* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 04.01.2011

% Judgment delivered on: 12.01.2011

+ O.M.P. 419/2010 & IA 14152/2010

M/S BAJAJ ALLIANZ GENERAL ..... Petitioner
Through: Mr. Neeraj Kishan Kaul, Sr. Adv. with Mr. Manu Aggarwal and Mr. Jatin Mongia, Advocates

versus

ASHOK SARIN ..... Respondent
Through: Mr. Harish Malhotra, Sr. Adv. with Mr. Gaurang Kanth, Mr. Rahul Kumar and Mr. Shiladitya Goswami, Advocates

AND

+ O.M.P. 420/2010 & I.A. No. 14150/2010

M/S BAJAJ ALLIANZ GENERAL ..... Petitioner
Through: Mr. Neeraj Kishan Kaul, Sr. Adv. with Mr. Manu Aggarwal and Mr. Jatin Mongia, Advocates

versus

ANIL SARIN & ORS ..... Respondent
Through: Mr. Harish Malhotra, Sr. Adv. with Mr. Gaurang Kanth, Mr. Rahul Kumar and Mr. Shiladitya Goswami, Advocates

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? : **No**

2. To be referred to Reporter or not? : **Yes**

3. Whether the judgment should be reported in the Digest? : **Yes**

J U D G M E N T

VIPIN SANGHI, J.

1. In these petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (The Act), the petitioners have challenged the common award made by the learned Arbitral Tribunal consisting of three learned Arbitrators, whereby the Arbitral Tribunal has, inter alia, awarded damages in favour of the respondent landlords and against the petitioner/tenant from 01.09.2007 onwards, on the ground that the petitioner had not exercised its right of renewal granted under the lease deeds executed by it with each of the respondents within time and prior to the termination of the respective lease deeds by the respondents.

2. The respondents are the owners of the commercial premises in question which was leased out to the petitioner company. The first set of lease deeds were executed on 01.09.2001 commencing from 01.09.2001 for a period of three years with a clause for renewal for further period of three years at the option of the petitioner. These were registered agreements. Another set of lease deeds were executed and registered on 25.11.2004, for a period of three years commencing from 01.09.2004. These agreements also contained a renewal clause. The dispute between the parties that was taken to arbitration was whether the petitioner exercised its right of renewal as per the terms of the registered deeds, and if not, whether they are liable to compensate the respondents/claimants/landlords for the

damages suffered by them and to pay the market rent for the period during which the petitioner continues in possession despite termination of the leases, and whether they not liable to vacate the premises in question. These issues have been answered by the Tribunal unanimously in favour of the respondents.

3. Clause 2 of the lease deeds dated 25.11.2004 contained identical renewal clause, and the same reads as follows:

> "2. The Lessor does hereby allow and permit the Lessee subject to the terms and conditions herein contained to enter upon and use the said Premises admeasuring 2668.09 sq.ft. and 2279.76 sq.ft. each constructed as per Municipal Corporation Approved Plan and marked in red ink in the Floor plan annexed hereto, on "Lease Basis" for a period of three years commencing from 1st September, 2004. The lease shall, however, at the option of the Lessee be further renewable by an instrument in writing for another term of minimum term of three years. The Lessor shall not reserve any right to reject the said renewal.
>
> Provided that the Lessee shall reserve the right at any time during the term of the Agreement to terminate the agreement after having served a prior notice of three calendar months upon the Lessor to this effect."

4. Clause 7 of the lease deeds dated 25.11.2004 is also relevant and the same reads as follows:

> "7. The Lessor expressly affirms that the Lessors shall not claim the right to terminate the Agreement during the term of this Agreement and the next renewal of three years, if made by the lessee under any circumstance whatsoever, and after the said period of term of this Agreement and the next renewal of three years, the Lessors shall be entitled to terminate this Agreement by serving 3 (Three) months prior notice on the Lessee."

