

(1990) 07 MAD CK 0012
In the Madras High Court

Hindustan Petroleum Corporation Ltd.	APPELLANT
Vs	
Quthubuddin Syed Shah, Mohammed Bakher Sahib	RESPONDENT

Date of Decision : 02-07-1990

Acts Referred:

Citation : (1991) 2 MLJ 414

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—Defendant is the appellant. The suit is for possession and damages for use and occupation. Admittedly, the defendant

became the tenant of the suit property belonging to the plaintiff under Ex. A-1 lease agreement dated 4.6.1968, which gave a lease of the suit

property for a period of five years with option to the defendant - lessee to renew the lease for a further term of 5 years from the expiry of the said

term on a rent to be "then mutually negotiated and settled". Further, admittedly subsequent to the execution of Ex. A-1, the defendant under Ex. B-

8 letter dated 4.7.1968 addressed to the plaintiff, undertook to reimburse the plaintiff the municipal property tax for the demised site every half

year as soon as the plaintiff passes on the "demand notice or the tax receipt for the amount paid" towards the said tax. It is also common ground

that the defendant sent Ex. B-2 letter dated 11.1.1973 to the plaintiff expressing his option to renew the lease for a further period of 5 years at a

rent to be mutually negotiated and settled as per the Ex. A-1. Agreement and that reply was sent by the plaintiff to the said letter. However it is

also borne out from the evidence that the defendant made efforts to meet the plaintiff, so that a mutually agreed rent could be settled for the

abovesaid lease period of five years. However, the plaintiff did not respond. On the other hand, the plaintiff sent Ex. A-6 letter dated 5.2.1973 to

the defendant alleging that the defendant failed to discharge its obligation to pay the abovesaid municipal tax and that hence it forfeited the right to

continue in occupation of the site in question and calling upon the defendant to vacate and deliver possession of the suit property on the expiry of

the five year period from 16.6.1968, that is on 16.12.1973 and since the defendant did not so vacate, the present suit O.S. No. 201 of 1974 was

filed by the plaintiff, claiming possession and damages to the extent of Rs. 6,000 for the period of six months from February, 1974 at the rate of

Rs. 1,000 per month. (The rent fixed under Ex. A-1 was Rs. 460 per month). The trial Court has decreed the suit for possession and also granted

a decree for a sum of Rs. 3000 by way of damages for use and occupation, fixing the said damages per month at the rate of Rs. 500.

2. The learned Counsel for the appellant rightly contended that there was no forfeiture of tenancy on the ground that the above said municipal taxes

were not paid since, admittedly, the plaintiff did not pass on either the demand notice or the tax receipt and that under Ex. B-8 the liability of the

defendant to pay the property tax arises only if the plaintiff ""passed on the demand notice or the tax receipt for the amount paid."" So, there is no

forfeiture at all on the ground.

3. The learned Counsel for the appellant next submitted that apart from intimating his option to renew the lease as per the term under Ex. A-1, the

appellant made all efforts to meet the plaintiff so as to arrive at a mutually agreed rent and that since the plaintiff had not come forward to mutually

agree for the future rent for the succeeding five year period the appellant is entitled to continue to occupy the site in question on payment of the old

rent and that the appellant could not be ejected from the suit site.

4. But this submission of the learned Counsel for the appellant cannot be accepted. The learned Counsel for the respondent cited before me Nava

Kishore Das v. Madan Mohan Das 69 I.C. 600 to persuade me that the abovesaid submission of the learned Counsel for the appellant was

untenable. In that decision it was held that where, by a covenant for renewal of a lease, the lessor was given the power to enhance the rent without

any limit or objection on the part of the lessee and no method was stated as to

how the rent was to be fixed, the contract was too vague and incomplete to be specifically enforced and was vitiated by uncertainty. No, the learned Counsel for the respondent contended that when there was no agreement between the parties regarding the quantum of rent applicable for any future lease after the expiry of the above said initial 5 years, the defendant-appellant could not even seek the aid of the court in specifically enforcing the relevant clause in Ex. A-1 and the appellant has no alternative except to vacate the suit property and give delivery of possession to the plaintiff.

