

(2013) 04 CAL CK 0012

Calcutta High Court

Case No: APO No. 298 of 2011 and C.S. No. 281 of 2005

Bharat Petroleum Corporation
Ltd.

APPELLANT

Vs

Howrah Motor Company Ltd.

RESPONDENT

Date of Decision: April 10, 2013

Citation: (2013) 4 CHN 225

Hon'ble Judges: Ashoke Kumar Dasadhikari, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Siddhartha Mitra and Rajyashree Chowdhury Mukherjee, for the Appellant;
Hirak Mitra, Utpal Bose, Aryak Dutta, Arnab Chakraborty, Bithika Mandal and Prasenjit
Saha, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Banerjee, J.

On December 18, 1957 Burma Shell Oil Storage and Distribution Company of India Ltd., a foreign petroleum company took on lease of premises No. 14A, R.N. Mukherjee Road, Calcutta from M/s. Pyne Properties Pvt. Ltd. for running a petrol pump. The lease was initially for ten years that was from time to time renewed. On December 28, 1970 Burma Shell appointed M/s. Howrah Motor Pvt. Ltd. as their dealer to run the said petrol pump. On January 24, 1976 Burma Shell was taken over by Bharat Petroleum Corporation Ltd., a public sector undertaking. By virtue of the said take over the new Government company became the lessee in place of Burma Shell under Pyne Properties Pvt. Ltd. Pyne Properties transferred the ownership to M/s. Atindra Pvt. Ltd., a company virtually run by Dey family, having the management and control of Howrah Motor Company Ltd. In effect, Howrah Motor, in addition to the dealership of the petrol pump got the ownership too. On January 18, 1982, the Calcutta Tikha Tenancy Act, 1981 came in force. Initially there had been a confusion as to the definition of "Tikha Tenant" as to whether the petrol pump could come within the mischief of the said Act of 1981. Series of litigations reached

up to the Apex Court label. Ultimately, a Full Bench decision in the case of Lakshmi Moni Das & Ors. vs. State of West Bengal reported in All India Reporter 1987 Calcutta page-326 and the Division Bench decision in the case of Jatadhari Daw vs. Smt. Radha Debi reported in 1986 Volume-I Calcutta High Court Notes page-21 attained finality on the issue when the State withdrew the appeal pending against the High Court decision in the case of Jatadhari Daw (supra) that followed the Full Bench decision in the case of Lakshmi Moni Das (supra). During the period when the issue remained unsettled, Bharat Petroleum filed a writ petition and obtained an order inter alia permitting them to deposit the rent to the Registrar, Original Side month by month. Such direction would appear from the orders dated December 13, 1988 and January 10, 1989 appearing at pages 154-164 of the paper book. By the said orders the appeal stood disposed of, however the writ petition was kept pending. Bharat Petroleum was however regularly depositing the rent as they claimed before us. The learned Single Judge dismissed the writ petition on July 17, 2008 by passing the following order:

None appears on behalf of the petitioner even at the time of second call of this matter.

It is submitted on behalf of the respondent No. 11 that due to efflux of time, no relief is required to be granted to the petitioner in this writ application.

Be that as it may, this writ application is dismissed for default. Interim order, if any, stands vacated.

In any event, after the issue attained finality in the case of Lakshmi Moni Das and Jatadhari Daw (supra) nothing further left to be done in the writ petition and the writ petition in any event became infructuous. The learned counsel appearing for Bharat Petroleum would however contend, the restoration application being G.A. No. 1789 of 2011 is still pending, this could not be disposed of as Bharat Petroleum could not complete service of the copy of the application upon the respondents. We enquired from the department. The department admitted their mistake having accepted rent even after disposal of the writ petition.

2. The lease got expired by afflux of time. The owners did not take any step for eviction. The situation however took a drastic change when Bharat Petroleum terminated the dealership agreement of Howrah Motor Company Ltd. On February 17, 2000, Howrah Motor filed an unsuccessful writ petition that got dismissed on April 11, 2000. The appeal was also dismissed by the Division Bench on June 6, 2000.