5. The period of lease under the lease agreement dated 25.11.2004 expired on 31.08.2007. On 08.09.2007, the respondent landlords sent a common notice to the petitioner. In this notice the respondents stated that despite the fact that there was a clause for renewal of the lease for a further period of three years, the petitioner had neither opted nor taken any steps to renew the lease during the currency of the lease between 01.09.2004 and 31.08.2007. No written instruction for the renewal of the lease as per the terms of the said lease agreement was received from the petitioner. The said renewal clause, due to the expiry of the lease term did not exist anymore. The respondents stated that the petitioner had relinquished its option for the renewal of the lease. The respondents further claimed that the lease period had expired on the midnight of 31.08.2007 and due to the non-renewal of the leases, the petitioner had become an illegal and unauthorized occupant of the tenanted property w.e.f. midnight of 31.08.2007. It was further stated that the respondents did not wish to retain the petitioner as their tenant and though the tenancy had already come to an end by efflux of time, yet, by way of abundant caution, respondents terminated the petitioners tenancies w.e.f. the midnight of 31.09.2007, i.e. with the end of the tenancy month in terms of Section 106 of the Transfer of Property Act. The petitioners were called upon to vacate the tenancy premises on 01.10.2007. The respondents put the petitioners to notice that if they do not vacate the tenancy premises on 01.10.2007, they would be treated as unauthorized and illegal occupants and would be liable to pay

damages at the prevalent market rate with interest for delay in payment.

6. On 11.09.2007, the petitioner responded to the said notice of the respondents. Apart from expressing surprise, the petitioner asserted its right of renewal of the lease deeds. The petitioner claimed that the fact that they had not communicated their intention not to exercise the right of renewal, showed that the petitioner wanted to exercise the option of renewal. The petitioner further stated that no notice had been given by the respondents till 08.09.2007, meaning thereby that the respondents had consented to the holding over of the demised premises by the petitioner. The petitioner claimed that it was holding over the demised premises by virtue of Section 116 of the Transfer of Property Act. The petitioner also exercised its right of renewal under Clause 2 of the lease agreement on the existing terms & conditions contained in the two lease agreements.

7. On 25.09.2007, the respondents invoked the arbitration agreement contained in the two lease agreements dated 25.11.2007 while terming the petitioner's reply dated 11.09.2007 as false & frivolous.

8. On 30.10.2007, the petitioner called upon the respondents to come forward to complete the formalities for the execution and registration of the renewed lease for the premises in question for the period of three years commencing 01.09.2007. With this background, the parties proceeded for arbitration.

9. I may note that the petitioner eventually vacated the premises on 31.08.2010 in terms of the order dated 21.07.2010 passed by this court. Therefore, the issue whether the right to renew the two leases was duly exercised by the petitioners would have a bearing on the nature of the petitioners occupation of the demised premises, i.e. whether the petitioner was a tenant, or it was an unauthorized occupant from 01.09.2007 onwards. On this issue depends the determination of the issue whether the petitioner is liable to pay only the rent as stipulated in the lease deeds dated 25.11.2004, or to pay market rent or damages from 01.09.2007 onwards till the date of its occupation.

10. The Arbitral Tribunal in the impugned award has returned a finding that as no time was fixed under the lease deeds for exercise of the option for renewal, the petitioner should have exercised that option within a reasonable time before the expiry of the term. The Tribunal observed that this principle is based not only on common law but on an equitable consideration, namely, that a landlord should not be kept waiting till the last moment because in case the tenant does not wish to claim renewal, the landlord has to find another tenant which may consume some time, which may result in loss to the landlord. While returning the aforesaid finding the Tribunal heavily relied upon the decision of the Supreme Court in ***Caltex (India) Limited Vs. Bhagwan Devi Marodia,*** *1968 (2) SCR 238*. The Tribunal also referred to the decisions of the Supreme Court in ***Shanti Prasad Devi***

& Another Vs. Shankar Mahto & Others, *JT 2005 SC 6* and ***Smt. Bismillah Begum Vs. Rehmatullah Khan,*** *AIR 1998 SC 970*. The finding of the Tribunal as returned in para 40 of the impugned award reads as follows:

> "40. Having considered the authorities we have no doubt that the lease deed of the year 2004 governed the rights of the parties and no reliance can be placed on the terms of the earlier lease deed which came to an end by efflux of time. The parties negotiated thereafter and consciously drafted a fresh lease deed containing some terms and conditions which were different from the earlier lease deed particularly as regards rent and as regards renewal of the lease. **We have also no doubt that the terms of the lease deed of 2004 required the tenant (respondent) to exercise its option of renewal by affirmatively conveying to the claimant its decision to claim a renewal of the lease. This ought to have been done while the lease was in force, and even if no time was prescribed, it ought to have exercised its right within a reasonable time before the expiry of the term of the lease. This the respondent failed to do. Therefore, it follows that it lost its right to claim renewal of the lease after the same had come to an end by efflux of time.** The plea of automatic renewal cannot be sustained." (emphasis supplied)

11. I may note that though before the Arbitral Tribunal it was the case of the petitioner that it had tendered the rent for the month of September 2007 to the respondents' watchman on 07.09.2007, the said stand was not accepted by the Tribunal after considering the evidence led by the parties. That finding of fact is not assailable before this court, and learned senior counsel for the petitioner Mr. N.K. Kaul has not even ventured to do so.

12. The submission of Mr. Kaul primarily is that the reliance placed by the learned Tribunal on the decision in ***Caltex*** (supra) is erroneous. He submits that the Tribunal has misread and misapplied the said decision of the Supreme Court and proceeded on the assumption that the Supreme Court in ***Caltex*** (supra) has held that even in cases where no time is fixed for the purpose of exercise of an option of renewal by the lessee, the said right has, necessarily, to be exercised prior to or before the expiry of the term of the lease. Mr.Kaul submits that the law has consistently been that when the right of renewal is not conditioned either by the period within which the same has to be exercised, nor the stage at which the same has to be exercised (i.e., before the expiry or after the expiry of the lease), the said right of renewal can be exercised either before or after the expiry of the lease within a reasonable period. Mr. Kaul submits that there is misapplication of law by the tribunal and, therefore, there is patent illegality in the impugned award insofar as the finding contained in para 40 of the award is recorded.

13. In support of his aforesaid submission Mr. Kaul firstly submits that the renewal clause which came up for consideration before the Supreme Court in ***Caltex*** (supra) required the lessee to make a written request for renewal of the lease two calendar months before the expiry of the term of the lease. There were two aspects in that renewal clause. Firstly, it prescribed the notice period, i.e. a period of two months. Secondly, the stage at which notice had to be given was also

prescribed, i.e. the notice had to be given prior to the expiry of the lease, and not thereafter. He submits that the observation of the Supreme Court in para 6 of the decision, which has been relied upon by the learned tribunal has to be read in the context that the Supreme Court was concerned with a case wherein the renewal clause prescribed that the option to renew the lease had to be exercised prior to the expiry of the lease. Para 6 of the said decision reads as follows:

> "6. We may add that where no time is fixed for the purpose, an application for renewal for the lease may be made within a reasonable time before the expiry of the term (see Foa's General Law of Landlord & Tenant, 8th Edn., Article 455, pp. 311-12, Ram Lal Dubey V. Secretary of State for India – Maharani Hemanta kumara Devi v. Safatulla Biswas). In the present case, the lease fixes a time within which the application for renewal is to be made. The time so fixed is of the essence of the bargain. The tenant loses his right unless he makes the application within the stipulated time. Equity will not relieve the tenant from the consequences of his own neglect which could well be avoided with reasonable diligence."

