
(2005) 07 MP CK 0104
In the Madhya Pradesh High Court
Case No : First Appeal No. 57 of 1996

Hindustan Petroleum Corporation Ltd. APPELLANT
Vs
Smt. Kamal Vasini Agrawal and Another RESPONDENT

Date of Decision : 12-07-2005

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(2), 7(3)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, 80, 96
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 12(1), 2

Citation : (2005) ILR (MP) 862 : (2005) 3 JLJ 97 : (2005) 3 MPLJ 404

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : P.S. Nair and B.P. Gupta, for the Appellant; Satish Agrawal and Kunal Thackrey for Respondent No. 1 and Devesh Jain, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

These two appeals have been preferred by different Defendants u/s 96 read with Order 41 Rule 1 CPC against the judgment and decree passed by trial Court decreeing the suit of Plaintiff Smt. Kamal Vasini Agrawal.

In brief the suit of Plaintiff is that she is the owner and land lady of disputed property. The Defendant No. 1 M/s. Hindustan Petroleum Corporation Limited (hereinafter referred to as "the Corporation") is a Government company. By, The Caltex [Acquisition of Shares of Caltex oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act, 1977 (for brevity the Act of 1977), the shares of the said company were acquired by the Government of India. Subsequently the rights therein were assigned to Defendant No. 1 Corporation.

Defendant No. 2 M/s. Sikharchand and Company is a dealer of Defendant No. 1 -

Corporation which is in actual occupation of the premises in question.

The Defendant No. 1 was a tenant of the premises in question under a lease agreement on monthly rent of Rs. 250/- which expired on 30.6.1986. As per the plaint averments, by deed of lease dated 5.9.1966, the said premises were let out to M/s. Caltex (India) Limited for a period of 10 years commencing from 1.7.1966. Clause 3(g) of the said deed of lease provided for renewal of the lease for a period of 5 years which expired on 30.6.1981. During the extended period of lease, the Act of 1977 came into force w.e.f. 23.4.1977. Under the said Act, all the rights and liabilities of the said company vested in the Union of India and it became a Government company carrying on business under the name and style of the Defendant No. 1 Corporation. Although no provision exists in the lease, however, by letter dated 13.6.1981 issued by Shri P.K. Roy, the then Regional Manager, Bhopal Region, of Defendant No. 1 Corporation, the Defendant No. 1 unilaterally extended the lease period by 30.6.1986 taking the aid of Sub-section (3) of Section 7 of the Act of 1977. Thus, the Defendant No. 1 Corporation was required to vacate the suit premises on the expiry of lease on 30.6.1986, however, Defendant No. 1 Corporation has failed to do so on the ground that Defendant No. 2 M/s. Sikharchand and Company, a dealer of Defendant No. 1 Corporation is not in a position to vacate the suit premises because substantial investment has been made by him in the trade and he would suffer heavy loss if the retail outlet is closed. Shri S.S. Siddiqui, Senior Regional Manager, Bhopal Region, of Defendant No. 1 has visited Jabalpur on 2.10.1986 and discussed the matter with the husband of the Plaintiff and also agreed that such occupation was against the natural moral norms. According to the Plaintiff, she requires the premises for starting a clinic-cum-hospital-cum-consulting chamber for her major son Dr. Alok Agrawal who is a qualified doctor and a Surgeon, having done M.S. in General Surgery from Government Medical College, Jabalpur, in which there shall be facility of x-ray, pathological services and diagnostic facilities etc. According to the Plaintiff, the proposed project shall be one of the best in the State of Madhya Pradesh and besides getting gainful employment to the son of the Plaintiff, the establishment would render valuable services to the cause of humanity by offering medical facilities to the growing population specially the poor and needy people.

