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**TENANCY AGREEMENT DURING COVID-19 – THE
“FORCEMAJEURE” CLAUSE**- Vishali Sivagnanam & Riya Lal¹**ABSTRACT**

During the pandemic, every person's livelihood has been affected and the unemployment rate had gone up to 26% during April 2020. During this crucial time, one of the significant issues was the payment of rent and tenancy agreements that were being enforced upon both the landlords and tenants. The “Force Majeure” clause which is inserted in many contracts were the focus of every tenant and landlord and the issue of whether it can be enforced or not was raised. This paper will dive into the detail of how the clause will work according to the Indian Contract Act, 1860. The question of whether the force majeure clause needs to be mentioned in the contract to be enforced will also be dealt with in this paper. Tenancy agreements had many issues come up during the uncertain time of lockdown and the force majeure clause was just one issue that was highlighted. This paper would deal with issues that arose in the contractual obligation between tenant and landlord during the pandemic and how was the situation dealt with when it arose. Further, this paper will focus on the matters of straightforward property management that are taken on new complexities in light of the current restrictions due to which both landlord and tenant may need to consider upcoming rent reviews and whether it is worth trying to defer those in light of current circumstances. This paper will lastly deal with the solutions as well as suggestions that can be used for encouraging better compliance of tenancy agreements.

INTRODUCTION

COVID-19 has impacted all over the country and was declared as a pandemic by World Health Organization concerning the economic breakdown, lay-offs, income losses, etc. To cover the

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spread of the pandemic, the entire population in the country was ordered to stay indoors and called **LOCKDOWN** by India's Prime Minister Mr. Narendra Modi because of the lockdown, the economy has suffered the shockwaves and also affected the ability of people on one of the most significant effects on landlord-tenant relations. A lot of tenants have lost their ability to pay their rents which adversely affected the economy of landlords too. Rent relief is one of the aspects that the tenants are hoping for so that they do not go through the financial global crises. This was caused for the invocation of the Force Majeure clause in the lease deeds.

Force Majeure clauses are the clauses dealing with the risk attributes that arise from its events. These events are like the unenforceable events where the parties of the contract do not have control over some specific issues and it cannot be prevented too by exercising great caution and care. At the time of Force Majeure, the clause is required to alleviate the effects of the agreement concerning time and the cost implications. Thus, the Force Majeure does not include the negligence, wrongdoings, non-ability of the party of not performing their obligations towards the agreements, and the outcomes of external forces. Force Majeure is an unlikely event that has never been considered with the seriousness it deserves today. Pandemics of serious nature lead towards the economic shutdowns concerning the threats to life deserving the serious necessity of entering into a fresh contract or reviewing the cost impact as they are not non-enforcement in the real sense. The first phase of covid19 had international repercussions fully justifying the cause for non-enforcement. The impact of the second phase is more localized and restricted to the Indian sub-continent in particular. Accordingly, the nature of the contract and the possibility of enforceability has to be looked into. The process excludes non-performance before the pandemic. Government ordinances in this regard are protective to trade and commerce in this regard. The current situation involves a threat to human life and social ethics should precede an aggressive approach to trade and commerce.

CONCEPT OF FORCE MAJEURE

Force Majeure is also referred to as the **Act of God** clause which means **Superior Force**. According to the contract law, a force majeure is a clause with the elimination of unenforceable liability like a natural disaster, Act of God, pandemics, epidemics, and wars. Force Majeure is basically for commercial contracts to avoid enforceable contractual obligations. The relationship

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between the Force Majeure Event and the Contractual Obligations that tend to be failed is said to be a fundamental relationship². Due to unforeseen events, the affected parties are required to invoke the Force Majeure Event concerning non-performance of Contractual Obligations. Thus, Non-Performing Parties depends on Force Majeure provision in a contract that can also help to avoid the breach of a contract in every situation. The provision of Force Majeure differs from case to case and does not completely rely on contractual interpretations.

Invocation of Force Majeure Event is based on its language in the clause by determining whether the party is exempted from its performance of obligations or not. If the clause favors the Force Majeure Provision, the clause is also required to prove the event of the non-performance of the contractual obligations.

According to Section 32 of the Indian Contract Act, it was held that the contracts with the Force Majeure Clause, their rents would be waived and will be governed by the respective section itself. The decision was held because of the case **Energy Watchdog v CERC and Ors**³, the tenants claimed either a waiver or the suspension of the rent with the condition of the contract includes the clause of Force Majeure Event. In this case, it was also held that the Force Majeure clause is contingent in the respective section of the Indian Contract Act by allowing the tenant to claim the contract of the non-performance of contractual obligations that led to the void contract and surrendering the premises.

According to Section 56 of the Indian Contract Act, the doctrine of “impossibility of performance” is been defined. It says that a contract that is not possible to make, becomes void along with the act.

