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Influence of Corona Virus on Rent Agreements

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ABSTRACT

In this paper we will study about rent and eviction norms in light of the circumstances created by the coronavirus pandemic all around the world. The worldwide imposed lockdown due to the spread of coronavirus all around the world has led to the economy taking a hit which in turn has led to billions of people losing their jobs. This in all and all has led to the development of the situation that the tenants of the property are not able and willing to pay the rent due to their landlords for either living in their property or using it as a workspace. The non-payment of rent by the tenants has compelled the Landlords to force tenants to evict the property which is being fought on various ground comprising of both legal and moral grounds such as the Force Majeure, i.e. the circumstances have prevented a person from doing the thing which had officially planned to do earlier and Frustration of Contract as enshrined under section 56 of Indian Contract Act, 1872. Though, it is considered as morally wrong to evict tenants over the issue of rent and suggested by government to not evict tenants in situation like this, it is also important to consider both the sides of the coin, i.e. the business of putting property on rent or lease acts as a source of earning bread for a number of landlords without any other source of income and the situation of not receiving rent puts them into a complex position in terms of feeding their family. It is due to these issues mainly that the government had stated that in case of default of payment of rent by the tenant, it would be paid by the government to landlords to maintain status quo. We in this paper we will study all the concepts relating to the issue of rent and effect of coronavirus on the laws.

Keywords: *Rent and Eviction Norms, Landlord, Tenant, Rent, Force Majeure, Frustration of Contract.*

I. INTRODUCTION

The Landlord and Tenant relationship is a relationship which has existed from centuries though may differ in size, nature or even from the name provided to the relationship but it is clear that this relationship has been found in the society in one form or other from time immemorial and would continue in future as well. The history of rent norms could be traced back to the period of the second world war when the impact of the world war and industrial

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revolution had led to spiraling of prices and increase in cost of living as well along with the massive shift of rural population to the urban areas. The increase in costs along with increase in the urban population was to be considered in consonance with the fact that the availability of homes was not able to meet the demand of the homes in the urban areas. The first legislation in India was enacted in Madras around 52 years old to control the amount of rent and also exploitative practices of the landlords. The rent norms of 1949 was replaced by the act in 1960 and after that also there were several amendments made to the law with the aim of suiting the circumstances of society at that period of time. It is now with society becoming advanced and the landlord-tenant relationship becoming more and more complex that it was felt to impose restrictions on the fundamental rights of citizens to hold property on the ground of public interest in the society. It is in this evolving time that spread of the coronavirus has once again effected the relationship as there have been numerous incidents reported concerning with landlord forcing tenant to evict the premises on the ground of non-payment of rent as agreed in the rental agreement. It is these disputes like these in the past between the landlord and tenant that had necessitated the need of strong rent laws to protect the interest of both the landlords and tenant in the economy.

II. EXPLANATION

The Central Government had established an act titled as “Rent Control Act of 1948” to be applicable uniformly throughout India. The intention of the government or the legislature was to enact a uniform codified law which would control the rent imposed by the tenants and also control the eviction process of the Tenant. The only condition imposed was that there shall be a rental agreement between the Landlord and Tenant consisting of details such as the amount of rent, time period, purpose of stay, security amount and other similar details². This would enable the government to keep a regulation on the Landlord-Tenant relationship in the economy. Government of states with advancement of time have been enabled to enact rent and eviction norms for their states depending upon the circumstances of each state.

It is important at this stage to understand some basic concepts relating to the concerned paper on hand before moving any further:

- a. **Tenant:** According to section 2(1) of Delhi Rent Control Act, 1958 the term tenant means any person by whom or on whose account or on whose behalf is, or, but for a special contract would be payable, and includes:

- A sub-tenant;

²www.shodhganga.

