



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.602 OF 2024

Hindustan Petroleum Corporation Limited

A Govt. of India Enterprise

Having its office at 17,

Jamshedji Tata Road,

Mumbai – 400 020.

... Applicant

V/S

1 **Mr. Anil Mansukhlal Doshi**

Age 62, Occupation: Business

2 **Mr. Dinesh Mansukhlal Doshi**

Age 60, Occupation: Business

3 **Mr. Himanshu Mansukhlal Doshi**

Age 62, Occupation: Business

All of them being legal heirs and

Representatives of Mr. Mansukhlal

Doshi, Residing at Smruti, 137/2,

Road No.24, Sion (West),

Mumbai – 400 022

.... Respondents

Mr. Pralhad Paranjape with Mr. Manish Kelkar *for the
Revision Applicant.*

Mr. Rohan Cama, with Mr. Anish Karande, Mr. Shahrukh
Shaikh i/b Mr. Rohit Shetty *for Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATE : 19 NOVEMBER 2024.

J U D G M E N T:

1. At the outset Mr. Paranjape, the learned counsel appearing for Revision Applicant seeks leave to convert Writ Petition into Civil Revision Application. Leave granted. Amendment to be carried out forthwith.

2. Applicant-Hindustan Petroleum Corporation Limited (**HPCL**) has filed the present Civil Revision Application challenging the judgment and decree dated 18 September 2023 passed by Appellate Bench of Small Causes Court dismissing Appeal No.269 of 2018 and confirming the judgment and decree dated 7 July 2018 passed by Small Causes Court, Mumbai in TE Suit No.181/224 of 2011. The Trial Court has decreed the TE Suit No.181/224 of 2011 and has directed the Revision Applicant to handover vacant and peaceful possession of the suit premises to the Plaintiffs with further direction for conduct of enquiry into mesne profits under Order 20, Rule 12 of the Code of Civil Procedure, 1908 (**the Code**).

3. Facts of the case, in brief, are that Plaintiffs' father Mr. Mansukhlal B. Doshi was the owner of land bearing Plot No. B-1, Survey No.12, Hissa No.1 (part) admeasuring 2055.67 square yards at village Mohili, Sakinaka, Andheri Kurla Road, Mumbai (**suit premises**). M/s. Caltex (India) Limited (**Caltex**), Indian arm of global oil company, approached Plaintiffs' father in the year 1964 seeking lease in respect of suit premises for establishing its retail fuel outlet. Accordingly Indenture of Lease

dated 31 January 1964 came to be executed between Plaintiffs' father and Caltex granting lease in respect of suit premises in favour of Caltex for a period of 20 years commencing from 1 December 1963 on monthly rent of Rs.1,500/-. Under clause 3(g) of the Indenture dated 31 January 1964, parties agreed that Caltex shall have an option of lease in respect of the suit premises for a further period of 10 years by making request two months before expiry of the tenure of the lease and that such further lease would contain a covenant for further renewal of the lease for 10 years on same terms and the conditions. It appears that Caltex established fuel station at the suit premises after securing leasehold rights vide Indenture dated 31 January 1964. Government of India incorporated HPCL by nationalizing Caltex, ESSO and Lube. By virtue of provisions of Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited) Act 1977, (**Caltex Act**) the right, title and interest of Caltex in relation to all its undertakings in India got transferred and vested in Central Government with effect from 30 December 1976. The said acquired business of Caltex was handed over by the Government of India to Revision Applicant/HPCL which continued operating retail fuel outlet at the suit premises.

4. The original owner Mr. Mansukhlal B. Doshi passed away on 7 June 1977, leaving behind his wife, three sons (Plaintiffs) and daughters. The mother of Plaintiffs passed away on 1 April 2000 and it is the case of Plaintiffs that they have succeeded to the suit premises by virtue of the Will executed by the mother.