As per the pleadings of the Plaintiff, after having done M.S. (in General Surgery) from Medical College, Jabalpur, Plaintiffs son Dr. Alok Agrawal was totally unemployed. Since he was keen to start his own hospital and the possibility of doing so in near future was not possible, he has temporarily taken up a job in Bombay Hospital, Bombay, from 23.9.1987. Thus, he had to do to keep up-to-date knowledge of the subject and he shall resign from service as soon as the Plaintiff gets the vacant possession of the plot.

After getting the vacant possession of the suit premises, both sons of Plaintiff shall share the premises adjusting according to their mutual needs in a flexible manner. Thus, the suit premises is required bonqfidely by the Plaintiff for the

purpose of starting the business of her major sons as envisaged u/s 12(1)(f) of the M.P. Accommodation Control Act, 1961 (in short "the Act").

A decree u/s 12(1)(h) of the Act has also been sought for construction of a building as per the sanctioned plan. The estimate has been properly prepared and the Plaintiff is possessing necessary funds.

The Defendant No. 2, besides running a retail outlet of Defendant No. 14 Corporation, also undertakes repairs of trucks including the welding job. Thus, a major portion of the suit premises is being used and converted into unauthorized workshop. As per the averments made in the plaint, since suit premises is situated in the heart of the town, the said user of the premises has become hazardous to the public of the locality. The said user is also against the distance norms recommended by the Ministry of Petroleum, Government of India. The suit premises are also being used for storage of junk material and truck parking and is also used as open urinal and sometimes as open latrine. Thus, the suit premises are being used for the purpose other than those for which they were initially leased out. The Defendants are also guilty of nuisance. Thus, a decree u/s 12(1)(c) of the Act has also been sought.

It has also been put forth by Plaintiff in the plaint that at the time when the premises were initially let out, there exists a cabin. The northern, western and southern walls thereof were made of steel with glass panels. Recently the Defendant No. 2 has removed the southern steel panel and has misappropriated the same. He has also constructed pucca brick wall in place of steel panel. Further, behind the cabin, the Defendant No. 2 has constructed a pucca store room as shown in blue colour in the plaint map and this is done without permission of the Plaintiff and sanction of the Municipal Corporation and thus, Defendant No. 2 had materially altered the accommodation to the detriment of the interest of the Plaintiff therein and thus the Plaintiff is also entitled" to a decree of eviction under Clause (m) of Sub-section (1) of Section 12 of the Act.

The Plaintiff on 23.7.1986 sent a notice u/s 80 CPC which served on Defendants on 29.7.1986 and 28.7.1986 respectively but they failed to vacate the suit premises and therefore they are liable to be evicted and are also liable to pay mesne profit for the period 1.7.1986 up-to-date at the rate of Rs. 250/- per day which comes to Rs. 24,500/-. The Plaintiff is claiming mesne profit at the rate of Rs. 250/- per day on the basis of actual profits received or might have received by the Defendants by the use of the suit premises. It has also been prayed that Defendants are further liable to pay future mesne profit at the rate of Rs. 250/- per day from the date of the suit till they are evicted in due course of law. On these premised pleadings the Plaintiff sought decree of eviction and mesne profits.

The Defendants resisted the suit and filed separate written statements. The pleadings of Defendant No. 1 is that Defendant No. 2 M/s. Sikharchand and Company is a licensee of Defendant No. 1-Corporation. The Defendant No. 1

should be decided to be in actual occupation of the suit premises. Though the period of lease may have expired on 30.6.1986 but the rights of the Defendant No. 1 as lessee continue pending renewal of the said lease. The renewal of the lease after 30.6.1986 has been unreasonably withheld by the Plaintiff in breach of the lease. The lease being governed by the provisions of the Act the rights of lessee are protected against eviction by the provisions of Section 12 thereof. The lease statutorily stood continued u/s 7(3) of the Act of 1977. The Defendant Corporation has been trying continuously to obtain renewal of the lease after 30.6.1986 but the Plaintiff has unreasonably refused to renew the lease on unilateral grounds. The Defendant No. 1 Corporation was not required to vacate the suit premises on the expiry of 30.6.1986. The Petrol Pump is an old retail outlet established since 1963 and is meeting the essential requirements of the customer trading in that area of the city. The occupation of the suit premises after 30.6.1986 is not unauthorized as there is a renewal clause in the lease deed and the Defendant No. 1-Corporation is entitled to the renewal even in the absence of renewal of the lease period of the suit premises being an accommodation falling within the definition of Section 2(a) of the Act. The occupation of the Defendant No. 1 on expiry of lease cannot be termed as unauthorized unless any one of the ground u/s 12 of the Act is made out in favour of the Plaintiff.