- A person continuing in possession after termination of tenancy;
 - In the event of death of person continuing in possession after termination of tenancy, subject to the order of succession.³
- b. Landlord:** The term landlord as defined under section 2(e) of the Delhi Rent Control Act, means any person who is receiving or is entitled to receive on own account or on account of or on behalf of another person or even in capacity of being a guardian, trustee, receiver for another person, or another person, who would be entitled to rent if property were let to a tenant. ⁴
- c. Basic Rent:** The basic rent as per provisions of the act refers to the amount of rent specified under the second schedule.⁵
- d. Standard Rent:** The act by word standard rent refers to the amount of standard rent as specified under section 6 or as increase under section 7 of the Act.
- e. Lawful Increase:** It refers to the increase in the amount of rent as permitted under the provisions of the act.
- f. Rental Agreement:** The agreement signed between the Tenant and the Landlord is known as the rental agreement. It serves as proof of existence of the Landlord-Tenancy relationship between the two parties.⁶
- g. Property Demised:** The term property demised refers to the property of the landlord which is provided to the tenant on either lease/mortgage, for a limited period of time and for a certain amount of money. It would involve the following things:
- the garden, grounds and outhouses, if any, appertaining to such building or part of the building;
 - any furniture supplied by the landlord for use in such building or part of the building;
 - but does not include a room in a hotel or lodging house.

III. RIGHTS AND DUTIES OF TENANT AND LANDLORD

(A) RIGHTS OF TENANT⁷:

It can be inferred from the study that though the tenant gets the possession of property but does not become the owner of property as to assert right of ownership, there are 3 main basic rights which a man must possess. The three rights are as the following:

³Delhi Rent Control Act, 1958

⁴www.delhihighcourt.in

⁵egazette.nic.in

⁶www.legaldocs.co.in

⁷www.portiqo.com

- a. Right of Possession;
- b. Right of Enjoyment;
- c. Right of Alienation.

Thus, it is true that though the tenant acquires the right of possession and enjoyment but does not acquire the right of alienation of property and as a result, cannot become the owner of property. Despite, of this the tenant acquires certain rights in respect of the property which are required to be studied. The rights which need tenant acquires are as follows:

1. The tenant has the right to acquire a house fit for living. The duty is imposed upon the landlord to ensure that the house minimum standards of living.
2. The tenant shall be made aware about all the details relating to the house by the landlord before the agreement relating to transfer of property is signed.
3. It has the right to maintain copy of the agreement and have appropriate contact information;
4. Tenant also acquires the right to privacy in respect of the property which is occupying currently;
5. Tenant can compel the landlord to undertake some of the required repair works in the house;
6. Right to be reimbursed for the expenses incurred on the demised property which should have been undertaken by the landlord of the property.
7. Finally, also the has the right to obtain an eviction notice, while being compelled to leave the property by the landlord. Thus, cannot be forced to leave the property without compliance with the procedure required by the law.

(B) DUTY OF TENANT⁸:

It has been rightly observed that with every right the law imposes some duty on the right bearer as well. In terms of the tenant, the duties imposed on the tenant are as the following:

1. The first and foremost duty imposed on tenant is to pay the decided amount of rent to the landlord on time and clear off dues if any.
2. Tenant has to be comply with all the directions imposed by the landlord in the process of occupying the property of the landlord.
3. Another duty which can be imposed is that the tenant would not sub-let the property to any person while in occupation of property. This is a duty which is dependent upon the terms and conditions of the agreement between the two parties.

⁸www.myadvo.in

4. Finally, another duty could be that the tenant would maintain the property of the landlord as reasonably as a person would keep his own property.

(C) RIGHTS OF LANDLORD⁹:

The Landlord in India also has been empowered with certain rights under the Indian legislation with the aim of protecting interests of landlord. The rights of landlord are as the following:

1. Right to obtain rent from the tenant on the date as determined in the agreement between the parties and also sue if no payment received.
2. Right to enter the property given to tenant on the right of easement or licensee or even obtain possession of the property temporally on breach of condition imposed by the tenant by the landlord.
3. The landlord also has the right to evict the tenant from the property on the grounds specified in the legal framework in India regarding the rental or lease agreement.
4. Right to get back the property in the same condition as provided to the tenant and also get reimbursed for the expenses incurred to repair the damage caused by acts of the tenant.