5. The tenure of the original lease expired on 30 November 1983. It appears that HPCL continued to remain in possession of the Suit premises, possibly on account of renewal/extension clause in the Indenture. On 23 July 1993, Revisional Applicant/HPCL wrote to the Plaintiffs' mother for renewal of the lease for further term of 10 years on expiry of the extended tenure of lease on 30 November 1993. Plaintiffs served notice dated 29 July 2003 on Defendant-HPCL seeking possession of the suit premises on account of expiry of the tenure of original license as well as the extended/renewed tenure on 30 November 2003. Instead of handing over possession of the suit premises Defendant-HPCL wrote back to Plaintiffs on 11 August 2003 stating that under provisions of section 7(3) of the Caltex Act, it was entitled to renew the lease for further period of 10 years commencing from 1 December 2003. Accordingly, Defendant-HPCL exercised the right to renew the lease for further period of 10 years from 1 December 2003. Plaintiffs denied the claim of the Defendant-HPCL of right of renewal under provisions of section 7(3) of the Caltex Act and reiterated termination of the lease on 30 November 2003 by its Advocate's letter dated 31 October 2003. Since Defendant-HPCL failed to vacate possession of the suit premises, Plaintiffs served notice dated 28 March 2011 on Defendant-HPCL demanding possession of the suit premises and mesne profits. The Defendant-HPCL responded by letter dated 22 July 2011 taking a position that it was entitled to seek renewal of lease for further period of 20 years from 30 November 2003 alongwith two renewals of 10 years each.

6. In the above factual background, Plaintiffs instituted TE Suit No.181/224 of 2011 in the Court of Small Causes at Mumbai seeking recovery of possession of the suit premises from Defendant-HPCL alongwith mesne profits from the date of termination of lease. The suit was resisted by Defendant-HPCL by filing Written Statement *inter alia* contending that it was occupying the suit premises under valid and renewed/extended lease deed dated 30 November 1943. Both parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the learned Judge of the Small Causes Court proceeded to decree the suit vide judgment and order dated 7 June 2018 holding that the Plaintiffs had validly terminated lease of Defendant-HPCL vide notices dated 29 July 2003 and 28 July 2011. The Small Causes Court therefore directed Defendant-HPCL to handover possession of the suit premises to the Plaintiffs within three months. An enquiry into mesne profits of the suit premises was also directed to be conducted under provisions of Order 20 Rule 12 of the Code.

7. Aggrieved by the eviction decree dated 7 June 2018, Defendant-HPCL filed Appeal No.269 of 2018 before Appellate Bench of Small Causes Court. In the Appeal, Defendant-HPCL filed Application at Exhibit-8 for stay of eviction decree. By order dated 30 June 2020, Appellate Bench of Small Causes Court stayed execution of the eviction decree subject to the condition of Defendant-HPCL depositing interim mesne profits/compensation

at the rate of Rs. 3,00,000/- per month from the date of decree till final disposal of the Appeal. After hearing the Appeal, the Appellate Bench has proceeded to dismiss the same by judgment and decree dated 18 September 2023. Defendant-HPCL is aggrieved by the decree passed by the Appellate Bench on 18 September 2023 and has filed the present Civil Revision Application.

8. Mr. Paranjape, the learned counsel appearing for the Revision Applicant-HPCL would submit that the Small Causes Court and its Appellate Bench have erred in decreeing the Plaintiffs' suit in ignorance of the position that the Defendant-HPCL is validly occupying the suit premises in pursuance of currency of the lease upto 30 November 2043. He would submit that the original lease was for 20 years with a right in favour of Defendant-HPCL to have the same extended by 10 years each. That the extended tenure of the lease was to expire on 30 November 2003 and before expiry of the same, Defendant-HPCL exercised the right of seeking further renewal of the lease under provisions of section 7(3) of the Caltex Act. He would submit that the Defendant-HPCL has both contractual as well as statutory right to seek extension and renewal of the lease. He would submit that there is marked difference in the concepts of 'extension' and 'renewal' of lease. That extension of the lease contemplates continuation of same contract for a specified period, whereas renewal of the lease envisages an act of recreation of legal relationship or replacement of an old contract with a new contract. In support he would rely upon definitions of the terms