3. Howrah Motor filed a civil suit coupled with an application for interim order of injunction challenging the termination that stood dismissed by the City Civil Court. The City Civil Court suit was also dismissed for default of August 25, 2003.

4. In the changed circumstance two suits were filed one by Bharat Petroleum being C.S. No. 281 of 2005 inter alia praying for a declaration that they were lessee in

respect of the premises in question and was entitled to run and administer the retail outlet coupled with a perpetual injunction restraining Howrah Motor from creating any obstruction as to the egress and ingress and the second one being Civil Suit No. 281 of 2005 filed by Atindra on December 28, 2005 for eviction. At the instance of Atindra, they were also added as a party defendant in Bharat Petroleum suit. The present appeal would relate to the judgment and order of the learned Single Judge dealing with three interim applications filed in those two suits. G.A. No. 1706 of 2006 would relate to an application made by Bharat Petroleum for appointment of Receiver in their suit whereas G.A. No. 1079 of 2011 would relate to recall of the order dated March 16, 2011 filed by Atindra. Atindra filed G.A. No. 2110 of 2006 in their suit inter alia praying for injunction restraining the Bharat Petroleum from disturbing possession of Atindra. Significant to note, Atindra claimed, Bharat Petroleum deserted the premises. It became no man's land being used as a resting place of the street urchin and anti social elements. Hence, they entered in possession and since then, retained the same. The learned Single Judge heard all the three applications and disposed of by the judgment and order dated April 26, 2011. The learned Single Judge held, Bharat Petroleum did not have any lawful right to retain possession after the lease having expired by efflux of time and the issue of Tikha Tenancy attained the finality at the Apex Court label.

5. Being aggrieved, Bharat Petroleum preferred the instant appeal that we heard on the abovementioned dates.

CONTENTIONS:

6. Mr. Siddhartha Mitra, learned senior counsel, appearing for Bharat Petroleum supported the appeal. While assailing the judgment and order impugned, Mr. Mitra would contend, the lessor did not take any step at all contemporaneously when the lease had expired by efflux of time. It was only when the appellant terminated the dealership of Howrah Motor, the notice under 106 of the Transfer of Property Act was served upon them. He would contend, since Bharat Petroleum was regularly discharging their liability by making payment of rent as a tenant they were entitled to be in possession. In any event, so long they were in possession they could not be evicted without a due process of law. He would further contend, he had a statutory right asking for renewal of lease that opportunity the appellant had never got before they were dispossessed. Once they were dispossessed without any due process of law, the Court must restore possession through Receiver. Bharat Petroleum was and still is ready and willing to discharge their obligation as a tenant subject to any terms and conditions that this Court may deem fit and proper. To support his contentions he relied on the following decisions:

1. [Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others,](#)
2. [STP Limited Vs. Nirmaljit Singh Hoon,](#)
3. [Krishna Kumar Khemka Vs. Grindlays Bank P.L.C. and others,](#)

4 [Satyanarayan Banerji and Another Vs. Kalyani Prosad Singh Deo Bahadur and Others,](#)

5. [State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others,](#)

6 [Indian Cable Company Limited Vs. Smt. Sumitra Chakraborty,](#)

7. [Kanhiya Shanker and Others Vs. Mohabata Sedhu and Others,](#)

7. Per contra, Mr. Hirak Mitra, learned senior counsel would contend, Atindra was not a party to the suit filed by Bharat Petroleum against Howrah Motor Ltd. Hence, any order passed against Atindra would not bind them. Learned Judge rightly refused appointment of Receiver that would not deserve any interference by the Division Bench at all. He would further contend, Atindra became a party defendant at their instance. The plaint as of date would still demonstrate, the plaintiff had no claim against Atindra. Once the plaintiff would not make any final claim against Atindra, no interim relief could be granted to the plaintiff detrimental to the interest of Atindra. Commenting on the contentions of Mr. Mitra, that they did not have any idea about change of ownership, Mr. Mitra would refer to the correspondence and pleadings to show, Bharat Petroleum always accepted Atindra as landlord. The confusion, if any, on the applicability of the Tikha Tenancy Act stood resolved after the decision in the case of Lakshmimoni Das (supra) and in the case of Jatadhari Daw (supra). Mr. Mitra would lastly refer to the amendment of the said Act of 1981 that came in 2010, permitting the Tikha tenants to have pucca construction and would comment, the said amendment would have a prospective effect and in any event, cannot have any applicability in the facts and circumstances of the instant case.

