
(1985) 09 CAL CK 0023
In the Calcutta High Court
Case No : A.F.O.D. No. 372 of 1981

Hindusthan Petroleum Corporation Ltd.	APPELLANT
Vs	
R.P. Agarwalla and Brothers (Pvt.) Ltd.	RESPONDENT

Date of Decision : 18-09-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 27(1)
ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 5, 7
Transfer of Property Act, 1882 — Section 107

Citation : AIR 1986 Cal 403

Hon'ble Judges : Manashnath Roy, J; Amarendra Chandra Sengupta, J

Bench : Division Bench

Advocate : Prodosh Mullick and Tarun Chatterjee, for the Appellant; Aninda Kumar Mitra, Sudish Chandra Dasgupta, Pradipta Kumar Roy and A.K. Roy, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Roy, J.—This appeal is directed against the judgment and decree dt. 25th April 1981, passed in Title Suit No. 33 of 1980, by Shri D.K. Panda, learned Subordinate Judge, 4th Court, Alipore, 24 Parganas.

2. By such judgment and decree, the plaintiff/Respondent's suit for ejectment and for damages in respect of the property as described hereafter, was decreed and consequently, the declarations as asked for were granted.

3. M/s. R. P. Agarwalla & Brothers (Pvt) Ltd. Plaintiffs in the suit, stated that a Company by the name of Property Development Trust (P) Ltd., who incidentally were their predecessor-in-interest, acquired more or less 2 Bighas 15 Cottahs 14 Chittacks and 62 Square feet of land, appertaining to premises No. 5, Lansdown Road, which is presently known as 5B, Sarat Bose Road, Calcutta-20 and thereafter, the said predecessor-in-interest (hereinafter referred to as the said Trust), built a multistoried building, which is known as "Lansdown Court" (hereinafter referred to as the said premises), consisting of 28 flats.

4. It was also the case of the plaintiffs that by a registered deed of lease dt. 10th May 1957 (Ext. 1), the predecessor-in-interest of the defendant/appellants Standard Vacuum Oil Co. Ltd., were inducted into the said premises in respect of flat No. 12 (hereinafter referred to as the said flat), as a lessee for a period of 25 years, at a monthly rent of Rs. 225.00P. payable according to English Calendar month. It was also the case of the plaintiffs that the lease in question, expired on the expiry of the last day of Jan. 1980, since the same commenced from 1st day of Feb. 1955. It was pointed out, that Clause 10 of the said Ext. 1, specifically stipulated that upon the expiry of the said term, forthwith to deliver up possession of the said flat to the Lessor without any objection or obstruction and in default, to pay mesne profit for the Lessee's continued occupation on the basis of the rent prevalent at the time in respect of premises of the same standard and in the same locality. The Lessee shall have the first option of renewal of the lease after the first period of 25 years is over, and it was further pointed out, that as per terms of the lease in question, the Lessee was not entitled to make any additions or alterations in respect of the said flat and was also required to bear and pay, enhanced Municipal taxes to the extent of the occupier's share.

5. It was the further and specific case of the plaintiffs that though there was or has been a clause in the Lease Deed in question (Ext. 1), for option of renewal as indicated hereinbefore, the defendants had lost such option of renewal and that being the position, the concerned suit for decree for eviction and mesne profit, had to be filed as the defendants were continuing with their unauthorised occupation of the said flat.

6. In their written statement, the defendants apart from denying the material allegations and averments of the plaint, claimed that not only in terms of Clause 10 of (Ext. 1) which related to renewal, the suit as filed, was misconceived. Apart from that, the defendants further claimed that such renewal clause as exercised, if appropriately considered with the relevant provisions of the ESSO (Acquisitions of Undertakings in India) Act, 1974 (hereinafter referred to as the said Act), there would be no way out but to hold that the option of renewal in the instant case was duly exercised and in any event, the lease in question, was to be renewed and that being the position, the suit as filed, was misconceived and the same should be dismissed.

7. On the pleadings as above, the following issues were framed for consideration : --

1. Is the suit maintainable?
2. Has the Lease deed 1st Feb. 1955 for a period of 25 years in respect of the suit premises extended?
3. Whether the defendant is entitled to the benefit of such extension?
4. Is the plaintiff entitled to a decree for recovery of Khas possession of the suit

property and for damages?

5. To what relief, if any, is the plaintiff entitled?

8. So far Issue No. 1 is concerned, the same not having been pressed during trial and on consideration of the materials on record, the learned Court below answered that issue in favour of the plaintiffs and further held and observed, that the suit as framed, was in form and there was no defect in the same.

