

**Motilal Rakhit Vs. Hindustan Petroleum Corpn. Ltd. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/529462](http://sooperkanoon.com/529462)

**Court :** Orissa

**Decided On :** Jan-18-2008

**Reported in :** AIR2008Ori74

**Judge :** A.K. Parichha, J.

**Appellant :** Motilal Rakhit

**Respondent :** Hindustan Petroleum Corpn. Ltd. and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**A.K. Parichha, J.**

1. This appeal has been filed against the judgment and decree of learned Additional District Judge, Jaipur passed in Title Appeal No. 66 of 1986 (31 of 1987) confirming the judgment and decree of learned Subordinate Judge, Jaipur in Title Suit No. 112 of 1982.

2. The plaintiff appellant's case in brief was that he and his brother Maniklal are the owners of the suit premises described in Schedule 'A' of the plaint and they leased out the same to Caltex India Ltd. on 1-3-1961 for a period of 10 years with option to extend the same for a further period of ten years. On expiry of the initial lease period of 10 years the lessee wanted to renew the lease, but the plaintiff

owners did not agree as a result lessee Caltex India Ltd. filed Title Suit No. 19 of 1974 in the Court of Munsif, Jaipur for enforcing the renewal of the lease. The suit was decreed. The plaintiffs filed Title Appeal No. 3 of 1980 against the said decree, but the appeal was also dismissed on 7-4-1981, as it had become infructuous. While the plaintiffs and Caltex India Ltd. were under litigation, in the year 1976 the Government of India took over the management of Caltex India Ltd. as per Caltex (Acquisition of Shares of Caltex Oil Refinery (India) Ltd.) Act ('Act', for short). After taking over the management, the Government of India handed over the management to the defendant company, namely M/s. Hindustan Petroleum Corporation Ltd. That defendant company by letter dated 2-9-1980 requested the plaintiffs to renew the lease for a further period of 10 years commencing from 1-3-1981, but the plaintiffs declined to oblige and in their letter dated 3-11-1980 while refusing the renewal of the lease asked the defendant company to vacate the suit premises and to treat the letter as notice of eviction. In spite of this notice, the defendant did not vacate the said premises. So, the plaintiffs filed the suit for eviction of the defendant-company on the plea that the lease term has expired and the defendant is a rank trespasser. It was also pleaded that plaintiffs require the suit premises for their personal use. The defendant company in its written statement while refuting the claim of the plaintiffs pleaded inter alia that by virtue of a statutory right vested in them under the Act, they have exercised option for renewal in their letter dated 2-9-1980 seeking renewal of lease for further period of 10 years commencing from 1-3-1981 and therefore, they cannot be evicted. They denied the allegation of non-payment of rent stating that they have despatched cheques to the plaintiffs, but the plaintiffs are not accepting the same. Learned trial Court framed as many as eight issues. The plaintiffs and defendant examined one witness each and produced documents, which were marked as Exts. 1 to 5 and Exts. A to B/2 respectively. On consideration of these evidences and the connected law learned trial Court dismissed the suit with the observation that in view of Section 5(2) and Section 7(3) of the Act the defendant company has statutory right of renewal and since they had expressed their option for renewal, they cannot be treated as trespassers and evicted from the said premises. The plaintiffs carried appeal. But the appeal was also dismissed and the judgment and decree of the trial Court was confirmed. Hence, the present appeal.

3. The following substantial questions of law were formulated for consideration in the appeal:

(i) Whether the option to renew the lease by the defendant company could be exercised when there was no formal lease for the period from 1-3-1971 to 1-3-1981?

(ii) Whether renewal of the lease can be made unilaterally by the defendant company over-riding the terms of the lease agreement and whether the provisions of the Act can over-ride the provisions of the Transfer of Property Act?

(iii) Whether after the termination notice sent by the plaintiffs the lease came to an end on 1-3-1981 and the defendant company become a trespasser?

4. Mr. D. Chatterjee, learned Counsel for the appellant appearing on behalf of Mr. S. P. Misra and associates submitted that after the initial lease period there was no formal agreement for renewal of lease and therefore, even if T.S. No. 19/74 for enforcing the renewal of the lease was decreed, renewal of the lease till dated 1-3-1961 cannot be presumed and once the lease was not in existence, the defendant company had no scope of exercising statutory option for renewal of the lease. He argued that according to the term of the lease, the lease was renewable for a period of 10 years only and that period having expired, the defendant company had no legal right to insist further renewal unilaterally. In support of his submissions Shri Chatterjee relied on the case of Hindustan Petroleum Corporation Ltd. and another v. Dolly Das : (1999)4SCC450 . Mr. N. Sarkar appearing on behalf of Mr. J. Das and associates contended per contra that in view of the decree of the Civil Court in Title Suit No. 19/74, the lease automatically got renewed till 1981 and the defendant company having exercised the option for renewal before the said date, the option was valid and legal and the plaintiffs appellant had no option, but to renew the lease in view of the provisions of Section 5(2) and Section 7(3) read with Section 9 of the Act. He also argued that the option for renewal being statutory in nature under a special statute, strict compliance of the provisions of Transfer of Property Act, which is a general law, cannot be insisted. In support of his plea, he cited the case of Bharat Petroleum Corporation Ltd. v. P. Kesavan and Anr. 2004 AIR SCW 1989.

