

INFORMATION MEMORANDUM :

Delhi High Court holds that tenants are liable to pay rent during Covid-19 lockdown and cannot invoke doctrine of suspension of rent on the basis of a force majeure event.

RAMANAND & Ors. v. DR. GIRISH SONI & Anr.

R.C. Rev 447/2017 (Delhi High Court)

Order dated 21st May, 2020

COVID-19 is not a force majeure event for suspension of rent in the case of leave and licence agreement

Facts of the case:

In 2008, the Owner of Shop filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ("**DRC Act**"). A decree of eviction dated 18/03/2017 was passed. The Tenant filed an appeal before the Rent Control Tribunal ("RCT") against the said decree of eviction. The RCT stayed the order of eviction subject to certain conditions inter alia :

(i) Tenant had to pay rent of Rs.3.5 lacs per months in advance by 10th day of English Calendar month ;

(ii) If there is any default in payment, the stay of execution of the order of eviction shall stand vacated and the Owner shall be entitled to execute the order of eviction.

Aggrieved, the Appellant Tenant filed revision petition challenging the order dated 18/03/2017 passed by the RCT granting a decree of eviction. Following the outbreak of COVID-19, the Appellant Tenant filed an

application for suspension of rent, during the lockdown period.

Question before High Court :

Whether the lockdown due to Covid-19 will entitle tenant to claim waiver or suspension from payment of rent?

Tenant's Contention :

- (i) Covid-19 lockdown is a force majeure event as it is beyond the control of the Tenant. Due to suspension of business from the said premises, the tenant is entitled to waiver of the monthly payment or at least some partial relief in terms of suspension, postponement or part-payment of the said amount.
- (ii) Alternatively, the rent be suspended for at least one month since there has been no business during the lockdown period.

Respondent Owner's Contention :

- (i) Tenant is well-to-do business person.
- (ii) Rent of Rs.3,50,000/- per month is a very meagre amount as compared to the prevalent market rate.
- (iii) Force majeure does not apply as the case is governed by the DRC Act.
- (iv) Mere disruption of the business cannot exempt the Tenant from making the

monthly payments as the Owner also depends on the income from the tenanted premises.

Rules :

- (i) In the realm of contracts, the respective rights and obligations of the parties would be determined by the terms and conditions of the contract itself.
- (ii) Parties could seek waiver or non-payment of the monthly amounts, under contracts which have a force majeure clause and governed by Section 32 of the Indian Contract Act, 1872.
- (iii) Section 56 "lays down a positive rule relating to frustration of contracts and the Courts cannot travel outside the terms of that section". Section 56 does not apply to lease agreements.

High Court Analysis :

- (i) Where there is a contract, whether there is a 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.

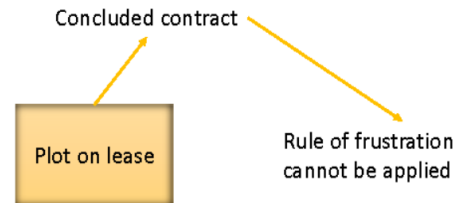
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- (ii) If there is no contract at all or if there is no specific force majeure clause, then the issues would have to be determined on the basis of the applicable law.
- (iii) In case the contract itself contains an express or implied term relating to a force majeure condition, the same shall be governed by Section 32 of the Indian Contract Act, 1872 ("**ICA**"). Section 56 of the ICA, which deals with impossibility of performance, would apply in cases where a force majeure event occurs outside the contract [Energy Watchdog v. CERC & Ors., (2017) 14 SCC 80].
- (iv) If the contract contains a clause providing for some sort of waiver or suspension of rent, only then the tenant could claim the same.
- (v) If the tenant wishes to retain the premises and there is no clause giving any respite to the tenant, the rent or the monthly charges would be payable.
- (vi) Doctrine of frustration does not apply to a lease. The reason being that executory contracts alone are capable of being frustrated and not executed contracts. Lease is a transfer of rights under the Transfer of Property Act.
- (vii) A contract is not discharged merely because it turns out to be difficult or onerous for one party to perform and none can resile from a contract for said reason.
- (viii) Temporary non-use by the tenant would not entitle the tenant to invoke section 56.
- (ix) For a lessee to seek protection under sub-section 108(B)(e) of the Transfer of Property Act, there has to be complete destruction of the property, which is permanent in nature due to the force majeure event.
- (x) Wherein the tenant cannot use the property for the purpose for which it was leased, the tenant would have no right to continue enjoying the property and seek suspension of rent at the same time.
- (xi) In contracts where there is a profit-sharing arrangement or an arrangement for monthly payment on the basis of sales turnover, the tenant/lessee may be entitled to seek waiver/suspension, strictly in terms of the clause.

Key Principles :

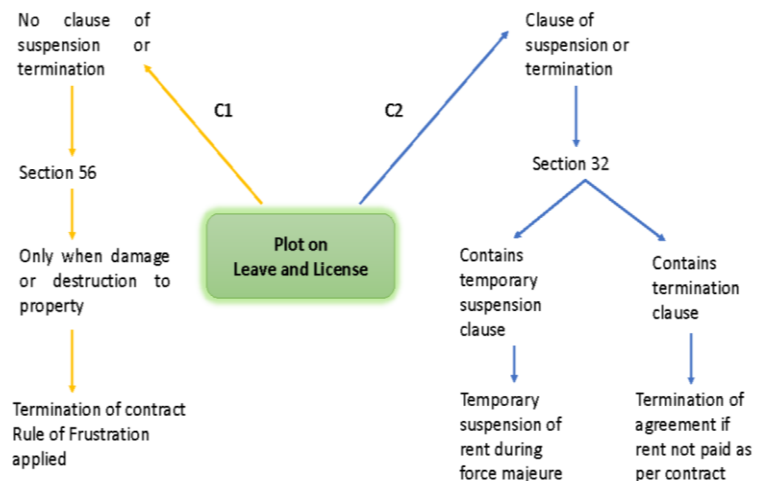
The Force Majeure clause would come into play strictly as per the terms of the contract or under section 56 of the Indian Contract Act. There is a clear distinction between a completed conveyance and an executory contract, and events which discharge a contract do not invalidate a concluded transfer.

Acelegal Analysis :

Lease of a plot :



Leave and license Agreement :



High Court held :

The Tenant’s application for suspension of rent is rejected as while invoking the doctrine of suspension of rent on the basis of a force majeure event, it is clear from the submissions made that the Tenant do not intend to surrender the tenanted premises.

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