

Tenant cannot suspend rent for temporary non-use due to COVID-19 lockdown

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1 Introduction

One of the pertinent issues landlords and tenants in India are grappling with during the COVID-19 crisis is the suspension of monthly rentals during the government announced lockdown periods. In its judgment dated 21 May 2020 in *Ramanand and Others v. Dr. Girish Soni and Others*¹ (Case), the Delhi High Court (Court) has held that the period of lockdown on account of COVID-19 does not excuse the payment of rental amounts.

2 Facts

The tenant in the Case was occupying a commercial property in one of Delhi's most sought after commercial spaces. The Case involved an eviction order passed against the tenant in an eviction petition filed by the landlord before the rent control authority under the Delhi Rent Control Act, 1958. When the matter reached the Court, it stayed the operation of the eviction order by an interim order, subject to deposit of an enhanced monthly rental amount of Rs. 3.5 lakhs, as against a rental amount of Rs. 300 per month being paid earlier. In these proceedings, the tenant approached the Court seeking suspension of rent on account of the COVID-19 pandemic and the consequent lockdown. The circumstances of COVID-19 pandemic and the consequent lockdown were contended to be *force majeure* and beyond the control of the tenant.

The Delhi High Court has clarified that the lockdown period where premises cannot be used would not give a tenant the right to void the lease. Consequentially, a lessee cannot claim suspension of payment of lease or rental amount due to COVID-19 lockdown.

¹ RC Rev. 447/2017

3 Ruling

The Court examined the provisions of the Contract Act, 1872 (**Contract Act**) and the Transfer of Property Act, 1882 (**TOPA**) before concluding that the tenant's request for suspension of rent was liable to be rejected.

The Court specifically analysed situations where a contract (including a lease) contains a *force majeure* clause and provides for actions to be taken pursuant to the said clause and where the lease did not provide for a *force majeure* clause. The Court's analysis was as follows:

- a. The Court observed that in the case of a contract (lease included), the terms of the contract govern the relationship between the parties and the clause of *force majeure*, if contained therein, would be the basis for determining the obligations of the parties. The Court while delivering its Order relied on the judgement of the Supreme Court in the Energy Watchdog² case. The Supreme Court in this case had observed that where a contract contains a *force majeure* clause it would have to be examined under Section 32 of the Contract Act, while Section 56 of the Contract Act applies when a force majeure event occurs outside the four corners of the contract. Section 32 of the Contract Act provides for enforcement of a contract contingent on an event happening and provides that where such event becomes impossible, the contract becomes void. Section 56 of the Contract Act on the other hand, deals with impossibility of performance of a contract or 'frustration of a contract'.
- b. The Court in this Case observed that a *force majeure* clause would entail the operation of Section 32 of the Contract Act upon the occurrence of an event which would make the *force majeure* clause operative. Therefore, the Court stated that a tenant can claim a waiver or suspension of rent only if the contract contains a *force majeure* clause that provides for such an eventuality.

Where a force majeure clause in a contract operates in a manner to make the contract itself unenforceable (on the occurrence of a force majeure event), then a force majeure clause in such a contract could also be regarded as a contingency under Section 32 of the Contract Act which may allow a tenant to claim that the contract has become void.

- c. The Court observed that where a lease does not contain a *force majeure* clause, then the tenant would not be able to seek a suspension of rental obligation citing impossibility of performance. The Court arrived at this finding based on the settled position³ that Section 56 of the Contract Act applies to 'executory contracts', where there is no completed conveyance, and not 'executed contracts' such as a lease. Where possession of the property is delivered for an agreed consideration to be paid, and there is a completed conveyance, TOPA would be applicable.
- d. Proceeding with the application of TOPA in cases which do not contain a *force majeure* clause, the Court went ahead to conclude that the doctrine of *force majeure* recognised under Section 108(B)(e) of TOPA (i.e. the right of a lessee to void a lease) is applicable only in the event of complete destruction of property, which is permanent in nature. A temporary non-usage of property, such as in the case of the COVID-19 lockdown would not constitute *force majeure* and additionally, would not result in suspension of payment of rental amount.

² Energy Watchdog v. CERC and Others (2017) 14 SCC 80

³ Raja Dhruv Dev Chand v. Raja Harmohinder Singh and Another (AIR 1968 SC 1024) and T. Lakshminpathi and Others v. P. Nithyananda Reddy and Others (2003) 5 SCC 150

Based on the above analysis, the Court rejected the tenant's argument that it was entitled to a suspension of the monthly rental amount, by invoking *force majeure*. However, the Court noted that a tenant can claim some relief on an equitable basis. Therefore, it allowed some relaxation to the tenant through postponement in the schedule of payment of the rental amount.

4 Conclusion

The Court's decision provides an interesting clarification on an issue that businesses are facing regarding rental obligations in the wake of the COVID-19 lockdown. While clarifying the legal position, which does not permit non-payment of rent in this lockdown situation unless a *force majeure* clause permits such non-payment, the Court also highlighted that equitable considerations can be taken into account to allow some degree of relief in such circumstances.

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