5. There is no dispute that the defendant company's suit for enforcing renewal of the lease for a period of 10 years was decreed in Title Suit No. 19/74 and the appeal therefrom was also dismissed on 7-4-1981 as it had become infructuous due to passage of the renewal period of 10 years. In such a situation, even though formal document had not been executed for renewal of the lease, yet because of the decree and pendency of the appeal, the renewal of the lease till 1-3-1981 has to be presumed. It is worthwhile to note that Act 17 of 1977 came into force in the year 1976-77 and by virtue of Section 4 of the Act, the assets, liabilities, rights, privileges, cash balance, reserved funds, investments etc. of the Caltex Company vested in the Central Government and the Central Government by notification Under Section 7(1) allowed vesting of all the above noted rights, liabilities, assets etc. of the Caltex Company with the defendant respondent company and the respondent company continued to retain the petroleum business on the leasehold land of the plaintiffs. Section 5(2) of the Act clearly says that on expiry of term of any lease or tenancy noted 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 Caltex Company immediately before the appointed day. Section 7(3) clarifies that provisions of Section 5(2) shall apply to a lease or tenancy which vest in a Government company as they apply to a lease or tenancy vested in the Central Government and the reference therein to the Central Government shall be construed as a reference to the Government Company. It is not in dispute that the Central Government acquired the assets of Caltex Company and then vested the same in the respondent company. So, the respondent company had option of renewal noted in Section 5(2) of the Act. In the case of Bharat Petroleum Corporation Ltd. 2004 AIR SCW 1989 (supra), the lessor by notice purported to terminate the tenancy of the Government Company and called upon the Company to quit and deliver vacant possession of the premises as per the terms of the lease deed. In reply to the said notice the Government Company invoked the provision of Section 5(2) and Section 7(3) of the Act and exercised option of renewal for a further period of twenty years commencing from 1-7-1989 on the same terms and conditions on which Burmah Shell Company held the lease immediately prior to the appointed day. The Apex Court observed that by reason of Section 5(2) and

Section 7(3) of the Act a right of renewal was created in the Government Company in terms whereof in the event of exercise of its option the existing lease would be renewed on the same terms and conditions on which lease or tenancy was held by the Burmah Shell Company prior to the appointed day. Answering a submission whether the provisions of Section 107 of the T.P. Act, which mandate execution of registered documents are required to be complied within a renewal of the above noted nature, the Apex Court held that the provision of T.P. Act has no application in a case where the transfer of property takes place by operation of law and that the provision of Transfer of Property Act applies only to transfer by act of parties.

6. While analyzing the scope and effect of Section 5(2) and Section 7(3) of the Act, the object and purport of the Act must be considered. The Central Government acquired running business undertaking dealing in distribution and marketing of Petroleum products, whereafter, the leases and tenancy for outlets were continued to be kept with the Central Government or the Government Company, as the case may be, so that no hindrance would occur in the matter of distribution of the petroleum products from the established retail outlets until alternative arrangements are made. Having regard to such object of the Act it has to be inferred that an unilateral desire of the Central Government or the Government Company is enough to effect the renewal of the lease and that existence of need for renewal or execution of registered document for the renewal of the lease are not essential. However, as observed by the Apex Court, the Central Government or the Government Company being public authorities are required to act fairly in exercising the option of renewal. In other words, the exercise of option by the Central Government or the Government Company must be fair, reasonable and bona fide. In the case of *Bharat Petroleum Corporation Ltd. v. P. Kesavan and Anr.* 2004 AIR SCW 1989 (supra), the Government Company had intimated its desire for renewal of the lease before the expiry of the original lease period and because it was a fair exercise of option, the Apex Court held that despite reluctance of the land owner, the lease would stand renewed for one term. This view reiterates the observation made by the Apex Court in the case of *Dolly Das* (supra) earlier. In the case of *Dolly Das*, it was said that the object of Section 5(2) and Section 7(3) of the Act being to give some breathing time to the Government Company renewal of a lease for one term at the unilateral option of the lessee

company would be proper.

7. In the present case, the original lease was renewable for ten years and even though such renewal was not formally executed, by virtue of decree of the Civil Court the lease continued till 1-3-1981. Before this date the Act came into force and the respondent company was vested with the rights, liabilities, assets etc. of the erstwhile Caltex Company and it exercised option for renewal before 1 -3-1981. By virtue of Section 5(2) and Section 7(3) of the Act, the respondent company was legally entitled to renewal at least for one more term of ten years starting from 1 -3-1981. Therefore, the learned Courts below rightly rejected the prayer of the appellant-plaintiff for eviction on the ground that the respondent company was a trespasser after 1-3-1981. The substantial questions of law formulated are accordingly answered against the appellant.

8. Learned Counsel for the appellant submits that the respondent-company is still continuing in possession over the suit premises even though the term of lease is long since over and, therefore, it should be evicted and damages for the period after 1-3-1991 be granted. The request of the learned Counsel for the appellant for a decree of eviction cannot be granted in this appeal because, this appeal relates to a cause of action, which took place before 1st March, 1991. The plaintiff-appellant is, however, at liberty to take appropriate legal action for eviction as permissible under law for any cause of action, which might have occurred after 1-3-1991. So far as rent/damages is concerned, it is worthwhile to note that the defendant-company is occupying the suit premises measuring 2358.5 sq.ft situated inside the Jaipur Road Town for a rent of Rs. 150/- per month. Such rent was contemplated in the year 1961 and because of the pendency of litigation no enhancement has been made. There cannot be any second opinion that value of property and the rent of such property have gone up many folds during the last 40-50 years.

9. So, for the sake of equity the respondent-company should pay rent/damages at the rate of Rs. 1,000/ - per month to the plaintiff-appellant with effect from 1-3-1991. The arrear amount may be paid within a period of four months from today.

10. With the above noted findings and observations, the appeal is dismissed on contest, but without any cost.

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