Kalyanpur Lime Workers Ltd.

Vs

State of Bihar and Another

Civil Appeals Nos. 189 and 190 of 1952

(B. K. Mukherjea, Ghulam Hasan, B. Jagannath Das JJ)

14.12.1953

JUDGMENT

GHULAM HASAN J. -

Two appeals have been filed by the plaintiff because of the exercise of two decrees prepared by the High Court. The appeals are in substance against the dismissal of the suit. We accordingly treat them as one appeal.

This appeal by the plaintiff is directed against the judgment and decree of the High Court at Patna dated March 27, 1952, dismissing the suit of the plaintiff by reversing the judgment and decree dated February 7, 1951, of the Second Additional Subordinate Judge, Sasaram, District Shahabad, who had decreed the suit. Kalyanpur Lime Works Ltd., hereinafter referred to as the Lime Co., instituted a suit for specific performance of the contract made by it with the State of Bihar, hereinafter referred to as defendant No. 1. To this suit Dalmia Jain & Co. Ltd. was impleaded as defendant No. 2.

The facts leading up to the present appeal are these :

> Defendant No. 1 is admittedly the owner of what is called Murli Hills situate in the Sub-Division of Sasaram in the District of Shahabad, the upper portion of which is known as the upper Murli Hill and the lower portion as the lower Murli Hill. On the 1st April, 1928, the defendant No. 1 gave a lease of the Murli Hill to the Kuchwar Lime and Stone Co. Ltd., hereinafter called the Kuchwar Co., for 20 years for the purpose of quarrying limestone therein, on the basis of two indentures of leases in respect of the two portions of the Murli Hill. The leases contained a prohibition against assignment of the company's leasehold rights without the permission of the Government. In January, 1933, Kuchwar Co. went into voluntary liquidation and the liquidators of the company purported to assign the leasehold interest of the company to one Subodh Gopal Bose for Rs. 35,000 by an unregistered deed dated the 30th September, 1933. The assignee took possession of the property, on the 9th October, 1933, but was stopped from working the quarries under orders of the Government from the 8th December, 1933, as the Government considered the assignment to be a breach of the contract in the lease which made the lessees' interest liable to forfeiture. It appears from the proceedings of the Lime Co. that on the 4th January, 1934, the managing director and the manager of the Lime Co. were authorized to take all steps to apply for and secure the lease of the Murli Hill property and on the 25th January, 1934, the Lime Co. made an application (Exhibit A) to the Collector of Shahabad for

getting the lease. The Lime Co. offered a minimum royalty of Rs. 10,000 and on the 14th March, 1934, the Board of Revenue granted an interview to Mr. Banerjee, the representative of the Lime Co., and recorded an order that "the commissioner may be told that the Board approves of the execution of the lease but the letter should not issue until the Government order canceling the old lease, is received" (A. 5). The defendant No. 1 forfeited the lease in favour of Kuchwar Co. by an order dated the 27th March, 1934, and re-entered into possession. Thereafter the defendant No. 1 offered to grant leases of Murli Hill to the Lime Co. for a period of 20 years on the existing terms and conditions as set forth in Chapter V of the Bihar & Orissa Waste Lands & Mineral Concession Manual. This offer was made by a letter of the Board of Revenue dated the 31st March, 1934, (Annexure B) and was accepted by the Lime Co. in their letter dated the 15th April, 1934, communicated to the Collector of Shahabad (Annexure C.). The Lime Co. obtained possession on the 15th of April, 1934, but the leases were to take effect from the 1st April, 1934. The Lime Co. started quarrying operations on the 15th May, 1934. It appears that on the 24th September, 1934, the Kuchwar Co. sued the Secretary of State for India for a declaration that the leases in their favour had not been validly forfeited and for an injunction restraining him from grating leases to any one else and for damages. The suit was dismissed by the trial court but was decreed by the High Court of Patna on the 7th February, 1936. While the appeal was pending before the High Court, an ad interim injunction was issued on the 25th April, 1935, restraining the Secretary of State for India from granting leases to the Lime Co. The decision of the High Court was affirmed by the Privy Council on the 19th November, 1937. The Lime Co. not being impleaded as a party to the suit, filed by Kuchwar Co., continued to remain in possession. The Kuchwar Co., however, started proceedings for contempt against the manager and the managing director of the Lime Co. and the Secretary of State for India, and upon their being found guilty of contempt the Lime Co. vacated the quarries in April, 1936. The order of the High Court in contempt proceedings was ultimately set aside by the Privy Council on the 31st October, 1938, but the Lime Co. did not succeed in getting restitution.

