

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

DISCLAIMER

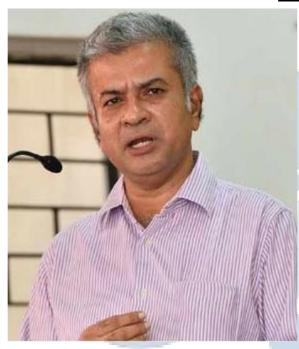
ISSN: 2581-8503

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal — The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



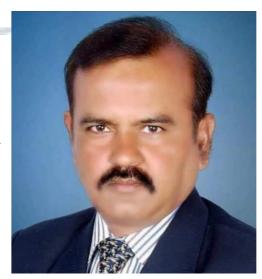
and a professional Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhiin one Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru diploma Public in

ISSN: 2581-8503

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & Phd from university of Kota.He has successfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor



Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja
Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



ISSN: 2581-8503

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



ISSN: 2581-8503

HI LIFE STATE OF THE STATE OF T

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

ISSN: 2581-8503

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEGAL

WAIVER OF RENT VIS-À-VIS FORCE MAJEURE CLAUSE AND DOCTRINE OF FRUSTRATION

AUTHORED BY - VEDDANT MAJUMDAR

ISSN: 2581-8503

ABSTRACT

The novel coronavirus pandemic and the lockdowns imposed to curb the same has halted businesses indefinitely and put people in severe economic distress. Out of all people, tenants form one of the most vulnerable classes to be affected by the pandemic. Due to stoppage/irregularity in income, tenants are facing immense difficulties in paying for rents to their respective landlords in these trying times. The only solution to the problems of such tenants would be suspension/waiver of rent till the economic scenario in the country normalises. However, the means to do so and the legality of the same are to be explored by this article. This article discusses the remedies which tenants could enforce to waive/suspend the payment of rent as per the terms of the lease agreement, and even otherwise. A specific legislation or ordinance has not been promulgated by the government of India as yet, catering to the woes of tenants in times of the current pandemic, who are unable to pay the rents due and thus, are lurking on the brink of eviction from their respective premises. This article also discusses a recent ruling of the Hon'ble Delhi High Court, which took cognizance of the said situation and clarified provisions which could be applied in the said context. The article goes on to encapsulate the provisions currently available at the disposal of tenants in India to avail such waiver/suspension of rent as discussed earlier, and also enumerates certain suggestions drawn from other jurisdictions which could be adapted for providing effective respite to the tenants against payment of rent and eviction.

INTRODUCTION

The Transfer of Property Act, 1881 (hereinafter referred to as "TPA") provides for leasing out immovable property. Section 105 of TPA¹ lays down and facilitates the said concept As stated by this provision, payments could be made to the lessor by the lessee as a lump-sum amount or in periodic instalments. The periodic payments made by the lessee to the lessor for the transfer of the right to enjoy such property, is called 'Rent'. In a relationship as to rent, the rent is paid

¹ The Transfer of Property Act, 1882 (Act 4 of 1882), s. 105

by the by the "tenant" and is payable to the "landlord/landlady".

The provisions for regulation of rent of and eviction from leased premises is governed by state legislations, and there is no uniform law/legislation governing the same throughout India. Non-payment of rent by the tenant over a period of time, empowers the landlord to file for eviction of the tenant from the concerned premise, under all such state legislations. Section 14² and 15³ of the Delhi Rent Control Act, 1954 provide for eviction of tenant on account of non-payment of arrears of rent. Identical provisions are also found in section 11 of the Bihar Building (Lease, Rent & Eviction) Control Act⁴, and in section 20 of the Punjab Rent Act, 1995⁵, to name a few. However, owing to the lockdowns imposed to control the spread of the novel coronavirus, people throughout the country, including the tenants in rented premises have been facing severe economic difficulties to arrange for rent; due to termination from jobs, businesses coming to a standstill and reduction in salaries. As a natural successor of this scenario, tenants are not able to pay for rents of the premise they inhabit, for the time being. In such trying times, it would be too harsh to evict them from their premise on the account of them non being able to pay rent to their respective landlords. In majority of such cases, the defaulting party seeks refuge in the "Force Majeure" clause.