9. The question whether the defendants would be entitled to the benefits of extension of the lease as claimed or whether the said lease was really and in fact extended and if the plaintiffs entitled to a decree for recovery of Khas possession of the said flat and the consequential damages, were taken up together for the consideration by the learned Court below. There has been no doubt that the said lease in respect of the said flat was granted in favour of the appellants or their successors in office or their predecessor-in-interest, for a period of 25 years, which has expired on 31st Jan. 1980 and the said Act came into existence on or about 13th Mar. 1974, for the purpose of providing for the acquisition and transfer of the right, title and interest of ESSO in India, in relation to its undertakings in India, with a view to ensuring co-ordinated distribution and utilisation of petroleum products distributed and marketed in India by ESSO Eastern Inc and for matters connected therewith or incidental thereto. The preamble of the said Act would also show that the said ESSO Eastern Inc, to be a foreign company and is carrying on, in India, the business of distributing and marketing of petroleum products manufactured by ESSO Standard Refining Company of India Limited and Lube India Ltd., and for that purpose, established places of business at Bombay and other places in India. The said preamble would also show that in the expediency of public interest, undertakings in India, of ESSO Eastern Inc, should be acquired in order to ensure that the ownership and control of the petroleum products distributed and marketed in India by that Company are vested in the State and thereby to serve the common good. It would also appear that a letter claiming to be one for having the letter (Ext. 3) dt. 9th Oct. 1979, claiming to be a letter for having the lease renewed, was given by the appellants to the plaintiff/Respondents on the basis of or in terms of Clause 10 of the lease (Ext. 1), the particulars whereof have been incorporated hereinbefore and the reply to the said letter (Ext. 3) was given by or on behalf of the plaintiff/Respondents by their letter dt, 31st Oct. 1979 and in that letter, it was specifically claimed, the renewal clause as involved, was vague, indefinite and not binding upon them and as such, possession of the said flat was asked for. The demand for renewal in the instant case, in any event, was claimed by the plaintiff/Respondents to be improper and not duly exercised.

10. The learned Court below has further and that too on the basis of the available materials, observed that the lease has admittedly expired and the employee of the said M/s. Hindusthan Petroleum Corporation Ltd., was in possession of the said flat, even after such expiry. He has also recorded that it was the case of the plaintiffs that the concerned lease was not extended and that

being the position, the defendants were not entitled to any protection against the eviction. It has also been recorded by the learned Court below that it was the case of the defendants" that after expiry of the concerned lease, they were and are in possession of the said flat duly and on the basis of renewal under the renewal clause as mentioned above, as well as under Sections 5 and 7 of the said Act, the particulars whereof are quoted hereunder :

(5) Central Government to be lessee or tenant under certain circumstances.

(1) Where any property is held in India by Esso under any lease or under any right of tenancy the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be in respect of such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government.

(2) On the expiry of the term of any lease or tenancy referred to in Sub-section (1), such lease or tenancy shall, if so desired by the Central Government be renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day.

6.

7. Power of Central Government to direct vesting of the undertakings of Esso in a Government company.

(1) Notwithstanding anything contained in Sections 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest and the liabilities of Esso in relation to its undertakings in India vest in a Government Company under Sub-section (1) Government company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) The provisions of Sub-section (2) of Section 5 shall apply to a lease or tenancy, which vests - in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government company.

11. It was the further claim of the plaintiffs before the learned Trial Court, that defendants cannot claim the right of a statutory tenant by holding over on the expiry of the lease, in view of Section 2(h) of the West Bengal Premises Tenancy Act, which defines the term "tenant" and the more so when, such term would not be applicable to a lease for more than 15 years. That being the position, it was the specific observations of the learned Court below that the defendants were not entitled to claim the right of a statutory tenant by holding over, after the expiry of the lease and he made such observations, in view of the determinations in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Manindra Nath Sarkar, .

12. While on the question of consideration of the fact as to whether the lease in question, was actually renewed, the learned Court below has referred to the relevant provisions of the lease and has in fact, quoted Clause 10 of the same and thereafter, has observed that on the basis of the terms of the lease, there was no doubt that there was a covenant for renewal of the lease on the happening of certain exigencies viz. on due exercise of the option of renewal in terms of the stipulations as mentioned in the said clause. As mentioned hereinbefore, Ext. 3 which is the letter dt. 9th Oct. 1979, has been claimed to be the demand for having the lease renewed. The said letter, no doubt was sent before the expiry of the terms of the lease, which incidentally was to expire in Jan. 1980 and the same was addressed to one Master Amit Agarwalla C/o M/s. R. P. Agarwalla & Brothers (P) Ltd., 51 Stephen House, 4, B.B.D. Bag East, Calcutta-700.001. The said Ext. 3 was addressed to the said Master Amit Agarwalla, by the constituted Attorney of the defendants; not only under or in terms of the renewal clause of the concerned lease, but also under Sections 5 and 7 of the said Act. The learned Court below has duly found that in terms of the Lease (Ext. 1), there was or has admittedly been a renewal clause and thus the question for consideration before him, if such renewal was appropriately asked and duly applied for and that too in view of the letter dt. 9th Oct. 1979 (Ext. 3), the other particulars the terms whereof have been indicated hereinbefore. It has been indicated by the learned Court below that Clause 10 of that Exhibit cannot be opted for piecemeal and if any option is exercised or required to be exercised, then, the same must be in full compliance of the terms of the said Clause 10, the particulars whereof have been quoted earlier. The said clause according to the learned Court below provides that on expiry of the terms of the lease, the lessee must deliver possession to the lessor without any objection or obstruction and in default, to pay for lessee's occupation, rent prevalent at the time in respect of the said flat, on the basis or at the rate of standard rent prevalent and available in the locality and it did not appear from the terms of Ext. 3, that the lessee adopted the provisions of the said Clause 10 in their entirety and they only exercised for renewal for the further period of 25 years on the existing terms. The learned Court below has also referred to the subsequent correspondence between the parties and more particularly on the aspect of purchase and sell of the said flat amongst others and on that basis, has indicated that the defendants gave a go-by to the concerned renewal clause.

