

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

+ **RFA No.557/2011**

% **2<sup>nd</sup> December, 2011**

ABHINAV OUTSOURCING PVT. LTD. .... Appellant

Through: Mr. Siddharth Yadav with  
Ms. Wasim Ashraf, Adv.

VERSUS

SUNITA SETH ..... Respondent

Through: Mr. Yakesh Anand with  
Mr. Murari Kumar with  
Mr. Nimit Mathur, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**Caveat No.1077/2011**

Counsel appears for the caveator. Caveat stands discharged.

**CM No.21762/2011(exemption)**

Allowed, subject to all just exceptions.

Application stands disposed of.

**RFA No.557/2011 & CM No.21761/2011(stay)**

1. The challenge by means of this Regular First Appeal filed  
under Section 96 of the Code of Civil Procedure (CPC), 1908 is to the

impugned judgment of the Trial Court dated 28.9.2011 by which judgment the Trial Court decreed the suit of the respondent/landlord/plaintiff under Order 12 Rule 6 CPC. In order to pass a decree under Order 12 Rule 6 CPC in suits such as the present the following aspects are required to exist:-

- i) Relationship of landlord and tenant between the parties,
- ii) The rate of rent being more than ₹3,500/- per month and
- iii) That the lease has been terminated by a notice

2. In the present case, there is no dispute that there is a relationship of landlord and tenant between the parties. There is also no dispute that the rate of rent is more than ₹3,500/- per month; the rate of rent being ₹21,150/- per month when the lease was determined by the notice dated 25.10.2007 with effect from 31.1.2008, and that the notice terminating tenancy was, in fact, duly received by the appellant/defendant/tenant.

3. There are two main issues which have been argued by the appellant before this Court. The first issue was that the registered lease in question entitled the appellant/tenant on exercising an option to continue in the premises for a total period of 3years + 3 years +3 years with effect from 1.11.2004 and the first option of three years till 31.10.2010 having

been exercised and therefore the suit for possession could not have been filed. The second point which is in fact incidental to the first point is that after exercise of the option, the appellant has paid enhanced rent and consequently there arises a relationship of landlord and tenant between the parties for an additional period of 3 years which would have only expired on 31.10.2010, and therefore, the suit could not have been filed before 31.10.2010. Reliance is placed on behalf of the appellant on two judgments. The first judgment is the judgment of the Supreme Court in the case of *Caltex (India) Ltd. vs. Bhagwan Devi Marodia AIR 1969 Supreme Court 405* and the second judgment is the judgment in the case of *Smt. Sneh Vasih & Anr. Vs. Filatex India Ltd. 95(2002) DLT 373*. The judgment in the case of *Caltex (supra)* is relied for the proposition that once an option is exercised, then, a person contractually is entitled to continue in possession of the tenanted premises. The decision in the case of *Smt. Sneh Vasih (supra)* is relied for the proposition that in view of the facts such as the present, the Courts should not exercise its discretion under Order 12 Rule 6 CPC.

4. In my opinion, both the arguments as raised on behalf of the appellant are wholly devoid of substance. The first aspect as to whether by mere exercising an option of renewal, a person can continue for a fixed

period in the tenanted premises, though there is no lease for the fixed period was the subject matter of the decision of the Supreme Court in the case of *Hardesh Ores (P) Ltd. Vs. Hede and Company, 2007 (5) SCC 614*. The Trial Court has referred to this judgment in para 17 of the impugned judgment. The Supreme Court in the decision in the case of *Hardesh Ores(supra)* has specifically observed that to give effect to a renewal of a lease, a document has to be executed evidencing the renewal of the agreement of lease and there is no concept of automatic renewal of the lease by a mere exercise of option by the lessee. This proposition of law that mere exercise of option cannot automatically mean entitlement of continuation in a tenant for a fixed period without any lease being executed, is on account of the provisions of Section 17(1)(b), Section 17(1)(d) of the Registration Act, 1908 and Section 107 of the Transfer of Property Act, 1882. By virtue of these provisions, there cannot be a lease for a fixed period in excess of one year, unless, there is a registered lease deed for the fixed period. The argument as raised on behalf of the appellant flies in the face of the aforesaid provisions of the Registration Act, 1908 and the Transfer of Property Act, 1882 which require that a lease deed for a period in excess of 12 months has necessarily to be only by means of a registered instrument, and, there cannot be estoppel against

law i.e. these statutory provisions of the Transfer of Property Act, 1882 and the Registration Act, 1908. Therefore, the argument as raised on behalf of the appellant is misconceived. The judgment in the case of *Caltex(Supra)* has no application to the facts of the present case which was only dealing with the aspect of the period within which an option has to be exercised and which has to be strictly exercised in the period as mentioned in the contract between the parties. The judgment in *Caltex's Case(supra)* does not lay down that if the option is exercised within the required period, but if no registered deed is executed, the tenant can without existence of a registered lease deed continue in the tenanted premises for a fixed period.