‘extension’ and ‘renewal’ under the Black's Law Dictionary. He would submit that what was done during the period from 1983 to 2003 was an extension of lease and what is sought by Defendant-HPCL in the year 2003 is renewal thereof as per provisions of section 7(3) of the Caltex Act. Thus the same contract was continued between the parties upto the year 2003 and what was required to be done in the year 2003 was renewal thereof in accordance with right created in HPCL's favour under provisions of section 7(3) of the Caltex Act. Mr. Paranjape would particularly highlighted use of the term ‘arrangement’ under section 7(3) of the Caltex Act, in support of his contention that the entire arrangement that existed between the parties upto the year 2003 is required to be renewed under provisions of section 7(3) of the Caltex Act. He would submit that expression ‘arrangement’ used in section 7(3) of the Caltex Act has wide connotation and cannot be restricted only to lease executed between the parties. He would further submit that the judgment of the Apex Court in ***Bharat Petroleum Corporation Limited vs. Rama Chandrashekhar Vaidya***¹ has no application to the present case in view of absence of *pari materia* provisions under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976. (**Burmah Shell Act**). Mr. Paranjape would therefore submit that the lease between the parties has rightly been extended upto 30 November 2003, which is required to be renewed under provisions of section 7(3) of the Caltex Act. He would therefore pray for setting aside the decrees passed by the Trial and the Appellate Courts.

1 (2014) 1 SCC 657

9. The Revision Application is opposed by Mr. Cama, the learned counsel appearing for Respondents/Plaintiffs. He would submit that what could be renewed under provisions of section 7(3) of the Caltex Act was the original lease deed that expired on 30 November 1983. That Defendant-HPCL cannot take benefit of contractual right under clause 3(g) of the Indenture as well as statutory right under section 7(3) of the Caltex Act. He would submit that the issue involved in the present case is squarely covered by the judgment of the Apex Court in ***BPCL vs. Rama Chandrashekhara Vaidya*** (supra), wherein the Apex Court has held that the contractual clause under the lease deed gets superseded by virtue of the statutory provisions in the Act. He would also rely upon judgment delivered by this Court in ***Hindustan Petroleum Corporation Ltd. vs. Vilas Madhavrao Paygude & Ors.***². Mr. Cama would submit that both the Courts have considered the effect of contractual clause in the Indenture as well as alleged statutory right of the Defendant-HPCL under the Caltex Act and have thereafter arrived at the conclusion that the lease has expired on 30 November 2003. He would submit that no interference is warranted in concurrent findings recorded by the Trial and Appellate Courts. He would pray for dismissal of the Civil Revision Application.

10. Rival contentions of parties now fall for my consideration.

² CRA No.216 of 2024, decided on 27 August 2024

11. The short issue that arises for consideration that in the present Revision Application is whether Defendant-HPCL is entitled to exercise contractual right of extension/renewal under clause 3(g) of the Indenture of lease as well as the statutory right of renewal of the lease under section 7(3) of the Caltex Act one after the another. Defendant-HPCL claims that it is first entitled to exercise contractual right under clause 3(g) of the Indenture by seeking two extensions of 10 years each upto 30 November 2003 and thereafter provisions of section 7(3) of the Caltex Act would govern the position creating right in its favour to seek renewal of the entire contractual arrangement of lease for 20+10+10=40 years. On the other hand, it is the case of the Plaintiffs that the Defendant/HPCL has exhausted its contractual as well as statutory rights of renewal/extension of lease on 30 November 2003 and therefore it does not have a right to occupy the suit premises.

12. The Indenture of Lease dated 31 January 1964 granted leasehold rights in the suit premises in favour of M/s Caltex for a period of 20 years commencing from 1 December 1963. It would be relevant to reproduce the relevant clauses of the Indenture Lease dated 31 January 1964 as under:

“(1) ----- ---- ---- ----

To Hold the demised premises unto and to the use of the lessee from the 1st day of December 1963 for the term of 20 years (renewable and determinable as – hereinafter provided) yielding and paying therefor during the said term on the monthly rent of Rs.1500/-.”

2(1) To deliver up the demised premises at the expiration or sooner determination of the lease or in the event of the lessee removing the

buildings, structures, plant, equipments, machinery pumps, underground tanks and all other property belonging to the lessee pursuant to the proviso in that behalf hereinafter contained, to deliver up the demised premises restored to its former condition.

