

LAWS RELATING TO WAIVER OF FORFEITURE AND WAIVER OF NOTICE TO QUIT

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ABSTRACT

Waiver of forfeiture and waiver of notice to quit are legal principles that protect tenants from abrupt lease termination by requiring landlords to act consistently with the continuation of the tenancy, such as accepting rent after knowing of a breach. When a landlord knowingly affirms the lease's existence through clear and communicated actions, the right to forfeit is lost for that breach, though other remedies may remain. Similarly, a notice to quit is waived if either party treats the lease as ongoing after issuing notice, often through rent acceptance or continued negotiations. These doctrines ensure fairness and prevent unintentional loss of tenancy rights.

KEYWORDS: Landlords, Tenants, TP Act, Lease termination, Tenancy, Waiver, Forfeiture, Notice to quit.

INTRODUCTION:

In the law of landlord and tenant, the concepts of waiver of forfeiture and waiver of notice to quit play a significant role in balancing the rights and obligations of both parties. These doctrines are rooted in principles of equity and fairness, ensuring that rigid legal rights are not enforced in a manner that results in undue hardship or injustice. Forfeiture refers to the landlord's right to terminate a lease when the tenant commits a breach of its conditions, such as non-payment of rent or misuse of the property. However, the law recognizes that a landlord may, either expressly or impliedly, waive the right of forfeiture. Waiver of forfeiture occurs when the landlord, with full knowledge of the breach, performs an act that treats the

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lease as subsisting, most commonly by accepting rent accruing after the breach. Such conduct indicates an intention to affirm the continuation of the tenancy rather than to determine it. Similarly, a notice to quit is a formal legal notice served by either party to terminate a tenancy. The law provides that such notice can also be waived by the conduct of the parties. Waiver of notice to quit arises when, after the expiry or service of the notice, the landlord or tenant acts in a manner inconsistent with the termination of the tenancy, such as accepting rent or allowing continued occupation. This waiver may be express or implied and reflects mutual consent to continue the tenancy. Both waivers are governed by the Transfer of Property Act, 1882. The provision of this Act prevents arbitrary eviction and protects tenants from sudden termination, while also encouraging landlords to act consistently with their asserted legal rights. Thus, the laws relating to waiver of forfeiture and waiver of notice to quit serve as essential safeguards within tenancy law, promoting stability, fairness, and equitable conduct in landlord-tenant relationships.

DETERMINATION OF LEASE BY FORFEITURE:

Section 111 deals with determination of lease. Further, clause (g) of the section lays down the determination of lease by forfeiture³. According to the provision, a lease of an immovable property is determined by forfeiture in the following cases:

1. Breach of Express Condition

When the lessor imposes upon the lessee any express condition and the lessee fails to perform that condition, there is a breach of condition by the lessee. The lessee's right under the lease is lost upon breach of such condition. In **Raghuram Rao V. Eric P. Mathias**⁴, the Supreme Court held that Section 111 (g) itself requires that for the forfeiture of a lease, the lessee should commit breach of an express condition which must provide that on breach thereof, the lessor may re-enter.

2. Denial of the landlord title:

Without any express condition contained in the lease, a case for the forfeiture arises when the lessee repudiates the landlord's right and sets up title in himself or in a third

³ Sec. 111(g), TPA, 1882: A lease of immovable property determines by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re- enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.

⁴ AIR 2002 SC 797

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party. Such conduct on the part of the lessee is sufficient to justify the landlord in forfeiting the lease. To work forfeiture under this sub-clause, the denial must be unequivocal for the law leans strongly against forfeiture. In **Shiam Behari v. Madan Singh**⁵, the court held that an omission to pay rent or even a refusal to pay does not constitute a disclaimer. The principle of forfeiture is founded on the rule that a man cannot approbate and reprobate at the same time.

3. Insolvency:

Insolvency of the lessee is another condition for the applicability of Section 111 (g), even though it by itself does not forfeit the lease. There must be a stipulation between the parties that the lessee's right shall be lost in case of his insolvency, and the lessor would be entitled to resume possession. However, the lease in such a case is not determined ipso facto. A written notice must be served either by the lessor or lessee regarding the same.

WAIVER MEANING

A waiver means that the lessor (landlord) gives up their right to forfeit (terminate) the lease, even though the lessee (tenant) has committed a breach that would normally justify termination. In **Rambux V. Sohanlal**⁶, it was held that the waiver is an intentional relinquishment of a known right or such conduct as warrants an inference of the relinquishment of such right. It was also held in **Surendra v. Smt. Panchi Bibi**⁷ that, the foundation of waiver is the knowledge of the person who said to waive his rights and there cannot be waiver in ignorance. Unless, therefore, the lessor is aware that forfeiture has been incurred there cannot be any question of waiver of forfeiture. In the ultimate analysis on the juristic foundation the concept of waiver is in essence based on agreement. In other words, the landlord must agree to waive the forfeiture or more accurately the breach of the express condition which leads to forfeiture.