(D) DUTIES OF LANDLORD¹⁰:

There are also certain duties imposed on the landlord in respect of the rights afforded to the landlord. The duties to be understood are as follows:

1. The duty to communicate to the tenant all the details that should be known about the property at the time of signing of agreement.
2. The duty to accord privacy to the tenant in occupation of the property; no unreasonable interference with the right of the tenant.
3. Duty to cover the basic expenses relating to the property before handing over the property to the tenant.
4. Duty to provide a notice of eviction to the tenant before making evict the premises.

IV. RENTAL AGREEMENT¹¹:

It is observed generally that the first step in the relationship of landlord and tenant is forming of a rental agreement, constituting all the relevant details in respect of relationship. In short rental agreement also known as lease agreement refers to a written contract between the two

⁹www.99acres.com

¹⁰www.thehindu.com

¹¹www.thetimesofindia.com

parties i.e. owner of property and tenant who took property on rent for a duration of time. The terms and conditions are entered as per negotiations between the two persons, but once when written and signed they are binding on both the persons. There are 8 things which are essential in a rental agreement:

1. It must contain the details of each of the parties, i.e., names, addresses, and also the start and end date of the signed agreement.
2. It should also specify the amount of rent to be paid as decided, the date of each month on which paid, the form in which to be paid and other similar details.
3. It should specify or impose duty on one of the party to pay the utility charges, i.e. the electricity, water, gas bill and also the maintenance fees if to be paid and other similar expenses.
4. The deposit taken from tenant as security deposit should also be mentioned and the deduction possible from it in case of any expenses or damage due to tenant.
5. It must also specify the conditions which should be adhered to by the tenant and in case of breach it could lead to eviction of the tenant. Thus, grounds of eviction should be specified.
6. There should be a minimum time period before which the notice of/for eviction should be provided by the party. The time period is generally a period of 30 days and in case of not provided then the penalty to be imposed.
7. One more thing to be mentioned is the condition in which the property should be at the time of conclusion of the rental agreement or returning the property to the landlord.
8. Finally, once the agreement is signed by both the parties it should be registered and due stamp duty must be paid by the party as agreed between the two parties.

(A) REGISTRATION OF RENT AGREEMENT¹²:

As we have studied above that one of the essential stated is the registration of rent agreement and payment of the required stamp duty. This condition has been imposed due to the section 17 of Registration Act, 1908 which requires registration of all rent or lease agreements of immovable property extending beyond one year or being on a year to year basis or when rent for period of 1 year being taken in advance. The Registration Act, 1908 has been made applicable throughout India and that's why the condition of registering the agreement is applicable throughout India and also acts as a piece of evidence in court at time of dispute

¹²Legaldesk.com

between the parties.

There has been a penalty imposed on non-registration of rent agreement for a period exceeding one year, that is the fine amount may extend to 10 times of the original amount and along with it the outstanding charges are need to be paid as well.

(B) VALIDITY OF AN UNREGISTERED RENT AGREEMENT¹³:

In light of the provision of registration act mandating registration of the agreement it becomes important to understand that an unregistered agreement is also perfectly valid till the time of the rent or lease is restricted to 11 months at max.

(C) WHY RENT AGREEMENTS ARE GENERALLY OF 11 MONTHS¹⁴:

It is now easy to understand that when we take a property on rent or let a property on rent, the agreement signed is for 11 months as the intention behind this act is to avoid the required stamp duty to be paid at the time of registration of the agreement. The agreement for a period of 11 months is a perfectly legal document serves the same use as the agreements for period exceeding 12 months.

The next discussed in the rent agreement is the issue of eviction of the tenants. It is considered as the most important thing, as it directly influences the rights of both the tenant and the landlords. The landlord has the right to evict the tenant on the grounds as mentioned in the legal framework.

