



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL (ST) NO.10836 OF 2023

Bharat Petroleum Corporation Limited
A Govt. of India Undertaking
Through its Territory Manager (Retail),
Thane, having its office at – Plot No.6, Sector -2,
Kharghar, Navi Mumbai – 410 210.

... Appellant
(Orig. Plaintiff)

Versus

Kedar Namdeo Pawar
Age about 67 years, Occupation – Retired,
Residing at – 103, Kaveri Building,
Bapulagve Road, Near Dahisar Bridge,
Dahisar (W), Mumbai – 400 068.

... Respondent

Mr. Nikhil Sakhardande, Senior Advocate a/w Mr. Prasad Page i/b. Ms.
Shubhra Paranjape for the Appellant.
Mr. Yashir Peshimam for the Respondent.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

JUDGMENT RESERVED ON : 6 FEBRUARY 2025

JUDGMENT PRONOUNCED ON : 23 APRIL 2025

JUDGMENT (Per Advait M. Sethna, J.) :

1. This appeal assails the judgment and order dated 18 November 2022 (“*Impugned Judgment*”) passed in Special Civil Suit No.181 of 2017 by

the Civil Judge, Senior Division, Kalyan ("*Trial Court* "). In pursuance of our order dated 6 February 2025, we have heard learned counsel for the parties on the final hearing of this appeal and more particularly as a short issue arises for consideration.

2. The impugned judgment was rendered by the trial Court on an application preferred by the respondent/ defendant under Order VII Rule 11(a), (d) of the Civil Procedure Code, 1908 ("*CPC*") praying for rejection of plaint alleging that no cause of action had accrued to the appellant/plaintiff to institute the suit in question. Such application of the respondent/ defendant was allowed by the trial Court.

FACTUAL MATRIX :-

3. Briefly, the facts in regard to the civil suit are :-

- (i) The appellant allotted a retail petrol pump outlet on 28 September 1999 under a dispensing pump license (DPSL) to one Satyajeet Samant and Ujwala S. Samant (for short "*Samant*") for a period commencing from 28 September 1999 to 27 September 2014 i.e. the license period for 15 years. The said petrol pump was set up on land admeasuring 1706 sq. meters situated at Kalyan, Dist. Thane ("*suit land*" for short) of which such persons were the erstwhile owners. On 21 May 2007, Samant sold the land beneath

the petrol pump to one Paresh Bala Jadhav. The said Paresh Jadhav further sold the suit land to one Ashok Patil and Ashwini Patil on 27 December 2013, who in turn sold the suit land to the respondent on 6 May 2014. The respondent, thus became the owner of the suit land.

- (ii) The suit land was leased in favour of the appellant by the previous owners by way of executing a lease deed dated 12 March 1964 which was registered on 21 May 1964 for a period of 20 years, expiring on 20 May 1984. Thereafter, the said lease was renewed further upto 20 May 2004. The appellant continued to be in possession of the said petrol pump situated on the suit land, even after the lapse of the said lease on 20 May 2004.
- (iii) The respondent issued a letter dated 22 July 2014 addressed to the Territory Manager (Retail) of the respondent pursuant to negotiations which were held on such date between the appellant and the respondent. The said letter styled as 'Offer letter' recorded the terms and conditions of the negotiations/talks that transpired between the appellant and the respondent.
- (iv) The appellant addressed a letter dated 10 February 2016 to the respondent making a reference to the respondent's letter dated 22

July 2014 stating that the appellant was agreeable for paying a rental amount of Rs.60,000/- p.m. with escalation of 10% after every block of 5 years from the date of registration of the lease, enclosing draft of the new lease agreement, for registration. However, nothing materialised thereafter.

- (v) The appellant in such circumstances proceeded to file a Special Civil Suit No.181 of 2017 on 21 July 2017 before the trial court seeking specific performance of the appellant's offer letter dated 22 July 2014 and to register the lease deed in favour of the respondent. Further, the appellant also sought for injunctive reliefs against the respondent, restraining the respondent from creating any third party rights in respect of the suit land.
- (vi) After the suit in question was instituted the respondent addressed a letter dated 25 July 2017 to the Territory Manager (Retail) of the appellant indicating his unwillingness to execute the lease deed, *inter alia* stating that the offer letter issued by the respondent dated 22 July 2014 expired on 22 July 2017 after completion of 3 years.
- (vii) On the aforesaid backdrop, the respondent filed an application under Order VII Rule 11 (a), (d) of the CPC in the trial Court on

17 June 2022 for rejection of the plaint, on the ground that it failed to disclose any cause of action as there was no contract formed between the parties.