The bona fide requirement of Plaintiff's sons, has been denied. The other grounds of the eviction have also been denied.

The Defendant No. 2 also filed a separate written statement and on going through it, it is revealed that more or less it had adopted the written statement of Defendant No. 1.

The trial Court after framing the issue and recording the evidence of the parties came to hold that:

- (i) the lease has come to an end on 31.6.1986 and since the possession of the Defendants is unauthorized;
- (ii) the Plaintiff is in need of the suit premises bonafidely for starting the business of her two sons;
- (iii) the suit premise is being used by Defendant No. 2 for other purpose than it was leased out;
- (iv) the Defendant No. 2 has created nuisance by starting the work of auto repair and by using it for urinal purpose and for evacuate purpose;
- (v) the Defendant No. 2 has shifted steel panel and made pucca wall without the permission of the Plaintiff;
- (vi) the re-construction of the suit premises is required to be carried out by Plaintiff and for that purpose the suit accommodation is to be vacated and the Plaintiff is having necessary funds for that purpose with her and she also possess

necessary plan; and

(vii) the Plaintiff is entitled for mesne profit at the rate of Rs. 250/- per day till the date of getting actual possession.

In this appeal Shri P.S. Nair, learned senior advocate appearing for Defendant No. 1 - Corporation has vehemently submitted that the mesne profit can only be from the date of the decree and not earlier to it. In support of his contention, he has placed reliance on Premdas v. Laxmi Narayan Pande 1964 JLJ 87 : 1964 MPLJ 190 and Smt. Chander Kali Bai and Others Vs. Shri Jagdish Singh Thakur and Another, , It has also been put forth by him that no reason has been assigned by learned trial Judge in passing the decree of mesne profit at the rate of Rs. 250/- per day. On the question of bona fide requirement, it has been submitted by learned senior Counsel that as per own case of Plaintiff, her son is in job in Bombay and therefore the alleged need is planted in order to give a colour of bona fide need. The Plaintiff is having reasonable suitable accommodation of her own adjoining to the suit property. It has also been canvassed that the suit was filed long back on 17.10.1986 and after the lapse of 19 years now it cannot be said that the need is bona fide. To buttress his contention, the learned senior counsel has placed reliance on the decision of Supreme Court in Hasmat Rai v. Raghunath Prasad 1981 JLJ 716

Shri Nair, learned senior counsel by assailing the judgment of the trial Court on other grounds of the Act, has submitted that none of the ground is proved and, therefore, the decree of eviction has been wrongly passed.

Shri Devesh Jain, learned Counsel appearing for Defendant No. 2 has filed a separate Appeal (F.A. No. 98/96) and has adopted the arguments of Shri Nair, learned senior counsel.