RIGHTS OF A LANDLORD

1. Right to choose their tenant according to their choice.
2. Right to confirm the current employment scenario of a tenant.

²Poorvi Sanjanwala and Kashmira Bakliwal, What is force majeure? The legal term everyone should know during Covid-19 crisis, The Economic Times, October 20, 2020, <https://economictimes.indiatimes.com/small-biz/legal/what-is-force-majeure-the-legal-term-everyone-should-know-during-covid-19-crisis/articleshow/75152196.cms?from=mdr>

³ Energy Watchdog v CERC and ors 307 SC

3. Right to have the prompt payment by the tenant.
4. Right to have the untimely eviction of the tenants on the ground of breach of the agreement between landlord and a tenant.
5. Right to be informed of the property's repairs, alterations, etc.

RIGHTS OF A TENANT

1. Right to raise voice against the unfair eviction of the property by the landlord.
2. Right to have the fair rent amount and not the add-ons or the unnecessary rent amount by the landlord.
3. Right to enjoy daily-essential services in the property itself like electricity, water, etc.

According to the Supreme Court of India, the rented place can be given to another tenant by a tenant and can ask the previous tenant to evict the property. The Rights of a landlord to evict from the property are defined properly in Kerala Buildings (Lease and Rent Control) Act, 1965. This act helps to regulate the lease of the buildings and also to control the rent of buildings in the State of Kerala.

SIRI CHAND CASE⁴

- The case had three-bench judges about the rental or the lease agreement. These agreements need not have the registration if it is not mentioned in the period of the lease.
- Their agreement had a monthly rent of Rs. 2000 with the increase of 10% rent annually.
- The case was initiated by the landlord on the grounds of non-payment of rent for which it was ordered to the tenant to evict the premises.
- The rent control act found out that the tenant is not registered and the same was filed by the landlord again.
- The court held that the case has clarified the position of law that a lease agreement that does not provide the duration of the tenancy is not required to be registered under the provisions of the Registration Act.

⁴ Siri Chand Case (2005) 140 PLR 726

COVID-19 AS A FORCE MAJEURE EVENT

As mentioned above, Force Majeure is an Act of God such as natural calamities, war, riots, etc. in the world. It is primarily called unexpected events in a society and is beyond our control. This clause in the contract dissolves the parties from contractual obligations and the ForceMajeure Clause just temporarily suspends the non-performance of the parties rather than restricting them completely⁵.

Currently, because of Covid-19, several businesses and people are experiencing struggles in their daily lives basis. In these extraordinary situations of lockdown, quarantine, and curfew in the countries, the people have started asking questions to either excuse or delay their obligations under a contract concerning Force Majeure Clause. These situations have led to giving some grants to the people on their contractual obligations of non-performance of a contract due to pandemic in the world and this pandemic can also be considered as “Act of God” keeping in mind that there is a force majeure clause in it. However, in a contract where there is a Force Majeure Clause may be excused from their contractual obligations. In the context of Covid-19 whether the current situation will excuse some individual or a party from their performance under a contract is strictly dependent on the specific language of the Force Majeure Clause.

Due to lockdown and the pandemic, the properties with rent, and agreement between a landlord and a tenant, the properties were not being used by the lessees. These circumstances have forced the tenants to change some clauses of the contract concerning the rent payment or the termination of the contract under the provision of the Force Majeure Clause.

According to the court, the tenants as a petitioner will not be considered the “lessees” if an eviction process is already started by their landlords and they cannot claim their contractual obligations and non-performance in a contract. It was also held in the court that due to this current circumstance of this pandemic of Covid-19, the parties of tenants and the lessees can claim their waiver clause and the non-payment of the monthly rent payment to their landlords under the provision of Force Majeure Clause and is currently governed by Section 32 of

⁵P.V Kapur, Tenancy Agreements and COVID-19 Lockdown: A ‘Majeure’ Headache, The wire, May 28, 2020, <https://thewire.in/law/tenancy-agreements-covid-19-lockdown-force-majeure>

the Indian Contract Act, 1872. The main provision would be that if the contract consists of a clause providing the waiver or suspension of rent, only then the tenant could claim the same.

TENANCY AGREEMENTS- THE RELATIONSHIP BETWEEN TENANT AND LANDLORD

Landlords' and Tenants' agreements have a significant impact on Covid-19. Majorly, a lot of workplaces are shut down all over the world especially in tenancy and the commercial aspects due to lockdown nation-wide. Surrounded by the alarming circumstances of this pandemic, the workplaces with rented office places or living in these kinds of properties are finding it difficult to obey the contractual obligations under Rent or the Lease Agreements. Each country around the world is trying to maintain the sector of these agreements in respect to the Covid-19 pandemic. The petitions were filed by tenants occupying the office spaces and the space for the home with some renegotiation of the commercial contracts in lease agreements to have the concession in their rent payment.