3(g) That the lessor will on the written request of the lessee made two calendar months before the expiry of the term hereby created and if there shall not at the time of such request be any existing breach or non observance of any of the covenants on the part of the lessee hereinbefore contained grant to the lessee a lease of the demised premises for a further term of 10 years from the expiration of the said term – of twenty years upon the same rent and containing the like covenants and provisions as are herein contained including a clause for one further renewal of 10 years and on the same terms and conditions as herein contained so as to give the lessee an option of an aggregate of two renewals of ten years each. PROVIDED that no advance rent and/or deposit shall be paid for any renewal.”

13. Thus, under clause 3(g) of the Indenture of Lease, the lessee was entitled to make a written request to the lessor two months before expiry of the tenure of lease for grant of lease of suit premises for a further term of 10 years after the expiration of original term of 20 years on payment of same rent and on same covenants and provisions, including a clause for one further renewal of 10 years. Thus, the lessee was granted an option of an aggregate of two renewals of 10 years each upon expiry of original lease on 30 November 1983.

14. During currency of the tenure of the lease, the Caltex Act came to be enacted on 23 April 1977 transferring the right, title and interest of Caltex in relation to its undertakings in India in favour of the Central Government with effect from 30 December 1976. Section 7 of the Caltex Act made special provisions with regard to certain rights and interests held by Caltex before the appointed day. Section 7 of the Caltex Act provides thus:

“7. (1) Every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose), which Caltex (India) held immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in, and be held by, the Central Government on and after the appointed day on the same terms and conditions on which Caltex (India) would have held it, if no negotiations had taken place for the acquisition by the Central Government of the undertakings of Caltex (India) in India or, as the case may be, if this Act had not been passed.

(2) If at any time after the 2nd day of February, 1974 (being the date on which the Central Government's policy for acquiring undertakings engaged in the production, marketing or distribution of petroleum products was made known) and before the commencement of this Act, Caltex (India) surrendered or otherwise relinquished any right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or a right under any arrangement to secure any premises for any purpose), then, for the purposes of this Act, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, the Central Government shall, on and after the appointed day, be entitled to such right or interest on the same terms and conditions on which Caltex (India) would have been entitled to such right or interest if it had not surrendered or otherwise relinquished such right or interest and this Act had not been passed:

Provided that nothing in this sub-section shall apply to any right or interest surrendered or otherwise relinquished by Caltex (India) before the commencement of this Act for sufficient monetary consideration.

(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.”

15. Thus, under section 7 of the Caltex Act, the right and interest of Caltex in properties in India before the appointed day stood vested in the Central Government on same terms and

conditions on which Caltex would have held the same. Under provisions of sub-section (3) of section 7 of the Caltex Act, upon expiry of term of any lease, tenancy or arrangement, the same could be renewed or continued on the same terms and conditions, if desired so by the Central Government.

16. In the light of agreement between the parties under clause 3(g) of the Indenture providing for aggregate of two renewals of 10 years each as well as provisions of section 7(3) of the Caltex Act, the issue that arises for consideration is whether Defendant-HPCL is entitled to exercise both contractual right of extension/renewal under clause 3(g) of the Indenture, as well as the statutory right under section 7(3) of the Caltex Act, one after the other. To paraphrase, whether Defendant-HPCL could first exhaust the contractual right of extension/renewal upto 30 November 2003 and thereafter exercise the statutory right under section 7(3) of the Caltex Act for seeking renewal of the period of lease. As observed above, Defendant-HPCL has taken out defence in the Written Statement that it is entitled to automatic renewal/extension of lease for a period of 20 years alongwith further two extensions of 10 years each from 30 November 2003 and that therefore the lease stood renewed/extended upto 30 November 2043. In paragraph 11 of the Written Statement, Defendant-HPCL pleaded as under:

“11. With reference to para-10 of the Plaintiff, the Defendants deny that the lease period expired on 30th November, 2003 by efflux of time as alleged. The Defendants state and submit that before the period of last extension of lease was to expire on 30th November, 2003, the Defendants by their letter dated 11th August, 2003 exercised their statutory right of extension of lease under Caltex Acquisition Shares

