

2016 C L C 1396

[Sindh]

Before Mohammad Shafi Siddiqui, J

M/s. HASCOL PETROLEUM LTD. through Authorized Attorney----Plaintiff

Versus

M/s. SHELL PAKISTAN LIMITED through Chief Executive Officer and 5 others----Respondents

Suit No.2471 and C.M.As. Nos.16412 and 16693 of 2014, decided on 6th March, 2015.

**Civil Procedure Code (V of 1908)---**

---O.XXXIX R.1 & 2---Suit for declaration, damages, permanent and mandatory injunction--- Application for grant of temporary injunction---Statutory tenant---Suit property was leased to defendant vide lease agreement that had expired and despite correspondence from landladies same was not renewed---Landladies entered into a new lease agreement with plaintiff but defendant had installed its machinery on leased land---Effect---Ignorance or no-reply on part of defendant should not be considered in a way that he had conceded their rights as to possession or statutory rights of tenancy---Defendant was for all intent and purposes in occupation of suit property and were running business of supply of petrol and other allied products--- Defendant had also applied for storage license after spending huge fee contrary to allegation that they were not interested in operation from suit property---Plaintiff's case was not considered to be one of prima facie, nor it would suffer an irreparable loss---Plaintiff had also not come with clean hands, hence was denied discretionary relief---High Court, in circumstances, dismissed application for grant of temporary injunction under its original jurisdiction.

Omar Nisar for Plaintiff.

Salahuddin Ahmed for Defendant No.1.

M.Salim Thepdawala for Defendants Nos.2 to 4.

Date of hearing: 26th February, 2015.

#### **ORDER**

**MOHAMMAD SHAFI SIDDIQUI, J---** These are three connected suits. Suit No.2471 of 2014 being prior in time may be considered as leading suit only for the purposes of identification of the plaintiff and defendants and by this order I propose to dispose of the listed applications out of which application at Sr. No.1 is under Order XXXIX, Rules 1 and 2, C.P.C. filed by the plaintiff seeking restraining orders in respect of property in question while the application at Sr.No.2 is under Order XXXIX, Rule 4 filed on behalf of defendant No.1 seeking recall of interim order dated 08.12.2014 passed on injunction application.

First suit i.e. Suit No.2471 of 2014 is filed by plaintiff Hascol Petroleum Limited (hereinafter referred. as Hascol) against M/s. Shell Pakistan Limited (hereinafter referred to as Shell) and other defendants out of whom defendants Nos.2 to 4 (hereinafter landladies) are landladies of the site in question while defendants No.5 and 6 are formal parties.

The other connected Suit No.2453 of 2014 is filed by Shell against landladies as defendants Nos.1 to 3, Hascol as defendant No.5 and one S.M. Shoaib Baghpati as defendant No.4 (hereinafter referred to as licensee) being franchisee/licencee of Shell. Shell claims to be a lessee of landladies/private defendants.

Third connected suit bearing No.2435 of 2014 is also filed by Shell against licensee and Hascol as defendants Nos.1 and 2 seeking damages against them.

In brief the facts are that the lease in respect of site in question was executed for 30 years between Shell and the original allottee i.e. grandfather of landladies which subsequently was renewed on 27.01.2000 for another 15 years, which are available on record. In terms of one of the six recitals apparently the terms of the lease expired on 31.07.2014 and since then it is claimed by the Hascol and the landladies that despite correspondence no lease was renewed or executed. S.M. Shoaib Baghpati, the attorney of these landladies in whose names the property was subsequently devolved have executed a lease in favour of Hascol which is claimed to be against the rights and interests of Shell.

With the above background, learned counsel for the plaintiff submitted that the Hascol entered into a tenancy agreement/lease on 26.08.2014 and they have applied for conversion of selling license in their names from the name of Shell. It is further claimed that fresh license in lieu of expired license of shell was also issued and is available as Annexure F/1 at page 175 as Form-K.