ISSN: 2581-8503

EXPLAINING 'FORCE MAJEURE'

'Force Majeure' is defined by Black's Law Dictionary⁶ as "an event or effect that can be neither anticipated nor controlled". As per the dictionary, Force Majeure includes both, acts of nature and acts of people.

While *force majeure* has not been defined in Indian statutes, however, some reference can be found in Section 32 of the Indian Contract Act, 1872⁷, which states that if a contract is contingent on the happening of an event which event becomes impossible, such contract becomes void.

As far as a contract is concerned, a force majeure clause provides temporary reprieve to a party

² The Delhi Rent Control Act, 1958, (Act 59 of 1958), s.14

³ The Delhi Rent Control Act, 1958, (Act 59 of 1958), s.15

⁴ The Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (Act 3 of 1947), s.11

⁵ The Punjab Rent Act, 1995, (Act 13 of 2012), s. 20

⁶ Bryan. A. Garner, Black's Law Dictionary (Thomson Reuters West, Eagan, 11th Edition, 2019)

⁷ The Indian Contract Act, 1872 (Act 9 of 1872), s. 32

from performing its obligations under a contract upon occurrence of a force majeure event. A force majeure clause specifically spells out the circumstances or events, which would qualify as force majeure events, and conditions which would have to be fulfilled for such force majeure clause to apply to the contract. By principle, for a force majeure clause to become applicable, the occurrence of such events should be beyond control of the parties and it would be required of the parties to demonstrate that they have made reasonable attempts to mitigate the impact of such force majeure event. If an event or circumstance qualifies as a force majeure event and fulfils the conditions for applicability of the clause; then as a consequence of the same, parties would be relieved from performing their respective obligations under the contract, during the period in which such force majeure events continue. With the incoming of the novel coronavirus pandemic and the lockdowns imposed to curb it, the debate as to whether rent under a lease can be suspended/deferred; owing to adverse conditions during the lockdowns imposed to control the spread of the novel coronavirus pandemic in India, has become all the more relevant.

ISSN: 2581-8503

HON'BLE DELHI HIGH COURT SETTLING THE RIGHT TO WAIVER/SUSPENSION VIS-À-VIS FORCE MAJEURE EVENTS.

The Delhi High Court recently settled the law concerning suspension/postponement of rent of a leased premise with respect to "*Force Majeure*" clause. As said earlier that rent is controlled by separate state legislations, the Delhi High Court, in this case, dealt with the aforementioned issue with respect to the Delhi Rent Control Act, 1954.

In the decision given by the Delhi High Court on 21st May, 2020, in the case of Ramanand and Ors. V. Dr. Girish Soni and Anr, provided clarity as to suspension/postponement of rent on account of force majeure events, was arrived at. The tenants, who held the concerned leased premise on rent, herein demanded for suspension or at least postponement in payment of rent on the account complete disruption of all business activities of the tenants due to the lockdowns imposed. The tenants pleaded that the circumstances are force majeure and beyond the control of the tenants.

The Court thereafter clarified the terms on which waiver of rent could be claimed pertaining to situations being force majeure. The court held that where there is a contract, whether there is a

-

⁸ Ramanand and Ors. V. Dr. Girish Soni and Anr, RC. Rev. 447 of 2017; Decided on 21 May 2020

force majeure clause or any other condition that could permit waiver or suspension of the agreed monthly payment, would be governed by the contractual terms. If, however, there is no contract at all or if there is no specific force majeure clause, then the issues would have to be determined on the basis of the applicable law.

ISSN: 2581-8503

SUSPENSION OF RENT AS PER THE FORCE MAJEURE CLAUSE.