13. Then, the learned Court below has considered the effect of Sections 5 and 7 of the said Act. Before him, the defendants submitted that besides Clause 10 of Ext. 1, they would be entitled to renewal under the aforesaid provisions of the said Act, on the same terms and conditions, as the option was rightly exercised by Ext. 3. On reading and consideration of Section 6 of the said Act, which makes provisions for removal of doubts and lays down that (1) For the removal of doubts, it is hereby declared that the provisions of Sections 3, 4 and 5 shall apply to the extent to which any property appertains to the business carried on by Esso in India; and to the rights and power acquired, and to debts, liabilities and obligations incurred and to contracts, agreements and other instruments made by Esso in India, and to legal proceedings relating to those matters pending in any court or tribunal in India and (2) If any question arises as to whether any property appertains, on the appointed day, to any business of Esso in India, or, whether any rights, powers, liabilities or obligations were acquired or incurred or any contract, agreement or other instrument was made by Esso for the purposes of its business in India or whether any documents relate to those purposes, the question shall be referred to the Central Government which shall, after giving an opportunity of being heard to the persons interested in the matter, decide it in such manner as it may think fit. It has been observed that the submissions as indicated hereinbefore, were without any substance, as the real scope and effect of the concerned section was overlooked, as they provide that provisions of Sections 3, 4 and 5 of the said Act, shall apply to the extent to which any property is appertained to the business carried on by the Esso in India. The learned Court below has referred to the evidence of P.W. 1, Bishnukant Jha and P.W. 2 Benoy Kumar Agarwalla, who had testified that the said flat was let out for residential purposes only and the same, at the time of institution of the concerned proceeding, was also used for that purpose, for the officers of the defendants. On further consideration of the paucity of evidence on the point that the said flat was not used for any other purpose or the same appertained to the business carried on by Esso in India, the learned Court below has observed that Section 5 of the said Act, would not enure to the benefit of the defendants or to get any assistance for and from the said Act and in respect of their claim, that the lease was renewed in terms of the provisions of the said Act.

14. On the basis of the documentary evidence as available, the learned Court below has observed and found that the defendants or their predecessor-in-interest were inducted in respect of the said flat as a lessee under Ext. 1 for a period of twenty five years and on expiry, such lease has not been duly renewed and that apart, on consideration of the evidence of Bishnukant Jha (P.W. 1), the learned Court below has accepted the rate of rent for the said flat or the manner for payment of the same and so also the expiration of the same and the fact that the lease was not renewed and furthermore, the present letting value of the said flat would be Rs. 7,000/- per month. While on the point of present letting value, the learned Court below has also considered the evidence of P.W. 3 Chandramoni Pandey, a house broker. The learned Court below has also recorded on the basis

of the evidence of Benoy Kumar Agarwalla (P.W. 2), that after expiry of the lease, possession of the said flat was demanded and asked for, A part from the above, the evidence of P.W. Mongrilia O.P. No. 1 has been held and found to be far from being satisfactory and it has been observed that he could neither prove the renewal of the lease nor could say anything regarding the present letting value of the said flat. The plea as raised, that the defendants had made some additions and alterations, was not argued in favour of the plaintiffs.

15. In view of the findings as above the suit succeeded and in this Appeal from Original Decree, Mr. Mallik, on the basis of the pleadings as above stated that the main contentions of the defendant/appellants were that the learned Court below should have held that in Clause 10 of Ext. 1, there was really a renewal clause and the option for the renewal of the lease in the instant case was duly exercised by them, apart from claiming that the said court should have also held that in terms of Exhibit 3, the renewal of the lease (Ext. 1) was appropriately asked for and since such renewal was duly asked for, the plaintiff/Respondents were not entitled to claim or get a decree for eviction. It was also contended that the renewal clause as contained in Clause 10 of Exhibit 1, was not vague and by virtue of their option as exercised, the defendant/appellants, got a right to have to renewal of the lease and thus, entitled to remain in possession of the said flat. It was also claimed that the option of renewal under Clause 10 of Ext. 1, could be exercised by following the entire provisions of the said clause and the learned Court below erred in not holding that the provisions as contained in first sentence of the said Clause 10, was not the renewal clause and furthermore, in terms of the last sentence of the said Clause 10, the lessee in the instant case was entitled to have the first option for renewal after the expiration of the lease after twenty five years. In any event, it was claimed that the learned Court below was wrong in holding that the lessee did not adopt the entire provisions of the said Clause 10 of Exhibit 1, but only exercised option for renewal for a further period of twenty five years on existing terms and in holding so, the terms of the letter of renewal (Ext. 3) were misconstrued and misappreciated..