Learned counsel for plaintiff submitted that they were shown correspondence between the landladies and Shell and they realized that Shell was not interested in renewal of such lease and hence entered into such agreement of tenancy. Learned counsel further submitted that they are now in occupation and control of site in question wherein they are running petrol pump under the name and style of M/s Hascol Petroleum Limited.

On the other hand learned counsel for Shell submitted that they have filed their independent suit soon after they realized that their leasehold rights are being infringed. He has taken me to lease deed attached with his plaint in the connected Suit No.2453 of 2014 and submitted that after alleged expiry of the lease on 31.07.2014, they have become statutory tenants of the site in question. He has further relied upon clause 11(b), (d) and (e) of the lease deed which provides that the lessee would be at liberty to install and maintain on the demised premises a pump outfit or outfits with underground tank or tanks with necessary fittings and that it shall remain the property of the lessee and that they were further entitled to assign/sublet the demised

premises to any company, firm, person for the due performance and observance of the terms of the subject lease. He submitted that in pursuance of such terms and conditions Shell entered into a Retail Franchise Agreement with the licensee (defendant No.4 in Suit No.2453 of 2014) who is also father/attorney of landladies to whom the property was gifted when it is allegedly acquired by their father/licensee.

Learned counsel further submitted that the status of Baghpati is only of a licensee and he was holding the possession on account and on behalf of lessee/Shell. Learned counsel submitted that although fresh lease agreement/tenancy agreement was not executed as the parties could not reach to some final terms of the agreement however for all intent and purposes Shell is being considered as statutory tenant. Learned counsel further submitted that Shell realized that their rights and interests are being infringed and as on 06.12.2014 Hascol in collusion with others started to interfere with their tenancy rights, they filed connected suits.

Learned counsel further submitted that the plaintiff/Hascol knowingly and intentionally that Shell is a statutory tenant and for all practical purposes in possession of the premises in question entered into such negotiations which culminated into execution of subject lease agreement/rent agreement.

Learned counsel further relied upon Nazir's report who has carried out the inspection of the premises in question in terms of order dated 17.12.2014 and it is claimed that the Nazir has observed that the Canopy and underground petrol tank and washroom of Shell are still in existence at site, though the explosion proof lights are claimed to be owned by both the parties. It is also observed that the security guard room in the upper floor was built up by Shell though now in use of Hascol. It was further observed in Para 7 of the report that the remaining assets of Shell were kept on the backside of pump in separate premises which are as under:-

1. Dispenser 2 nozzles - Three
2. Dispenser 4 nozzles - One
3. Pole sign flag - One
4. Generator - One
5. 40 KV but any marks of number or company is not visible standalone pillar - One
6. Oil trolley - Three

Thus, learned counsel submitted that under no stretch of imagination it could be presumed that the Shell has handed over possession of the site in question voluntarily to the landladies. He maintained that such statutory rights of tenancy could not be snatched by force as is apparent from the facts and circumstances of the case.

Learned counsel appearing for defendants Nos.2 to 4/landladies contended that they have issued several notices and reminders to Shell and it did not respond and despite efforts could not agree on the terms insofar as execution of the fresh lease is concerned and finally they issued a letter dated 09.12.2014 for removal of the articles lying at site which too they have failed to respond and hence the possession was resumed as the subject lease agreement was already expired on 31.07.2014. He further relied upon correspondence between the landladies and Shell which are attached with the plaint as Annexure K onwards followed by final letter dated 26.08.2014 asking them to collect their material and luggage from the site in question within 24 hours and since they have not responded not only the new lease was executed but the possession was also resumed and hence Shell had slept over their rights insofar as statutory rights under the lease agreement are concerned.

I have heard the learned counsel and perused the material available on record.