The case put forward by the Lime Co. was that both the Lime Co. and defendant No. 1 proceeded on the assumption that the latter was fully competent to lease the Murli Hill to the former. The Kuchwar Co., which had been reinstated into possession, surrendered it when the lease in its favour expired on the 31st March, 1948. The defendant No. 1 then re-entered into possession and although the Lime Co. repeatedly asked the defendant No. 1 to execute the leases agreed upon between the parties and get them registered, they refused to do so and on the 2nd June, 1949, informed the Lime Co. that the defendant No. 1 had decided to lease the Murli Hill to the defendant No. 2. Accordingly the primary relief sought was for specific performance of the contract, as also for possession and for compensation.

The defendant No. 1 resisted the suit inter alia on the ground that no contract was entered into, that while the terms of the proposed leases were in the stage of negotiations, the proposal fell through and that there was no concluded contract. The pleas of limitation, estoppel, acquiescence and waiver were also raised.

The defendant No. 2 in a separate statement questioned the right of the Lime Co. to sue and denied its legal existence. They also denied the contract and even alleged that the Lime Co. was never inducted into possession by the Government. They alleged that the order of the Government

sanctioning the forfeiture of the leases in favour of the Kuchwar Co. and offering to lease the quarries to the Lime Co. was based on misapprehension of the actual facts and had no binding effect. The right of the Lime Co. to obtain specific performance on the basis of the draft leases relied on by the Lime Co. was denied and it was stated that the Lime Co. was not entitled to claim any equity against defendant No. 2 who were subsequent lessees of the Murli Hills for valuable consideration.

The trial court framed as many as 13 issues in the case. The two main issues relating to the existence of the contract are issues 3 and 4 which are as follows :-

> "3. Was there any legal, valid and binding contract between the plaintiff and defendant No. 1, and can any such contract be enforced ?
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> "4. Was the agreement between the plaintiff and the Government defective for lack of settlement of any essential term as alleged by the defendants, and was it bad for uncertainty or vagueness ?"

The trial court took up the two issues together. It held that the letter of the Lime Co. dated the 25th January, 1934, (Exhibit A) and the Board of Revenue's approval contained in Exhibit 3z(26) did constitute an agreement for lease between the plaintiff and the Government according to the terms and conditions in Chapter V of the Bihar and Orissa Waste Lands and Mineral Concession Manual, 1926. The trial court further found that the parties to the agreement intended that the lease was to commence from the date of its execution and that it was to be for a period of 20 years. It also found that the parties had agreed as to the distribution of the minimum royalty between the leases for the two portions of the Murli Hills as contained in the letter dated the 19th January, 1935, of the Board of Revenue (Exhibit A12), namely that the royalty for the upper portion of the Hill was to be Rs. 7,500 and for the lower portion Rs. 2,500. Both the issues were found in favour of the Lime Co. The trial court rejected the plea of the defendant No. 2 that the Lime Co. had no legal existence and had consequently no right to sue. It found that the suit was not barred by limitation or by estoppel, waiver or acquiescence. It also found that the defendant No. 2, who was a lessee for one year with notice of the Lime Co.'s prior contract, had no locus standi to contest specific performance of that contract. As a result of these findings the suit for specific performance and for compensation against dependents Nos. 1 and 2 for the period commencing from the 1st April, 1948, till the Lime Co. gets possession of the lease-hold properties, was decreed, the amount of compensation to be determined in subsequent proceedings between the parties. Both the defendants appealed and the appeals were disposed of by a Division Bench of the High Court (Reuben and Das JJ.) by judgment and decree dated the 27th March, 1952.

By two separate and concurrent judgments the learned Judges reversed the decree of the trial court and dismissed the suit. They held in concurrence with the finding of the trial court that the contract by the Government to grant a lease in favour of the plaintiff was made out but they held that the contract of which specific performance was sought in the plaint was not the contract which the parties had entered into, that the agreement was void under section 20 of the Indian Contract Act, as both parties were under a mistake of fact as regards the title of the Government to the subject matter of the proposed leases, that it was also void under section 30 of the Government of India Act, 1915, as the conditions laid down in that section had not been complied with, that no relief under section 18(a) of the Specific Relief Act could be granted to the Lime Co., as it would amount to a reconstruction of the agreement between the parties, that under section 15 no alternative relief could be granted as the Lime Co. had not relinquished all further claims, that the Lime Co. was not ready

and willing to perform its part of the contract as it was asking for more than it was entitled to under the contract by invoking section 18(a) of the Specific Relief Act, that the Lime Co. was not the real plaintiff iff and that in the circumstances of the case the discretion to grant a decree for specific performance could not be exercised in its favour.