of Caltex Oil Refinery (India) Ltd. under Caltex Act, 1977 as well as under Ordinance of 1976. The Defendants state and submit that by virtue of provision of Section 7(3) of the said Caltex (India) Ltd. Act, the Lease got automatically and statutorily renewed /extended for the further period on the same terms and conditions as recorded in the Indenture of Lease dated 31st January, 1964. The Defendants state and submit that in view of the statutory renewal under the said Act, the lease in respect of the suit premises would get automatically renewed and/or extended for a period of 20 years, alongwith further two extensions of 10 years each. The Defendants submit that thus on and from 30th November, 2003, the lease stands extended for 20 years i.e. till 30th November, 2023 though however, in Defendants letter dated 11th August, 2003, through bonafide mistake it is mentioned that the period of lease extended for 10 years in stead of 20 years. The Defendants further state and submit that since under the statute the lease would stand automatically renewed or extended on the same terms and conditions, even two options of 10 years each would also get included. The Defendants therefore submit that after 30th November, 2003, the lease would further be extended by the Defendants in all for 20 years i.e. two extensions of 10 years each. The Defendants submit that the lease in respect of the suit premises is therefore valid and renewed or extended till 30th November, 2043.

With further reference to para-10, the Defendants state and submit that lease is valid and subsisting till 30th November, 2003. In view of the statutory renewal/extension it is true that the Plaintiffs through their Advocate's Notice dated 29th July, 2003 called upon the Defendants to restore possession of the demised premises on or before 1st December, 2003. The Defendants however, state that the said Notice is bad in law, illegal and invalid in view of what is stated hereinbefore. As far as the contents of the said Notice dated 29th July, 2003 are concerned, the Defendants state that the same are incorrect. The Defendants further state that the Plaintiffs had no right to issue the said Notice dated 29th July, 2003 more particularly as the same was premature.”

17. The plea taken by Defendant-HPCL in Written Statement about right of renewal/extension of lease for further period of 20 years alongwith two extensions of 10 years each is contradictory to its letter dated 11 August 2003, in which it sought renewal of lease for a period of 10 years commencing from 1 December 2003. The Defendant-HPCL thus attempted to improve upon its case in the Written Statement by claiming subsistence of lease upto 30

November 2043 contrary to what it stated in letter dated 11 August 2003. However, it is not really necessary to delve deeper into the contradictory stands adopted by the Defendant-HPCL.

18. Had there been a plain tenure of 20 years of lease in favour of Defendant-HPCL, the controversy that is sought to be raised in the present proceedings, would not have arisen and Defendant-HPCL would have been entitled to seek renewal of the lease for further period of 20 years under section 7(3) of the Caltex Act. The difficulty in the present case is created on account of right of renewal created in Defendant-HPCL's favour under clause 3(g) of the Indenture of lease. Thus, when the original tenure of the lease expired on 30 November 1983, Defendant-HPCL had two options of either opting for contractual right of renewal under clause 3(g) of the Caltex Act or to seek statutory right of renewal of lease for 20 years under section 7(3) of the Caltex Act. On account of existence of twin rights of renewal of lease, one under the contract and another under the statute, the difficulty is created in the present case where Defendant-HPCL claims that it could first exercise the contractual right by getting the lease extended by 20 years and thereafter seek renewal of the entire extended period of contractual lease by a block of 40 years under section 7(3) of the Caltex Act. The issue involved in the present case is squarely answered by the judgment of the Apex Court in ***BPCL vs. Rama Chandrashekhara Vaidya*** (supra). The case before the Apex Court involved almost similar circumstances, where the

predecessor of Defendant-HPCL viz. Burmah Shell Oil Storage and Distributing Company of India Limited was granted lease in respect of land in question vide registered deed of lease dated 29 September 1955 for a period of 25 years commencing from 1 March 1955. Under covenants of the said lease deed, there was unilateral right of renewal in favour of the Burmah Shell for additional period of 25 years by giving notice in writing of two months prior to expiration of its term. On 24 January 1976, the Burmah Shell Act came into force and section 5(2) of the Act created a right in favour of the Central Government/BPCL to seek renewal of the lease. Thus, in ***BPCL vs. Rama Chandrashekhhar Vaidya*** also, there existed contractual as well as statutory rights of renewal. On behalf of the Appellant-BPCL similar contention was raised before the Apex Court as is sought to be raised by HPCL before me, which is captured by the Apex Court in paragraph 6 of the judgment, which reads thus:

“Mr C.A. Sundaram, learned Senior Counsel appearing for the appellant, strongly argued that the right of renewal under the lease and the right of renewal in terms of Section 5(2) of the Act are two distinct and separate rights, the former being contractual and the latter statutory. He further contended that the two rights being different in nature and arising from different sources could, therefore, be exercised separately and successively, independently of each other. Mr Sundaram contended that though in the year 1980, the Act had come into force nevertheless, the appellant chose first to exercise its right of renewal in terms of the provision in the lease. However, the exercise of the contractual right of renewal would not abrogate the appellant's statutory right as provided under Section 5(2) of the Act and at the expiry of the lease renewed in terms of the contract, it would be still open to the appellant to get a further renewal of the lease in exercise of the statutory right under Section 5(2) of the Act. In support of the submission, Mr Sundaram relied upon the decisions of this Court in *Bharat Petroleum Corpn. Ltd. v. P. Kesavant* (2004) 9 SCC 772 and *Hindustan Petroleum Corpn. Ltd. v. Dolly Dass* (1999) 4 SCC 450.

19. The Apex Court has however rejected the contention on behalf of Appellant-BPCL and held in paragraphs 8, 9, 10, 11, 12 and 13 as under:

8. On a careful consideration of the matter, we find that though Mr. Sundaram has crafted his submissions very skilfully, the points raised by him do not really arise in the facts and circumstances of the case as noted above.

9 The original 1955 lease (which, as a matter of fact, is the only lease deed that came into existence between the parties) was for a period of 25 years and was due to expire on 28-2-1980. On 17-10-1979, the appellant gave the notice of renewal invoking the renewal clause in the lease deed. In the renewal notice, there is no reference at all to any provision, much less Section 5(2) of the Act. After 28-2-1980, the appellant admittedly continued in occupation of the suit premises but it is undeniable that no fresh deed of lease was executed and registered renewing the terms of the previous lease.

10 Now, let us examine what would be the position in the absence of a fresh deed being executed and registered between the parties. There are only two possibilities: one, that the renewal notice was in exercise of the renewal clause in the lease deed. If that be so, the execution and registration of a fresh deed of lease was essential for the renewal of lease to take place. [See *State of U.P. v. Lalji Tandon*, (2004) 1 SCC 1, paras 13 and 14; *Anthony v. K.C. Ittoop & Sons*, (2000) 6 SCC 394 paras 8 to 11 and *Hardesh Ores (P) Ltd. v. Hede and Co.* (2007) 5 SCC 614].

11 In case the renewal was claimed in terms of the stipulation in the lease deed (described as "the contractual right" by Mr Sundaram), in the absence of a fresh deed of renewal, the appellant's status became that of a month-to-month tenant and after twenty-five years, in that relationship it would be ludicrous for the appellant to turn around and claim renewal of lease under Section 5(2) of the Act.

12 Mr Sundaram made an attempt to argue that it was not a case of renewal of lease but a case of extension of the term of the lease and in that case no fresh deed was required to be executed and registered between the parties. In support of the submission, he relied upon two decisions of the Calcutta High Court, one by a Division Bench in *Syed Ali Kaiser v. Ayesha f Begum* AIR 1977 Cal 226 and the other by a learned Single Judge of the same Court in *Ranjit Kumar Dutna v. Tapan Kumar Shaw*, AIR 1997 Cal 278. We

need not go into the question whether an extension of lease is permissible in the absence of any fresh deed for the simple reason that this is unquestionably a case of renewal of lease and not of extension of lease. Thus, in case renewal was claimed under a clause of the previous lease, the appellant has no case and the lessor cannot be faulted for terminating the tenancy by a notice under the Transfer of Property Act, 1882.

13 The other possibility is that though in the renewal notice dated 17-10-1979 there is no reference to Section 5(2) of the Act, the renewal must be deemed to have taken place under that provision because the Act had come into force on 24-1-1976 and by virtue of Section 5(2) of the Act, the renewal clause of the existing lease stood superseded. If the "renewal", beginning from 1-3-1980 is to be deemed under Section 5(2) of the Act that would be a legally valid and correct renewal even in the absence of a fresh deed being executed between the parties, as was held in *Bharat Petroleum Corpn. Ltd. v. P. Kesavan*, (2004) 9 SCC 772. If that be the position, then the appellant has already exercised and exhausted its right under Section 5(2) of the Act and there can be no question of a second renewal in terms of the statutory provision. Thus, viewed from any angle, the appellant cannot claim any further renewal of lease beyond 28-2-2005."