In circumstances such as the outbreak of a pandemic, like the current COVID-19 outbreak, the grounds on which the tenants could seek waiver or non-payment of the rent, under contracts which have a force majeure clause; would be governed by Section 32 of the Indian Contract Act, 1872⁹ (hereinafter referred to as 'ICA'),and the said explanation is buttressed by the judgment of Hon'ble Supreme Court in Energy Watchdog v. CERC & Ors¹⁰. wherein it was held that in case the contract itself contains an express or implied term relating to a force majeure condition, the same shall be governed by Section 32 of the ICA. Section 31 of the ICA¹¹ defines 'contingent contracts' as those contracts as per which something is to be done or not done, if some event, collateral to such contract, happens or does not happen. Such contingent contracts can only be enforced if the event in question happens or does not happen, as per the terms of the said contract. A force majeure clause also qualifies as a contingent contact, which can be enforced on the happening of events as stipulated in such contract.

Section 56 of the ICA¹², which deals with impossibility of performance, would apply in cases where a force majeure event occurs outside the contract.

Thus, in agreements providing for a force majeure clause, the Court would examine the same in the light of Section 32 of the ICA¹³ and contracts devoid of the force majeure clause shall be dealt in light of S.56 of the ICA.¹⁴

Thus, for a tenant to claim the waiver/suspension of rent in the event of a force majeure event as discussed herein, a clause to that effect must be present in the contract, and in absence of the same, the defence of impossibility under S.56 seems to be a viable option to seek for

-

⁹ Supra note 3 at 2

¹⁰(2017) 14 SCC 80 (India)

¹¹ The Indian Contract Act, 1872 (Act 9 of 1872), s. 31

¹² The Indian Contract Act, 1872 (Act 9 of 1872), s. 56

¹³ Supra note 3 at 2

¹⁴ Supra note 8 at 3

suspension/waiver of rent, provided the tenant is not to retain the premises from thereon.

SUSPENSION OF RENT IN A FORCE MAJEURE EVENT IN ABSENCE OF A FORCE MAJEURE CLAUSE

ISSN: 2581-8503

In the absence of a force majeure clause or a remission clause, the tenant may attempt to invoke the Doctrine of Frustration of contract or 'impossibility of performance' encapsulated under section 56 of the ICA¹⁵. Section 56 explicitly states that an agreement to an impossible act is void. The said section excuses the promisor from performing the obligations he was supposed to perform under a contract, on account of initial impossibility or subsequent impossibility. The latter is covered by the Doctrine of Frustration, which lays down that if the performance of a contract becomes impossible because of a supervening event, the promisor is excused from the performance of a contract. The said provision operates on the maxim: "les non cogit ad imposibilia", which means that "the law does not compel a man to do what he cannot possibly perform". The impossibility herein refers to both, physical and legal impossibility.

The standard of impossibility as inferred from the decisions of the court, appear to be very strict, i.e, discharging oneself of the contract and the obligations therein should only be on the account of supervening obstruction of a permanent and unavoidable nature. Strictness as to interpretation of this doctrine was also reflected in Amir Chand v. Chuni Lal¹⁶, wherein the tenant of a house was evicted in terms of a decree. The tenant filed an application for restoration of possession, and it was granted. The landlord then pleaded before the executing court that the building standing on the land had been demolished by the Municipal Committee, and now there was vacant land, and therefore, there being no building, the tenant was not entitled to the land. It was held that the contract of lease had still not become impossible of performing, because the landlord could reconstruct the premises in the same form in which it existed prior to demolition and the rights of the lessor and the lessee would then be available in respect of the new premises.

In the context of a tenant's obligations, the Supreme Court had the occasion to consider this doctrine in the case of Raja Dhruv Dev Chand v. Raja Harmohinder Singh & Anr¹⁷. Court held therein that Section 56 of ICA does not apply to lease agreements. The Court drew a distinction

¹⁶ AIR 1990 P&H 345

¹⁵ Supra

¹⁷ AIR 1968 SC 1024

between a 'completed conveyance' and an 'executory contract' and observed that there is a clear distinction between a completed conveyance and an executory contract, and events which discharge a contract do not invalidate a concluded transfer. By its express terms, Section 56 of the ICA does not apply to cases in which there is a completed transfer. A covenant under a lease to do an act, which after the contract is made, becomes impossible or by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful, but on that account; the transfer of property resulting from the lease granted by the lessor to the lessee is not declared void. Thus, the court held that lease being an executed contract, Section 56 of ICA cannot be invoked to claim waiver, suspension or exemption from payment of rent. This view of the Supreme Court has been reiterated in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. as also in Energy Watchdog v. CERC & Ors.

