

Indore Municipal Corporation

Vs

Caltex (India) Ltd.

C.A. Nos. 2560-61/77

(L. M. Sharma, M. M. Punchhi JJ)

10.01.1991

ORDER:-

1. A. Nos. 1 and 2. As prayed for, the name of the respondent, Caltex (India) Ltd. is permitted to be changed to Hindustan Petroleum Corporation Ltd. in the present appeals.

C.A. No. 2560 of 1977

2. This appeal is directed against the decision of the Division Bench of the Madhya Pradesh, Indore, setting aside the judgment of the trial Court, dismissing the suit of the respondent on the ground of limitation. The respondent was made to pay octroi duty on certain petroleum goods which according to the company was brought within the Municipal limit for a temporary period for being taken out later. The plaintiff/respondent, therefore, claimed that octroi duty was not payable and the money should be refunded. The suit was dismissed on the ground of limitation. On appeal the Bench remitted the matter for further trial after setting aside the finding on the issue of limitation. Directions have been given in the impugned judgment as to the manner in which the suit has to be disposed by the trial Court now. However, with respect to the burden of proof in the case, the two Judges constituting the Division Bench made slightly inconsistent observations. This part of the judgment required the matter to be referred to a learned third Judge of the High Court, which was not done. Mr. Justice Bhave observed that it will be open to the Municipal Corporation to show that the goods for which refund has been claimed were, in fact, sold to the consumers within the Corporation limits and were not sent out for sale or distribution outside that area. Mr. Justice Oza did not agree to this part of the judgment of Mr. Justice Bhave and stated that the burden of proof would not be thrown on the Corporation about the facts which are within the special knowledge of the plaintiff Company and that it will depend upon the plaint and documentary evidence on the basis of which the learned Court would have come, to its own conclusions in the case. We have heard Mr. Sorabjee, learned counsel for the appellant and the learned counsel for the respondent and are in agreement with the observations made by Mr. Justice Oza. Accordingly, we direct that the trial Court in disposing of the suit in pursuance of the remand order shall follow the judgment of Mr. Justice Bhave, except the observations in paragraph 7 on the question of burden. The Court will, so far the question of burden of proof is concerned, follow the observations of Mr. Justice Oza.

C.A. No. 2561/ 77

3. This appeal has now become infructuous and is dismissed.

4. The appeals are disposed of in the above terms. There shall be no orders as to costs.

Order accordingly.

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