

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

SECOND APPEAL NO. 359 OF 2014

IN

REGULAR CIVIL APPEAL NO. 257 OF 2005

IN

REGULAR CIVIL SUIT NO. 1461 OF 1995

	Bharat Petroleum Corporation Ltd. Bharat Bhuvan, 4-6, Dr. Currimbhoy Road Ballard Estate, Mumbai 400 032.	Appellant
	Versus	
1.	Shri Champalal Vithuram Jajoo (since deceased through L.Rs.)	
1A.	Shri Chandrakant Champalal Jajoo Aged : 64 years, Occ. Business	
1B.	Shri Ramesh Champalal Jajoo Aged: 57 years, Occ. Business	
1C.	Padma Suresh Bhutada Aged - Adult, Occu.	
1D	Smt. Ratnabai Champalal Jajoo Aged 82 years, Occ. Household Nos.1A,1B and 1D R/o. Jaju Niwas, Behind Raj Hotel, Nashik Road, No. 1C R/o. Shikhrewadi,	

	Nashikroad	
1E.	Smt. Mangala Vinod Laddha Aged 50 years, Occ. Household r/o L.Himalay Co-op. Hsg. Soc. Ltd. Dattamandir Chowk, Nashik Road.	
1F.	Sau. Tarabai Jugalkishor Karwa Age 67 years, Occu. Household R/o. Amravati, Tal. & Dist. Amravati.	
2.	Shri Madanlal Vithuram Jajoo (since deceased by his L.Rs.)	
2A.	Shri Nandkishor Madanlal Jajoo Age 70 years, Occ. Business	
2B.	Shri Vijay Madanlal Jajoo Age 63 years, Occ. Business	
2C.	Shri Jagdish Madanlal Jajoo Age 59 years, Occ. Business, Nos. 2A,2B, 2C r/o. Raj Apartments, Behind Raj Hotel, Bytco Point Nashik Road, Deolali, Tal. & District Nashik	
2D	Mrs. Aruna Rajesh Kabra Age 62 years, Occ. Housewife R/o. Kabara Medical Stores, Near Railway Station, Bhusaval District Jalgaon	
3.	Shri Harinarayan Vithuram Jajoo Aged 73 years, Occ. Business R/o. Nashik Road, Jail Road.	

4.	Shri Somanath Vithuram Jajoo (since deceased through his L.Rs.)	
4A.	Shri Atul Somnath Jajoo Aged 52 years, Occ. Business	
4B.	Shri Amar Somnath Jajoo Aged 50 years, Occ. Business	
4C.	Smt. Shakuntala Somnath Jajoo Aged 73 years, Occ. Housewife Nos. 4A to 4C R/o. Raj Apartments, Behind Raj Hotel, Bytco Point, Nashik Road, Deolali	
4D	Smt. Archana Manish Karwa Aged 49 years, Occ. Housewife R/ o. 9N.B.X.Janki Nagar, Indore Madhya Pradesh.	
5.	Shri Mohanlal Raghunath Jajoo Age Major, Occ. Business	
6.	Shri Bhikulal Raghunath Jajoo Age – Major, Occu. Business, Nos. 5 & 6 r/o. Jaju Niwas, Behind Raj Hotel, Nashik Road.	Respondents

 Shri Shivprasad Pagare, Standing Counsel for the appellant Corporation.
 V. A. Thorat i/b M. M. Sathaye - Sr. Advocate for respondent-owners.

CORAM : DAMA SESHADRI NAIDU, J.

JUDGMENT RESERVED ON: 5th September 2019.

JUDGMENT PRONOUNCED ON: 27th April 2020.

JUDGMENT:**I. Introduction:**

If law cannot give you what you seek, litigation will. The appellant, it seems, strongly believes in it and proves it right, too.

2. The appellant is a well-known—or is it notorious?—entity: Bharat Petroleum Corporation Limited (BPCL). It becomes a lessee in 1965; secures no registered lease deed; rather it fails “by inadvertence” to have the lease deed registered; continues as a lessee for twenty years, the originally agreed period; seeks extension but fails to get; then litigates for extension and loses; appeals and loses; and still appeals. All the while it holds on to the property. Now it has been a tenant for 55 years. It is on the strength of an unregistered lease deed. In other words, it is supposed to be a tenant for 30 days; that is all it gets as a lessee under an unregistered lease. But BPCL continues as a lessee for 55 years. Law gives it 30 days, and litigation stretches it to 20,075 days.