ISSN: 2581-8503

It is pertinent to note that a lease is not pin-pointedly ousted from the application of Doctrine of Frustration, but is done on the premise of it being an executed contract. The same can be inferred from the judgement of the Hon'ble Supreme Court, the case of Sushila Devi & Ors. v. Hari Singh & Ors. ²⁰, wherein impossibility to perform the contract was granted by the court in case of an agreement to lease, on the account of supervening events. The difference between lease and agreement to lease being that the former is an executed contract and the latter is an executory contract, was acknowledged and accordingly acted upon by the Hon'ble Supreme Court in the said case. Moreover, leases are not the only instruments which are excluded from the application of this doctrine on the account of it being an executed contract, this was made evident in the case of K.J Coal v. Mercantile Bank²¹, wherein the Calcutta High Court held that mere nationalisation of a coal company, which had taken loans from a bank prior to such nationalisation, cannot avoid its contractual obligation to repay the loan on the premise of change in the management of the company. The doctrine of frustration could be invoked in this case as it was an executed contract. Thus, it would be erroneous to conclude that lease disputes are not amenable to the application of the doctrine of frustration per-se.

The Hon'ble Delhi Court, in the case of Hotel Leela Venture Ltd. v. Airports Authority of India²² too, held that the doctrine of frustration does not apply to a lease. The reason for it being

18 AIR 2003 SC 2427

¹⁹ Supra note 10 at 3

²⁰ Sushila Devi & Ors. v. Hari Singh & Ors. AIR 1971 SC 1756

²¹ K.J Coal v. Mercantile Bank AIR 1981 Cal 418

²² Hotel Leela Venture Ltd. v. Airports Authority of India²², 2016 (160) DRJ 186,

that executory contracts alone are capable of being frustrated and not executed contracts.

FORCE MAJEURE IN TRANSFER OF PROPERTY ACT, 1882

ISSN: 2581-8503

Provisions of the Transfer of Property Act, 1882 also apply in landlord-tenant relationships, in absence of a force majeure clause. The doctrine of force majeure is recognised in Section 108(B)(e) of the TPA²³.

Strict standards as to the interpretation of the term 'substantially and permanently unfit' under section 108 (b)(e) for a tenant to invoke this section, have been settled by various judgements. In Raja Dhruy, (supra) the Apex Court, while interpreting as to what constitutes `substantially and permanently unfit' held that temporary non-use by the tenant due to any factor would not entitle the tenant to invoke this section. The Hon'ble Supreme Court, in the said case, held that where the property leased is not destroyed substantially and/or rendered permanently unfit for the purpose for which the property was leased for, the lessee cannot avoid the lease. Another example of the judiciary's strict approach in granting the tenant a relief under this section, could be found in the judgement of In T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors²⁴, wherein the Hon'ble Supreme Court held that where the lessee covenants to pay rent at stated period, he is bound to pay it, though the house be burnt down; for the land remains. The mere destruction of a building on land is not total destruction of the subject-matter of a lease of the land and building, so the lease and the obligations therein continue. A similar stance was taken by the apex court in explicit terms; stating that destruction of a house or building constructed on a leasehold does not by itself destroy the tenancy attached therewith, in the case of Shaha Ratansi Khimji and Sons v. Proposed Kumbhar Sons. Hotel P. Ltd²⁵. (2014)14SCC1, 2014 Another rider was attached to the invocation of this section, in the shape of 'Nullus Commodum' Capere Potest De Injuria Sua Propria', which means that no man can take advantage of his own wrong, by the judgement of Jagdish Chand v. Parveen Kumar²⁶, which laid down that it is necessary that the destruction so caused must not be caused by the lessee himself. The standard of granting relief under this section is strict and is granted sparingly by courts, as can be seen from the aforementioned cases, and thus, replicates the standard of strictness adhered to by the courts while granting a relief under the Doctrine of Frustration, S.56 of ICA²⁷.