Refuting the submissions of learned senior counsel for the Appellant, Shri Satish Agrawal, learned Counsel for Plaintiff has argued in support of impugned judgment. According to him, the bona fide need of Plaintiff is still subsisting. She has no alternative suitable accommodation of her own to start the business of her major sons. Merely the suit has travelled for near about two decades would not mean that the need of Plaintiff has come to an end. It has been proposed by him that the trial Court rightly passed the decree of eviction under the Act since Plaintiff has proved all the grounds. By placing reliance on the pronouncement of the apex Court Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, , it has been contended that u/s 7(3) of the Act of 1977, the oil company has only one right of renewal and the said option by renewal can be availed only once. It has also been canvassed by him that the decree of mesne profit at the rate of Rs. 250/- per day comes to Rs. 7,500/- per month and the suit premise is the land admeasuring almost 7,000 sq. ft. in the valuable commercial location of the city and therefore passing the decree of mesne profit @ Rs. 250/- per day cannot be said to be arbitrary or in excessive. According to Shri Agrawal, learned Counsel for Plaintiff, the objection of decree of mesne profit is to compensate the

rightful owner against the loss and is determined with the reference to the profitable use to which the suit premises could have been put having regard to the market value. To bolster his submission, reliance has been placed on Suit. Smt. Nandita Bose Vs. Ratanlal Nahata, , The another decision on the point which has been placed reliance by M/s. Marshall Sons and Co. (I) Ltd. Vs. M/s. Sahi Oretans (P) Ltd. and Another, On these premised arguments, it has been prayed that both the appeals be dismissed.

After having heard learned Counsel for the parties, I am of the view that both the appeals deserve to be dismissed.

I shall first deal the decree passed by the trial Court on the ground envisaged u/s 12(1)(f) of the Act. On the ground of bona fide need, the Plaintiff has examined Dr. Alok Agrawal and Atul Agrawal who are major sons of Plaintiff and for whom the suit accommodation is being sought to be vacated. The Plaintiff also examined Radheshyam Agrawal who is the husband of Plaintiff, P.W. 1, Dr. Alok Agrawal has stated that he had passed M.S. Degree course from Medical College Jabalpur in 1984 and at present he is serving in Nair Hospital at Bombay where he is serving since 1988. Earlier to 1988 for some period he did serve in Bombay Hospital and he remained unemployed for near about 2-1/2 years. He also tried to get the job of lecturership in Medical College, Jabalpur but could not succeed. He has further stated that in the suit premise, he wants to construct a nursing home. The accommodation in which they are residing is the property of joint Hindu family. He is not having any land of his own and the residential house which is available is quite small. In the residential house, hospital cannot run and apart from this, his family is big having sufficient number of the members. He has further stated that he is having liquid money with him to construct a hospital. This witness remained embedded in his version despite there being a roving cross-examination to him. If the testimony of this witness is scrutinized in proper perspective, no one can say that the bona fide need of his is not genuine.

On going through the evidence of P.W. 2, Sharat Chand Jain who is a builder and is also a valuer, it is revealed that the area of the suit property is near about 7000/- sq. ft.

Atul Agrawal, who is the second son of the Plaintiff has also been examined as P.W. 3 and he has also stated that he is in need of suit accommodation in order to start his business. His brother Dr. Alok Agrawal would also construct a hospital and for this purpose, the suit accommodation is required by him and his brother. He has also stated that he is having necessary capital with him in order to start the business.

Before discussing the evidence of Radheshyam Agrawal who is the husband of Plaintiff, I would like to discuss the evidence of Defendants. The Defendants have examined two witnesses, namely, D.W. 1 A.K. Das Gupta and D.W. 2, R.D. Agrawal. D.W. 1, on the date of his examination, was serving on the post of Sales Manager at Ahmedabad and D.W. 2 was serving on the post of Senior Sales

Representative. None of these witnesses have stated that Plaintiff did not require suit accommodation to start the hospital for her son Dr. Alok Kumar Agrawal and to start the business of her another son Atul Agrawal. Thus, the evidence of Plaintiff's sons has not been rebutted by the Defendants in regard to the bona fide requirement of suit accommodation.