After the above discussion it is quite clear that the rent agreements do play a huge role in terms of the Landlord and Tenant relationship and the coronavirus has seriously affected the real estate industry in the biggest way possible. The Tenants have started to refrain from performing their duties agreed upon in the contract between the parties. In the next section of the paper we will understand the impact of coronavirus on the rental agreements.

V. EVICTION PROCEDURE OF TENANTS DURING CORONAVIRUS¹⁵:

It has been realized in the light of rights of the Tenant that it is not an easy procedure to make a tenant evict the demised property. The courts have taken strict action against any illegal eviction of a tenant pursued by the Landlord with the aim of promoting its motive. There are some grounds mentioned on which the landlord can evict the tenant, the grounds are as the following:

¹³www.legalserviceindia.com

¹⁴www.livemint.com

¹⁵www.nestaway.com

- a. By efflux of time;
- b. Non-payment of rent intentionally by the tenant even after passing of 15 days since due date;
- c. Tenant has sub-letted the property to another person without permission of the landlord;
- d. Tenant has used property for unlawful purposes or for purposes other than stated in the agreement;
- e. Breach of the condition imposed by the Landlord at the time of signing of the agreement;
- f. Tenant disputes the title of landlord in respect of the demised property.

Thus, it is clear that the law has given a broad idea of what are the possible grounds on which a tenant can be evicted from the property, but the thing to be noted is the need of followance of procedure by the Tenant.

The procedure to be followed by the Landlord consists of three basic steps, which are as the following:

- 1. Notice to be sent to the Tenant:** The notice must expressly state about the intention to make tenant vacate the property, it should state the grounds for eviction, there must be appropriate time provided to vacate property. The notice must be first filed before the court and then it must be sent to the Tenant as well. It is stated that without delivery of notice no eviction can take place.
- 2. File an Eviction Suit:** The next step after sending of notice is that the landlord needs to file a suit in the appropriate court if the tenant refuses to vacate the property on receiving the notice to vacate the property. It is then contested in the court that whether the eviction is legal or illegal.
- 3. Final Eviction Notice:** Once the court pronounces the judgment on the basis of arguments presented in the court, if the court considers the eviction legal then there is delivery of final notice to the tenant to evict the property.

Thus, it has been realized that the law has afforded several grounds to the landlord with the motive of making the tenant evict the property but on the same hand a duty has been imposed upon the landlord, that is requirement of delivery of notice to the tenant. The reasons for sending the notice is to make the Tenant make aware about the reasons for eviction from the property and also must afford tenant reasonable time to evict the property and make suitable arrangements. It is also stated that after the delivery of the notice the landlord needs to file

before filing for suit of eviction in the court of law. It is with the motive to reach to the solution to the dispute regarding eviction amicably.

Finally, the thing to be understood in these present times is that the tenant has also been provided with certain remedies to fight illegal eviction or eviction suit filed by the Landlord in the court of law. It arises in the situation that when the landlord tries to make tenant evict the tenant on grounds other than the grounds specified under the State Rent Control Laws. The ways possible to fight the eviction suit are as the following:

- a. **Suit for injunction:** The tenant can opt for the remedy of filing an injunction, citing the reasons for seeking injunction to fight the attempt of the landlord to evict the tenant without appropriate notice being delivered to the tenant.
- b. **Rent Controller:** It is the situation in which the tenant can approach the rent controller with appropriate jurisdiction to cite the grounds on which the eviction is being fought and then the court would summon both the parties to hear the arguments and reach to an informed decision.
- c. **Notice of Rent payment:** The most common grounds on which eviction is being sought is the issue of non-payment of rent by the tenant. The remedy available to the tenant in this regard is that the tenant can ask for the bank details of the landlord and upon the payment of the rent if the landlord accepts the payment of rent then the dispute can be brought to an end. In case the landlord refuses to accept the rent then the tenant can file a petition in the court and the court would compel the landlord to accept the rent.

One more concept to be understood for after the time the tenant receives the notice of eviction is the concept of Tenancy at Will and Tenancy at Sufferance.