²³ The Transfer of Property Act, 1882 (Act 4 of 1882), s. 108

²⁴ Supra note 18 at 5

²⁵ AIR 2014 SC 2895

²⁶ AIR 2007 (NOC) 2562 (HP)

²⁷ Supra note 8 at 3

It has also been held that the lessee has the option to avoid the lease when the property so leased becomes "substantially and permanently unfit", but merely having such option is not enough to set the lease aside, such option ought to be exercised for the tenant to evoke this section. It was held by the Hon'ble Delhi Hugh by this Court in Sangeeta Batra v. M/s VND Foods & Ors²⁸, that the fact that the leased premises, intended to be run as a restaurant, was sealed on two occasions is of no relevance as the tenants did not choose to avoid the lease. Thus, if the leased premise is rendered substantially and permanently unfit for the purpose for which it was let, the lessee has the option to avoid the lease. Thus, unless the lessee explicitly avoids the lease, he cannot avoid his obligation contained in clause (1) of Section 108, which states that "the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;".

ISSN: 2581-8503

Even if this clause is successfully invoked by the tenant, though the tenant is exonerated from his liability of paying the rents from thereon, but is also required to vacate the premises, as successfully invoking the said section renders the lease void and restores the position of the parties as it was before entering into the said lease.

CURRENT POSITION AS TO SUPSENSION/POSTPONEMENT OF RENT

The decision of the High Court provides much needed clarity, especially in the COVID 19 times on the questions pertaining to obligation of lessee to pay rent. The High Court has thrown light upon the applicability of Sections 32 and 56 of the ICA and Section 108(B)(e) of the TPA in the present scenario. In doing so, the High Court has also provided the factors necessary for determining whether the tenants were entitled to any relief of suspension of rent.

The findings of the Hon'ble Delhi High Court are summarized hereinbelow: -

- i. Section 32 of ICA will only come into play when there exists a clause in the nature of force majeure providing for waiver or suspension of rent;
- ii. Section 56 of the ICA is not applicable to lease agreements and other similarly situated contracts, which are executed contracts and not executory contracts;
- iii. In the absence of any contracts or contractual stipulations, the provisions of TPA will govern tenancies and leases. Temporary non-use of premises due to lockdown pursuant

-

²⁸, (2015) 3 DLT (Cri) 422

to COVID-19 cannot be construed as rendering the lease void under Section 108(B)(e) of TPA and therefore, a tenant cannot avoid payment of rent under the said clause.

ISSN: 2581-8503

This decision of the High Court makes it clear that it is not an inherent right of a tenant to seek waiver or suspension of rent from the landlord. Thus, while holding that suspension of rent is not permissible in absence of a force majeure clause in the lease, neither can the tenant claim impossibility as under S.56 of ICA; lease being an executed transfer, the Doctrine of Frustration does not apply to leases. In addition, the tenant cannot avoid the rental lease under S.108 of the TPA, without the premise having become substantially and permanently unfit for usage, and even after such premise is proven to be rendered substantially and permanently unfit for usage, the tenant would have to vacate the premise from the time of having proven the same successfully.

Having a humanistic view at the scenario though, the court has allowed for some postponement or relaxation in the schedule of payment, owing to economic difficulties caused due to the lockdown. The order for postponement of rent is sound law and does not frustrate the lease contract, in consonance with the judgment in Arti Sukhdev Kashyap v. Daya Kishore Arora²⁹, which laid down that merely because performance has to be delayed, it does not mean frustration of contract. The same has also been upheld by the Hon'ble Supreme Court, in the case of Satyabrata Ghose v. Mugneeram³⁰, wherein the apex court held that doctrine of frustration does not apply where there is a merely a delay in the performance in the contract.