16. Apart from the above, the defendant/ appellants also claimed Chat the learned Court below should have held that by virtue of or in view of Sections 5 and 7 of the said Act, the Lease (Ext. 1) was deemed to have been renewed on the same terms and conditions and as such, the lessee was entitled to remain in possession of the said flat as such, on the same terms and conditions of Ext. 1 and the learned Court below should not have rejected the contentions that there has been such renewal as mentioned above, in terms of the said Sections 5 and 7 of the said Act. It was also contended and claimed that in making the determinations as in this case, the learned Court below failed to consider and understand the true purport, impact, import and effect of Sections 5, 6 and 7 of the said Act and in any event, it was wrong in holding that Section 5 relates to the property, which appertains to the business carried on by the Esso (India) Limited. It has been claimed further that in making the determinations as in this case, the learned Court below overlooked the provisions, effect and import of

Section 6 of the said Act and it" should have further been held, that really Section 5 of the said Act supported the case of the lessee and in the matter of having renewal of the lease under the provisions of the said Act.

17. It was also contended that on the basis of the evidence, both oral and documentary or the correspondence as disclosed and passed between the parties, the learned Court below was wrong in holding that such correspondence for sell of the property in favour of defendant/appellants gave a clear go by to the renewal clause and in any event, it should have been held that there was no letter showing any agreement for sale of the said flat by the plaintiff/respondents to the defendant/appellants and if at all, there had only been some negotiations at the instance of the plaintiff/Respondents, regarding the sale of the said flat, but such negotiations did not really and in effect materialised. On the basis of the available materials, it was contended that the learned Court below should have held that there was no question or there could be any question of giving a go by or waiver of the concerned renewal clause as contained in Clause 10 of Exhibit 1. In any event, it was claimed that in terms of Sections 5 and 7 of the said Act, there was in fact a renewal clause and the lease (Ext. 1), as indicated hereinbefore, should have deemed to have been renewed.

18. Apart from the above, the defendant/ appellants claimed and contended that the learned Court below was wrong in appreciating, construing and considering the evidence as available on either side and his reading of the evidence, was not due and appropriate.

19. Mr. Mallik, appearing in support of the Appeal, after placing the pleadings and the available evidence, also submitted that in the instant case, there was in fact a due renewal or a claim for the same, by virtue of the letter dt. 9th Oct. 1979 (Ext. 3) and as such there was no justification in holding by the learned Court below, that by the said letter (Ext. 3), option was not exercised in terms of Clause 10 of Exhibit 1. That apart, he specifically claimed that in terms of Sections 5 and 7 as quoted hereinbefore, there was really and in fact an automatic renewal of the concerned lease. It was also contended by him that the observations that such claim for renewal was given a go-by and that too for the attending circumstances as mentioned in the impugned judgment, had no basis. It was also the specific submissions of Mr. Mallik that the impugned judgment and decree should be held and deemed to to be bad in law, as the same was made and passed on the basis of a case, which in fact was nobody's case.

20. Thereafter, the submissions were continued by Mr. Chatterjee. He took us through the preamble of the said Act, Section 2(a) of the same, which means "appointed day" as the day of commencement of the said Act, which was on 13th Mar. 1974. Thereafter, reference was made by Mr. Chatterjee to Section 2(d) of the said Act, which defines "Government Company" as a Company as defined in Section 617 of the Companies Act, 1956. Mr. Chatterjee also referred to Section 3 of the said Act, which deals with transfer and vesting in the Central Government of the undertakings of Esso in India and lays down that on the

appointed day, the right, title and interest of Esso, in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government. Then, Mr. Chatterjee pointed out that Section 4 of the said Act, has laid down the general effect of vesting and Sub-section (3) thereunder, indicates that unless otherwise expressly provided by this Act, all deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature in relation to the undertakings of Esso in India, subsisting or having effect immediately before the appointed day, and to which Esso is a party or which are in favour of Esso shall be of as full force and effect against or in favour of the Central Government and may be enforced or acted upon as fully and effectually as if in the place of Esso the Central Government had been a party thereto or as if they had been issued in favour of the Central Government. The provisions of Section 5 of the said Act have been quoted hereinbefore and to those provisions and more particularly to Sub-section (2) under the said section, specific reference was made by Mr. Chatterjee, before referring to Sections 6 and 7, the particulars whereof have been quoted hereinbefore and thereafter, after relying on Section 9 of the said Act, which deals with transfer of services of existing employees of Esso, Mr. Chatterjee claimed and contended that the said Act had and has application in the instant case and since there was no fundamental case on waiver made out, the rigours of the said Act cannot be said to have been waived and that being the position, he also restated the submissions of Mr. Mullik, that renewal of the lease under Clause 10 of Ext. 1 in the instant case, was automatic.