The statement of Dr. Alok Agrawal and Atul Agrawal is corroborated by the evidence of Radheshyam Agrawal who is the father of Dr. Alok and Atul Agrawal. In the statement of Radheshyam, it has come that he has purchased one plot (Ex. P-43) and this fact has not been mentioned in the plaint. But, according to me, it will not be fatal to the Plaintiff for the simple reason that Plaintiff is not the owner of that plot. The requirement of law under Clause (f) of Section 12(1) of the Act is that the landlord must be the owner of the reasonably and suitable alternative accommodation. No doubt true, the husband of the Plaintiff is the owner of one plot the description of which is given in Ex. P-43, but it is equally true the same is not owned by the Plaintiff and if that is the position, according to me, it cannot be an alternative reasonable suitable accommodation as envisaged u/s 12(1)(f) of the Act. The husband of the Plaintiff Radheshyam Agrawal (P.W. 4) in paragraph 34 has stated that on the back side of the disputed property there is a plot of Plaintiff admeasuring 7000 sq. ft. out of which 5000 sq. ft. has already been constructed. It be seen that on this plot area, 5000 sq. ft. had already been constructed. But, the construction of hospital is quite different and the doctor may construct his hospital to meet out his own need and requirement. Apart from this, it is the choice of the Plaintiff and her sons to choose where they want to carry on the hospital and the business and the tenant is nobody to direct him to start the business at a particular place. In this regard, I may profitably rely the decision of the Supreme Court in the case of M.L. Prabhakar v. Rajiv Singal (2001) 2 SCC 355 and Akhileshwar Kumar and Others Vs. Mustaqim and Others, , There is no substance in the submission of learned Counsel for the Appellant that since Dr. Alok Agrawal is serving in Nair hospital at Bombay, his need has come to an end. It be seen a person will not sit idle till his case is decided and certainly he is required to do something for his earnings and for that purpose if Dr. Alok Agrawal is serving in some hospital at Bombay, would not mean that his need has come to an end. Apart from this the entire answer to this question has been given by the apex Court in the case of Gaya Prasad v. Pradeep Srivastava (2001) 2 SCC 604 which was a case of bona fide need to open a clinic by the sone of landlord who was qualified as a doctor and part of accommodation was required by the landlord for radio repair business. The eviction petition was filed in the year 1978 and the order was passed by the authority on 25.3.1982. The tenant's appeal was dismissed on 10.10.1985 against which he filed writ petition before the High Court and there was stay of eviction. In the year 2000, the writ petition was dismissed and in the meantime the son of landlord joined the provincial medical service. In these circumstances, the apex Court in para 10 held as under:

10. We have no doubt that the crucial date for deciding as to the bona fide of the

requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. During 23 years, after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred *pendente lite*, because the opposite party succeeded in prolonging the matter for such unduly long period.

Thus, merely because in order to meet his requirement of his livelihood, Dr. Alok Agrawal has joined the services in one hospital at Bombay, would not overshadow his genuineness of the need nor his action acquiesced his genuine need. Thus, by following the verdict of the apex Court in the case of *Gaya Prasad* (*supra*) the contention of learned Counsel for the Appellant cannot be accepted. The decision of *Hasmat Rai*'s case (*supra*) is not applicable in the present facts and circumstances because not only in the plaint it has been pleaded that the Plaintiff still requires the suit accommodation for the need of her two sons but her sons Dr. Alok Kumar Agrawal and Atul Agrawal have categorically stated in their evidence that still their need is surviving and they are in need of the suit accommodation.

The bona fide need to start the hospital of Dr. Alok Agrawal and to run business of Godam by Atul Agrawal in the said accommodation has been proved.

I have given my anxious and bestowed consideration to the reasonings assigned by the trial Court while deciding issue No. 2 which pertains to bona fide need of Plaintiff from paragraph 33 to 50 and I find them to be quite cogent. Indeed, from every angle the trial Court has scanned the evidence and pleadings of the parties in regard to the bona fide need and there is no reason to deviate from the reasonings assigned by trial Court. Accordingly the finding of trial Court is hereby affirmed and the decree passed by trial Court u/s 12(1)(f) of the Act is hereby affirmed.