As a result of these findings the decree of the trial court was reversed and the suit dismissed.

So far as the factum of the contract is concerned, we agree with the concurrent finding of the courts below on this point. The finding was sought to be challenged on the ground that there was variance between pleadings and the findings but that, in our opinion, is not a matter of substance. We have examined the relevant materials on the record and we are satisfied that the finding of the High Court is not open to any exception.

The first question which arises for consideration before us is whether the contract is void and unenforceable under section 20 of the Contract Act because both parties were under a mistake of fact as regards the title of the Government to the subject-matter of the proposed leased. It is contended on behalf of the appellants that the point was not raised in the pleadings and is not open to the defence. This contention is not without substance. It appears that originally the trial court framed a draft issue to the effect whether the contract alleged by the Lime Co. was bad to mutual mistake of law and fact but on the objection of the plaintiff the issue was deleted on the 29th November, 1950, and was substituted by another issue which has no bearing upon the point. The plea seems to have been expressly abandoned in the trial court as appears from the following observation in its judgment :-

> "The learned counsel for the defendants do not challenge the completeness or the validity of the contract entered into between the plaintiff and the Government on any other ground. They do not contend that the contract was vitiated on account of any mistake of fact or mistake of law on the part of the parties to the contract and there is no allegation in the written statements in that regard."

Be that as it may, it is difficult to see how the agreement can be challenged under section 20 of the Contract Act as being vitiated by reason of a mistake as to a matter of fact essential to the agreement. Neither party was under any mistake of fact : both parties knew that Kuchwar Co. had assigned its interest to Bose and that the assignment having been made without the consent of the lessor, its interest was liable to be forfeited. The Government Pleader advised the Government that it had the right to forfeit the leases and to grant fresh leases to the Lime Co. The Lime Co. accepted the position and proceeded on the assumption that the Government possessed the right to forfeit the leases and then to grant them to the Lime Co. It is not easy to discover any mistake of fact on the part of either of the parties.

The case of Edward H. Cooper v. William Phibbs, Charlotte S. Cooper and Other and Other (2 H.L.p. 149.) upon which reliance was placed by the defendant No. 1 was a case in which a person not knowing that he himself was the tenant for life of the fishery agreed to take a lease of it from another who mistakenly supposed himself as owner of the fishery and the agreement was set aside on the ground of mutual mistake of fact. Lord Westbury in setting aside the agreement put the matter thus : "The petitioner did not suppose that he was, what in truth he was, tenant for life of the fishery. The other parties acted upon the impression given to them by their father, that he (their father) was the owner of the fishery, and that the fishery had descended to them. In such a state of things there can be no doubt of the rule of a court of equity with regard to the dealing with that

agreement. Now that was the case with these parties - the respondents believed themselves to be entitled to the property, the petitioner believed that he was a stranger to it, the mistake is discovered, and the agreement cannot stand." The case before us is not one in which there is absence of title like the above case; on the contrary the Government had an undoubted title to the property but the assignment not being evidenced by a registered instrument, the forfeiture did not legally take effect.

We think that in the present case the Bihar Government could be taken to have represented to the plaintiff that they had the right to forfeit the lease of the Kuchwar Company and grant a fresh lease to the plaintiff. The plaintiff no doubt believed in that representation and entered into the contract on that understanding. As a result of the decision of the Privy Council, however, the Bihar Government became incapable of making out the title which it asserted it had at the time of the contract. But its title was not wholly gone; it was restricted only by reason of the lease which had still several years to run. In these circumstances, it might have been open to the plaintiff to repudiate the contract if they so liked, but the defendant No. 1 could not certainly plead that the contract was void on the ground of mistake and refuse to perform that part of the agreement which it was possible for it to perform.

Furthermore, as has been stated already, neither party was in error as regards the essential facts upon which the contract proceeded. It was known to both parties that there was an assignment of the lease by the Kuchwar Company in favour of S. G. Bose and both parties knew that under the terms of the lease an assignment by the lessee without the consent of the lessor would make his interest liable to forfeiture. The mistake, if any, was with regard to the effect of the law of registration upon the validity of the assignment deed. At the most, such mistake would be a mistake of law and under section 21 of the Indian Contract Act the contract would not be void on that ground.