21. Mr. Mitra, initially made the submissions on behalf of the plaintiff/ Respondents and contended that Clause 10 of Ext. 1, must be considered and looked into as a whole and not in isolation of the several limbs as contained therein. In fact, it was contended by him, that Ext. 3 not being a proper expression to have the intention of the lease (Ext. 1) renewed in terms of or in full compliance with the said Clause 10, there was in fact no demand, claim and option to have the necessary renewal of the said lease. Mr. Mitra, pointed out that even though after the expiry of the lease, for the purpose of having the necessary renewal, it was obligatory on the part of the lessee to pay mesne profits, there has in fact been no such offer or any reference on that aspect in Ext. 3 and that being the position, there has been in this case, no due compliance with the renewal clause and furthermore when, the payment for such mesne profit or the offer for the same, must and should be held to be one of the necessary limbs of the renewal clause or harmonious construction of the same, would require amongst others, such compliance as indicated above. That apart, it was pointed out by Mr. Mitra that from Ext. 3, it would not also appear that there has in fact been no offer to pay the market rate of rent or there has not also been any offer to pay at the rate of rent prevailing at the time of the expiry of the lease, which were also necessary, in view of or in terms of the abovementioned construction of clause 10 of Ext. 1. It was Mr. Mitra's further submission that the letter Ext. 3, was addressed to a minor and not to the

lessors, who could alone grant the renewal of the lease and in any event when, the minor addressee of the letter Ext. 3, had no right, power and competence to grant the necessary renewal. In view of the above, Mr. Mitra specifically contended that there was no valid and due exercise of the option for the renewal. The above submissions of Mr. Mitra were also adopted and supplemented by Mr. Dasgupta, while he took up the submissions in the absence of Mr. Mitra. Mr. Dasgupta claimed that the said letter Ext. 3, was not really addressed to the legal owner, but the same was sent to a minor, who had no or could not have any right, to grant the extension of the lease.

22. It was then contended by Mr. Dasgupta that mere sending of the letter Ext. 3, would not create a lease in terms of the requirements of or u/s 107 of the T.P. Act and even if there has been such or the necessary refusal to grant the renewal of the lease, and when admittedly, the lease was not going to be renewed, the remedy by way of a suit for specific performance was available, the period of limitation whereof under Art. 54 of the Limitation Act, 1963, was 3 years, but such suit has not admittedly been filed within the stipulated time, and now, the time to initiate such proceeding is over. Such being the position, Mr. Dasgupta further claimed that in terms of the decisions in the case of AIR 1931 79 (Privy Council) , which has amongst others observed, that if registration of a lease is compulsory u/s 107, the lease can only be made by registered instrument, and would be void, if the same is not made in that manner, the defendant/appellants had no defence in the suit, the more so when, they had only sent a letter (Ext. 3) and there has admittedly been no registered instrument.

23. We shall now revert back to the submissions of the plaintiff/Respondents in answer to the submissions made on behalf of the defendant/appellants, on the effect of the provisions of the said Act, the particulars whereof have been indicated hereinbefore and if in view of those provisions, there has been in this case, an automatic renewal of the lease. On construction of the provisions of the said Act, it was initially contended by Mr. Mitra that the undertaking of Esso in India has only been vested in terms of Sections 3 and 4 and not any lease, as held by them, and more particularly when, such lease would be governed by or under a separate heading u/s 5 of the said Act. It was also pointed out by Mr. Mitra, that Section 5(2) of the said Act make provisions of renewal of a lease on expiry, not automatically, but on expression of such or necessary desire and such expression of desire to have the lease renewed, should be made duly and that being the position, there was in fact no such desire expressed by Ext. 3 and so, the submissions of renewal of the lease or the automatic renewal of the same, would be of no avail in this case. Section 6 of the said Act has used the word "appertains to the business carried on by Esso in India". Such expression, according to Mr. Mitra, would mean "part of the business of Esso and the holding of the said flat would not be part of such business. Such term "appertains to", Mr. Mitra claimed, would mean any manner other than ownership of the said flat as a part of the business of Esso in India or may mean the business as owned by them. It was also indicated by Mr. Mitra that the use of the expression

"ownership" would also be controlled by the terms of Section 6 and the said words "appertains to", would thus also mean the property with which the business of the Esso in India is carried on or which is the part and parcel of their business, the more so when, the preamble of the said Act or the objects of the same indicate the primary object to distribute Petrol and Petroleum products and there has been no evidence that the said flat appertains to the business of Esso in India or is really a part and parcel of such business and on the other hand, when the specific evidence of P.W. 1 Bishnukant Jha and P.W. 3 Benoy Kumar Agarwalla, which were considered by the learned Court below, recorded that the said flat would be used for residential purposes only and in fact, the same is still used as such, for the officers of the defendant/appellants. It was also the submissions of Mr. Mitra that the object of keeping the said flat for their officers, would not satisfy the tests as mentioned above or to keep the same for the purposes of the business of Esso in India. For the purpose of meaning of the term "appertains", Mr. Mitra referred to the Oxford dictionary, where meaning of the word "appertain" has been shown to belong as part to the whole or as members of a family or class and hence, to the head of the family; to be related, akin to, apart from meaning -- to belong as a possession to, to belong as a right or a privilege to, to belong naturally or by inherent fitness, to be suited, proper, appropriate to and to belong as an attributed, function or effecting circumstances; to pertain, relate. It was then submitted by Mr. Mitra that appertaining to business or the determination thereof as in this case, would be a mixed question of law and fact and there was in fact no basis for the submissions as advanced by Mr. Mullik and that too on the evidence as available that the said flat appertained to the business of the Esso in India.

