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How Pandemic has affected Tenants in India

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ABSTRACT

Amid the raging second wave of the COVID-19 pandemic in India, migrant workers may once again find themselves being forced out of urban cities in India. With job loss and pay cuts, because of the economic crisis from the resurgence of more fatal variants of the Corona virus, the focus is again on tenants, who may never be able to pay their monthly rentals. Even though the government agencies and global thinking tanks continue to maintain that the economic impact of the COVID-19 second wave, would not be as adverse as seen during the first wave when millions of workers lost their incomes following a strict nationwide lockdown, numbers present a bleak picture. . The corona pandemic is an unexpected and unfortunate event to be noted, as tenants facing the lockdown which puts the situation much more worse and the rent condition is in the line where people can't even provide themselves with necessities. The clause Force majeure provides temporary reprieve to a party from performing its obligations under a contract. However, most tenancy agreements don't have the provision of 'force majeure' and can never invoke the doctrine of frustration and so unless announcements are backed by ordinances, the uncertainty of its enforceability remains. Mere existence of a 'Force Majeure' clause does not secure the waiver for a tenant or lessee.

Keywords: Pandemic, Tenants, Lessee.

I. INTRODUCTION

As the world is fighting over one of the deadliest pandemics ever in the history of mankind, the global economy has been left worse crippled. In these troubled times, the 'payment of rent' appears to be 'the challenge' for commercial/business entities, the common man and the daily wage workers.

According to the Centre for Monitoring Indian Economy (CMIE), the second wave of COVID-19 and the lockdowns have impacted over 75 lakh jobs, taking the unemployment rate to a four-month high of 8%, in April 2021.

Unlike the 1st wave of the virus, when various states issued directives to landlords to not force

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their tenants to pay rents amid the economic crisis, no such advisory has been issued by any state so far, including those which are base home to some of the biggest job markets in the country like Maharashtra, Delhi and Karnataka.

Rent payments will be a bigger burden for tenants who are also paying monthly EMIs against housing loans for their under construction properties. The previous time offered a six-month relief to home loan borrowers, the RBI has not announced any home loan moratorium scheme. In the view of the banking regulator, businesses conducted in India are being better prepared to deal with the economic impact of the second wave of the pandemic and the RBI would continue to assess as the situation evolves, before announcing any scheme.

Under the provisions of the Draft Model Tenancy Law, landlords could initiate eviction process, if the tenants fail to pay the rent for two months in a row. Unless states start issuing directives to landlords in this regard, the landlords would be well within their legal rights, to ask their tenants to move out.

“Not only can the landlord ask you to move out of their premises, he would also be allowed to keep a large part of the security deposit, to claim any unpaid rent,” says Prabhanshu Kishra, a Lucknow-based lawyer.

II. DISASTER MANAGEMENT ACT ON RENT PAYMENT

On March 29, 2020, the Union Ministry of Home Affairs in an order said, “Wherever the workers, including the migrants, are living in rented accommodation, the landlords of those properties shall not demand payment of rent for the period of one month.” Further, it said that “If any landlord is forcing laborers and students to vacate their premises, they will be liable for action under the Act,” invoking measures under the Disaster Management Act, 2005.

While this stands true for the workers and students, it is most certainly to help the economically backward, who have to sustain far more pressure than people with regular jobs and a decent lifestyle.

III. REMEDIES OF TENANCY CONTRACTS

(A) Novation of contract

The provision under Indian Contract Act, 1872 explains, “If the parties to a contract agree to substitute a new contract, or to rescind or alter it, the original contract need not be performed.” This means that you can go in for a novation and create a supplementary contract with new terms, meant for the benefit of both parties.

(B) Considering Mediation

Practically, it is advised that landlords can consider mediation.

Section 32 of the Indian Contract Act, 1872- Force Majeure:

Waiver of one's monthly rent, or its non-payment under contracts, which have a force majeure clause will be governed by Section 32 of the Contract Act. The apex court in the *Energy Watchdog v. CERC & Ors.* Case, the court held that a tenant may claim some waiver but only if a contract had such a provision or clause to this effect. Section 32 of the Contract Act, allows the tenant to claim that the contract has become void and surrender the premises. However, if the tenant wishes must retain the premise, no other clause gives them any respite to the tenant in the form of suspension or rent waiver.

IV. IS COVID PANDEMIC SUCH A "FORCE MAJEURE" EVENT

Law often leans on logicity. Under the law, the Doctrine of 'Force Majeure' stipulates that the duty of a party is waived permanently or suspended temporarily when a supervening event beyond the control of the parties that renders performance of a contract impossible happens. A party whose responsibility it is to discharge a duty that is to pay his/her monthly rent in this instance, is protected even if they fail to do so once the event is considered by law to be unexpected and beyond their control. The corona pandemic is an unexpected and unfortunate event to be noted, as tenants facing the lockdown which puts the situation much more worse and the rent condition is in the line where people can't even provide themselves with necessities. Hence, corona pandemic lockdown is one such event of the FM.

(A) Legal Summary

The Delhi High Court in the case of *Ramanand and Others v Girish Soni and another* rejected a tenant's application for suspension of rent claimed on the basis of 'Force Majeure' but granted deferment, postponement of rentals, which is significant relief in situations where in the landlord refuses any concession. But the waiver of rentals would depend on the facts and circumstances of each cases. Mere non-usage or inability to use the property cannot be treated as an event rendering the property as permanently unfit. These judgments help to answer several situations which a tenant or landlord can face depending on whether or not a contract carried an adequate 'Force Majeure' clause.