3. It pays to litigate, so BPCL litigates. Blissfully, it is a profitmaking PSU; it can afford to litigate and engage its lessors across the country in a war of attrition. It tries to convert every case into Dickensian *Jarndyce v. Jarndyce*¹. Before decades, it has inherited many leases with the same terms;

¹Charles Dickens, *Bleak House*: That scarecrow of a suit. “Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties . . . without [their] knowing how or why; whole families have inherited legendary hatreds with the suit.”

those leases expiring and extensions unavailable, it litigates. Courts across the country and the Supreme Court, too, interpret the same terms and render the same judgments: no extension for BPCL. But, undeterred, BPCL raises the same plea again and again, despite its losing cases, one too many. If not *res judicata*, those earlier decisions at BPCL's own invitation become precedential estoppel.

Facts:

4. Appellant BPCL is a fully-owned Government Company and successor to Burmah Shell Oil Storage and Distribution Company of India Ltd. In February 1965, BPCL's predecessor secured the suit property, an open plot of 14,550 sq. feet, on lease from the respondent owners. The annual rent was Rs. 3900/- and the period was 20 years. Though both the parties signed the lease deed, the lessee did not get it registered "by inadvertence." Further, the "draft lease deed" contained, among other terms, a provision for renewing the lease for 20 more years after the expiry of the initial lease.

5. When the lease was subsisting, in 1976, under the Burmah Shell (Acquisition of its Undertakings in India) Act, 1976 ("Burma Shell Act"), the Company was taken over by the Government of India to form Bharat Refineries Limited, later renamed as Bharat Petroleum Corporation Limited, BPCL. Thus, the appellant Corporation has become the licensee. But the very next year, that is in 1977, the Owners filed RCS No.754 of 1977 against

the Corporation for eviction. It was on the grounds of *bona fide* requirement, erection of unauthorized permanent structures, change of user, and unlawful sub-letting.

6. Pending that suit, the initial 20 years ended. So in January 1985, the Corporation is said to have notified the Owners with its demand for the renewal of the lease for twenty more years, as the unregistered leased covenanted. But the Owners refused to renew the lease; they cited, it seems, the pending eviction proceedings as the reason.

7. Then, the Corporation filed Regular Civil Suit No.256/88 before the Court of Civil Judge, Junior Division, Nashik, for specific performance and injunction. Later, the suit was renumbered as RCS No.1461/1995. Eventually, on the merits, the trial Court dismissed the suit with costs, through its judgment dt.7th May 2005. Aggrieved, the Corporation filed RCA No.257/2005. But the District Court-I, Nashik, too, dismissed the suit, through its judgment, dt.11.12.2013. It has, however, interfered to the extent of the “compensatory costs.” Finally, the Corporation has filed this Second Appeal.

8. Heard Shri Shivprasad Pagare, the learned Standing Counsel for the appellant-Corporation and Shri V. A. Thorat, the learned Senior Counsel, instructed by Shri M. M. Sathaye, for the respondent-Owners.

Discussion:

9. Before we refer to the substantial questions the Corporation

presented to this Court, we may take judicial note of the other parallel developments involving the Corporation and the Owners.

The Owners' First-Round Litigation:

10. As we have already mentioned, in 1977, the Owners filed RCS No.754 of 1977 against the Corporation for eviction. It was on the grounds of *bona fide* requirement, erection of unauthorized permanent structures, change of user, and unlawful sub-letting. In March 1985, the trial Court dismissed the suit. The dismissal was on all grounds. Aggrieved, the Owners filed Civil Appeal No. 265 of 1985 but without success; the appeal was dismissed in July 1986. Further, aggrieved, the Owners filed Writ Petition No.4985 of 1986. Yet again, they failed. This Court dismissed the Writ Petition on 09.02.1998.