The trial Court has also found the other grounds envisaged under Clause 12(1) (c), (h) of the Act to be proved and in that regard I have seen the findings arrived at by it while deciding issues No. 3, 4, 5 and 7. The trial Court, after marshalling the evidence, came to hold that the grounds are duly proved. In rebuttal to the evidence of Plaintiff, none of the Defendants' witness have stated anything in order to discredit the statement of Plaintiff's witness or to demonstrate that the grounds of eviction are not proved. The only statement, which the above said Defendants' witnesses have stated is in regard to how the Hindustan Petroleum Corporation came into existence and in regard to the relationship of landlord and tenant. Since there is no evidence in rebuttal of the Defendant, therefore, the trial Court did not commit any error in passing the decree of eviction on the other grounds on the basis of unimpeachable evidence of Plaintiff. I have considered the reasonings assigned by the trial Court decreeing the suit and I do not find any illegality in the judgment. The findings arrived at by the trial Court are based on cogent oral and documentary evidence which are unrebutted. The trial Court rightly decreed the suit of the Plaintiff.

The next question for consideration is that from which date and at what rate the Plaintiff is entitled for the mesne profits. In that regard trial Court framed issue No. 1 and 6. The trial Court while deciding these two issues came to hold that the lease of the Defendant has come to an end on 31.6.1986 and thereafter his possession is unauthorized. The trial Court further came to hold that the Plaintiff is entitled for the mesne profits and looking to the profession of the doctor, the loss could easily be assessed for the purpose of masne profit and the trial Court calculated it at the rate of Rs. 250/- per day till the date getting vacant possession.

Learned Counsel for the Defendant by placing reliance on the Division Bench decision of this Court Premdas (supra) and a decision of Supreme Court in the case of Suit. Chander Kali Bail (supra) has contended that in the eviction suit if a decree of eviction is passed, the mesne profit can be awarded from the date of the decree. It has also been contended that no reason has been assigned by the trial Court awarding mesne profit @ Rs. 250/- per day and therefore the findings arrived at by the trial Court deciding issue No. 1 and 6 against Defendants be set aside.

On going through the pleadings made in para 5 of the plaint, it is gathered that the lease came to an end on 30.6.1986 and thereafter according to the Plaintiff she is claiming mesne profit at Rs. 250/- per day on the basis of actual profits received or might have been received by the Defendants by the use of the suit premises and they are further liable to pay future mesne profit @ Rs. 250/- per day from the date of the suit till they are evicted in due course of law. Apart from the decree of eviction, the Plaintiff has prayed a decree of mesne profit with effect from 1.7.1986 up to date @ 250/- per day amounting to Rs. 25,500/- till the date of the filing of the suit and the future mesne profit from the date of the filing of the suit till the Defendants are actually evicted in due course of law.

It be seen that on 5.9.1966 a piece of open land comprising of 6984 sq. ft. in the prime commercial area of the township of Jabalpur was leased out to the Defendant (M/s. Caltex India Limited) at a monthly rate of Rs. 250/- for a period of 10 years commencing from 1.7.1976. Clause 3(g) of the lease deed provides for the renewal of lease for a period of 5 years and accordingly on 1.7.1976 it was renewed and extended to the period 30.6.1981.

The Act of 1977 was enacted under which all rights and liabilities of M/s. Caltex (India) Limited stood vested in Union of India and it became a Government company carrying on business under the name and style of M/s. Hindustan Petroleum Corporation Limited. Section 7(3) of the said Act provides for extension of lease which reads thus:

Section 7(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 terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into.

The lease which was extended for a period of five years came to an end and expired on 30.6.1981. Thereafter on 13.6.1981 the Defendant through its Regional Manager purported to invoke Section 7(3) of the said Act unilaterally extended the lease up to 30.6.1986 and accordingly the statutory extension of the lease was availed upto 30.6.1986. Since, there being no further provision or power for extension of the lease under the said Act, eventually, the possession of the Defendants after 30.6.1986 became unauthorized and they became as trespassers with effect from 1.7.1986. It is no more in dispute that despite having received the quit notice the Defendants did not vacate the suit premises.