As the facts of the present case seem to us to negative the existence of any mistake of fact under which either of the parties laboured, we are of opinion that the High Court was wrong in the conclusion that the contract was void under section 20 of the Contract Act. We may also observe that the finding of the High Court that the parties came to a final agreement on all the essential terms of the leases which were embodied in Exhibits 22 & 22(a) would leave no room for the further finding that it was induced by a mistake of fact.

The next point which require consideration is whether the contract is unenforceable on the ground that it did not conform to the provisions of section 30 of the Government of India Act, 1915. Section 30 reads thus :-

> "(1) The Governor-General in Council and any local Government may, on behalf and in the name of the Secretary of State in Council and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any real or personal estate whatsoever in British India, within the limits of their respective Governments, for the time being vested in His Majesty for the purposes of the Government of India, or raise money on any such real estate by way of mortgage, and make proper assurance for any of those purposes, and purchase or acquire any property in British India within the said respective limits, and make any contract for the purposes of this Act.
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> (2) Every assurance and contract made for the purposes of this section shall be executed by such person and in such manner as the Governor-General in Council

by resolution directs or authorises, and if so executed may be enforced by or against the Secretary of State in Council for the time being."

There can be no doubt that the local Government was entitled under sub-section (1) to make any contract for the purposes of the Act and the contract to grant leases for quarrying limestone is perfectly within the purview of this provision. Rule 7 of the Waste Lands Manual refers to Notification No. 713-734 of the 2nd June, 1913, which was issued by the Governor-General in Council in exercise of his power under section 2 of the East India Contract Act, 1870 (33 and 34 Vict. Chap. 59). This notification was preserved by section 130 of the Government of India Act, 1915. For the Province of Bihar and Orissa it specifies Collectors and Deputy Commissioners as the proper authority to execute "contract and other instruments in matters connected with... mining leases." It is agreed that there was no particular manner prescribed by the Governor-General as to how the contract was to be executed. The first question which arises in this connection is whether the contract was to be executed by a formal document or whether it could be spelt out from the correspondence in which the negotiations were carried on by the parties. We do not think it necessary to go into this question, for assuming that a formal document was necessary, the plea of section 30, it is to be noted, was not raised in the pleadings. Objection is taken on behalf of the appellant that the point not having been raised in the written statement, it was not incumbent upon the plaintiff to show that the contract was executed according to the provisions of section 30, before it could be specifically enforced and reliance was placed upon the provisions of Order VI, rule 8, and Order VII, rule 2 of the Civil Procedure Code. Paragraph 6 of the plaint stated the offer by the Government for settlement of the leases and the acceptance by the plaintiff and referred to annexures B and C of the plaint as embodying the contract. Defendant No. 1 in reply accepted the accuracy of the averment in para 6 of the plaint, except that the terms of the lease were not final in the sense that it was understood that the question of royalty would be re-examined by the officer of the defendant and any reduction in rates, if made, would be a matter of good grace.

It is obvious that on these pleadings the only question that arose was one of fact. No defence was raised that the contract was not enforceable because it was not executed as required by section 30. Rule 8 of Order VI of Civil Procedure Code lays down that where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract. Rule 2 of Order VIII requires that the defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality. These provisions leave no doubt that the party denying merely the factum of the contract and not alleging its unenforceability in law must be held bound by the pleadings and be precluded from raising the legality of validity of the contract. It appears that not only was this point not raised in the pleadings before the trial court but it was not raised in the memorandum of appeal to the High Court and was mentioned for the first time in the course of arguments before that court. It is no answer to say that it was not raised because on the face of it the draft leases Exhibits 22 and 22(a) were not executed in accordance with the provisions of section 30, nor is it correct to say that it was a pure point of law. Reference is made to para. 14 of the plaint involving an alleged admission on the part of the plaintiff that the leases were not so executed. That paragraph merely says that by reason of the ad interim injunction the Secretary of State for India or his officials or agents could not execute the necessary indentures,, terms whereof had been already settled between the parties,, although the plaintiff on his part had duly singed the documents incorporating the terms

of the lease as approved by Government. This statement refers only to the indentures of leases and not to the contract.