OUR VIEW:

8. The Division Bench decision of this Court in the case of Satyanarayan Banerji (supra) was rendered in a case where Court considered a situation where mortgage property was under possession of a Receiver. The Court observed, property remaining in possession of Receiver did not affect the title of the property. We do not find any relevance of this decision in the present case. In the case of Krishna Kumar (supra) the Apex Court followed a Division Bench decision of this Court to the effect, "the object of appointment of Receiver is not to divest the rightful owner of the title but only to protect the property and appointment might operate to change possession but cannot affect the title to the property which remains in those in whom it was vested when the appointment was made." We fail to appreciate, how this would have any effect at all in the present case.

9. We patiently heard Mr. Siddhartha Mitra for about one and half days, yet we felt it difficult to understand his way of approach. We are in full agreement with him on the issue of Atindra coming into possession. We have our doubts on that score, yet we do not find any legal right still available to Bharat Petroleum, the appellant

abovenamed, to ask for any relief as against Atindra. We have carefully examined the plaint that made grievance against Howrah Motor who were admittedly not in possession. Atindra was not a party to the Bharat Petroleum suit. Atindra was added at their instance. Bharat Petroleum did not amend their plaint making any final claim as against Atindra. It is settled principle of law, in a civil suit the plaintiff is entitled to claim any interim relief inter alia under Order 40 to preserve the suit property that would still be in possession of the parties to the suit. Atindra was not a party to the suit having no claim against it made by the plaintiff. Bharat Petroleum themselves would claim, Atindra entered in possession. To remove Atindra from possession they must have a definite final claim made in their suit. So long it is not done, such prayer cannot be acceded to. Even if such claim is made, the plaintiff having no legal right to be in possession, we fail to appreciate, how such prayer could be maintained. In any event, question would not arise at all in absence of appropriate amendment. We may consider such issue when occasion would arise.

10. The appellant lastly relied on the West Bengal Thika Tenancy (Acquisition and Regulation) Act of 2001 and the amended provision of section 2(14). The amended provision of section 2(14) would inter alia define a thika tenant to include person occupying under a written lease having erected portion used for business purpose. Such amendment came into effect on November 1, 2010. The said Act of 2001 came into effect on October 5, 2010. The present suit was filed in 2005 when appellant Bharat Petroleum claimed, they were not in possession of the petrol pump. The learned Judge very rightly held, the subsequent Act of 2001 had no application. The decisions cited by Mr. Mitra were mostly on due process of law. Such legal proposition is not in dispute being well settled proposition of law. The applicability is however doubted. The Division Bench of this Court in the case of Indian Cable (supra) considered a situation where a tenant was restored possession who had the legal protection under the tenancy law having evicted without due process of law. In the present case the plaintiff Bharat Petroleum themselves would claim in the plaint, they were dispossessed, Atindra was in possession, no relief was claimed against Atindra. We fail to appreciate, how we could extend any interim relief by appointment of Receiver over a property that was admittedly in possession of Atindra against whom no relief was claimed.

11. Learned Judge dismissed both the applications being G.A. No. 1706 of 2006 inter alia praying for appointment of Receiver and G.A. No. 1079 of 2011 for vacating earlier order of injunction both filed in the Bharat Petroleum suit. G.A. No. 2110 of 2006 filed by Atindra was allowed restraining Bharat Petroleum from disturbing possession since Bharat Petroleum did not have any legal right to be in possession.

12. We do not have any scope of interference.

13. The appeal fails and is hereby dismissed. There will be no order as to costs. Urgent certified copy of this judgment, if applied for, be given to the parties on their usual undertaking.

Ashoke Kumar Dasadhikari, J.

I agree.