14. Mr. Kaul submits that the expression of the law contained in ***Caltex*** (supra) cannot be said to apply in all circumstances and particularly in a case like the present, where the right of renewal is not limited either in terms of the period of notice of renewal, nor in terms of the stage at which the notice is required to be given. In this regard, he firstly places reliance on ***Mulla on the Transfer of Property Act***, IXth Edition. On page 1201 of this commentary the learned author has observed as follows:

> "The covenant generally, requires the lessee to give notice of his intention to take a renewal before the expiry of the

term, and if so, the right of renewal may be lost by not applying within the specified time, though relief will be granted in special circumstances against failure to give notice in time. If no time is mentioned for giving notice, it will suffice if notice is given in a reasonable time. But it is not to be inferred that the lessee will lose his right of renewal by not giving notice or by not having made an application for renewal if he continues in possession with the assent of the lessor. Time is not regarded as of the essence of the contract for renewal, and if the lessee omits to exercise the option, the lessor may call upon him to decided whether he will take the lease and any delay by the lessee after receiving such notice from the lessor will be fatal."

15. Mr. Kaul submits that the Supreme Court referred to FOA's General Law of Landlord & Tenant. He has produced a copy of the relevant extract from the VIIth Edition of the said treatise wherein article 454 reads as follows:

> "454. Application when no time fixed – Where the lease is silent as to the time when application for renewal should be made, it has been said that it must be made a reasonable time before its expiration (u). But it is not, as it is thought, to be inferred that the lessee will necessarily lose his right of renewal by not having made it, if he continue in possession afterwards with the sanction of the lessor (a)."

16. He also places reliance on the decision of the Calcutta High Court in ***Hemanta Kumari Bedi Vs. Sefatulla Biswas,*** *AIR 1933 Calcutta 477*, also referred by the Supreme Court in ***Caltex*** (supra), and in particular on the following extract:

> "8. In England where the original lease provides that the lessee must apply for a renewal within a specified time, the condition is not regarded as implying that time is to be regarded as the essence of the contract unless there is

clear stipulation to that effect either express or implied: see Hearne V. Henant (1807) 13 Ves 287. In Lewis V. Stephenson (1897) 67 LJQ B 296 it was said that where a lease is silent as to the time when application should be made, it has been said that it must be made with a reasonable time before its expiration. But it has been pointed out that this dictum was obiter: (see Foa on Lanlord and Tenant, Edn. 6, p. 360 where it is also said, quoting Job v Barrister (1856) 2 K & J 374, affirmed, in 26 Ch. 125, that it is not, as it is thought to be inferred, that the lessee will necessarily lose his right of renewal by not having made the application if he continues in possession afterwards with the sanction of the lessor). If one party is guilty of delay the other may call upon him to fulfil the agreement within a reasonable time and any further delay after notice will defeat a claim to specific performance whether made by the lessor or by the lessee unless capable of satisfactory explanation. In Foa on Landlord and Tenant, Edn. 6, p.429 it is said:

Hence though an agreement to let for a specified term, with a stipulation to grant a lease at the tenant's request for a further specified term at the same rent, may be specifically enforced at the instance of the lessee unless he has waived his right (Mc Ilary v. Clements) (1923) WN 81, affirmed C.A. p. 140) at any time after expiration of his first term (Moss V. Burton) (1866) 1 EQ 474, so long as he has continued in possession with the sanction of the lessor (Buckand v.pailion)(1886)2ch67, or (as it has been otherwise expressed) as long as the relation of landlord and tenant continues (Rider v. Ford (1923) 1 Ch 541 Mc Ilray v. Clements) (1923) WN 81 the lessor may call upon him to decide if he will take the lease, and any delay on the part of the lessee after receiving such notice will be fatal, [Hersey v. Gibbett (1854) 18 Beav 174 : per Lord Romilly M.R.].

9. Now the circumstances under which a holding over may be presumed may not have been present in this case; but there was no waiver of the clause, and the original tenants were in possession by themselves and through sub-tenants. If the lessee continues in possession, when there was a renewal clause in the original lease, by himself or his under-tenants, after the original term without exercising his option, he is liable for rent in an action for use and occupation: (Christy v. Tancred (1840) 7 M & W 127; Waring v. King (1841) 8 M & W 571. In the case of Mc Ilroy v. Clements (1923) WN 81 in the judgment of the Court of appeal no grounds are given, and it would seem that the

> original relationship was supposed to continue because the lessee continued in possession. When the original lease contains a renewal clause with no term fixed, and the lessee continues in possession after the expiry of the original term the mere fact that the original term has expired in the absence of any circumstance suggesting a waiver or refusal, ought not in our opinion, to be regarded as determining the relationship between the parties. Moreover a contrary assumption would militate against the spirit if not the letter of Section 89. Ben. Ten. Act."