The Owners' Second-Round Litigation:

11. In the mid-1998, the Owners filed RCS No.149 of 1998. This time the Owners sought the Corporation's eviction on the grounds of *bona fide* requirement, arrears of rent, and permanent construction on the suit land. To this suit, the Owners added a partnership firm and its partners as the other defendants. Admitting no privity contract, the Owners, however, maintained that the Firm is an illegal sublessee.

12. The Civil Judge, Junior Division, Nashik, through its Judgment and decree, dt.29.09.2005, allowed that suit. Aggrieved, the Corporation filed RCA No.237 of 2005, and the Firm filed RCA No.234 of 2005. Through a

common judgment, dt.11.12.2013, the District Judge-I, Nashik, dismissed both the appeals. Then, the Corporation and the Firm filed CRA Nos.562 of 2018 and 561 of 2018, respectively.

13. Today, through a separate judgment, this Court dismissed both the CRAs. In the face of that dismissal, now there is no subsisting lease. Nor can we say the Corporation is a tenant at sufferance. Nevertheless, we will consider this case for the worth it is. And it has no worth, I am afraid.

Substantial Questions of Law:

14. The Corporation has presented these supposed substantial questions of law:

- i. Have the Courts below committed an error of law by holding that the Corporation has failed to prove its entitlement for the renewal of lease?
- ii. Have the Courts below have failed to apply the principles of res judicata to the Owners' claim for the Corporation's eviction, despite their losing the suit RCS No. 754 of 1977?
- iii. Have the Courts below failed to appreciate the impact of Sections 5 and 7 of the Burmah Shell Act on the Corporations' right to renewal?
- iv. Should the generic provisions of the Transfer of Property Act not yield to the specific provisions of the Burmah Shell Act, which provides for an automatic renewal?
- v. Has the Corporation not displayed its bona fides by forwarding the draft lease deed to the Owners for renewal?
- vi. No law bars the lease without documentation; on the contrary, the Burmah Shell Act itself provides for automatic renewal. In that

statutory backdrop, have the Courts below correctly concluded that the Corporation is disentitled to the lease renewal?

The Trial Court's Findings:

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| i. Has the Corporation proved that it is entitled to have the lease renewed for 20 more years? | No |
| ii. Is the Corporation entitled to specific performance? | No |
| iii. Is this suit barred by res judicata? | Yes |
| iv. Is the Corporaton entitled to any other relief? | No |
| v. Have the Owners proved that the suit is vexatious? | No |
| vi. Do the Owners deserve compensatory costs? | Yes |

15. Aggrieved, the Corporation filed RCA No.257/2005. In that appeal, the District Court-I, Nashik framed and answered the following points:

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| i. Have the Owners agreed to renew the lease for 20 years after the expiry of the initial 20 years? | No |
| ii. Given the adverse findings against the Corporation in the earlier round of litigation, is it entitled to the renewal of the lease? | No |
| iii. Has the Corporation filed a false and vexatious suit? | No |
| iv. Is the decree under challenge justified? | Yes |

Second Appeal:

16. Against the concurrent findings, the Corporation has filed this Second Appeal. Let us talk about admitted facts. The initial lease in 1965 was unregistered. Though it was for 20 years, in the eye of law, it must be

treated as a month-to-month tenancy. Save for the collateral purpose, such as possessory aspect, an unregistered lease deed cannot be acted upon; its terms are unenforceable. So, the alleged covenant of renewal is still born.

(a) Unregistered Lease Deed:

17. As Section 107 of Transfer of Property Act mandates, “a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.”

Section 17 (1) (d) of the Registration Act, the leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent must be registered. Then, Section 49 of the same Act clearly provides that a document purporting to be a lease and required to be registered under Section 17 will not be admissible in evidence if the same is unregistered. True, the proviso to this

section allows that unregistered lease deed to be looked into for collateral purposes. But neither the duration of the lease nor its renewal is a collateral purpose; it is one of its core purposes. So, cumulative effect of Section 107 of the Transfer of Property Act, Section 35 of Stamp Act, Sections 17 and 49 of the Registration Act is that an unregistered lease deed as relied on by the Corporation cannot be looked into. The Corporation’s possession admitted, the very lease must be treated as month-to-month tenancy. Thus, the Corporation has no basis for the renewal of the lease.