The Supreme Court in the case of Dolly Dos (*supra*) by interpreting Section 7 of the Act of 1977 has categorically held that the oil company has only one right of renewal and the said action for renewal can be availed only once. It would be condign to rely para 12 which reads thus:

12. The lease had been granted with effect from 1.10.1969 in favour of M/s. Caltex (India) Ltd. and on the coming into force of the Act on 23.4.1977 the Appellant had stepped into its shoes and from that day onwards the Appellant has been in possession of the same till now. The crucial question whether the option for renewal either in terms of the lease deed or in terms of the act had been availed of or not is the controversy between the parties now. Litigation between the parties has been going on from 1993 onwards. On the expiry of the term the deed provides for renewal for two terms of 10 years each on the same terms and conditions except for enhancement of rent and execution of fresh deed modifying the clause relating to renewal. The Appellant gave notice of renewal in terms of the provisions of (i) the deed in the letter dated 23.5.1979, and (ii) the Act in the letter dated 13.9.1989. Now it is not necessary to examine the effect of renewal for the earlier period as even on the Appellant's own showing it is

invoking the statute in the latter notice and not the terms of the deed. If that is so, the Appellant could seek for renewal only in terms of Section 7 of the Act which enabled it to renew the deed for a period of one term as originally granted. A covenant for renewal is not treated as a part of the terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only be for one term and no more, but nevertheless it could be contended that the covenant for renewal was also part of the lease and, therefore, stood incorporated in the renewed lease arising under the Act. However, in the peculiar facts of this case, we think that it is not necessary to enter upon the merits of the controversy regarding the effect of Clause 3(g) of the lease deed or the rights available under the Act for renewal of the lease period. We are of the opinion that the ends of justice in this case will be met if we modify the order of the High Court in the following terms:

- (1) The Appellant does not have power to claim exercise of option for any renewal of the lease beyond 30.9.1999;
- (2) The Appellant seeks for and is granted time to hand over vacant possession of the premises in question to the Respondent on or before 31.3.2000, however, subject to filing of the usual undertaking in this Court within a period of four weeks from today;
- (3) Rent payable is as per the terms of the lease deed, that is, Rs. 1920 per month which shall be paid till the date of handing over the vacant possession;
- (4) If any arrears of rent, as stated above have not been paid, the same shall be paid within a period of three months from today; and
- (5) The order made by the High Court to the extent it is inconsistent with out order shall stand set aside.

This Court in the case of Smt. Prema Agarwal and others Vs. Om Prakash Gautam and another, has held that Plaintiff-landlords are entitled to mesne profit from the date of the filing of the suit at the rate higher than contractual rate and for so determination the Court can also consider escalation in rental prices. I have given my anxious and bestowed consideration to the reasonings assigned by the trial Court deciding issues No. 1 and 6. Indeed the trial Court has given elaborate reasonings by awarding the mesne profit @ Rs. 250/- per day from the date of the filing of the suit as well as the mesne profit from 1.7.1986 to the date of filing of the suit @ Rs. 250/- per day which comes to Rs. 25,500/-. It be seen that the suit premises is located in the posh locality of the Jabalpur town and the area is almost 7,000 sq. ft. and, therefore, the view of this Court is that the trial Court did not commit any error by deciding issues No. 1 and 6 and granting mesne profit while deciding those issues. In this context, I may profitably rely two decisions of the Supreme Court in the case of Smt. Nandita Bose (supra) and Marshall Sons and Co. (supra).

Judging from all the angles, I could not find any fault in the judgment and decree

passed by the trial Court. Accordingly, both the appeals are found to be devoid of any substance, the same are hereby dismissed with costs. Counsel fee Rs. 5,000/-, if pre-certified.