

(1994) 01 SC CK 0129

In the Supreme Court Of India

Case No : Civil Appeals Nos. 795-96 And 3673 Of 1993

Hindustan Petroleum Corporation Ltd.

APPELLANT

Vs

Chandra Prakash Bubna and Others

RESPONDENT

Date of Decision : 18-01-1994

Acts Referred:

Transfer of Property Act, 1882 — Section 114

Citation : (1994) 3 SCC 101 Supp

Hon'ble Judges : S. Mohan, J; M. K. Mukherjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The suit property was in the enjoyment of the appellant as successor to M/s Caltex India Ltd. A lease deed had been entered into between the appellant and the respondents on 15/2/1968. The duration of the lease was for a period of twenty years. The object to demise was for installation and erection upon the demised land of underground petrol tanks and shelter for attendants and any other buildings, erection and equipment for the purpose of storing, selling or otherwise carrying on trade in petrol, petroleum products, oil and kindred motor accessories on a monthly rent fixed at Rs. 500.00 up to June 1975 and, thereafter at Rs 650 payable on or before 5th day of the succeeding calendar month. This property was sold by the original owners on 22/3/1982 in favour of defendants 3 to 6. After the sale, the landlord called upon the tenant to pay the rent to the successor. A registered notice was issued on 30/3/1982 by the advocate as to whom the rent was to be paid. Notwithstanding this, the rent not having been paid the landlord filed a suit for ejectment of the appellant herein. Besides non- payment of rent, two other grounds were also raised in the plaint (i) non- payment of municipal tax and (ii) misuse of the property. The tenant filed an interpleader suit. That suit was dismissed. A revision was filed unsuccessfully against such dismissal. Thereafter an application under Section 114 of the Transfer of Property Act was filed to relieve the tenant from the rigour

of forfeiture. That application was dismissed by the trial court on the ground that the suit was laid for ejectment not on the ground of non-payment of rent alone but on two other grounds as well. Therefore, Section 114 of the Transfer of Property Act could not be applicable. This was taken up in revision to the High Court. It was observed therein in the revisional order:

"The question of granting any relief in terms of Section 14 of the Transfer of Property Act shall be available to the defendant-petitioner subject to their depositing the rent and interest up to December 1985 along with cost in the court below within a month from today and also subject to their depositing the current month to month rent by 15th of next succeeding month."

Besides this, other defences were raised praying for the dismissal of the suit. We are not concerned with them.

2. The only point is as to the non-payment of rent. The reason is, though the trial court decreed the suit on all the three grounds, on appeal by the tenant the ground relating to the non-payment of rent was rejected. On further appeal the ground relating to misuse was also rejected. Thereafter, what survives for consideration in these appeals is as to the non-payment of rent as alleged in the plaint.

3. This is a case in which we are to blame the appellant alone for having brought itself into this difficult situation. As have been noted earlier after the sale on 22/3/1982, the appellant was visited with an advocate notice on 30-3- 1982 to the following effect;

Nawal Kishore Agarwal Advocate Patna High court 30/3/1982 M/s Hindustan Petroleum Corpn. Ltd. 9 Formerly - Caltex (India) Ltd. 17, Jamshedji Tata Road, Bombay-400021. Dear Sirs, This is to inform you. under the instruction of my clients Shri Ramawater Bubna. Shri Chandra Prakash Bubna and Shri Prabhat Kumar Bubna "Suprabhat Building", Extitlitlon Road. Patna -800 001 to Inform you that the Petrol Pump situated at Rajendra Path, Kadarnkuan, Patna-3 of which Shri Santosh Kumar Mazurndar, Shri Ashutosh Mazurndar, Shri Paritosh Mazurndar and Shri Biswatosh Mazurndar were the owners of above premises and used to receive a monthly rent of a sum of Rs. 650.00 only, have sold the entire premises, vide four sale deeds executed and registered in favour of my clients, as such you are henceforth requested to send monthly rental for the month of April 1982 onwards directly to my clients at the following address: Shri Ramawater Bubna Shri Chandra Prakash Bubna & Shri Prabhat Kumar Bubna, House name "SUPRABHAT", Exhibition Road, PATNA-1 (BIHAR) Please note that your ex-landlords have given in writing on 22/3/1982 requesting you to send the monthly rent directly to my clients. A xerox copy of the letter of Attomment by your ex-landlords is enclosed for your ready reference. Thanking you, Yours faithfully, Sd/- (N.K. Agrawal) Advocate

Then again on 22/3/1982 the original landlord wrote to the appellant as under:

"In spite of this we do not know how we agree with the appellant alone to make a request to send a certified copy of the purchase deed and also advice as to the share of each of the landlords."

This recalcitrant attitude persisted. Therefore, the courts below found that there was no justification for non-payment of rent. By its conduct the appellant had disentitled itself to the relief against forfeiture under Section 114 of the Transfer of Property Act.

4. In these Civils before us the learned counsel for the appellant strenuously urged that the appellant for its own purpose of corporation, requested the landlord to send a copy of the sale deed with which they derived the title. In such a case certainly it cannot be blamed. Further having regard to the ruling of this court reported in R.S. Lola Praduman Kumar v. Goyal the application under Section 114 of the Transfer of Property Act has to be allowed.

5. We are unable to accept either of these submissions. We have quoted in full the correspondence that is exchanged between the parties. The registered notice of the advocate dated 30/3/1982 leaves no room for doubt as to whom the appellant has to pay the rent. Therefore, now to contend, there was a doubt as to whom the rent was paid is an argument which is stated to be rejected. The landlord is called upon to produce a copy of the sale deed. We do not know where such a necessity arose. If really, the appellant was bona fide about the payment of rent the tenant would have to pay the rent in accordance with the directions in the registered notice dated 30/3/1982 and then requested the landlord to give such particulars. For reasons best known that was not done.

6. When there was no dispute as to the title where was the necessity? Therefore, we are clearly of the view that the appellant/tenant had not acted in terms of clauses 1 and 2 of the rental agreement dated 15/1/1968.

7. As regards the application under Section 114 of the Transfer of Property Act it is one of the settled principles that "law abhors forfeiture". However, Section 114 is a discretionary relief based on equitable consideration. Having regard to the above conduct of the tenant, the courts below had justified in its conclusion. In other words, the tenant by its conduct has disentitled itself in seeking the discretionary relief of Section 114 of the Act. Therefore we see no scope for application of the ruling in R.S. Lala Praduman Kumar v. Virendra Goyal. In the result the CA No. 795 of 1993 will stand dismissed.

8. In view of the dismissal of CA No. 795 of 1993, CA No. 796 of 1993 and CA No. 3673 of 1993 are not pressed. They will stand dismissed. No costs.

9. Both the learned counsel are agreed as to the grant of time to execute (i) the landlord shall not levy the execution till 31/12/1994, (ii) the tenant and the dealer M/s Bidasaria Auto Service shall file the separate undertakings within 4 weeks from today undertaking to deliver the vacant possession to the landlord without requiring the landlord to levy the execution.