
(2009) 07 AP CK 0057
In the Andhra Pradesh High Court
Case No : C.C.C. A. 328 of 2003

Md. Adli Khan

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 5, 5(2), 7, 7(3)

Citation : (2009) 6 ALT 528

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : M.R. Harsha, for the Appellant; O. Manohar Reddy, for the Respondent

Judgement

R. Kantha Rao, J.—This appeal is directed against the judgment and decree, dated 30.12.2002 in S. No. 1459 of 1999 passed by the IV Senior Civil Judge, City Civil Court, at Hyderabad.

2. The unsuccessful plaintiff is the appellant herein. The mother of the appellant Smt. Fateh Khatoon was the owner of the schedule mentioned premises measuring 7900 square feet situate at Goshamahal road, Hyderabad. She leased out the premises to Burma Shell Oil Storage and Distributing Company of India Limited under a registered lease deed of 1962 for a period of 20 years with an understanding that it can be renewed for a further period of ten years. Originally the rent was agreed at Rs. 650/- per month and subsequently it was enhanced to Rs. 750/- per month. After the death of Smt. Fateh Khatoon on 19.02.1987 intestate, the appellant became entitled to schedule mentioned premises under family arrangement. The ownership of the appellant was also acknowledged by the Company after the death of his mother.

3. The appellant issued notice to the respondent on 02.06.1998 terminating the tenancy by the end of July, 1998 on the ground that after the expiry of period of lease, the lease is terminable since the tenancy is only a month to month

tenancy. There was some discussion between both parties for amicable settlement but the respondent did not vacate the premises. Thereupon, the appellant got issued another notice on 26.06.1999 calling upon the respondent to vacate the premises and hand over the possession of the same by the end of August, 1999 and thereafter the appellant filed the suit seeking eviction of the respondent from the schedule mentioned premises and for other allied reliefs.

4. In its written statement the respondent admitted that Fateh Khatoon, the mother of the appellant was the owner of the schedule mentioned premises and she under the registered lease deed, dated 09.11.1962 leased out the premises to Burma Shell Oil Storage and Distributing Company of India Limited for a term of 20 years from 20.05.1962. However, its contention was that under the provisions of Burmah Shell (Acquisition of Undertakings in India) Act, 1976 which came into force on 25.01.1976, the respondent became a lessee of the schedule mentioned premises and by virtue of the provisions of Sections 5(2) and 7(3) of Burmah Shell (Acquisition of Undertakings in India) Act, 1976, the respondent after the expiry of the said lease is entitled for renewal of lease for a further period of 20 years from 20.05.1982 on the same terms and conditions provided under lease deed, dated 09.11.1962. The respondent addressed a letter dated 26.02.1992 to the appellant asking him to renew the lease and the respondent also informed about its statutory rights under the above mentioned Act for a renewal of the lease for a further period of 20 years from 20.05.1982.

5. Basing on the rival contentions, the trial Court settled the following issues:

- (i) Whether the plaintiff is entitled for recovery of possession?
- (ii) Whether the plaintiff is entitled for arrears of rent?
- (iii) Whether the plaintiff is entitled for past mesne profits with interest?
- (iv) Whether there is no cause of action?
- (v) To what relief?

6. In the course of the trial before the Court below, the appellant examined himself as PW-1 and marked Exs.A-1 to A-6. The respondent company examined its Senior Sales Manager as DW-1 and marked Exs.B-1 to B-5.

7. Upon perusing the entire material on record, the trial Court answered all the issues against the appellant and dismissed the suit with costs. The appellant is only challenging the finding of the Court below relating to refusal to evict the respondent from the schedule mentioned premises on the ground that there is no cause of action for the appellant to file the suit.

8. The trial Court proceeded on the premise that by virtue of provisions of Sections 5 and 7 of the Act, the respondent company which stepped into the shoes of Burma Shell Oil Storage and Distributing Company of India Limited is conferred with the right of extending the lease for a period of 20 years and the suit filed by the appellant is premature.

9. The point, therefore, arises for consideration in this appeal is whether the decree and judgment passed by the trial Court refusing to evict the respondent company from the schedule mentioned premises can be sustained in law?

10. Initially the respondent company by its letter Ex.P-2 sought extension of lease for a period of 10 years, but subsequently the respondent company addressed Ex.B-4 letter to the appellant seeking extension of lease for a period of 20 years. Even, if it is considered that the respondent is entitled for renewal of lease for a period of 20 years, the said period expires on 25.02.2002, that is while the suit was pending before the trial Court. The trial Court was of the view that since by virtue of Sections 5 and 7 of the Act, the respondent is entitled for renewal of lease till 25.02.2002, the appellant can only seek eviction of the respondent by having recourse to law only after the said date. Thus, according to the learned trial Court, the suit filed by the appellant is premature.