5. Even in the facts of the present case, there is no doubt that a fresh lease deed was to be executed for the additional term inasmuch as the registered lease deed dated 15.10.2004 contains para A.4 which specifically states that a fresh lease deed will be executed at the time of renewal of the lease.

6. Accordingly, the argument on behalf of the appellant that an option having been exercised, the appellant is entitled to continue in the tenanted premises solely by virtue of option exercised, without there existing a registered lease deed for the period for which an option is sought to have been exercised, is clearly misconceived and hence rejected.

7. The incidental argument on behalf of the appellant that parties have acted on the renewal by accepting enhanced rent, will not take the appellant any further, because even in such circumstances, at best after the expiry of the original period of lease, for the further period, the tenant continues as a month-to-month tenant and such monthly tenancy can always be terminated by giving a notice under Section 106 of the Transfer of Property Act because the payment by the tenant can be received by the landlord as use and occupation charges payable for occupation of the premises after termination of tenancy. So far as the requirement of a notice under Section 106 of the Transfer of Property Act, 1882 of having been served before filing of the suit for possession, I have had an occasion to consider the aspect of requirement of a service of notice under Section 106 of the Transfer of Property Act, 1882 prior to the institution of the suit in the case of *M/s. Jeevan Diesels & Electricals Ltd. vs. M/s. Jasbir Singh Chaddha (HUF) & Anrs. 2011 (182) DLT 402*. I have in the judgment of *M/s. Jeevan Diesels (supra)* held that the service of summons in a suit filed by landlord accompanied by the plaint can always be treated as notice under Section 106 of the Transfer of Property Act, 1882. I have also held that along with the suit, the notice by which the tenancy was terminated is filed as a document, and which document/notice is again served on the

defendant along with the other documents in the suit, and which also can be treated as service of the notice of termination of tenancy. I have taken the aforesaid two aspects read with Order 7 Rule 7 CPC which entitles the Courts to take notice of subsequent events. The subsequent event being that at the very maximum, the tenant has to vacate on a 15 days' notice being given for vacating the premises and which period expires on service of summons of the suit and the copy of the notice terminating the tenancy which is sent with the suit plaint. In fact there is such legislative intendment by virtue of the Act 3 of 2003 which amended Section 106 of the Transfer of Property Act, 1882, and which amendment has done away with the objections pertaining to defences of improper service of notice of termination of tenancy, once a period of 15 days expires giving the tenant that time of 15 days to vacate the premises. An SLP against this judgment has been dismissed by the Supreme Court vide SLP No15740/2011 dated 7.7.2011.

8. Accordingly, in my opinion, there is no disputed question of fact which required trial and therefore the Trial Court has rightly decreed the suit under Order 12 Rule 6 CPC. So far as the decision in the case of *Smt. Sneh Vasih & Anr. (supra)* is concerned, in my opinion, the said judgment ignores the binding judgment of the Supreme Court in the case

of *Hardesh Ores (supra)* and therefore cannot be said to lay down good law. Once, the Supreme Court lays down that there cannot be a lease merely on exercise of the option without actually there coming into existence a duly registered lease deed, the position in law which will follow is that the tenancy will have to be monthly tenancy in the absence of such registered lease, and which tenancy can be terminated by a notice under Section 106 of the Transfer of Property Act, 1882. In case of a categorical legal position arising from the admitted facts, clearly the provisions of Order 12 Rule 6 CPC must apply otherwise the legislative intendment of shortening the litigation when there are clear cut admissions will be defeated and a tenant will be allowed to unnecessarily delay and drag the proceedings.

9. In the present case, in view of the above, I do not find any illegality or perversity in the impugned judgment of the Trial Court which has decreed the suit of the respondent/landlord under Order 12 Rule 6 CPC by granting a decree for possession with respect to the tenanted premises. The appeal is therefore dismissed with costs of ₹15,000/-. The Supreme Court in the recent judgment of *Ramrameshwari Devi & Ors. Vs. Nirmala Devi (2011) 8 SCC 249* has observed that it is high time that actual and realistic costs must be imposed in order to discourage unnecessary

litigation. I am also entitled to impose actual costs by virtue of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi)* *Chapter VI Part I Rule 15*. I must add that had the intention of the appellant been fair and honest it would have not filed this appeal or at the outset would have straightaway agreed to vacate inasmuch as the period of the option i.e. 3 years from 1.11.2007 i.e. till 31.10.2010 had already expired during the pendency of the suit.

10. The appeal is accordingly dismissed and disposed of.

**VALMIKI J. MEHTA,J**

**DECEMBER 02, 2011**  
**ak**