- (viii) The appellant filed its reply dated 16 September 2022 to the application filed by the respondent under Order VII Rule 11 for rejection of the plaint of the appellant.
- (ix) On 18 November 2022 the trial Court passed the impugned judgment and order whereby, it dismissed the suit of the appellant under the provisions of Order VII Rule 11(a), (d) of the CPC primarily on the ground that the plaint failed to disclose any cause of action, as also that it was barred by limitation.

SUBMISSIONS:-

4. Mr. Sakhardande, learned Senior Counsel for the appellant in assailing the impugned judgment would firstly refer to the plaint filed by the appellant before the trial Court. He would submit that as averred in the plaint, the offer letter dated 22 July 2014 was duly accepted by the appellant by its letter of acceptance dated 10 February 2016 followed by another letter of the appellant dated 18 February 2016. The letters dated 22 July 2014 and 10 February 2016 read thus :-

"OFFER LETTER"

Dated 22.07.2014

To
The Territory Manager (Retail)
BPCL
Thane Territory

Dear Sir,

NEGOTIATION FOR THE LAND AT M/S SAMANT AUTO, GAOTHAN LAND BEING. LYING & SITUATED AT MOUJE MANPADA, KALYAN SHIL ROAD, DOMBIVALI, DIST-THANE.

Please refer discussions during the negotiations held on 22.07.2014 in regards to the above subject. We confirm our offer as below:

1. Area/Location / Khasra no, etc.1706 sq. mtrs, Gaothan land being, lying & situated at Mouje Manpada, Kalyan Shil Road, Dombivali, Dist: Thane.
2. Lease Period 29 years months we f. date of Registration.
3. Rental & Increment Rs. 60000/- per month with an escalation of 10% after every block of 5 years w.e.f. the date of registration of lease.
4. Ownership of land: Sh. Kedar Namdeo Pawar.
Sale Option/consideration demanded: Not applicable
6. Conversion of land: Land to be converted from Residential to Commercial and for such purpose permission / approval for change of land use or conversion shall be obtained by owner at his cost and risk and provided to BPCL.
7. The earmarked plot would be made available by the undersigned to BPCL after doing earth filling, including compaction, upto the road level. Undersigned will also complete the retaining wall upto the road level.
8. Any other remarks:
 1. Based on the exact measurements of the converted land for use of petrol pump, if the plot size decreases, the rentals would be decreased in the proportion of Rs. 60000/-. In case plot area increases, this rental shall remain Rs. 60000/- only.
 2. BPCL to bear stamp duty, registration charges towards the registration of lease deed. However, any incidental expenses towards execution of deed would be born by the undersigned.
 3. Property tax, if any, towards the land and Land Revenue tax would be borne by the land lord and the property tax towards the structures erected at the site would be born by BPCL.
 4. Undersigned will submit all documents for verification of title as per list provided by BPCL.

5. This agreement is subject to Legal Department of BPCL clearing the title of the said land.
6. Both the parties will cooperate with each other for execution and registration of the lease deed expeditiously.
7. This agreement is subject to obtaining NOC and any other required clearances viz. DTP, Forest, PWD or any other Govt. bodies and finally clearance of land title from BPCL Legal Deptt. The registration of lease would be done only after receiving all the aforementioned clearances and NOC from Govt, bodies,
8. The Plot and/or its ownership is free from all encumbrance /encroachments/religious/Defence structures etc.
9. The plot meets all the requirements of NHAI /PWD/SH and Forest department guidelines.
10. The undersigned shall arrange for all statutory clearance such as urban ceiling, Non Agriculture conversion (Commercial conversion to Petrol Pump purpose), Income Tax clearance and other clearances as applicable for the plot at his own cost and risk.
11. BPCL is allowed to utilize ROW (The area/Site available Parallel to frontage of Plot Size) without charging any extra rental and I also undertake that no construction what so ever which hampers the free flow of traffic; visibility of the Retail Outlet on the land taken on lease will be made by me or my associates and this will be purely used for approaches to the retail Outlet.

Thanking You,

Yours faithfully,
Sh. Kedar Namdeo Pawar

(Landlord of M/s Samant Auto, Manpada, Dombivali, Dist – Thane)”.

“BHARAT PETROLEUM CORPORATION LTD.

TT. RET. THANE SAMANT AUTO

10 FEBRUARY 2016

To,
Mr. Kedar Namdeo Pawar,
103, 1 Floor, Kaveri Building,
Bapu Bagwe Rozd,
Dahisar Bridger Dahisar (West),
Mumbai 400 068.