5. The learned Counsel also relied on a more direct decision of the Division Bench of this Court reported in *United Plantations and Industries v.*

Tata Tea Ltd. (1990) 1 L.W. 402. There, as in the present case, the agreement was for the renewal of a lease stating "this lease may be renewed

for such further period and upon such revised rent and other terms and conditions as may be mutually agreed upon" and this Court held that the

abovesaid clause in the lease deed was void for uncertainty and not specifically enforceable. In that context, it is relevant to note the following

observation of the Bench in the said decision in paragraph 43 of the judgment:

Therefore, this is only a contract to make a further contract. In such case, it is impossible for the court to fill in all those (terms) which are to be

mutually agreed upon and that too at a time when the renewal takes place. However might be our endeavour to do so, if the portion agreed to

make a further contract, we cannot help. As observed in *Gujarat Cimaco Co. v. Motilal Ltd.* 31 Bom. L.R. 130 the court does not exist for the

purpose of making a new contract between the parties if there is no contract as stated in *G. Scammell and Nephew Limited v. B.C. and J.G.*

Oustom 1941 A.C. 231 we have but to necessarily state that there is no contract between the parties. Therefore, we hold that the contract is void

for uncertainty.

6. Therefore, the above said contention of the respondent is correct. The relevant clause in Ex. A-1 only says that renewal could take place when

there is an agreement between the parties regarding the question of rent. If there is no agreement, there can be no renewal at all even as per Ex. A-

1. No doubt in *Port of Tuticorin v. Tuticorin Salt and Marine Chemicals* 90 L.W. 45 it was observed as follows:

The Supreme Court in *Damodar Tularam Mangalmoti v. The State of Bombay* 1959 S.C.R. 180 had to consider the term in a Lease deed wherein

the lessee secured an option to renew the lease, but subject to such fair and equitable enhancement of rent as the lessor shall determine. The

expression "fair and equitable" rent to be fixed by the landlord in case an occasion to renew the lease arises was held to be not void for

uncertainty. The court was of the view that it was open to the lessee to ask the court to determine what was fair and equitable enhancement.

So, if under Ex. A-1 it was stipulated that the future rent for the succeeding period of 5 years when the option for renewal is exercised, was "fair

rent", then at least it could be said that the defendant could have moved the Court for fixing such a fair rent on the ground that there was no mutual

agreement regarding the fair rent. But, as already noted, the relevant term in Ex. A-1 did not speak about any fair rent at all. It only stated that if

the lease has to be renewed, the rent should be mutually agreed between the parties. In such a situation, the plaintiff cannot even go to court

seeking its assistance for fixing the rent if the lease is to be renewed. At any rate, it is not the case of the defendant that it took any legal action

against the plaintiff for fixing the rent under Ex. A-1 for the renewal period. Therefore, the appellant has no alternative except to vacate the suit site

and give vacant possession thereof to the plaintiff.

7. The learned Counsel for the appellant no doubt cited *Badrilal Vs. Municipal Corporation of Indore*, , in support of his contention. But, even the

said decision only held that on the determination of the lease, it is the duty of the lessee to deliver up possession of the demised premises to the

lessor and that if the lessee continues in possession even after the determination of the lease, the landlord undoubtedly has right to eject him

forthwith. In the present case, even before the expiry of the lease under Ex. A-1, the landlord - plaintiff has written the above said letter Ex. A-6

dated 5.2.1973 demanding possession of the property back to him and subsequently has filed the present suit also. No doubt, the Supreme Court

observes in the above said decision that if the landlord does not take steps to eject the tenant and there is neither assent nor dissent on his part to

the continuance of occupation of the lessee the latter becomes a tenant on sufferance, who has no lawful title to the land but holds it merely through

the laches of the landlord. But such a situation has not arisen at all in the present case, as stated above. So, the abovesaid Supreme Court decision does not support the appellant, but only supports the respondent.

8. Therefore, I confirm the judgment and decree of the trial court and dismiss the appeal with costs.