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REGISTRATION OF LEASE DEED VIZ-A-VIZ RENT ACT

A General Law for Registration of Lease Deed

1. Lease deed which creates a lease exceeding a year are to be compulsorily registered as per the Section 107 of the Transfer of Property Act, 1882 (in short “**Property Act**”).
2. Section 107 further provides that all other lease, meaning those below one year can be either made by registered deed or by oral agreement or delivery of possession.
3. Thus, supposing the lease being for period of more than one year was not registered, then the consequences are to follow from the Registration Act, 1908 (in short “**Registration Act**”).
4. Section 49 of the Registration Act provides that no document which is required by any provision of the Property Act to be registered and not registered shall be taken as evidence in Courts.
5. However, under Section 106 of the Property Act, the lease in absence of a lease deed shall be from month to month, which can be terminated by a 15 days’ notice by either of the parties.
6. In terms of the eviction suit, the Hon’ble Supreme Court in *Anthony v. K.C. Ittoop & Sons*, (2000) 6 SCC 394 has categorically held that the consequence of non-registration of the Lease Deed shall be that the lease shall be considered to be maximum of one year.

B Registration of Lease Deed under Rent Control Act

1. That the Rent Act is specifically applicable only when there exists a relationship of Landlord and Tenant between the parties and in absence of which any legal action can lie only under the Property Act.
2. The Registration of Lease Deed under the different Rent Control Act has been the matter of serious concerns for the eviction suits filed under the Rent Act. However, the compulsorily requirement of Registration of lease deed differs from state to state:
 - a. Section 55 of the Maharashtra Rent Control Act (in short “**Maharashtra Rent Act**”) provides that:
 - Lease Agreement is to be compulsorily registered.
 - Non obstante provision, meaning it shall overrule Section 106 and 107 of Property Act.
 - Exclusive responsibility of Lessor to get it registered.
 - In absence of registered Lease Deed, the contention of the Lessee about the terms and conditions subject to which the Property have been leased to him by the Lessor, shall prevail, unless proved otherwise. (Section 55(2))
 - Penalty of imprisonment which may extend to three months or with fine not exceeding Rs. 5,000/- to the landlord (Section 55 (3))
 - b. Section 22 of Maharashtra Rent Act contains similar provision of registration of lease deed when the property is rented to employee, staff, etc.
 - Thus, the Maharashtra Rent Act makes it compulsory for registration of Lease Deed.
3. The Hon’ble Bombay High Court in *Shashikant v. Nir-mala* [2011 SCC OnLine Bom 509] held that:
 - a. In the absence of written and registered agreement, the terms and conditions, subject to which the premises have been given to the tenant, as contended by the tenant, shall have to be accepted.
 - b. Section 55 nowhere provides for “any other consequence” for failure on the part of the landlord to get the agreement drawn in writing or getting the same registered, except those provided in sub-section (2) and (3) of section 55.



Abinash Agarwal

Senior Associate, MCO Legals

B.Com (Hons)

Zakir Husain College

Delhi University

LL.B, Faculty of Law

Delhi University

Expertise:

Corporate Litigation &

Corporate/Commercial Arbitration

✉ abinash.a@mcolegals.co.in

- c No embargo in respect of entertain-ability of any legal action by the landlord either for recovery of possession or for rent.
- d Thus, application under Order VII Rule 11 of Civil Procedure Code, 1908 for dismissal of suit on the sole ground of want of Registered Lease Deed held to be not maintainable
- e Same done under a Civil Revision application.
- 4 In *Shanta Tukaram Kasare v. Father Milton Gonsalves* [2004 SCC OnLine Bom 917], the Hon'ble Bombay High Court held that:
 - a No eviction can be ordered for want of compliance of the conditions of registration of lease deed under Section 22 (similar provision to section 55 of Maharashtra Rent Act except for the difference that Section 22 if for tenancy to employees, etc.)
 - b The proceedings before the Courts under Rent Act were void ab initio.
 - c Contention of lease being much prior to commencement of the Rent Act and no registration required also disregarded.
 - d Same done under Writ Petition under Article 226 of Constitution.
- C Conclusions:**
 - 1 When eviction is sought by the landlord under the provisions of the Rent Act, the tenant cannot claim total prohibition of eviction on the basis of the provisions contained in the Property Act and/ or the provisions contained in the Contract Act. [*Paul v. Saleena*; (2004) 1 KLT 924]
 - 2 Non-registration of lease deed can lead to only two situations, one, lease is not exceeding one year and second, the unregistered deed is useless for the consideration for creation of lease. [*Anthony v. K.C. Ittoop & Sons*; (2000) 6 SCC 394]
 - 3 The unregistered Lease Deed could not debar the Landlord from filing of eviction suit, even in States where the registration is compulsory, but the terms and conditions of the Lease Deed cannot be looked into by the Hon'ble Courts.
 - 4 Thus, the eviction suit if based upon the unregistered Lease Deed is likely to be at the back foot in terms of being decreed.
 - 5 However, it is pertinent to note that all Rent Act does not require the Registration of Lease Deed, like the Maharashtra Rent Act.
 - 6 But apart from the requirement of the Law, the Registered Lease Deed is always more advantageous since:
 - a The Registration makes the document legally enforceable.
 - b The terms and conditions defined in the Lease Deed becomes sacrosanct with no scope for any of the parties to divert from the same.
 - c Only registered Lease Deed can be produced in evidence.
 - d The changes of derogation or denial of Lease and/or terms of Lease by any of the parties is completely nil
 - 7 It be noted that the registration charges differs from state to state and depends upon the Lease rent. For example, in Delhi it is 2% of the annual rent plus Rs. 100/-, if Security deposit paid in the event the Lease is up-to 4 years.
 - 8 To conclude, though all Lease Deed is advisable to be registered, a special care and effort be taken by both the parties in drafting of the Lease Deed, so as to conclusively define all the terms and conditions of the lease.