Dear Sir,

This is with reference to the minutes of the meeting dtd. 22.07.2014 and

your offer letter dtd. 22.07.2014 wherein you had agreed to **irase** the premises situated at Moule. Manpada, Kalyan Shil Road, Dombivali, Tal. Kalyan, Dist. Thane, admeasuring 1706 sq.mt. for a period of 29 years for a rental of Rs. 60000/- per month with an escalation of 10% after every block of 5 years w.e.f. the date of registration of lease.

You are aware that we have already received the title documents for the subject site and the same have been approved.

We are enclosing the draft lease agreement for your perusal and you may kindly inform us a suitable date and time for registration of the same.

Thanking you,

Yours faithfully,

For BHARAT PETROLEUM CORPORATION LTD.

TERRITORY MANAGER (RETAIL) THANE.”

According to Mr. Sakhardande, a bare perusal of the said letter dated 10 February 2016 denotes a clear and unequivocal acceptance of the appellant, of the terms and conditions of the offer and its revised terms as negotiated between the parties. Thus, such offer of the respondent and unqualified acceptance of such offer by the appellant as stipulated under Section 8 of the Contract Act, 1872 (“***Contract Act***’ for short) clearly brings about the formation of a valid and binding contract between the appellant and respondent enforceable in law, under Section 10 of the Contract Act. It is submitted that all ingredients as specified under Section 10 i.e. free consent, lawful consideration, with lawful object, are duly satisfied. Accordingly, the appellant was rightly seeking specific performance of the contract for

registration of lease deed formed pursuant to the acceptance of the respondent's offer letter dated 22 July 2014.

5. Mr. Sakhardande would next submit that in the letter of the respondent dated 25 July 2017, the respondent clearly admits that his offer letter dated 22 July 2014 expired on 22 July 2017. The said letter reads thus:-

"Date – 25-07-2017

Mr. Kedar Namdeo Pawar
103, 1st Floor, Kaveri Building,
Bapu Bagweroad, Dahisar Bridge,
Dahisar – west, Mumbai -40068.

To,
The Territory Manager (Retail) Thane
Mr.Kedar Namdeo Pawar,
103, 1" Floor, Kaveri Building
Bapu Bagweroad, Dahisar Bridge,
Dahisar-west Mumbai-400068.

Sub - M/s. Samant Auto Service
Reference : Offer letter dated 22-07-2014
Acceptance letter dated 10-02-2016

Dear Sir,

This is with reference to the minutes of meeting dated 22-07-2014 held at Bharat Petroleum Corporation Ltd., HQ, 12 E&F, Maker Towers, Cuffe Parade, Mumbai-400015 and offer letter dated 22-07-2014 regarding the leasing of the premises situated at Mouje Mangaon, Manpada, Kalyan Shil Road, Dombivali, Tal-Kalyan, Dist-Thane, measuring 1706 sq.mtrs.

I would like to mention that I have already informed you that I am the owner of above stated land. As you aware that your vide acceptance letter dated 10-02-2016 asked me to give above mentioned land on lease to Bharat Petroleum Corporation Ltd. on offered lease rent Rs.60000 per month subject to the condition that I should be given 49% partnership in Dealership licence (DPSL) of M/S.Samant Auto Service (Petrol pump/Retail-outlet) situated at above mentioned land.

I have compiled and provided all the necessary documents regarding reconstitution proposal. Instead of giving dealership licence of petrol pump you have taken forcible illegal possession of petrol pump and land with

help of police on 17-04-2016.

Kindly take note that my offer letter dated 22-07-2014 expired on 22-07-2017 as it completed 3 years.

Henceforth I do not wish to offer my land on lease to Bharat Petroleum Corporation Ltd.

Thanking you.
Kedar Namdeo Pawar.”

6. Mr. Sakhardande would then take us to the relevant averments in the plaint, coupled with the substantive reliefs/ prayers, which read thus:

“7. The Plaintiff submits that when the Defendant became owner of the land he wanted to revise the terms and conditions of the lease. Therefore a meeting was held in the office of the Plaintiff along with the Defendant on 22.07.2014. In the said meeting the Defendant agreed to give the said land on lease to the Plaintiff for a period of 29 years at a rent of Rs.60,000/- per month with an escalation of 10% after every block of 5 years with effect from the date of registration of the lease deed.