It is urged on behalf of the plaintiff, and in our opinion rightly, that the objection founded on section 30 involves investigation into the fact whether the draft leases bore the signature of the appropriate authority on behalf of the Government and the plaintiff had no opportunity to adduce necessary evidence in the trial court to meet the point. It appears that the Lime Co. sent six copies of draft leases Exhibits 22 and 22(a) to defendant No. 1. These leases are undoubtedly signed on behalf of the plaintiff but the signature of the Collector, who was competent to sign on behalf of the Government, is wanting. The Government produced two copies only but withheld the other four. It is contended that had the other four leases been produced, they could have shown that they bore the signature of the Collector on behalf of the Government. In its application to the trial court on the 19th September, 1950, the Lime Co. did call for the leases from defendant No. 1. The court made an order on the same date, directing the defendant No. 1's pleader to produce them on the date fixed. Another application was made by the Lime Co. on the 14th November, 1950, drawing the attention of the court that the papers had not been produced and praying that the defendant No. 1 be reminded to produced them before the next hearing of the suit. The court on the same day made the order in terms of the plaintiff's prayer. Yet another attempt was made by the plaintiff on the 20th November, 1950, by filing an application that urgent telegrams be sent to the Collector, Shahabad, and other officers for producing these documents. The telegrams be sent but the documents were never produced. In view of these facts it seems to us clear that the High Court was not justified in allowing this question to be raised at the time of the arguments when the plaintiff had no opportunity to adduce evidence upon the question of fact whether the leases were signed on behalf of the Government. It is also clear that despite the best efforts of the plaintiff, the Government withheld the production of the other leases. Without going further into the matter, we shall rest our decision on the ground that the question ought not to have been allowed to be raised and we accordingly reject the plea founded on section 30 on this ground.

The next question which arises for consideration is whether the High Court was right in its conclusion that the contract of which the specific performance is asked for in the plaint is not contract which the parties entered into. In this connection the High Court found that the parties came to the final agreement on all the essential terms of the proposed leases on or before the 30th April, 1935, and these terms were embodied in Exhibits 22 and 22(a). It is contended before us on behalf of the appellant that the substance of the contract entered into between the parties was the lease for 20 years under the rules of the Waste Lands and Mineral Concession Manual and that the time from which the lease was to commence was not of its essence. This intention, it is urged, flows clearly from the relevant correspondence which passed between the parties on the subject. That such was the intention is said to be further confirmed by the fact that precisely the same terms were entered into with Kuchwar Co. We agree with the High Court that although the period of the leases was to be for twenty years, yet this period was not to commence from the date when the leases were to be executed. In para. 7 of the plaint the plaintiff alleged that in pursuance of the contract it was inducted by Government into possession of the property though the leases were to be subsequently executed and were to take effect from the 1st April, 1934. The draft leases, while specifying the duration as twenty years, make it clear that they were to commence from the 15th April, 1934. That is the contract of which specific performance can be allowed but as the defendant No. 1 is unable to perform it in its entirety, the plaintiff can claim leases for the unexpired portion, that is to say up to the 31st March, 1954, if it can invoke the provisions of section 15 of the Specific Relief Act in its favour. We agree with the High Court that section 18(a) of the Specific Relief Act applied to the case. That section lays down that where a person contracts to sell or let certain property having only

imperfect title thereto, if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest. There can be no doubt whatever that when the Government entered into the contract to grant leases to the Lime Co. in 1934, it had an imperfect title, inasmuch as it could not grant a fresh lease to anyone during the existence of the previous lease in favour of Kuchwar Co. No doubt the Government thought that it had the right to forfeit those leases and did in fact order forfeiture but it having been found subsequently that the forfeiture was legally invalid, rights of the previous lessees were restored. As already pointed out above this is not a case of absence of title but is one of imperfect title and hence falls within the meaning of section 18. After the 31st March, 1948, when the leases in favour of Kuchwar Co. expired, the impediment in the way of the Government to grant leases of the property stood removed, and the Lime Company's right to get the leases revived in its favour. This right of the plaintiff was resisted by the Government who, on the other hand, granted the leases to defendant No. 2.