Since 24th March 2020, lockdown due to the pandemic, a lot of discussions have emerged talking about the agreements between the tenants and landlords and whether the rent payment can be exempted or not since the premises are not occupied by them. The relationship between a landlord and his tenant is based on contractual obligations except in cases where the relationship is governed under Rent Control and Regulation Act provisions depended on the different states the tenants reside in. The relationship has prior promises and guarantees by both the parties (Landlords and Tenants) in respect to legal documents with the reference to Rent Agreement.

In the case of **Ramanand and Others v Girish Soni**⁶, the High Court held that the rejection of a tenant's application for suspension of rent claimed is based on 'Force Majeure' but granted a postponement of rentals, that is an insightful relief in circumstances where the landlord refuses any concession. But the "waiver of rentals" would depend on the facts and situations of each case. Mere non-usage or inability to use the property cannot be treated as an event rendering the property "substantially or permanently unfit". These judgments help several

⁶Ishan Singla, Case Summary of Ramanand v/s Dr.Girish Soni, Legalservices, <http://www.legalserviceindia.com/legal/article-2432-case-summary-of-ramanand-v-s-dr-girish-soni.html>

circumstances which a tenant or landlord can face depending on whether a contract carried an adequate 'Force Majeure' clause. According to the judgment, it can be circumspect to say that the mere existence of a 'Force Majeure' clause in an agreement would not entitle a tenant to a waiver. That is except and until a scenario of inability to use or access the premises for reasons as prevalent during the COVID pandemic is stipulated contractually between parties.

TENANCY RIGHTS REGARDING FORCE MAJEURE

The Force Majeure Clause had made use of in the Pandemic time and several people invoked this clause to relieve them of the contractual obligations that need to be done. The tenancy contracts were majorly affected by this and both the landlords as well as tenants were affected as mentioned above, but the tenants were most affected as they are usually unaware of the rights given to them in situations such as this. Every tenant was concerned with earning their livelihood and having a roof over their head that they did not pay attention to the rights available to them if they were evicted by the landlords, and merely followed their notice of eviction. Eventually, this led to major issues of landlords misusing their power and serving notice when they are not supposed to giving them less time to evacuate than the time given according to law. Many landlords were demanding rent from students and laborers which was not allowed according to the law.

While the COVID 19 Pandemic was declared, the issue was considered as an act under the Disaster Management Act and accordingly on the 29th of March 2020⁷ the National Executive Committee had issued a notice which stated certain lockdown implementations that can be done by all the States/Union Territories for better execution of the lockdown. This was primarily made for migrant workers whose movements were high due to the lockdown being imposed, but the implementation of the order was not seen in the country. The order specially mentioned that the Senior Superintendent of Police/ District Magistrate /Deputy Commissioner of Police/ Superintendent of Police will be held liable if the order was not implemented but what was seen that happened in our country was the complete opposite.

⁷Sneha Sharon Mammen, Can a tenant be evicted for non-payment of rent during COVID-19?, 7 May 2021, Available at: <https://housing.com/news/can-a-tenant-be-evicted-for-non-payment-of-rent-during-covid-19/>

The order further stated two points regarding the tenancy agreements:

- a. Wherever the migrants are living in a rented property, the landlord should not collect the rent for one month.
- b. If any landlord is forcing the laborer or the student to vacate then the landlord will be held liable.

In the initial period of lockdown, India faced a huge migrant worker issue wherein they were moving from their place of work to their native place, this was majorly due to the landlords taking advantage of the workers and asking them for the rent or asking them to vacate the premises if the rent is not paid. For the migrant workers who were deprived of their livelihood and could not pay rent, they heeded the landlord's notice. Since many of them are illiterate and poor, they were not aware of the rights such as by the order issued that were available to them which caused the landlords to take advantage of them.

In the case of *Ramanand & Ors vs Dr. Girish Soni & Anr*⁸, the question of whether the payment of rent can be waived and the various other legal questions surrounding this issue were raised. One of the major questions that were answered was whether the lockdown could be taken as a reason for the tenants to claim waiver on payment of rent or suspension of rent. The Delhi High Court held that there are various types of agreements present when it comes to the tenant-landlord relationship and due to this the waiver or suspension of rent payable depends on the type of contract made. If there exists a contract between the landlord and the tenant, then the law applicable would be section 32 of the Indian Contract Act, 1872 but if there is no contract present then to invoke the force majeure clause, the tenant will have to follow the Transfer of Property Act, 1882. Section 108 (B) (e) of the transfer of property act talks about the doctrine of force majeure and the rights and liabilities of the lessee are stated in section 108 (B) (I) where the tenant cannot avoid the payment of rent according to the court and according to the section 108 (B) (e), a lease agreement can be held as invalid due to the force majeure clause. The High court concluded that when it comes to COVID 19 Pandemic a lease agreement cannot be held as