12. The Plaintiff submits that when the offer of the Defendant submitted by him by means of his Offer Letter dated 22.07.2014 it is duly accepted by the Plaintiff by means of their Acceptance Letter dated 10.02.2016 and 18.02.2016. When the Offer is accepted it is turned into a contract. The Contract is binding between the Plaintiff and Defendant. But the Defendant is avoiding to perform his part of obligation and also avoiding to execute the registration of lease deed. Therefore the defendant has committed a breach of contract. The defendant is liable for specific performance of contract for registration of the lease deed as per their offer letter dated 22.07.2014. The Plaintiff is ready and willing to perform their part of obligation but the Defendant has utterly failed to perform his part of obligation. Therefore the Defendant is liable for breach of contract. Hence this suit for specific performance of contract.

Prayers:

a. This honourable court may kindly pass decree directing the defendant for specifically performing the terms and conditions of Offer Letter dated 22.07.2014 and to register the lease deed in favour of the Plaintiff

- b. This honourable court may kindly grant order for permanent injunction restraining the Defendant, his agents, servants, workmen and any other person acting on behalf of the defendant from alienating, transferring or disposing off or creating third party interest in respect of suit premises.”*

7. In the above context, it is submitted that as specifically averred in the plaint, the appellant conveyed its unqualified acceptance by its letter dated on 10 February 2016 (supra), much before the expiry of the period of the offer, as stated by the respondent in the said communication. Mr. Sakhardande would hence urge that the trial Court had ex-facie erred when it has come a conclusion that there was no cause of action for the appellant to file the suit, due to the belated acceptance by appellant of the respondent's offer, after efflux of time, which was clearly not the case as borne out by the record.

8. Mr. Sakhardande would next contend that after 10 February 2016 the respondent maintained complete silence and never communicated to the appellant until 25 July 2017 and at the same time the appellant, continued with the possession of the petrol pump and of the suit land. Thus, despite the formation of a legally valid contract to register the lease deed, the respondent failed to carry out its obligation to register the same. It is in the light of such breach of contractual obligations by the respondent that the appellant was constrained to file the suit in question seeking specific performance of the contract to register the lease deed in terms of the draft of the lease which was furnished to respondent on 10 February 2016 for registration.

9. In support of his submissions, Mr. Sakhardande would rely on a judgment of the Supreme Court in the case of *Bharat Petroleum Corporation Limited vs. Great Eastern Shipping Corporation Limited*¹ to urge that under certain circumstances the offeree's/respondent's silence coupled with his conduct would take the form of a positive act which would constitute an acceptance - *sub silentio*. It is submitted that the principle of *sub silentio* is clearly attracted in the given facts and circumstances. According to him, as held by the Supreme Court in paragraphs 23 and 24 of the said judgment, assuming that there was no contract due to expiry of efflux of time, it would get extended by the conduct of the parties.

10. Mr. Sakhardande would next submit that the trial Court ought to have applied its mind to such vital aspects which had a direct bearing on the respondent's contention and the appellant's case on cause of action, on whether a valid agreement existed between the parties for a lease deed to be entered and registered between the parties. It is submitted that instead, the trial Court in a mechanical manner without recording reasons accepted the application of the respondent filed under Order VII Rule 11 of the CPC non-suiting the appellant.

11. Mr. Peshimam has strongly supported the impugned judgment of the trial Court. According to him, the trial Court has duly considered various

1. 2008(1) SCC 503

facets of the matter in coming to a reasoned conclusion that there existed no cause of action on any agreement between the parties, as the appellant accepted the offer of the respondent but beyond reasonable time. It is submitted that hence the trial Court rightly held that there was no formation of contract, as the offer came to end by efflux of time and therefore there was no basis for the appellant to prefer the suit, as correctly observed in the impugned judgment. It is in such circumstances, that Mr. Peshimam would urge that the trial Court was correct in rejecting the plaint of the appellant under the provisions of Order VII Rule 11 of the CPC. He would thus, submit that no inference with the impugned judgment is warranted and the appeal of the appellant should be dismissed.

ANALYSIS AND CONCLUSION :-

12. The impugned judgment refers to the offer letter dated 22 July 2014 (supra) addressed by the respondent to the appellant and its acceptance by the appellant vide its letter dated 10 February 2016 (supra) which are considered relevant for determining the cause of action i.e. formation of contract between the parties to the present *lis*. As urged by Mr. Sakhardande, the legal consequence which would flow from these letters was to the effect that a valid agreement enforceable in law was brought about between the parties. In our opinion, certainly this was one of the valid contention as urged

on behalf of the appellant. However, there is no finding or any reasoning rendered in the impugned judgment of the trial court on such aspect of the appellants contention. Moreover, reply of the appellant dated 16 September 2022 to the application filed under Order VII Rule 11 by the respondent, though on record, is not considered by the trial court, as evident from the impugned judgment.