1. **Tenancy at will¹⁶:** It refers to the situation in which the tenant is in occupation of property after the eviction notice has been delivered with the consent of the landlord, and the tenant pays to the landlord the rent amount which cannot be demanded by the landlord. The payment of rent does not result in re-initiation of legal relationship between the tenant and landlord and also the party cannot claim the mesne profits from property.
2. **Tenancy at sufferance¹⁷:** This refers to the situation where the tenant is in occupation of the property without the consent of the landlord. It is in this that there is no money

¹⁶www.investopedia.com

¹⁷www.thebalancesmb.com

involved and as in Tenancy at will there is no legal relationship between the Tenant and Landlord and neither the mesne profits can be claimed by the party.

VI. IMPACT OF COVID-19 ON RENT/ TENANCY AGREEMENTS¹⁸:

It has been realized that due to coronavirus many agreements are being suspended and similar is the situation with the tenancy agreement. Normally, a rent agreement is suspended on the following grounds:

1. On the action/inaction of the tenant as in violation of the provisions of the agreement;
2. On the action/inaction of the landlord as in violation of the provisions of the agreement;
3. By Mutual Agreement;
4. On order of any jurisdictional court/tribunal.
5. On Frustration of Contract/ Doctrine of Frustration;
6. Force Majeure.

However, for the paper in hand we are focused on the last two points as these points have come into prominence during this coronavirus pandemic.

(A) DOCTRINE OF FRUSTRATION¹⁹:

The doctrine of frustration refers to the situation when without the fault of either party to the contract, obligations under the agreement, as originally intended, becomes impossible to fulfill as a result of unforeseeable circumstances. It has been discussed under section 56 of Indian Contract Act, 1872, which lays down principles such as the following:

- a. An agreement to do impossible task is void in itself;
- b. An agreement to do an act, which after forming of agreement, without fault of either of parties becomes impossible or unlawful to perform is void in itself.

Tenancy as a general rule, will automatically terminate on happening of a frustrating event, i.e. one which is unpredictable or unforeseeable, without fault of parties, which makes the act impossible to perform or different from what parties at time of signing agreement had thought of.

According to judgment of Apex Court in the Case of *Satyabrata Ghose v. Mugneeram Bangur & Co*²⁰, the doctrine of frustration does not merely extend to physical impossibility of performing the work rather also includes the situation when doing of act becomes useless

¹⁸ www.mondaq.com

¹⁹ Blog.ipleaders.in

²⁰ 1954 SC 44

depending upon the purposes and intention of parties at time of signing of the contract.

Thus, in brief it can be considered that the clause of Doctrine of Frustration is applicable in this situation as it could not have been predicted by any one that the whole world would come to a standstill because of spread of a virus and also there was no human intervention in the creation of virus, so the idea of relieving or deferring the tenants from the duty to pay the required rent for a few months has been doing the rounds of which the author considers the more feasible way to move forward is the idea of deferring payment of rent for some time rather than cancelling it.

(B) FORCE MAJEURE²¹:

As we have studied, coronavirus has proved to be a nightmare for the real estate industry in today's world. The landlords and tenants are both facing an uncertain future, and it is these circumstances that the study of defense of Force Majeure needs to be studied. The term Force Majeure refers to the situation as a result of some superior force and which absolves a person completely from performing a duty which, in normal circumstances would amount to a Breach of contract. The question that whether defense of Force Majeure is available or not is dependent upon the terms and conditions of the agreement between the parties. This stated, however, there are some essential principles of Force Majeure, which are as follows:

- a. Basis of these principles is that event is beyond reasonable control of parties;
- b. It is important to analyse if best endeavors made to mitigate the circumstances;
- c. The event must be unforeseen by the parties;
- d. That the event has made performance of contract as illegal or impossible.

It was held in the case of **Satyabrata Ghose** that when an agreement contains Force Majeure Clause and the court considers it attached to the facts of the case then there is no applicability of the Frustration of Contract (Section 56 of Indian Contract Act,1872). Thus, in one case either of Force Majeure or Frustration of Contract is available as a defense to the party and not both.