On reading the judgment, it is also safe to say that the mere existence of a 'Force Majeure' clause in an agreement would not entitle a tenant to a waiver.

looking by the Delhi High Court Judgment, if a contract contains a "Force Majeure" clause, wherein the payment can be waived, it shall be governed by the provisions of section 32 of the

Indian Contract Act, 1872 (Enforcement of Contract contingent on an event). If the terms of the contract do not provide for "Force Majeure conditions" or if any of the Force Majeure conditions are beyond the contract clauses, section 56 of the Indian Contract Act, 1872 (Agreement to be an impossible act) can be invoked. However, the law of the land is very clear to say that section 56 of the Indian Contract Act, 1872 cannot be invoked for the purposes of lease agreement. Further providing, in the event the lessee seeks protection under the provisions of section 108 of the Transfer of Property Act 1882, he can do so, and only in the case of the property being wholly destroyed rendering the premises permanently and substantially unfit for use. Therefore, nothing favors a tenant or lessee except and unless, the contract saves their interests.

V. LACK OF AWARENESS OF THE FM CLAUSE

If the contract does not have a 'Force Majeure' clause contemplating a 'lockdown' scenario, the parties should at best approach the Courts to seek a breather on payments and seek that and the same be scheduled if the landlord does not agree for any waiver or deferment. Such a relief is purely at the equity and discretion of the Court and the circumstances of each case and will never be a rule of law.

Mere existence of a 'Force Majeure' clause does never secure the waiver for a tenant or lessee. The circumstances of the clause do, It is required and mandated that the contract between the parties encapsulates such a scenario as a possible 'lockdown' for waiver to be granted. Most of the contracts between parties contemplate suspension of rent only when the premises are permanently or partially destroyed or damaged rendering the same not usable or accessible. It does not contemplate the waiver for any reasons which are beyond the control of the parties, more so, the present 'lockdown' scenario. Therefore, the tenant or lessee cannot contractually look for a waiver of rent. On the other side, if the agreement does contemplate a scenario like the 'lockdown' rendering the premises unusable, only then would the waiver be binding on the parties. Not much of people are aware of the FM clause, for it to be provided and benefited to the tenants, only if the contract contemplates the clause on the first place do tenants know.

VI. DOCTRINE OF FRUSTRATION, TO REPLACE FORCE MAJEURE

The clause Force majeure provides temporary reprieve to a party from performing its obligations under a contract. The phrasing of the clause decides whether that particular event falls within the clause and what consequences to follow. The question that may arise is whether a Lessee can invoke the Doctrine of Frustration in the absence of a Force Majeure Clause for Non-Payment of Lease Rent, Typically, the Doctrine is invoked in circumstances where the

purpose of their contract is held to be frustrated under Section 56 of the Indian Contract Act. However, the Hon'ble Supreme Court in *Raja Dhruv Dev Chand v Raja Harmohinder Singh*, has observed "Authorities in the courts in India have generally taken the view that Section 56 of the Contract Act is not applicable when one's rights and obligations of the parties arise under a transfer of property under a lease". Thus, it is unlikely that a lessee can claim frustration of contract in the absence of a FM clause under a lease agreement and seek waiver of lease rental as consequence of a Force Majeure event. However, most tenancy agreements don't have the provision of 'force majeure' and can never invoke the doctrine of frustration and so unless announcements are backed by ordinances, the uncertainty of its enforceability remains. Nonetheless of the Government efforts, individual circumstances could lead to foreclosure proceedings across the country. Fortunately, the Hon'ble Supreme Court in its judgment in *Vishal N. Kalsaria Vs. Bank of India & Ors* and in the case of *Bajarang Shyamsunder Agarwal Vs. Central Bank of India*, has held that "the rights of a rightful tenant cannot be compromised under the SARFAESI Act proceedings. However, the operation of Rent Control Act cannot be extended to a "tenant-in-sufferance".

VII. CONCLUSION

Despite the fact that the ongoing pandemic may have resulted in great hardship to the tenants and governments are also requesting constantly, the landlords to adopt a lenient view, in ordinary circumstances, in the absence of anything to the contrary in the tenancy agreement, the 'lockdown' as a result of the novel corona virus cannot be used by the Tenant to excuse himself from payment of the rent under law. It is based purely on one's contractual arrangement. It is only failing this that a tenant or lessee should be constrained to approach the Court of Law to seek postponement or deferment or relaxation or part payment, not as a matter of right, but always solely on the principles of equity.

The perfect scenario for a tenant and landlord would be to negotiate and discuss the situation and re-negotiate the terms of the agreement for waiver of rent or alternative solution to avoid litigation and complexities. All the terms of agreement should be in writing to provide enough room to both the parties. Further, in the absence of absurdness by the authorities on rental obligations under commercial lease agreements, businesses are left struggling with zero sales coupled with salary and rental obligations. The economic devastation due to the spread of the Corona virus has forced the private parties and advocates to look through the fine print copy to future proof contracts. Amid the pandemic, the much forgotten and the invisible helping hand of the "force majeure" provision in contracts and lease is affecting contractual responsibilities

throughout will help the tenants.

Force Majeure events aren't exhaustively laid out under the law and applicability of this provision depends on the language of the rental agreement and interpretation of the Courts. The effect of this virus on the lease will depend on the final determinations made by the Courts.

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