13. In our view, the principle of *sub silentio* and its implications as submitted by Mr. Sakhardande in the given facts and circumstances certainly deserved consideration, as such issue would have a bearing on whether an agreement as alleged by the appellant was at all formed. This more particularly when the trial Court purported to hold that the offer of the respondent, came to an end only by efflux of time, without considering the material factual nuances, as the record would depict. Moreover, there are also issues, likely requiring evidence to be led.

14. It is well settled that when the trial Court when confronted with the application under Order VII Rule 11 which if allowed non-suits the plaintiff, the court needs to be circumspect, in dealing with such applications. In the case before us, the trial court ought to have considered the appellant's case recorded appropriate reasons in considering the appellant's case in opposition to the respondent's application filed under Order VII Rule 11. On

the contrary, the trial court rejected the plaint by the impugned order on quite superficial and/or cursory consideration of such application. The impugned judgment and order is indeed bereft of reasons. Moreover, the impugned judgment does not reflect, much less consider the vital averments in the plaint coupled with the relief sought as noted by us above, which would have a material bearing in adjudicating the application of the respondent preferred under Order VII Rule 11 of the CPC. It is appropriate to set out Order VII Rule 11 (a) and (d) which read thus:-

“(a) where it does not disclose a cause of action;

(d) where the suit appears from the statement in the plaint to be barred by law.”

15. In our view, the trial Court ought to have taken into account the following vital legal principles while dealing with and deciding an application under Order VII Rule 11 of the CPC. These are summarized below:-

- (i) The Supreme Court in dealing with the issue as to whether the suit can be said to be barred by limitation or not observed that, at the stage of an application under Order VII Rule 11, what is required to be considered are the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only, a plaint can be rejected under Order VII Rule 11(d) of the CPC on

the ground of limitation. Hence, what is imperative to be considered mainly are the averments in the plaint which is to be read as a whole. (See **Biswanath Banik vs. Sulanga Bose**²)

- (ii) The trial Court in dealing with an application under Order VII Rule 11 must remember that if on a meaningful and not a formal reading of a plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue. It should exercise its power under the said provision, taking with utmost caution and care to see that the ground mentioned therein is fulfilled. If clever drafting has created an illusion of a cause of action it has to be nipped in the bud at the first hearing by examining the party under Order X of the CPC, as observed by the Hon'ble (See **T. Arivandandam v. T.V. Satyapal**³).

- (iii) For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of CPC, the averments in the plaint are germane, the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage (See **Salimbhai vs. State of Maharashtra**⁴)

² 2022(7) SCC 731

³ 1997 (4) SCC 467

⁴ 2003(1) SCC 557

- (iv) Under Order VII Rule 11 of the CPC, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon, or whether the suit is barred by any law. (See **Dahiben vs. Arvind Kalyanji**⁵)
- (v) Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found from the reading of the plaint itself. For such purpose, the averments in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety a decree would be passed. (See **Liverpool and London S. P. Ltd. v. M.V. Sea Success and Anr.**⁶)

16. The Supreme Court in *Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors.*⁷ in the context of emphasizing the importance of reasons in an order held that reasons are the heartbeat of every conclusion, as it introduces clarity in an order and without which the order becomes lifeless. It was observed that the reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible

⁵ 2020(7) SCC 366

⁶ 2004(9) SCC 512

⁷. (2010) 13 SCC 336

/unsustainable particularly when the order is subject to further challenge before a higher forum.

17. We may observe that the above salutary principles which are fundamental and quintessential in deciding an application under Order VII Rule 11 needs to be scrupulously adhered to and not to be overlooked, in any manner. The impugned judgment lacks consideration of such basic and vital legal requirements/parameters.

18. In light of the above discussion, we are certain that the impugned judgment and order of the trial Court dated 18 November 2022 cannot be sustained and deserves to be quashed and set aside and the proceedings be remanded. We, accordingly dispose of this appeal in terms the following order:-

ORDER

- (i) The impugned judgment passed by the Civil Judge, Senior Division, Thane dated 18 November 2022 is hereby quashed and set aside.
- (ii) The proceedings of the respondent's application under Order VII Rule 11 of the Code of Civil Procedure stand remanded to the trial court for *de novo* consideration on merits and in accordance with law.

- (iii) The trial court shall decide the application of the respondent under Order VII Rule 11 of the CPC afresh after hearing the parties and by a reasoned order, preferably within a period of four months from today.
- (iv) All rights and contentions of the parties are expressly kept open.
- (v) Disposed of. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)