be disregarded. If it were otherwise the free discretion given by the statute would be fettered by limitations which have nowhere been enacted. It is one thing to decide what is the true meaning of the language contained in an Act of Parliament. It is quite a different thing to place conditions are not based upon statutory enactment at all. It is not safe, I think, to say that the Court must and will always inset upon certain things when the Act does not require them, and the facts of some unforeseen case may make the Court wish it had kept a free hand.

The aforequoted passage does not relate to the facts of that case alone but lays down the general principles of law relating to relief against forfeiture.

28. It is also to be noted that in the case of Praduman Kumar Vs. Virendra Goyal (Dead) by L. Rs., (on which reliance was placed by Mr. Ray) the Supreme Court had said:

The covenant of forfeiture of tenancy for non-payment of rent is regarded by the Courts as merely a Clause for securing payment of rent unless the tenant has by his conduct disentitled himself to equitable relief the Courts grant relief against forfeiture of tenancy on the tenant paying the rent due interest thereon and costs of the suit.

(Emphasis added)

In this case, I am of the considered opinion that the appellant by its conduct as described above has thoroughly disentitled itself to any relief against forfeiture in terms of Section 114 of the T. P. Act.

29. As regards the next ground the learned single Judge has found that putting the demised land to use for the sale of scooters constituted a breach of the terms of tenancy. With respect, I find myself unable to share this view.

30. This question involves the interpretation of two Clauses of the lease. The material terms in this regard are to be found in Clauses (1) and 2 (b) of the lease which are reproduced below:

The lessor hereby let...with the right for the lessee to instal, erect and maintain in and upon the said piece of land, readways and pathways and underground petrol tanks and shelter for an attendant and any other building erection or equipment whether of a permanent or temporary nature for the purpose of storing, selling or otherwise carrying on trade in petrol, petroleum products, oil, and kindred motor/accessories and any other trade or business that can conveniently carried on therewith.

(2) the lessee agrees with the lessor as follows:

(a)...

(b) to obtain and renewal all necessary licences permits and to pay all licences and other fees in respect of the demised premises by reason of their being used for storing, selling or otherwise carrying on trade in petrol, petroleum products, oil and kindred motor accessories and to observe and perform all local police and municipal rules and regulations in connection with such use.

The learned single Judge has applied the ejusdem generis rule in reading the expression in Clause (1), "and any trade or business that can conveniently be carried on therewith" and has held that it premitted the lessee to carry on another trade or business only in a commodity related to or allied with petrol, petroleum products, oil and kindred motor accessories. In the words of the learned single Judge:

the word "therewith" occurring in the Clause "or any other trade or business that can convent onely be carried on therewith" has to be inter preted to mean edjusdem generis or "of the same kind or nature." In other words, the lessee is permitted to do any other trade or business that can be carried on with petrol, petroleum products, oil and kindred motor accessories.

In addition to this the learned single Judge has noted the absence of the expression, "and any other trade or business that can conveniently be carried on therewith" in Clause 2 (b) of the lease and has accepted, with approval, the contention advance on behalf of the respondents that Clause (1) of the deed was only in the nature of the permises and the actual terms and conditions which bound the lessee were to be found in Clause (2) of the lease only.

31. I am unable to accept any of the two reasonings. I sec no reason to restrict the plain meaning of Clause (1). To me Clause (1) as quoted above simply means that in addition to the petrol pump business the lessee can carry on any other trade or business that can be conveniently carried on along with the petrol pump business. Putting it differently, the lease prohibits carrying on only such other business which cannot be carried on conveniently with the business of petrol pump, such as a business in fire words or other undertakings involving the use of fire or other hazardous materials etc. So far as the sale of scooters is concerned, I see no inconvenience in carrying on that business along with the business of running a petrol pump and I find full sanction for the same in Clause (1) of the

lease.