24. Mr. Mitra further pointed out that under Clause 10 of Ext. 1, the lessee had admittedly the right to have renewal of the lease on certain exigencies and obligations which were required to be performed and since there was no automatic renewal of the concerned lease in terms of the said Act and there was also no due compliance with the renewal clause as contained in Clause 10 of the said Ext. 1 or alternatively such right of renewal has not been exercised in terms of the said Clause 10 and there has been no evidence that the said flat was required to be used for the purposes of the business of the Esso in India and furthermore when, there has been the definite and specific evidence that the same was to be used for residential purposes only, the learned Court below was right and justified in making the order, in the manner as has been done. While further arguing the case, following the submissions of Mr. Mitra, Mr. Dasgupta on a reference to Section 5(2) of the said Act or the terms as contained therein, claimed that the extension of the lease in the instant case was not and could not be automatic, the more so when, there was no offer by the defendant/appellants in terms of the Clause 10 for renewal of the lease and more particularly when, there was no offer by them to pay Rs. 45,000/-, which they were required to pay for every renewal, as consideration for the lease and which consideration again, was the condition precedent. Mr. Dasgupta further pointed out that the rent of

the said flat was kept at such a low rate as indicated hereinbefore, because, of the consideration as mentioned hereinbefore. Mr. Dasgupta, on a reference to Sections 5(2) and 7(3) of the said Act, pointed out that in view of those provisions, the renewal clause in this case has been abrogated.

25. Before recording the replies of Mr. Mallik and our findings, we must also keep it on record, that an application dt. 27th July , 1985, for taking into consideration, two letters dt. 25th Aug. 1979 and 27th Nov. 1979, as additional evidence in this Appeal, under Order 41 Rule 27 of the Civil P.C. was filed by the plaintiff/Respondents, for the purpose of showing that before the expiry of the concerned lease, there was correspondence between them and the Ministry of Petroleum, Chemicals and Fertilizers, Government of India and M/s. Hindusthan Petroleum Corporation Ltd., regarding their tenancies in Lansdown Court and in fact the correspondence as sought to be disclosed now, would prove the intention of the plaintiff/Respondents, to have an increased rental for the said flat and such evidence in respect of rent as suggested, was accepted by or on behalf of defendant/appellants. It was further pointed out that the letters as disclosed now, were really disclosed and marked Exhibits without objection in T. S. No. 60 of 1980, in the Court of the learned Subordinate Judge, Fourth Court, Alipore. The letters as indicated now, were said to have been misplaced or could not be traced out during the course of hearing of T.S. No. 33 of 1980, from the determinations whereof, this appeal has been preferred. It was also claimed that in view of the undisputed position in respect of the said two letters as mentioned in the application and so also the circumstances as disclosed, those two letters should now be allowed to be produced and also to be allowed to be used by the plaintiff/Respondents in support of their case and claim of waiver against the defendant/appellants. Affidavits were exchanged on the application and the defendant/appellants, in their affidavit-in-opposition dt. 16th Aug. 1985, claimed the said application to be not bona fide and pointed out, that by the same the plaintiff/Respondents are trying to have some lacuna in the proceeding rectified and that being the position, they claimed, that the application must not be entertained. It was also claimed that the plaintiff/Respondents, not having filed the letters in question at the appropriate time of the hearing of T.S. No. 33 of 1980, although they had such opportunity, should not be allowed to file them now and at this stage of the Appeal and that too when, the original letters have not been filed along with the application. It was also stated that letters as sought to be disclosed now, would not be required to enable this Court to pronounce its judgment. Apart from the above, the application in question was claimed to be a belated one. To substantiate his submissions on the Power of the Appellate Court to admit additional evidence Mr. Dasgupta made a reference to the case of K. Venkataramiah Vs. A. Seetharama Reddy and Others, , where, it has been laid down that under Rule 27(1), the appellate court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment", but also for "any other substantial cause". There may well be cases where even though the court finds that it is able to pronounce judgment

on the state of record as it is, and so it cannot strictly say that it requires additional evidence to enable it to pronounce judgment, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence for any other substantial cause under Rule 27(1)(b) of the Code, apart from observing that such requirement of the Court is not likely to arise ordinarily unless some inherent lacuna or defect becomes apparent on an examination of the evidence. It may well be that the defect may be pointed out by a party, or that a party may move the Court to supply the defect, but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands.