The High Court of Patna rightly took the view that section 18(a) was applicable to the facts of this case and although defendant No. 1 was not in a position to grant a lease from the time it agreed to do, the impediment being now removed and a suit for specific performance not being barred, the Lime Company was entitled to sue for that relief. We have already held in agreement with the view of the High Court that section 18 is attracted to the facts of this case, and the contract of which specific performance can be decreed in favour of the plaintiff is the one embodied in Exhibits 22 and 22(a). But as a substantial portion of the period has already expired, relief can be given only under section 15 of the Specific Relief Act and in compliance with its conditions. The High Court while holding that section 15 applied, disallowed the plaintiff's claim because in its view these conditions were not fulfilled. According to the High Court, the application of the plaintiff, dated the 18th February, 1952, did not show that it had relinquished all claims to further performance and all right to compensation either for the deficiency, or for the loss or damage sustained by it through the default of the defendant as required by section 15. The relevant portion of the application is in the following terms :-

> "That without prejudice to the submissions made by the petitioner under section 18 of the Specific Relief Act the petitioner alternatively claims relief under section 15 of the Specific Relief Act and claims a decree 'for specific performance of contract' for the period after the expiry of the lease of Kuchwar Lime and Stone Co. Ltd., that is from 1st April, 1949, to 31st March, 1954, on the usual covenants as mentioned in Waste Land Mineral Concessions Manual with such compensation as may be permissible. He further relinquishes all claims to further performance and all right to compensation either for the deficiency or for the loss or damages sustained by him for default of the defendant for the period to 1st April, 1948."

This statement only shows that the Lime Co. initially our forward its claim to full specific performance under section 18, but in the alternative confined it to the period from 1st April, 1949, to 31 March, 1954, with compensation. The last portion of the application, however, leaves no doubt whatever that all claims to further performance were relinquished and compensation prior to 1st April, 1948, was also given up. The plaintiff's learned counsel has asked for that relief in the course of his arguments and he has made it clear that he insists on no further performance nor does he claim any compensation for any period prior to the execution of the leases. Relinquishment of the claim to further performance can be made at any stage of the litigation. See Waryam Singh and Others v. Gopi Chand and Others (I.L.R. 11 Lah. 69.). We think, therefore, that subject to what we are going to say on the last point, the plaintiff can claim relief under section 15 of the Specific

Relief Act.

Although we hold that section 15 applies to the case, we do not think this is a fit case in which we should decree specific performance in favour of the plaintiff. The High Court refused this relief on the ground that the Lime Co. was not the real plaintiff and that the suit was for the benefit of the Kalyanpur Lime and Cement Works Ltd. This may or may not be so, but it cannot be doubted that the plaintiff company has not been dissolved under the provisions of the Indian Companies Act, and, therefore, still possesses a legal entity. The consideration while, however, appeals to us as one of overriding weight in refusing specific performance is that there are only a few months left before the unexpired portion of the lease will run out; indeed by the time the leases come to be executed in pursuance of the order of this court it would be scarcely worth while to carry on any quarrying operations. But it was urged before us on behalf of the appellant that on the expiration of the period of the lease, the appellant will be entitled to renewal on fresh terms. This, however, is far from being the case. Paragraph 20 of the draft lease does not confer any right upon the lessee to obtain a renewal. All that it says is that on the expiration of the period of the lease the lessee may, if it has duly observed all the foregoing conditions, have renewal of the lease on terms to be agreed upon by the Collector and the lessee subject to the approval of the Commissioner. Assuming that this paragraph applies to the present case and does not require a lessee to have been in occupation for the whole period of twenty years, there are still two important conditions to be fulfilled before a renewal can be granted. The terms of renewal must be agreed upon by the Collector and the lessee. Where the Collector does not agree, no renewal will take place, and even if he does, the Commissioner may decline to approve the lease. In these circumstance, we do not think any material benefit will accrue to the Lime Co. to get the lease executed for a few months. The case would have been different if the Lime Co. had an option of renewal as a matter of right. Such is, however, not the case. We think, however, that though we decline to give a decree for specific performance of the contract for the short period, there is no reason why the Lime Co. should be deprived of compensation. The plaintiff had prayed for a decree for compensation in the plaint and the trial court had decreed compensation for the period commencing from 1st April, 1948, till the date of getting possession of the leasehold property and the amount of compensation was left to be ascertained in subsequent proceedings. As no question of possession arises in the view that we have taken in the case, it follows that the plaintiff is entitled to compensation from the 1st April, 1948, till the 31st March, 1954.

We accordingly allow the appeal, set aside the judgment and decree of the High Court and direct that the plaintiff shall be allowed a decree for compensation from the 1st April, 1948, to the 31 March, 1954, the amount of compensation to be ascertained by the trial court. After determining the amount, the trial court will pass an appropriate decree. We make no order as to costs.

Appeal allowed.

Agent for the appellant : S. P. Varma.

Agent for respondent No. 1 : R. C. Prasad.

Agent for respondent No. 2 : B. P. Maheswari.

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