(C) IS CORONAVIRUS A FORCE MAJEURE THAT EXCUSES PERFORMANCE OF CONTRACT²²:

The question to be answered is that does coronavirus amounts to Force Majeure. The answer to the question in terms of contractual arrangements would be dependent upon the terms of the agreement and intention of the parties. It has been normally observed that it is stated in agreement that what would amount as Force Majeure. The majority of people are of the view

²¹www.newsindianexpress.com

²²www.indianexpress.com

that both the worldwide spread of virus and the response of the respective governments is unprecedented in nature and thus, the situation of coronavirus should be treated as a Force Majeure. It must also be considered that the WHO has referred to spreading of coronavirus as a pandemic, and words such as epidemic and pandemic are normally present in most of the agreements under the category of Force Majeure. The Ministry of Finance, Department of Expenditure Procurement Policy Division of India has gone a step forward and has stated that coronavirus must be considered as a natural calamity and Force Majeure Clause must be invoked wherever possible. There have been judgments of the Apex Court of India, in which the burden of proving that the existing circumstances constitute Force Majeure is imposed upon the person claiming benefit under the Force Majeure Clause. The elements that need to be proved are that the existing circumstances are supervening circumstances and without any human intervention and also that it has directly affected the party's ability to fulfil contractual obligations.

The author would also like to analyze the High Court judgment discussing the issue of whether tenants can be exempted from paying rent due to coronavirus, in the case of *Ramanand and ors vs Dr. Girish Soni and anr*²³. The brief facts of the case are as the following:

The petitioners who were operating in the Khan Market premises had been served an eviction notice by the landlord after unsuccessfully appearing in lower court, the tenant thus, filed an appeal in the Delhi High Court. The High Court stayed the decision of the lower court and also ordered the tenant to pay an advanced sum of Rs.3.5 lakh per each month the tenant filed an appeal in the Delhi High Court with the aim of making the rent suspended on the basis of Force Majeure Clause. The Delhi High Court stated that if the contract is bereft of Force Majeure Clause then the tenant may seek benefit of the Doctrine of Frustration as enshrined under section 56 of Indian Contract Act. It was also stated that Force Majeure is applicable in situations as enshrined under the terms of contract as also stated under section 108(b)(e) of the TPA,1882. Thus, after analyzing these concepts the High Court gave the decision that suspension of rent is not possible rather the payment of rent can be merely postponed, i.e. of March in month of May and of April and May till 25th June,2020.

VII. CONCLUSION

Thus, after the study it has become clear that the real estate industry in the form of relationship between Tenant and Landlord contributes immensely towards the growth of the

²³ RC. REV. 447/2017

GDP of the nation. It must be also noted that though the tenants acquire certain rights over the property, being in possession of property but they never become the owner of the property as they do not possess the right of alienation of the property. The point of differentiation between landlord and tenant in case of confusion is that the Landlord is the person who has the power to make the tenant evict the property. It is due to this power being afforded to the landlord that the tenant has been made available certain rights and grounds on the basis of which the tenant can fight or resist an illegal eviction from the Landlord, the law has also taken into consideration the issue of occupying the property even after expiry of the time period mentioned under the agreement between the parties, either with the consent of the owner (Tenancy at Will) or without the consent of the owner (Tenancy at Sufferance), the required course of action differs according to the facts of the situation or non-payment of rent by the tenant at the due date. The issue of non-payment of rent is the issue which has cropped up in the time of coronavirus, when the Tenants are seeking to be exempted from paying the rent on grounds like Force Majeure or Frustration of the Contract. Despite these defenses being available, it is dependent upon whether these are mentioned in the agreement between the parties or not. The burden has been imposed upon the person claiming benefit of the clauses by the Supreme Court in various judgments. Thus, in the end it is easy to conclude that the spread of coronavirus is a once in a million years' event, and it is without interference of any of the parties which is sine qua non for claiming relief under either of the defense and the defense of stated in the agreement between the parties, which is usually, then should be available to the seeking party.
