

17th February, 2021

EFFECT OF PANDEMIC ON LEASE DEEDS AND TENANCY AGREEMENTS IN INDIA

Introduction

The Covid-19 pandemic has impacted and continues to impact almost every aspect of our life and lease deeds and tenancy agreements did not turn out to be an exception.

The pan India lockdown put everything to halt and continued for a considerable good period of time until it was eased down recently. Everybody was asked to stay wherever they are; be it a owner, landlord, tenant, industrialist, labourer, worker, et cetera whoever he or she is all had to remain at his/her own place. This left many people to sustain with what they already have in terms of money and assets. The relationships of landlord-tenants and lessor-lessee hold significance in this regard. The novel Coronavirus (nCov) has affected the adverse interests of tenants and of landlords. On one hand, the ability of tenant to pay the rent was significantly been effected and on the other hand the landlords are facing problems in claiming their rightful rent amount from their tenants..

Position of the tenant and lessee

The position of tenants and lessees can be understood under the following heads:

I. The use of *force majeure* clause:

The force majeure clause is a clause that parties generally put it into their contract. The interesting thing to note that the Indian Contract Act, 1872 doesn't use this maxim directly.

As literally understood, the maxim means a *situation where an unforeseen and unpreventable event prevents the parties to perform their part of the contract.*

But it has to be noted that in most of the cases where the parties involved in the relationship of tenant and landlord, the contract is not put in writing.. Further, it is seen that many a times the written contract and the words used there also fail to cover the situation due to weak drafting of the contracts. Moreover, it becomes more so difficult when the courts in India are seen reluctant to read something which is not written in the contract and instead are interpreting the exception

clauses like force majeure in a contract narrowly and restrictively.

So, if the tenant under the tenancy agreement want to take the benefit of force majeure clause, then he/she not only has to prove the occurrence of an unforeseen event which is beyond their control but also has to prove that the said event has effected their ability to perform the contract. Just because the Covid has affected their economic capability to pay won't be a good ground for taking this defence. At this juncture, it is to be noted that in the case of *Ramanand & Ors. versus Dr. Girish Soni & Another*, RC. Rev. 447/2017 [hereinafter referred to as '**Ramanand case**'], the single bench of Delhi High Court disallowed the application to invoke the doctrine of force majeure in view of the fact that the applicants are not willing to vacate the premises of the landlord and continue to occupy the same.

II. Frustration of the contract:

Section 56 of the Indian Contract Act, 1972 deals with the frustration of the contract which states that a contract becomes void when after entering into a contract the act becomes impossible to perform due to an unpreventable event.

In the year 2016 the Single Bench of the Delhi High Court in the judgment delivered in the case of *Airport Authority of India versus Hotel Leelaventure Ltd.*, OMP 1206/2012 (and similarly in the case of *Raja Dhruv Dev Chand versus Raja Harmohinder Singh*, (1968) 3 SCR 339) has held that the lease deed under Section 108(e) of the Transfer of Property Act, 1882 is a special law and therefore the doctrine of frustration of the contract does not apply in the case of lease deed since special law supersedes the Indian Contract Act which is a general law. Moreover, section 108(e) does not cover pandemic as an event to make the lease deed void. The judgment in Ramanand case also held that section 56 is inapplicable as against the presence of the specific law in the form of the Delhi Rent Control Act, 1958.

Position of landlords and lessors



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Having understood the hardship that tenants have and will face while paying the rent, we cannot lose sight of the plight of landlords who are unable to realize the rightful rent amount from the defaulting tenants. Especially, when the landlords depend their livelihood on the earning they receive through rents on their property and premises. So, in such cases it might seem against the equity to allow the tenant and lessee to waive off their duty to pay the rent. Therefore, it has to be seen in such cases that who has the comparative advantage or hardship over the other which will be seen and decided by the courts in each and every case.

When the tenant is still in possession

There are situations when the tenants have claimed that they are not in actual possession of the property because of the pandemic they got stuck at the place wherever they were. However, the tenancy agreement makes the transfer of property complete as soon as the property comes in the hands of tenant and it is immaterial whether the property is in actual or constructive possession. Moreover, the inability on the part of the tenant and lessee to use the property cannot allow him or her to claim the benefit to defer the payment of rent as confirmed in the *Ramanand case*.

Govt. issued notifications in respect of performance of tenancy agreements

The following are the notifications that the Central and respective State Governments have issued in respect of performance of tenancy agreements:

- 1 The very first thing that the Government did was to impose a restriction on increase in rent amount and on termination of tenancy agreements for an initial period of 6 months beginning from March 2020.
- 2 For the help of students and migrant workers staying on rent, the Delhi Government requested the landlords not to coerce them to pay the rent and instead should take the rent in installments. Later, Delhi Disaster Management Authority asked for the strict compliance of the directions that the landlords will not demand rent for a month and in case of failure penal action can be taken against them. Similar measures were taken by the Governments in the states of Uttar Pradesh and Maharashtra.
- 3 RBI announced a moratorium on loans initially for a period of 3 months. This relief was further extended for another 3 months. This as per the reports turned out to be a great relief for people who have taken small size loans for various purposes.

Cases

The **Delhi High Court** in the judgment delivered in the *Ramanand* case has considered the following factors to deny the relief claimed by the applicant to waive off the rent:

- i Status of the tenant and lessee (especially financial status);
- ii Nature and value of the property; and
- iii The Government orders and notification in this regard.

However, the court observed that owing to pandemic the relaxation in schedule of payment or postponement of payment of rent may be granted.

Secondly, the **Hon'ble Supreme Court** in *Pawan Pathak Prakash versus Bar Council of India*, Writ Petition (Civil) No. 10949 of 2020 refrained from entertaining an Article 32 writ petition seeking waiver of rent for lawyers chambers. The court categorically observed that no special exemption can be entertained in the case of lawyers.

Conclusion

After the abovementioned discussion, it can rightly be said that the lease deeds and the tenancy agreements continue to prevail even in the pandemic situation unless and until the same event is covered in the force majeure clause in the contract or the government waives off or defer the payment of rent by way of a temporary law as was done by the countries like United States of America and Singapore. The RBI's and Central Government's scheme of providing moratorium on loans will not going to help substantially as this will only defer the payment of rent. Just it is a matter of time.

The payment of rent in installments (may be weekly or on 10-day basis as per the convenience and agreed upon) by the tenant seems to be a probable solution as the small amount won't be a burden on tenant and the landlord also will continue to get the rent amount. This might turn out to be a win-win situation for everyone.