17. He has also relied on the following extract from the decision of the Calcutta High Court in ***Ram Lal Dubey Vs. Secretary of the State of India,*** *51 Indian Cases 690*, which is also referred to by the Supreme Court in ***Caltex*** (supra):

> "*In the case before us, there was no express provision for notice of renewal before expiration of term, and, as renewal could not be claimed merely at the option of the lessee, the rule that where the lease is silent as to the time of application for renewal, it should be made a reasonable time before expiration of the term, cannot be applied*".

18. Mr. Kaul has referred to paragraph 115 of the Hallsbury's Laws of England, Volume XXVII (I) 4th Edition which inter alia reads as follows:

> "115. **Exercise of option.** A tenant who wishes to exercise an option to renew must conform with the conditions in the lease as to its exercise and those conditions will be strictly construed. In general the option must be exercised by a notice given at or before the stated time before the termination of the lease. If the tenant purports to exercise the option by a notice given before such a stated time, he must do so at a reasonable time before stated time. If no time is stated in which the option is to be exercised, the rights to do so will continue so long as relationship of landlord and tenant exists, even though

> the original term has expired; but a landlord who has power to determine the tenancy at the end of some period prior to that at which the exercise of the option takes effect may be lawfully do so at that time, notwithstanding that the tenant has given notice of his intention to exercise the option"

19. Mr. Kaul also placed reliance on the decision of the Supreme Court of Canada in ***Guardian Reality Company of Canada Vs. John Stark & Co***., *1922 CarswellOnt 133, 64 S.C.R. 207, 70 D.L.R. 333*, and in particular on para 33 of the decision which reads as follows:

> "33. The contract does not provide as to the date at which the option should be exercised. The law, as stated in Halsbury, Vol 18, page 393, is to the effect that if a lease which creates a tenancy for a term of years confers on the lessee an option to take a lease for a further term, the exercise of the option is not necessarily restricted to the duration of the general original term."

20. Mr. Kaul also places reliance on clause 6 of the two lease agreements. He submits that the intention of the parties was that the petitioner would be allowed to enjoy the full term of the lease, including the renewal period, as the petitioner had invested substantial sums of money in establishing, developing and maintaining its business. He submits that the respondents had indemnified the petitioner against any loss or damage that may be caused or incurred by the petitioner if it is unable or interrupted from utilizing the premises for any reasons whatsoever, except when the petitioner was in default.

21. On the basis of the aforesaid decisions, the submission of Mr.Kaul is that each one of them recognize the right of the lessee to

seek renewal of the lease even after the expiry of the lease period, in cases where the right of renewal is not limited by agreement of parties, to be exercised prior to the expiry of the lease. He, therefore, submits that the decision of the Supreme Court in ***Caltex*** (supra) has to be seen in this light. Mr. Kaul submits that to understand and appreciate binding force of a decision, it is always necessary to see what were the facts of the case under which the decision was given, and what was the point which had to be decided. No judgment can be read as if it is a statute. The words or a sentence of the judgment cannot be regarded as the full exposition of law. In this regard, he places reliance on the decision of the Supreme Court in ***Union of India & Others v. Dhanwanti Devi & Others***, *(1996) 6 SCC 44*. Mr.Kaul submits that as the arbitral tribunal has committed a fundamental error in the understanding of the law, the same constitutes a patent illegality and, consequently, the award insofar as it holds that the petitioner is liable to pay damages and not merely rent, is liable to be set aside.

