

FORCE MAJEURE: AN ESCAPE ROUTE FROM LEGAL RENT?

written by Yash Raj | August 6, 2020



Force Majeure and House Rent: Findings of Court on Rent Liability Amidst COVID-19

The countrywide lockdown imposed to combat the Coronavirus has sent shockwaves across the economy. The spending power of people has gradually decreased as compared to what it used to be before the imposition of lockdown. This has also impacted the landlord-tenant relations greatly. Whereas on one hand the ability to pay rent has been adversely affected, the economics of the landlord has also been disturbed. Tenants are seeking a waiver of rent as they are not in a position to access their rented premise or because of a significant loss in their income due to the pandemic. Tenants are trying to invoke the doctrine of Force Majeure as legal protection against the non-fulfilment of their contractual obligations. According to Black Law Dictionary, Force Majeure means *“an event or effect that can be neither anticipated nor controlled, is unexpected and which prevents someone from doing or completing something that he or she had agreed or officially planned to do”*^[1].

The prevailing situation due to the pandemic has forced many people to invoke the force majeure clause in their rental agreement to escape from their liability to pay for rent during the period of the Lockdown. A similar case came before the consideration of Hon'ble Justice Pratibha M. Singh of Delhi High Court in the case of *Ramanad & Ors. Vs. Dr Girish Soni & Anr*^[2]. The ruling given by the Delhi High Court is one of the first and provides clarity with respect to the burning issue of suspension of rent across the country.

Brief Background

In this case, the review petition was filed by the Appellants/Tenants against the decree of eviction passed by the Rent Controller seeking a complete suspension of rent for the period which came under the nationwide lockdown. In the review petition, an interim order was passed whereby the eviction decree stayed against the Appellant, provided that they pay a sum of Rs. 3.5 lakhs as monthly rent. The Appellants had pleaded that the lockdown should be considered as a force majeure event and hence there should be a suspension on the rent which is required to be paid to the Landlord.

Findings

The Court has clearly clarified that the question with regard to suspension or waiver of the rent payable would operate differently for each category of

agreements.

The Court while dealing with the petition has mainly categorized the varied tenancy into two forms i.e.:-

1. Those which contain a force majeure clause in the agreement
2. Those which do not contain any force majeure clause in the agreement

When it comes to the agreements which contain the force majeure clause then the relationship between the landlord and tenant is governed by the terms of their respective contracts and the question of a waiver, suspension or any remission would totally depend upon the terms and conditions of the rental agreement signed between both the parties and the same will be governed by Section 32 of the Indian Contracts Act, 1882.

The Court held that the tenant can claim some sort of waiver or suspension of rent only and only if the contract pertaining contains a clause specifically to this effect. It was further held that the force majeure clause in a contract could also be a contingency under Section 32 of the Contract Act which in a way would allow the tenant to claim that the contract has become void and surrender the premise. If the tenant wants to stay on the rented premise and the rental agreement doesn't contain any clause which prefers the tenant then in those cases the tenant shall pay the monthly rent to the landlord for staying on the premise.

However, when it comes to a rent agreement which specifically does not contain any force majeure clause and the tenant tries to invoke the doctrine of frustration or impossibility of performance, Section 56 comes into the picture. Section 56 of the Contract Act, 1882 deals with the "impossibility of performance" which provides that when a contract becomes impossible to perform after the execution of the agreement, will become void as soon as the performance becomes impossible. In the case of *Raja Dhruv Dev Chand Vs. Raja Harmohinder Singh & Anr*^[3], it was held that Section 56 would only be applicable to executory contracts and not to completed conveyances.

After relying on the judgment, the Court has held that as the lease is a completed conveyance, hence the Section 56 would not be applied to it for claiming waiver or suspension of rent. Hence, the Delhi High Court has concluded that Section 56 of the Contract Act does not apply to a lease agreement and other similarly situated contracts, which are 'executed contracts' and not 'executory' contracts.

The Court while considering different arguments and points raised by the parties, also considered the application of Section 108 of the Transfer of Property Act which mainly sets out the rights and liabilities of the lessor as well as lessee in cases where there is an absence of a Contract. After due consideration and looking at various judgments which had been passed by the Hon'ble Apex Court in which the above section has been interpreted, the Delhi High Court held that the tenant cannot avoid the rent liability by taking the help of Section 108 of the Transfer of Property Act for rendering the lease void because of the nationwide lockdown.

The Court while concluding has held that the present case falls neither under Section 32 nor 56 of the Contract Act, 1872 nor Section 108(B) of the Transfer of Property Act. While determining whether the suspension of rent sought could be granted or not, the Court considered various factors and held that the tenant sought to invoke the force majeure clause but was unwilling to surrender the rented premise and hence rejected the claim of the Appellants for suspension of rent. It is pertinent to note here that the

Court, however, did give some relaxation to the tenant for the payment of rent due to the countrywide lockdown.

Conclusion

In the prevailing difficult times, various state governments are directing the landlords and owners to defer the rent collection, there seems to be no respite to the suffering tenants, as landlords are forcing for the collection of rent and the judiciary has provided somewhat a different opinion regarding the suspension of rent for the period of lockdown in the country. The present judgment by Delhi High Court brings about a lot of clarity on the prevailing question of suspension of rent for the period of lockdown.

The court has inter-alia held that inability of the tenant to access the leased land or premise for a certain period would not entitle him from the suspension of rent provided there is a specific clause regarding the same in the rent agreement. There has been an exception provided by the court in cases where the rent is linked to profits under the rental agreement, and then in those cases, the tenant can seek a waiver of payment of rent if he was unable to make any profit because of the lockdown.

Contributed by - [Yash Raj](#)

- ^[1] Black's Law Dictionary (10th ed. 2014)
- ^[2] Order dated 21st May, 2020 in RC.REV 447/2017
- ^[3] AIR 1969 SC 1024

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