26. In view of the above decision and that the defendant/Respondents have not disputed the existence of the documents or the contents of them and the fact that they could not be produced at the time of trial of T.S. No. 33 of 1980, for the facts and circumstances as indicated hereinbefore, these documents, in our view, can be admitted into evidence, in terms of or under the provisions of Order 41 Rule 27 of the Civil P.C. the more so when, we also feel that they will have some effect in the ultimate determination of the lis between the parties and that too finally and furthermore, when we feel that by production of these documents, which were specifically referred to in the plaint and which also appeared to us to be undisputed documents, the defendant/appellants, would not be prejudiced in any manner. It cannot be the true interpretation, that since the concerned documents were not filed at the time of trial, they cannot be produced at the stage of this appeal. On the question of production at the Appellate stage, of such documents, which were not produced at the initial stage, the law is quite clear, specific and unambiguous and the Courts are authorised to allow the necessary application, if it is found firstly, that there has been improper refusal of evidence by the trial Court, which should have been admitted, secondly, the Courts dealing with the Appeal require the assistance of such evidence, for pronouncing judgment and thirdly, the Courts consider the necessity for such production, for any other substantial cause, which in our view, will also include the question of doing due, proper and substantial justice, including the case of "ends of justice", and while making an order for any reasons as mentioned above, the Courts must also be satisfied that for some good or sufficient reason or cause, the concerned evidence could not be produced before the trial Court. The Courts at the same time have right, authority and power to refuse admission of additional evidence, if the action is not bona fide and intended to fill up the lacuna in the evidence. The last part of the power of the Courts will not apply in this case, since we are satisfied that for reasons duly explained the concerned letters in this case could not be brought in evidence at the trial of T.S. No. 33 of 1980.

27. Mr. Mallik, in his reply further restated that the letter Ext. 3 can be looked into and considered to be a valid exercise of renewal in terms of Clause 10 of Ext. 1 and the point regarding the fact that the same cannot be looked into or

considered in the manner as indicated hereinbefore, as claimed by the defendant/ Respondents at the stage, cannot be allowed to be urged at this stage, as at no point of time, any point was taken that the said Ext. 3 was not a proper exercise of the renewal as the same was addressed to a minor, there was no such pleading, consequently no evidence and thus no issue was framed on that aspect. In view of the above, it was further claimed by Mr. Mallik that this Court will not be justified in going beyond the pleadings and to establish the same, he relied on the case of Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, , where it has been observed that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. It was also pointed out by Mr. Mallik that the point as sought to be urged now on Ext. 3 could have of course been allowed, if there was an amendment of the pleadings made and obtained by the plaintiff/Respondents. In addition to the above, Mr. Mallik also referred to the case of Kanda v. Waghu, AIR 1950 PC 68, where it has been indicated that when admitting public records at a late stage the Court has a discretion and while generally speaking it will be a wise exercise of the discretion to admit such evidence the question must be decided in each case in the light of the particular circumstances, apart from holding that it is an absolute necessity that the determination in a cause should be founded upon a case to be found in the pleadings or involved in or consistent with the case thereby made.

28. In paragraph 8 of the plaint, the plaintiff/Respondents have stated that the lease (Ext. 1) had expired on the expiry of 31st Jan. 1980 and the relationship of lessor and lessee between them and defendant/ appellants, thus ceased and stood determined on the expiry of that date. It has also been pointed out in that paragraph, that the Clause 10 of Ext. 1 for renewal of the lease was vague, indefinite and uncertain and the defendant/appellant were neither entitled to any extension or renewal of the concerned lease under the said clause for renewal nor were they entitled to exercise or in fact, had really exercised, any such option reasonably or according to law. It was claimed that the defendant/appellants had lost their right, if any, to have renewal of the lease in question. Such being the attack by the plaintiff/ Respondents, it was Mr. Mullik's further contention that Ext. 3, the letter dt. 9th Oct. 1979, was a proper demand for the concerned renewal of the lease and in any event, according to him, mere expression of the desire to have the lease renewed, which was done in the instant case by Ext. 3, was enough. It was further claimed and contended by Mr. Mullik that in terms of Section 5(2) of the said Act also, such and mere expression of desire was enough and since in the instant case, a statutory right was created in favour of the defendant/appellants, in view of the provisions of the said Act, no lease deed was necessary. Apart from the above, Mr. Mullik stated that the defendant/appellants, having the right to be accepted as a tenant by or under the provisions of the said Act and since, from their conduct, it also appeared that they intended to continue as such tenant, no further execution of a lease was necessary.