22. On the other hand, the submission of Mr. Malhotra, learned senior counsel for the respondent is, firstly, that there is no illegality, much less a patent illegality in the impugned award. He submits that it was for the arbitral tribunal to interpret the contractual clauses which has been done by the arbitral tribunal. It cannot be said that the view taken by the arbitral tribunal with regard to the right of the petitioner to seek renewal of the two leases is not a plausible view. He submits

that the Supreme Court in no uncertain terms held in ***Caltex*** (supra) that where no time is fixed for the purpose of exercising right of renewal of lease, an application for renewal of lease could be made within a reasonable time before the expiry of the term. The arbitral tribunal has merely applied the said law. Even otherwise, he submits that there is no merit in the submission of the petitioner that the right of renewal could be exercised even after the expiry of the lease. He submits that the right of renewal springs from clause 2 of the two lease deeds dated 25.11.2004. When these leases expired by efflux of time on 31.08.2007, the right of renewal perished with the said leases. The right of renewal could have been exercised prior to the expiry of the said leases.

23. He further submits that even the various authorities relied upon by the petitioner do not support the petitioner's case in the particular facts of these cases. He submits that from the various authorities cited by the petitioner, it appears that a tenant who is holding over after the expiry of the lease may exercise the right of renewal, but not if the landlord has withdrawn his sanction to the tenant's continuation in the property as a tenant. He submits that once the respondents had served a common notice dated 08.09.2007 expressing their intention not to extend the lease and informed the petitioner that the leases stood expired by efflux of time on 31.08.2007, the petitioner could not claim to be holding over the premises with the assent of the respondents. He submits that even

the rent for the month of September 2007 was not tendered by 07.09.2007, and even when the same was tendered, the respondents did not accepted the same unconditionally. The intention of the respondent was never to permit the petitioner to hold over the property as a tenant after the expiry of the leases on 31.08.2007.

24. In his rejoinder, Mr. Kaul submits that even the notice dated 08.09.2007 was not in accordance with the contractual terms, inasmuch, as, the lease itself prescribes a three months notice, whereas the respondents gave merely a fifteen day notice ending on 30.09.2007.

25. Having heard learned senior counsels for the parties and perused the impugned award, as well as the various decisions and authorities cited by the petitioner, I am of the view that there is no illegality much less a patent illegality in the impugned award, and the said award cannot be said to be in conflict with the Public Policy of India. The various decisions are authorities cited by Mr. Kaul do not apply in the particular facts of the petitioners case.

26. In ***Mulla*** (supra), the learned author observes that if no time is mentioned for giving notice, it will suffice if notice is given in a reasonable time. It is not to be inferred that the lessee will lose his right of renewal by not giving notice or by not having made an application for renewal if he continues in possession with the assent of the landlord. What is noteworthy is that in a case where the renewal clause does not lay down any specific conditions in terms whereof the

option to renew the lease should be exercised, the right of renewal may extend even after the expiry of the lease, provided the tenant continues in possession of the premises with the assent of the landlord. Where the landlord has withdrawn the assent, or communicated its intention not to accept the tenant as holding over upon the expiry of the lease, the said right of renewal cannot be exercised after the expiry of the lease, unless so specifically provided for under the renewal clause itself. Article 454 of FOA is also to the same effect. To be able to exercise the right of renewal after the expiry of the lease, the tenant should be in continuous occupation "*with the sanction of the lessor*".

27. In ***Hemanta Kumari*** (supra), the Calcutta High Court relies upon the exposition of law contained in FOA. The Court in this decision observed that "*when the original lease contains a renewal clause with no term fixed, and the lessee continues in possession after the expiry of the original term the mere fact that the original term has expired in the absence of any circumstance suggesting a waiver or refusal, ought not in our opinion, to be regarded as determining the relationship between the parties*".

28. Therefore, the question that arises for consideration is whether the petitioner continued with the sanction of the respondents, or whether there were circumstances suggesting a refusal by the respondents to the continuation in possession of the petitioner after the expiry of the lease.