11. I have heard the learned Counsel appearing for the appellant as well as the respondent.

12. The learned Counsel appearing for the appellant inter alia submitted that since the suit was pending before the trial Court and even, if it is accepted that the respondent is entitled for renewal of lease for a further period of 20 years from the initial lease granted by the mother of the appellant, it is erroneous on the part of the trial Court to hold that the suit is premature and no cause of action had accrued to the appellant to file the suit against the respondent.

13. On the other hand, the learned Counsel appearing for the respondent contended that the lease in question is not governed by the provisions of Transfer of Property Act, but only by Section 5 of Acquisition Act and as such, the respondent is entitled to renew the lease as per the provisions of Acquisition Act and the trial Court rightly dismissed the suit as premature.

14. Reliance is placed by the learned Counsel for the appellant on *Vithalbhai Pvt. Ltd. Vs. Union Bank of India*, wherein the Apex Court held that "the filing of a suit when there is cause of action though premature does not raise a jurisdictional question, the claim may be well merited and the Court does have jurisdiction to hear the suit and grant the relief prayed for but for the fact that the plaintiff should have waited a little more before entering the portals of the Court. In such a case, the question is one of discretion. In spite of the suit being premature on the date of its institution the Court may still grant relief to the plaintiff if no manifest injustice or prejudice is caused to the party proceeded against. When the objection as to maintainability of the suit was taken in the written statement but not pressed for decision, the dismissal of the suit on the ground of its being premature, when it came to be decided after 8 years would be travesty of justice more so when the plaintiff was found entitled to a decree otherwise."

15. In view of the principles laid down in the decision above referred, on the date of rendering its decision by the trial Court, the appellant is entitled for the relief

of eviction sought for in the suit against the respondent. Even if it is accepted that notwithstanding the fact that the lease was only for a period of 20 years as stipulated in Ex.B-1 lease deed, the respondent company by virtue of the provisions of the Act is entitled for renewal of lease for a further period of 20 years. The said period also expires during the pendency of the suit. Therefore, directing the appellant to file a fresh suit causes undue hardship and irreparable prejudice to the appellant.

16. On the other hand, the learned Counsel appearing for the respondent relied on a decision reported in *Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another*, wherein it was held as follows: the provisions of Transfer of Property Act have no application in a case where a transfer of property takes place by operation of law. As would appear from the preamble of the Transfer of Property Act, the same applies only to transfer by act of parties. A transfer by operation of law is not validated or invalidated by anything contained in the Acquisition Act. A transfer which takes place by operation of law, therefore, need not meet the requirement of the provisions of the Transfer of Property Act or Indian Registration Act.

17. There is no dispute about the fact that the rights of the parties have to be determined in the present case only having recourse to the provisions of the Acquisition Act. But the crucial question is whether the learned trial Court exercised its discretion properly in dismissing the suit by treating the cause of action as premature in the light of the decision rendered by the Supreme Court in *Vithalbhai Pvt. Ltd. (supra)*. In the said case, the Supreme Court pointed out certain instances where the Court shall not exercise its discretion in favour of decreeing a premature suit and they are:

- i. when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event;
- ii. when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose;
- iii. if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the Court's jurisdiction; and
- iv. where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. One more category of suits which may be added to where leave of the Court or some authority is mandatorily required to be obtained before the institution and was not so obtained.

18. The situation in the instant case does not fall in any one of the above categories mentioned by the Supreme Court. Whenever a Court is vested with

discretion, it has to be exercised properly and judiciously. If the finding of the trial Court is based on improper exercise of discretion, the appellate Court can certainly interfere with the said finding and can set aside the same in the appeal. The learned trial Court, therefore, having regard to the facts and circumstances of the present case, dismissed the suit filed by the appellant on account of improper exercise of discretion vested in it. Thus, the learned trial Court has fallen into error in refusing the relief of eviction sought by the appellant against the respondent and the view taken by the learned trial Court that the appellant had no cause of action against the respondent to file the suit is unsustainable.

19. However, the learned Counsel appearing for the respondent would submit that in the event this Court coming to the conclusion that the respondent is liable for eviction, the respondent may be granted sufficient time to shift its unit after securing the required accommodation, considering the submissions made by the learned Counsel for the respondent and also that of the appellant in this regard one and half years time is granted to the respondent to shift the unit and also directing the respondent to pay rent of Rs. 20,000/- per month to the appellant keeping in view the fact that the appellant in the suit filed in the year 1999 claimed that the premises which is situate in Goshamahahal, a prime business locality in the heart of the city can easily fetch a rent of Rs. 20,000/- per month, besides paying the arrears of rent due so far as per the terms existing between the parties.

20. For the foregoing reasons, the decree and judgment passed by the learned trial Court insofar, it relates to the relief of evicting the respondent is concerned, is set aside. The respondent is directed to vacate the schedule mentioned premises within one and half years and the respondent is directed to pay rent to the appellant at the rate of Rs. 20,000/- (Rupees twenty thousand only) per month from the date of this judgment till the date of surrendering possession of the premises besides paying arrears of rents if any as per the terms existing between the parties.

21. In the result, the appeal is allowed. There shall be no order as to costs.