29. Admittedly, the lease (Ext. 1) was due to expire with effect from 31st Jan. 1980 and there was or has also been no doubt that an employee of the defendant appellants was in possession of the said flat, even after such expiry. It was the claim and contention of the plaintiff/Respondents, in the facts and circumstances as indicated hereinbefore viz. that the lease was not extended or the extension of the same not having been duly asked for by the defendant/appellants, they were not entitled to any protection against their eviction. Such claim, was of course denied and disputed by the defendant/ appellants and their specific case was that, by Ext. 3, before the expiry of the term of the concerned lease, they had duly applied and asked for renewal of the same and they were in possession of the said flat on the basis of renewal under Clause 10 of Ext. 1, as well as under the provisions of the said Act, as indicated hereinbefore. The terms of the said Clause 10 of Ext. 1 have been fully indicated hereinbefore and there is no doubt that on completion of those terms, after the expiry of the lease in question, the lessee was to have the first option of renewal of the lease after the first period of 25 years was over. There was or has been no doubt or any dispute about the concerned renewal clause as contained in Clause 10 of the said Ext. 1 and thus, on the pleadings before us, the first and foremost question to be considered is whether the renewal in the instant case was appropriately exercised and asked for by the parties viz., the defendant/appellants"? By the letter (Ext. 3), they had asked for the renewal, not only under Clause 10 of Ext. 1. but such claim was also made under Sections 5 and 7 of the said Act. We are of the view that the terms of the said Clause 10 cannot be exercised or obtained in piecemeal and in isolation of any part and portion, and when any option is exercised under the said clause, the entire provisions of the same must be followed and complied with. From the contents of Ext. 3 or the terms thereof, it would not appear that the defendant/appellants had adopted the provisions of the said Clause 10 in its entirety, but really they had exercised the option of renewal for a further period of 25 years on existing terms only. There is also no doubt or any dispute that after the said Ext. 3, there has been several correspondence between the parties for the sale of the property in favour of the defendant/appellants, which again has held and found by the learned Court below, to have given a clear go by to the renewal clause. Since there has been no due and proper exercise of option or renewal, in terms of Clause 10 of Ext. 1 in its entirety, so, agreeing with the findings of the learned Court below, we also hold that there has been in fact, no renewal duly asked or opted for, in terms of the renewal clause as in Clause 10 of Ext. 1. In fact, we hold that Ext. 3, not having contained the due expression of the intention to have the lease (Ext. 1) renewed and that too in due and full compliance of Clause 10 of Ext. 1 and more particularly when, the defendant/ appellants have not fulfilled their obligations to pay mesne profits amongst others, there was or has neither been any appropriate claims for renewal of the lease nor the lease has been actually renewed. While on the point, we have also considered the inaction of the defendant/appellants, to pay market rent or any offer for the same, which was also a necessary prerequisite for renewal of the lease on the expiry of the same.

The said Ext. 3 was not also addressed to the proper authority, who could grant the renewal of the lease or in other words, the said Ext. 3 not having been addressed to a person duly authorised to grant the renewal, there was also and in fact, no proper and due claim for such renewal. We further hold that mere sending of the said Ext. 3 would not create a lease or allow renewal of the same in terms of Section 107 of the T.P. Act and requirements of necessary execution of such a lease in terms of the observations in the case of *Asiff v. Jadunath* (supra). In fact, the tests as indicated therein have not been satisfied and complied with in this case.

30. Then comes the question as to whether the defendant/appellants have acquired the right of the necessary renewal under Sections 5 and 7 of the said Act? We have quoted the provisions of the said Act, which would be of relevant consideration on the point in issue. On the basis of the evidence of P.W. 1 Krishnukanta Jha and P.W. 3 Benoy Kumar Agarwalla, there is no other way but to hold that the said flat was let out for residential purposes only and at all material times, the same was used as such or held for the purposes of the residence of the officers of the defendant/appellants and peculiarly enough, the officer occupying the said flat or any competent person from the office of the defendant/appellants or on their behalf; has come to depose to the effect, that the said flat was not used as residential purposes as mentioned above or the same appertained to the business, carried on by Esso, in India. We have indicated hereinbefore, the meaning of the word "appertains" in terms of Oxford's Dictionary and on the basis of the meaning as mentioned therein, it would be very difficult for us to hold that if the said flat is used for the residential purposes of the officers of the defendant/appellants, that would become or can be considered as a part and parcel of the business of Esso in India. On construction and consideration of the provisions of the said Act, it appears to us that the undertaking of Esso in India, has only vested and not any lease as held by them and that being the position, any lease as held by them are required to be duly and legally renewed and there cannot be an automatic renewal, as claimed, and if such view as indicated by us, is not accepted or given effect to, there would be grave and innumerable complications in future. The expression "appertains to" in our view and applying the tests and the meaning as in Oxford Dictionary, should mean part of the business of Esso in India and holding of the said flat, in view of the evidence in this case, would not come within such meaning and on the basis of the available evidence it cannot be held that the said flat was or is a part and parcel of the business of Esso in India. Even on a reference to Section 5(2) of the said Act, we also find that for the purpose of having the necessary renewal in terms of Clause 10 of Ext. 1, the lessee was to pay a sum of Rs. 45,000/- every year or to offer such payment for obtaining the renewal as a condition precedent and such offer was also not there in Ext. 3 and such being the admitted position, the terms of Sections 5(2) and 7(3) of the said Act, have also been abrogated.

31. For the views as above, we feel and hold that the submissions of Mr. Mullik as

recorded hereinbefore, would be of no avail or any assistance and as such, this Appeal should be dismissed and we order accordingly. We further hold that the learned Court below, having made the determination as impeached, on the basis of the available pleadings "and the materials on records, the determinations in the cases of Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, and Kanda v. Waghu (AIR 1950 PC 68) (supra), would not really apply in this case.

32. The Appeal is thus dismissed. There will be no order as to costs.

33. The prayer for stay of operation of this order is refused.

Amarendra Chandra Sengupta, J.

I agree.