It is not disputed that originally the leasehold rights were given to Shell for 30 years by one S.M. Shall who is the grandfather of the landladies and subsequently another Deed of Lease was executed on 27.01.2000 for period of 15 years commencing from 01.08.1999 at the rate of Rs.30,000/- per month. Although such Deed of Lease expired on/or around 31.07.2014 however Shell continued to be in possession of the premises in question. It is also relevant for the purposes of deciding this application that a Retail Franchise Fee Agreement was also executed between Shell/lessee and father of landladies/licensee and hence he being a licensee of Shell continued to act upon lease terms and the Franchise Fee Agreement for and on behalf of Shell.

Emphasize was made on correspondence between the landladies and Shell which is available as Annexures J, K and L to the plaint. The first letter in this regard issued by the landladies provides that despite several meetings held between landladies/attorney/lessee the terms for renewed lease were not finalized. Another letter was then issued by the attorney of landladies who is also licensee/franchise of Shell wherein the latter was asked to remove all its assets from the site and then subsequently and ultimately on 26.08.2014 they reiterated that they shall remove their belongings where after they shall not entertain any claim whatsoever in that regard.

It is also a matter of fact that after expiry of the renewed lease the status of Shell is of a statutory tenant and all terms and conditions incorporated in the lease deed would continue to operate insofar as they are not contrary to any of the provisions of law.

As far as the status of the lessee/defendant No.4 in connected suit is concerned, he is only considered to be a licensee or a franchise of Shell as for all intent and purposes he used the premises with the permission of lessor and hence he cannot be said to have occupied the site in question on his own or on behalf of landladies. Such rights insofar as the possession is concerned were passed on to the lessee by Lessor and hence neither the landladies nor the licensee could be deemed to be in occupation of the land on their own as in such a situation the licensee's use and occupation is always run with the permission of lessee.

In my humble view despite the correspondence between the landladies through their father/attorney, the ignorance or non-reply on the part of the Shell shall not be considered in a way to have conceded to their

rights insofar as the possession or statutory rights of tenancy are concerned. The possession is a substantial right under the law and to take it back by the landladies a due course of law is to be adopted which is not followed in the instant case. Both the counsel for Hascol as well as for landladies have not demonstrated as to what due course has been adopted by them apart from the fact that they have occupied the plot in question on their own by force and by removing fittings and fixtures of Shell which was found available at the time of inspection though it is needless to observe.

In view of above, it is an admitted fact that Shell was and is for all intent and purposes in occupation of the premises in question and were running business of supply of petrol and other allied products through its licensee. The Hascol no doubt has entered into an agreement of lease with landladies but apparently the same was done in haste as they have not realized, prior to entering into such agreement that such leasehold rights including the right of possession are still with Shell as being statutory tenant of premises in question. In fact in terms of the correspondence as filed and relied upon by Hascol as Annexures H to L itself shows that the plaintiff was in knowledge that there was some dispute as to the terms of the execution of new lease agreement which had not been finalized. Therefore, since they are in possession of all such documents they should have been more careful at the time of execution of the agreement and also at the time when the representatives of the plaintiff were removing the assets, equipment, dispensers etc. of Shell from the site in question.

It is also pertinent to note that the conversion of license was done apparently without notice to Shell and the Storage License was issued by the Ministry of Industries, Department of Explosives without any intimation to Shell although on 19.11.2014 i.e. much after the expiry of lease agreement and correspondence the renewal of fee for the storage license was paid in the sum of Rs.1,322,994/- for the site in question by Shell. Why would someone pay such huge renewal fee for storage license when it is alleged that they are not interested to operate from the site in question.

Hence, in view of the above facts and circumstances I do not consider the case of the plaintiff/Hascol to be within the frame of prima facie case nor they would suffer irreparable loss. They have not come before the Court with clean hands and hence they are not entitled for any discretionary relief at this stage. Accordingly, injunction application (CMA No.16412 of 2014) is dismissed. Resultantly application bearing CMA No. 16693/14 needs no consideration as it has already served its purpose and the same is accordingly disposed of.

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Application dismissed.