20. Thus, in ***BPCL vs. Rama Chandrashekar Vaidya*** the Apex Court has held that by virtue of section 5(2) of the Burmah Shell Act, the renewal clause of the existing lease superseded and that the Appellant-BPCL had already exercised and exhausted its right under section 5(2) of the Burmah Shell Act and that therefore there could be no question of second renewal in terms of statutory provisions.

21. In my view, the issue involved in the present case is squarely answered by the judgment of the Apex Court in ***BPCL vs. Rama Chandrashekar Vaidya***. Following the law expounded by the Apex Court in the said judgment, the contractual right in favour of Defendant-HPCL under clause 3(g) of the Indenture of

Lease stood superseded by section 7(3) of the Caltex Act. It cannot be stated that Defendant-HPCL could exercise first the contractual right of renewal/extension of lease and thereafter once again exercise the statutory right of renewal under section 7(3) of the Caltex Act. Thus, both under the contractual right of extension/renewal as well as statutory right of renewal, the maximum permissible extension/renewal of lease of Defendant-HPCL was upto 30 November 2003 and the lease has expired thereafter.

22. In *HPCL vs. Vilas Madhavrao Paygude* (supra) delivered by this Court, though the facts involved were slightly different, this Court has considered the judgment of the Apex Court in *BPCL vs. Rama Chandrashekhar Vaidya* (supra) and has held that right to seek renewal of lease was only a one time affair and that such right did not accrue concurrently or endlessly upon expiry of tenure of each lease.

23. Mr. Paranjape's attempt to draw a distinction between the concepts of 'extension' and 'renewal' is wholly irrelevant for present case. It appears that similar attempt was made on behalf of *BPCL in Rama Chandrashekhar Vaidya*. Whether occupation of suit premises by Defendant-HPCL during the years 1983 to 2003 was by way of 'extension' or 'renewal' makes no difference. As held by the Apex Court in *Rama Chandrashekhar Vaidya*, the contractual right of extension/renewal got superseded by virtue of provisions of section 7(3) of the Caltex Act. The emphasis by Mr. Paranjape on

use of the word 'arrangement' under provisions of sub-section (3) of section 7 of the Caltex Act is again meaningless. Under section 7(1) of the Caltex Act the right or interest of Caltex in any property in India could comprise of three classes viz. (i) right under any lease, (ii) right under tenancy, or (iii) any right under any arrangement to secure any premises for any purpose. Thus, the third eventuality of 'arrangement' would arise where there is no express lease or tenancy. The word 'arrangement' used in sub-section (3) of section 7 of the Caltex Act is in the context of any arrangement for securing any premises for any purposes by Caltex. The occupation of the suit premises by Defendant-HPCL is governed by the first category of lease and that therefore the third category of 'arrangement', where there is no formal agreement between the parties, is wholly irrelevant for the present case.

24. The conspectus of the above discussion is that the lease of Defendant-HPCL has expired on 30 November 2003 and therefore the Trial and the Appellate Courts are justified in passing a decree for eviction of the Defendant-HPCL from the suit premises. The concurrent findings recorded by the Trial and the Appellate Courts do not suffer from any palpable error or any error of jurisdiction for this Court to exercise revisionary jurisdiction under section 115 of the Code. The Civil Revision Application is thus devoid of merits and the same is **dismissed**. However, considering the fact that Defendant-HPCL operates retail fuel station at the suit premises and would require removal of various fixtures from the suit premises after procuring

necessary licenses, Defendant-HPCL is granted time of one year for vacating the suit premises, subject to the condition of continuing to pay interim compensation at the rate of Rs. 3,00,000/- per month as fixed by the Appellate Bench by order dated 23 June 2020. Payment of such interim compensation shall, however, be without prejudice to the right of the Plaintiffs to seek ascertainment of mesne profits under provisions of Order 20, Rule 12 of the Code from 28 July 2011.

(SANDEEP V. MARNE, J.)

Digitally signed
by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
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