⁸Available at: <https://indiankanoon.org/doc/130579261/>

invalid due to the reason not using the premises rented for a long period but at the same time the tenant should pay the rent, it cannot be avoided.⁹

Furthermore, in the contracts where there is a provision for profit sharing terms or the payment of rent based on the monthly sales/turnover, the reason COVID 19 pandemic can be used as to acquire suspension or waiver of the rent because during the pandemic there would have been no sales and it can be proved the same due to the lockdown that was imposed. This had a direct effect on the rent payment and hence, it can be said that the force majeure event is the reason for not being able to pay the rent. The tenant is entitled here because of the force majeure event but rather the consequence of the event which caused no sales and no profit. This entitlement however can only be claimed by the tenant if there is a clause in the contract regarding the sales or profit of the business to pay the rent.

COVID-19 EFFECT ON FUTURE AGREEMENTS

The COVID 19 pandemic has certainly led to a more proofread contract being signed between the landlord and the tenants. The contractual relationship between the landlord and the team has been impacted due to the pandemic and it has led to various inspires being risen during this difficult time.¹⁰ Several of these cases go unheard in courts due to the non-functions of courts currently due to the pandemic in the meanwhile the landlord takes advantage of the situation and keeps charging the rent until the case is resolved.

The pandemic has made future tenants agree to concentrate on the force majeure clause and draft a contract more tenant-friendly rather than giving rise to such occasions in the future. Amidst the pandemic, it is safe to say that the relationship between tenants and landlords has been taking a turn. Several cases have risen due to no specific clauses such as what should be done during the force majeure or what should be done when rent is not paid due to the reason of force majeure. This made the contract open to interpretations by the court, tenant, and the landlord which was one of the major reasons legal hassles were taking place. In the future, leases and rental

⁹Vibhor Gupta, Know Your Tenancy Rights In The Time Of Force Majeure (Covid-19), 22 June 2020 Available at: <https://www.mondaq.com/india/litigation-contracts-and-force-majeure/956234/know-your-tenancy-rights-in-the-time-of-force-majeure-covid-19>

¹⁰Ayush Verma, Understanding landlord-tenant relationship amidst this pandemic, 20 August 2020, Available at: <https://blog.ipleaders.in/landlord-tenant-relationship-crisis-amid-pandemic/>

agreements would be made in such a way that nothing is left to interpretation especially regarding the force majeure clause, which was only inserted as a normal definition, now would be inserted without various conditions on what would happen if such a situation arises in the future.¹¹ There would be drafting done with specific clauses for rent deferrals or suspension in case of a force majeure event or normal day-to-day life. With the pandemic, how uncertain a world could be, the tenant and landlord could make changes that they mutually agree on for the benefit of both such as inserting the clause “partial decrease in rent if the rented premises is not occupied for 2 months or more.” These types of clauses that are specific to each tenant and landlord would increase while drafting a lease or rent agreement.

While several changes will be made to the lease or rent agreement being drafted in the future it is pertinent to note that all the changes are meant nothing in the eyes of law if not registered or stamped duly. After the lesson of a pandemic where every agreement was taken to the court for various reasons, every agreement would be made sure that it is stamped duly and registered according to the rent control act or any other act applicable to various states. This increase registering means that government can now keep a check on landlord and tenant relationships and avoid any disadvantage arisen from the relationship.

CONCLUSION

The pandemic has changed several dimensions and sectors of the business world amongst them all the commercial rent sector has been affected and changed the way the sector has been working. Various issues have risen, and various loopholes were sought to forgo the obligation that is given to the landlord or tenant in their tenant/lease/rent agreement. There have been several issues with the tenancy that the pandemic brought forward and in the future, the agreements to be drafted would make sure that such situations will not occur. The tenant and landlord relationship had changed dynamics whether positive or negative, it has paved the way for different thinking. The force majeure clause which was seen to be a just clause routinely drafted into the agreement has been changed to a clause that has to be drafted more keenly. The legal drafting of rent or tenant agreements will be more scrutinized in the future and more

¹¹Kiran Bhardwaj, Impact of COVID-19 on the Landlord and Tenant issues, 15 Sept 2020, Available at: <https://www.indialegallive.com/special-story/impact-of-covid-19-on-the-landlord-and-tenant-issues/>

specific to make sure nothing is left for interpretation. It can also be said that the contractual relationship between landlords and tenants has become more than just contractual obligations. Many landlords have given leeway to tenants who could not pay the rent or any such issues which have garnered a good-natured relationship between them. We can say in the future landlord and tenant relationship would be more than just contractual obligations and this will lead to matters being settled amicably rather than going to court for cases. The importance of such a relationship has been highlighted in the pandemic and hopefully, such cases of giving leeway to tenants would increase and lead to good harmony.