(b) The Impact of Sections 5 and 7 of the Burma Shell Act:

18. In *Bharat Petroleum Corporation Ltd. v. Rustom Behramji Colah (Dr.)*², this Court, per Chandrachud D. Y., J (as his Lordship then was), has examined the provisions of The Burmah Shell Act. To being with, analysing sub-section (1) of Section 5, *Rustom Behramji Colah* has reckoned that “the lease which was executed in favour of Burmah Shell would ensure to the benefit of the Central Government as if the lease had been granted to the Central Government.” True, the Corporation is a Government company that has stepped into the Central Government’s shoes.

19. Then, *Rustom Behramji Colah* has examined Section 5(2) of the Burmah Shell Act and has reckoned that the option to renew that was conferred upon Burmah Shell under Clause 3(c) of the lease would be available on the same terms and conditions to the Central Government. “Clause 3(c) makes it clear that once the lease is renewed for 20 years the same terms and conditions would govern the lease during the renewed term save and except for the covenant for renewal unless both parties agreed that such an option for further renewal shall be included in the renewed lease.” As was in *Rustom Behramji Colah*, here too, admittedly, no such further option had been agreed upon between the parties.

20. Finally, *Rustom Behramji Colah* has considered the question whether a perpetual right of renewal can be held to exist in law. To answer this question, it has relied on the Supreme Court’s decision in *State of*

²(2007) 2 Bom CR 870

*U.P. v. Lalji Tandon*³. And, eventually, it has adopted the *Lalji Tandon's* proposition that the Court always leans against a perpetual renewal. So “where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous.”

21. On facts, *Rustom Behramji Colah* has held that the original term of lease expired in 1976. Even thereafter on the assumption that the lease was renewed either by the exercise of the option of renewal or by operation of law, the renewed term also expired in 1996. Clause 3(c) of the covenants of the lease deed specifically excludes a perpetual right of renewal. “Clause 3(c) postulates that during the renewed term, the lease would be subject to the same terms that governed the original term of lease except for the clause for renewal, unless parties specifically agree otherwise. Here there is no agreement that the petitioners would be entitled to any further renewals. The Court leans against a perpetual right of renewal even when the clause of renewal provides a renewal on the same terms and conditions.” So it has rejected the Corporation’s plea that it has a right for further renewal.

22. Here, in the case before us, we will assume the initial lease was valid and its terms could be enforced. In that light, we may notice that the lease began in 1965, the first twenty years ended in 1985. There was no

³(2004) 1 SCC 1

renewal, but there was litigation. That litigation saw the Corporation for twenty more years and beyond. So the 'litigious renewal' provided the second term up to 2005. Now, five years short, the Corporation is racing towards the third gratuitous renewal. So litigation pays.

23. At any rate, applying the ratio of *Rustom Behramji Colah*, I hold that the Corporation's plea for renewal has failed.

Has Anything Survived in this Second Appeal?

24. Let us assume that the Corporation won its RCS No.1465/1995, it could have got twenty more years—from 1985. Now it has got much more, almost twice. It has not lost anything having actually lost the case; the Owners gained nothing having won the case, except a pyrrhic victory.

The Impact of the Judgment in CRA Nos.561 and 562 of 2018:

25. Today, this Court dismissed both CRAs. The Corporation and its sublessee filed those CRAs challenging the concurrent findings of eviction against them. So long as that judgment holds the field, the lease stood judicially determined and the judgment of eviction operates as *res judicata* against the Corporation.

Is there any Substantial Question of Law:

26. In the light of the above discussion, first, we should hold that unregistered lease confers no rights on the Corporation; second, the Burma Shell Act has not provided for perpetual leases; third, the Corporation has already got the extension beyond the period it prayed for in the suit, and

that was despite its losing the case; and fourth, in view of this Court's judgment in CRA Nos.561 and 562 of 2018, the Corporation's claim for renewal no longer survives and stands hit by res judicata. So I find no question of law, leave alone substantial question of law, in this Second Appeal.

Result:

The Second Appeal has failed. The Court, as a result, dismisses it with costs all through. It pays to litigate, but those litigate must also pay.

[DAMA SESHADRI NAIDU, J.]

L.S.Panjwani, P.S.