ADVERSE CONDITIONS DUE TO LOCKDOWNS

Although, the imposition of lockdowns was essential to limit the spread of the novel coronavirus, especially in a country as densely populated as India, it proved to be devastating to tenants who could not pay the rent due; owing to unavailability of funds in a situation where businesses fell, salaries were put on hold, unemployment percentages set record highs, partly due to the lockdowns and partly due to the fear psychosis created by the pandemic. Even after the lockdowns are lifted, the damage so caused to the tenants could not be undone. A report of the Economic Times surfaced the irreversible effects of the lockdown on the tenant shopkeepers and traders in India³¹. It said that about 20% the retail shops across India may

²⁹ AIR 1994 NOC 279 (Delhi)

³⁰ AIR 1954 SC 44

³¹Lockdown or not, 20% of India's retail to shut shop, *available at*: https://economictimes.indiatimes.com/industry/services/retail/lockdown-or-not-20-of-indias-retail-to-shut-shop/articleshow/75705126.cms (Last visited on May 13, 2020)

perish even if lockdown is lifted soon because expenses such as high rents will make running business unreasonably expensive amid reduced sales, with customers expected to shop only for essential goods. As far as congested areas are concerned, where social distancing is impossible, traders have decided to remain shut even after the restrictions are relaxed. Quoting some worrying statistics pertaining to Delhi and Mumbai as examples, more than 60% of retail outlets in major markets including Colaba, Nariman Point and Andheri in Mumbai and Khan Market, Connaught Place and Sadar Bazar in New Delhi are occupied by tenants, and many have defaulted on rent. This is a worrying indicator of the vulnerability and sustenance of commercial tenants of India.

ISSN: 2581-8503

The residential tenants in India are not immune to the economic hardships of this lockdown either, their livelihoods have been affected in the negative as well, because of which, such tenants are also finding it hard to pay the rents due. Evicting such tenants on account of non-payment of rents would render a sizeable part of India's population homeless, as a consequence of being in extremely adverse conditions which they did not create in the first place. As revealed by the latest RICS – Knight Frank report, stating that almost 30% Indians live on rent, which is a huge figure considering India's population³².

Thus, in the interest of all such tenants unable to pay the rent due, and of justice, waiver of rent should be provided, not indefinitely; but for the time being.

CONCLUSION

In light of the clarity provided by the Delhi High Court in the above discussed case, tenants are not left with any such option which enables them to waive the rent due, save in case of a force majeure clause enabling the same in the lease agreement. The Doctrine of Frustration under S.56 of ICA is also of no avail to these woes of tenants, lease being an executed transfer. However, waiver/suspension of rent can be claimed by the tenant under S.108 of TPA, if the tenant succeeds in proving that the premises so leased has been rendered "substantially and permanently unfit" for the purpose for which it had been leased, provided that the tenant would not be able to retain the premises from thereon.

_

³²Over 50% people live in their own houses in India, available at: https://timesofindia.indiatimes.com/business/india-business/over-50-people-live-in-their-own-houses-in-india/articleshow/70586938.cms (Last visited Aug 8, 2019)

Not waiver/suspension but postponement in payment of the rent due could be granted by the courts on humanistic grounds in wake of the current economic hardships faced by the tenants due to the lockdowns and overall economic inactivity/slowdown, as seen in the above discussed judgement of the Delhi High Court. In the case of E. Palanisamy V/s. Palanisamy & Ors. 33, the Hon'ble Supreme Court has observed that the rent legislation is normally intended for benefit of tenant, at the same time it is well settled that benefit conferred on tenant during the relevant statute can be enjoyed only on the basis of strict compliance with statutory provisions. The Apex Court has also observed that Rent Control Act is not only beneficial enactment for the tenant, but also for benefit of the landlord and thus, the courts cannot function for ensuring the absolute benefit of the tenant in absence of a statutory provision to that effect. In effect, difficult times resulting in inability to pay rent, owing to lockdowns, do not discharge one from performing obligations under a contract and neither can anyone avoid a contract on the said basis, as held in Alopi Prashad Vs. Union of India 34 and Panna Lal Vs. State of Rajasthan 35.

ISSN: 2581-8503

In dearth of any explicit right available at the disposal of the tenants, which empowers him to claim waiver/suspension of rent in times of adverse supervening events, such as now, due to the novel coronavirus pandemic and the lockdowns imposed to curb its spread, brining economic activity to a grinding halt, it is advisable for the tenant to amicably negotiate with the landlord, all disputes pertaining to payment/suspension of rent, which would: a) prevent litigation costs and b) prevent the souring of the landlord-tenant relationship.