29. In ***Ram Lal Dubey*** (supra), the Court observed that in the case before it there was no express provision for notice of renewal before expiration of the term. The Court further observed that in that case renewal could not be claimed merely at the option of the lessee. It is in this light that the Court held that "*the rule where the lease is silent as to the time of application for renewal, it should be made a reasonable time before expiration of the term, cannot be applied*." Therefore, it appears that the Court recognized the existence of the rule, that the right of renewal should be exercised before the expiration of the term of the lease.

30. The extract from the Halsbury Laws of England relied upon by the petitioner also does not advance its case. In fact, it is noted by the learned author that in general, the option must be exercised by a notice given at or before the stated time before the termination of the lease. Even in cases, where no time is stated in which the option is to be exercised, the right to do so continues till so long as relationship of the landlord and tenant exists, even after the expiry of the original term of lease. Therefore, it is necessary that at the time of exercise of the option, the relationship of landlord and tenant should exist. The learned author also notes that if the landlord has power to determine the tenancy at the end of some period prior to that at which the exercise of option takes effect, and the landlord so determines the tenancy, then the said termination would take effect notwithstanding

that the tenant has given a notice of his intention to exercise the option to renew the lease.

31. The decision in ***Guardian Reality Company*** (supra) also does not the support the petitioner's contention. There too, the same principle was noticed, namely, that the option to renew the lease would continue even after the expiry of the original term "*until something has been done to determine it and that it would continue so long as the tenant remained in possession with the assent of the landlord*". In para 38 of the same decision, the Court took note of another decision in ***Brewer v. Conger***, wherein it was held that the option continues until something is done to terminate it.

32. From the aforesaid discussion, it is seen that the consistent view is that the option to renew a lease, where the option clause is otherwise silent with regard to the time within which, and the stage at which the said option should be exercised, could be exercised if the tenant continues in occupation of the tenanted premises with the sanction and assent of the landlord by holding over the premises, even after the expiry of the lease. However, if the landlord has, after the expiry of the lease, communicated its intention not to treat the tenant as holding over the tenanted premises, and has determined the rights of the tenant, the option to renew the lease cannot be then exercised.

33. In the present case, by issuing the notice dated 08.09.2007, the respondents clearly stated their position that:

(i) with the expiry of the lease from 31.08.2007 by efflux of time, from 01.09.2007, the petitioner had become an unauthorized and illegal occupant in the premises;

(ii) that the respondents do not accept the petitioners as tenants and as holding over the tenanted premises; and

(iii) that without prejudice to the said stand, the respondents gave a 15 day notice in terms of section 106 of the Transfer of Property Act to the petitioner and required the petitioner to vacate the premises on 01.10.2007.

There could not have been a clearer withdrawal of their sanction by the respondents to the continuous use and occupation of the tenanted premises by the petitioner. It is well settled that a mere illegality in the award cannot be a reason to interfere therewith. The illegality must go to the root of the matter. In the present case, there is no illegality in the impugned award. The arbitral tribunal has merely applied the law as declared by the Supreme Court in ***Caltex*** (supra), which states that "*where no time is fixed for the purpose, an application for renewal for the lease may be made within a reasonable time before the expiry of the term*". Therefore, the view taken by the arbitral tribunal is a plausible view, and that being so, the award does not call for interference.

34. The argument that three months notice was not given has no force. In the light of the amended Section 106, the notice does not

become ineffective because of the aforesaid reason. Moreover, the leases stood determined by efflux of time. The insistence on 3 months notice could not be made thereafter. I may note that, in the passing, Mr. Kaul has also sought to urge that the petitioner was not liable to pay service tax, and that the said liability ought to have fallen on the respondent landlord. However, this aspect was not pressed by him. As a matter of fact, the petitioner had paid the service tax to the respondents, and the respondents have deposited the same with the concerned authorities. The arbitration clause is wide enough to cover the dispute with regard to liability to pay the service tax and the said liability arises under the lease agreements.

35. For the aforesaid reasons, I find no merit in these petitions and dismiss the same, leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

JANUARY 12, 2011
Bsr/sr