32. So far as Clause 2 (b) is concerned, it does not at all stipulate the user of the land but "only obliges the lessee to run the petrol pump business under a valid licence and permit from the concerned authorities. As the immediate aim of the lessee was to establish a petrol pump on the demised land and as it is well known that the business of running a petrol pump requires licenses and permits from different authorities, such a stipulation was made in Clause 2 (b) of the lease. What other business or trade the-lessee might undertake in future was not known and neither was it known whether such business would require any licence or permits from any authority and hence the absence of the part "and any other trade or business that can conveniently be carried on therewith" in Clause 2 (b).

33. It is also to be noted that the scooter business was started on the suit land while it was still owned by the proforma defendants and it was fully in their knowledge, They never objected to it. In other words, the former owners of the land and the original lessors understood the lease to permit the user in question. In that view also, it is not open to the present plaintiffs to raise any objection in that regard.

34. It may here note that Mr. Ray took pains to completely dissect the lease with the help of Odgers on Documents (Vth Edn.) and has relied upon a series of decisions from the Supreme Court as also on some English decisions in support of his contention that there was no breach of any term of the lease. I need not undertake a discussion on those aspects as I have already found from a plain reading of the lease deed that the user of the land for carrying on a business in selling scooters did not constitute any breach of the terms of tenancy.

35. That At (sic) this stage, I am to record one submission advance by Mr. Thakur Prasad, learned Counsel appearing on behalf of respondent-plaintiffs. Mr. Prasad submitted that even in case all the points in this appeal were to be decided against the respondents-plaintiffs, the Court may not interfere with the decree of ejectment against the defendants. In this connection, Mr. Prasad out that in any event the lease expired on 30-6-1985, and thereafter no fresh lease came into existence by a registered instrument. Thus, after June 30, 1985, the status of the defendants according to Mr. Prasad was no better than trespassers on the suit land. Referring to the provisions contained in Section 7 (3) of the Take Over Act, Mr. Prasad contended that a right for renewal even though conferred by a status was one thing and the materialization and fructification of that right was something quite different. He greatly emphasised that a lease for more than one year could be made only by a registered instrument and in no other manner. Mr. Prasad further brought to our notice the petition filed by the appellant-defendant before the trial court on 24-6-1985 enclosing the notices given by the appellant to the plaintiffs. Mr. Prasad further stated that Para 4 of the petition wherein it was stated that on the basis of notices the lease of the suit land stood renewed for a further period of twenty years did not state the

correct legal position.

36. In this regard Mr. Prasad relied upon a number of decisions including those reported in AIR 1931 79 (Privy Council) , The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, and Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others, .

37. Mr Ray contended that the appellant had given notice (exercising faint option) in terms of Section 7(3) of the Take Over Act at the appropriate time and the question of enforcing the right by proper legal action would arise one after the present lis was decided in their favour. Mr. Ray further submitted that it and when a suit was to be filed, it had to be for mandatory Set on u/s 39 of the Specific Relief Act, 1963 and the period of limitation for such a suit was prescribed by the omnibus Article 113 of the Limitation Act. He also submitted that the cause of action in such a case was continuing cause of action and arose from day to day unless possession was recovered when time must run from the date of dispossession.

38. I have taken note of the rival contentions (sic) advanced by the parties only for the sake of the record as in view of my finding that relief against forfeiture was not available to the appellant. It is not necessary for me to be into this question. I have already found that the rights of the appellant under the lease were legally and validly extinguished on 30-9-1982 and there was no right surviving on 30-6-1985 which could be renewed in terms of Section 7 (3) of the Take Over Act.

39. No arguments were advanced challenging the notice dated 14-8-1992 . to the appellant u/s 106 of the T.P. Act which was held to be validly served both by the trial court and the learned Single Judge.

40. In the result, I find and hold, respectfully disagreeing with the learned Single Judge that there was no breach of the terms of the lease so far as per of the land was concerned. However, in agreement with the learned senior Judge I find and hold that the lease was validly determined tot non-payment of the monthly rent and the decree of ejectment passed against the undulant and proforma respondent No. 12 as also the decrees for arrears of rent, damages and mesne profits against appellant must be upheld.

41. I thus, find no merit in this appeal and the same is dismissed with costs.

U.P. Singh, J.

42. I agree.