RECOMMENDATIONS

Nothing in the past few decades has affected people economically and socially as severely as the present novel coronavirus pandemic has, with tenants being one of the most vulnerable to its impact. Extraordinary times call for extraordinary measures, and the present situation representing the former, measures to deal with it ought to represent he latter.

Such an extraordinary measure is an ad-hoc legislation passed by the U.K Parliament, called the Coronavirus Act, 2020³⁶, which came into force on March 25, 2020. Sections 81, 82, 83 and schedule 29 of this Act, protect the tenants against eviction from the rented premises on

34 AIR 1960 SC 588

³³ AIR 2003 SC 153

³⁵ AIR 1975 SC 2008

³⁶ Coronavirus Act, 2020

the account of non-payment for rent till the 'relevant period' exists, with section 81 and schedule 29 catering to residential tenancies and sections 82 and 83 catering to commercial tenancies. The 'relevant period' is updated from time to time, keeping in account the current and prospective impact of the pandemic in the country. An amendment to the said act has been tabled, which will extend the "relevant period" to 30 September 2020, which was earlier 30th June. The "relevant period" will now be the period starting on 1 March 2020 and ending on 30 September 2020.

ISSN: 2581-8503

The ad-hoc legislation coming in for catering to the unprecedented situations created; owing to the coronavirus outbreak, with periodic modifications as to the 'relevant period' under the said act, is a glaring example of prompt legislative activism.

India should also bring about an ad-hoc legislation, which protects tenants from eviction on account of non-payment of rent, for a tentative period till economic and social conditions normalise post the lifting of lockdowns imposed to curb the spread of the novel coronavirus. No such act/ordinance has been passed yet, and one can only be hopeful for such an act/ordinance put to effect in the near future.

However, some positive strides have been made towards reducing the agony of tenants during this tough phase, vide certain executive orders by state governments.

The Government of Maharashtra resorted to the said approach, in pursuance of which, by an order dated April 17, 2020, The Maharashtra State Housing Department instructed landlords to postpone rent collection for 3 months; and stated that no tenant should be evicted for non-payment of dues. It also ordered landlords to not evict tenants due to non-payment of rent during this period³⁷.

Some other states of India too used this method of executive orders; helping distressed tenants, an example of which being that The District Magistrate of UP's Gautam Buddha Nagar, which covers the satellite city of Noida, issued a similar order dated March 28th, 2020 stating that no exodus of workers shall take place on the ground of non-payment of rent will be allowed in

_

³⁷ Maharashtra: 'Defer collection of rent for 3 months, don't evict tenants,' govt instructs landlords, *available at:* https://indianexpress.com/article/india/maharashtra-defer-collection-of-rent-for-3-months-dont-evict-tenants govt-instructs-landlords-6367536/ (Last Modified: April 18, 2020)

present circumstances³⁸.

These executive orders serve a two-fold purpose. Firstly, they protect the tenants against eviction from their premises and secondly, they ensure that travelling of people is reduced to the least possible, which would have been possible in times of eviction of tenants; as following which, tenants would head towards their respective native places, thereby working as potential carriers of the virus to various parts of the country.

ISSN: 2581-8503

Therefore, considering the current situation with regard to the plight of tenants in India, there appears to be no settled law for providing respite to tenants against eviction due to non-payment of rent in a force majeure event like the present times of the novel coronavirus pandemic and the corresponding lockdowns to prevent its spread. However, now that we have the remedies of ad-hoc legislations and executive orders as prospective solutions in hindsight, one can be hopeful of adaptation of one or more of the abovementioned solutions to counter the problem in question.



_

³⁸ Noida: DM orders landlords to take rent only after one month amid lockdown, *available at:* https://www.thestatesman.com/india/noida-dm-orders-landlords-to-take-rent-only-after-one-month-amid-lockdown-1502870976.html (Last Modified on March 28, 2020)