Hindustan Petroleum Corporation Limited Vs. M. Rose,

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Court : Chennai

Decided On : Jan-29-2007

Reported in : (2007)6MLJ468

Judge : P.K. Misra and ;M. Jaichandren, JJ.

Acts : Madras City Tenants Protection Act, 1921 - Sections 9; Chennai City Tenant's Protection Act, 1921

Appeal No. : Review Appln. No. 14 of 2006

Appellant : Hindustan Petroleum Corporation Limited

Respondent : M. Rose, ;m. therese, ;m. Margarita Rep. by their Power Agent B. Helen and Venus Agencies

Advocate for Def. : P.S. Raman, Sr. Adv. for ;C. Seethapathy, Adv. for Respondent Nos. 1 to 3

Advocate for Pet/Ap. : E. Vijayan, Adv. for King and Patridge

Disposition : Application dismissed

Judgement :
ORDER

1. The Review Application has been filed to review the judgment dated 1.9.2.005 in O.S.A. No. 192 of 2005. Such appeal was against the judgment of the learned

single Judge in C.S. No. 370 of 2002, wherein the present applicant in the Review Application was the first defendant.

The plaintiffs had filed the, said suit against the present applicant (first defendant) for the relief of vacant possession of the disputed property and for payment of Rs. 18,00,000/- towards damages and use of the property for the period from April 1999 to March 2002. The disputed property had been let out to M/s. Caltex India Ltd., on 15.2.1972 for a period of 20 years. Subsequently, such property was purchased by the plaintiffs. As per the provisions contained in Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the undertakings in India of Caltex (India) Limited Act, 1977 (Act 17 of 1977) M/s. Caltex India Limited was nationalised and M/s. The Hindustan Petroleum corporation Limited (Defendant No. 1) came into being and all the assets and liabilities of M/s. Caltex India Limited stood vested with the first defendant. As per Clause 4 (f) of the original klease deed, the lease was to expire on 31.12.1991. However, the first defendant had issued notice in exercise of powers conferred under Section 7(3) of Act 17 of 1977. In effect the first defendant sought to extend the lease period to a further period of 20 years on the same rent of Rs. 700/-. At that stage, the plaintiffs had filed W.P. No. 17945 of 1991 and ultimately by order dated 21.8.1991 the learned single Judge of this Court quashed such notice on the ground that notice was vitiated due to non-application of mind and non-consideration of the relevant facts. W.A. Sr. No. 24962 of 2000, which had been filed after a delay of 213 days, was dismissed and the Review Application filed against such order of dismissal was also dismissed. Such decision had therefore become final and binding between the parties and in such view of the matter, the first defendant ceased to be a statutory tenant. At that stage, the plaintiff issued notice to the first defendant calling upon the defendants to deliver vacant possession. In such notice, keeping in view the provisions contained in The Madras City Tenants Protection Act, 1921, now renamed as The Chennai City Tenant's Protection Act, 1921, the first defendant was given option to purchase the disputed property as per the value determied by any approved valuer. Subsequently, a further notice dated 18.3.2000 was issued whereunder the plaintiffs offered compensation of Rs. 50,000/- to the first defendant for the superstructure erected by it. A further notice was issued on 6.10.2001. However, the first defendant had not responded to the notice and

continued to occupy the disputed land by tendering the very same monthly rent of Rs. 700/-. On the basis of these allegations, the suit was filed claiming compensation as well as damages for 3 years preceding the filing of the suit.

2. The first defendant filed a written statement. It was claimed that the first defendant was entitled to protection under the Madras City Tenants Protection Act. An application numbered as Appln. No. 2873 of 2002 purporting to be under Section 9 of the Act was filed for determining the minimum extent of land to be conveyed to the first defendant for the price to be determined by the court. The plaintiffs had agreed to sell the entire extent of the land and the court appointed an Advocate Commissioner to determine the value.

3. Learned single Judge held that in view of the decision in the writ petition, which had become final, the defendant had ceased to be a regular tenant as understood and not entitled to the benefit of the statute. The Court had fixed the market value of the property as Rs. 50,000/-per ground and had directed the first defendant to deposit such amount, but the first defendant had failed to do so nor the first defendant had filed any appeal against the order fixing the value. Therefore, the first defendant had lost right to buy the suit property and was required to vacate the possession. Learned single Judge has awarded a sum of Rs. 18 lakhs as damages for the period of three years.

4. Defendant No. 1 filed appeal in O.S.A. No. 192 of 2005 against such decision. Such appeal was dismissed by a Division Bench on 1.9.2005. In paragraph 2 of such judgment, it has been specifically indicated:

2. Though the appeal is filed raising various grounds, the learned Counsel for the appellant confined his contention only with regard to the quantum of damages arrived at by the learned Judge in the decree.

As apparent from the tenor of the judgment in the said case, learned Counsel appearing for the appellant had confined his contention only to the question of damages at the rare of Rs. 50,000/- per month. It was observed in the said case that the appeal filed by the first defendant against the order relating to eviction (Section 9 of the Madras City Tenants Protection Act) had been dismissed.

Ultimately in the later judgment, the Division bench found that assessment of damages at the rate of Rs. 50,000/- per month was proper. The present Review Application has been filed against the judgment dated 1.9.2.005.

5. The main ground which has been raised in the Review Application is to the effect that before effecting the direction for delivery of possession, it was the duty of the Court to fix the value of the building and the trees and since such procedure was not followed, the judgment dated 29.4.2005 in C.S. No. 370, of 2002 was contrary to the provisions of the Act.

6. We are afraid the contention raised in the Review Application, which is expressly against the decision of the Division Bench in O.S.A. No. 192 of 2005 dated 1.9.2005, cannot be countenanced in view of the specific observation made in the judgment dated 1.9.2005 that the only question raised by the present applicant at that stage was relating to the extent of damages.

7. When the present applicant had confined the question of quantum of damages fixed, the question now raised in Review Application cannot be sustained. It is not the case of the present applicant that the tenor of the judgment recorded in OSA. No. 192 of 2005 does not correctly reflect the submissions made at that stage.

8. A Review Application cannot be considered as an appeal in disguise. Keeping in view the specific question, which had been raised before the Division Bench at that stage, we are not inclined to go into the questions now raised in this Review Application, which is liable to be dismissed.

9. In course of hearing, obviously with a view to avoid any further dispute, learned Counsel for the respondent has suggested that the respondent would accept a total sum of Rs. 30 lakhs in lieu of the amount determined, if such amount is paid within a reasonable time, i.e., three months from the date of the order.

10. Learned Counsel for the Review Petitioner, however, has not accepted such offer and submitted that the review application should be considered on merit and should be disposed of.

11. Since we do not find any merit in the Review Application, such review is dismissed. However, keeping in view the submission made by the learned Counsel appearing for the respondents, it is observed that if a sum of Rs. 30 lakhs (Rupees thirty lakhs only) is paid to the respondents 1 to 3 within a period of sixty days from the date of receipt of the day, such payment may be taken to be in full compliance and the balance amount shall be deemed to have been foregone. It goes without saying that this observation would not be applicable if the review applicant does not make the payment within the period stipulated, whereafter the respondents would be free to execute the decree in accordance with law.