WHAT IS WAIVER OF FORFEITURE?

Waiver of forfeiture means that the lessor, after a tenant has committed a breach that would justify termination of the lease, gives up (waives) the right to forfeit the lease by their

⁵ (1945) All. 145

⁶ 1961 RLW 623 at p. 626.

⁷ 83 CLJ 327

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conduct. “Waiver of a right of re-entry can only occur where the lessor, with knowledge of the facts upon which his right to re-enter arises, does some unequivocal act recognising the continued existence of the lease”⁸. “If the landlord by word or deed manifests to the tenant by an unequivocal act a concluded decision to elect in a particular manner, he will be bound by such an election. If he chooses to do something such as demanding or receiving rent which can only be done consistently with the existence of a certain state of affairs, viz. the continued existence of the lease or tenancy in operation, he cannot thereafter be heard to say that that state of affairs did not then exist”⁹.

WAIVER - THE INGREDIENTS:

The following are the essential requirements to apply waiver viz.,

- (1) Landlord’s knowledge of the breach of covenant
- (2) The unequivocal recognition by the landlord of the continued existence of the lease
- (3) Communication of that recognition to the tenant.

(1) Landlord’s knowledge

The lessor must be aware or informed that the lessee has breached a covenant of the lease. Knowledge of the basic facts which in law amount to a breach of covenant.¹⁰ Burden of proof lies on the tenant.¹¹

Landlord’s knowledge - imputed knowledge

Personal knowledge of landlord is not necessary. In *Metropolitan Properties Co v Cordery*¹², the court held that, the knowledge acquired by an employee of the landlord imputed where employee under a duty to report the matter in question. Where agent’s authority is limited/no duty to report a breach of covenant to the landlord, knowledge will not be imputed to the landlord.

Landlord’s knowledge - suspicion

⁸ Matthews v Smallwood [1910] 1 Ch. 777, 786, per Parker J

⁹ Central Estates (Belgravia) v Woolgar (No. 2) [1972] 1 W.L.R. 1048, 1054, per Buckley L.J.

¹⁰ David Blackstone v Burnetts (West End) [1973] 1 W.L.R. 1487

¹¹ Van Haarlam v Kasner Charitable Trust (1992) 64 P. & C.R. 214

¹² (1980) 39 P. & C.R. 10

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where landlord has reasonable grounds to suspect a breach, must take steps to establish the position or will be imputed with knowledge¹³.

(2) Unequivocal recognition of existence of tenancy

Positive act required- lying by and witnessing the breach is no waiver. In *Kelsey v Dodd*¹⁴, it was held that, long acquiescence in repeated breaches of covenant will usually amount to a waiver.

(3) Communication to tenant

Act or statement not communicated to tenant is not an election to waive the right to forfeit. Example: assignee of the reversion of a lease who takes “subject to and with the benefit of the lease” and with knowledge of a breach of covenant by the lessee which would entitle the lessor to re-enter does not waive the right of re-entry¹⁵. In *David Blackstone v. Burnetts*¹⁶ it was held that, where the act of waiver relied on is the sending of a document, the waiver is not effective until the document is received.

INTERPRETATION OF THE SECTION 112

Sec 112 enacts that a forfeiture incurred under Sec 111(g) could be waived in any of the following

- (1) By Acceptance of rent accrued due after the forfeiture was incurred, but if it be accepted after institution of an ejectment suit against the lessee it is no waiver.
- (2) By distress for rent accrued due after the forfeiture was incurred.
- (3) By the lessor doing an act shewing an intention to treat the lease as subsisting. Provided, that the lessor was aware of his rights that the forfeiture was incurred.

(1) Acceptance of Rent

“Acceptance of rent” means that after a breach has occurred, if the landlord accepts rent that became due after the breach, it can imply that the landlord has waived (given up) the right to forfeit the lease. A forfeiture incurred under Section 111 (g) is waived

¹³ Van Haarlam v Kasner Charitable Trust (1992) 64 P. & C.R. 214

¹⁴ (1881) 52 L.J. Ch. 34

¹⁵ London & County (A. & D.) v. Wilfred Sportsman [1971] Ch. 764

¹⁶ (West End) (1972) 1 W.L.R. 1487

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by the lessor or his agent having a general authority to receive rent accepting rent accrued due after the forfeiture has been incurred¹⁷. But acceptance of rent after institution of a suit to eject lessee on the ground of forfeit is no waiver. The election to forfeit is complete and irrevocable once the suit for ejection is instituted¹⁸. The acceptance of rent after the determination of the lease would not amount to waiver since the payment of rent by a statutory solatium which a lessee is required to pay to the landlord, there being no element of contractual liability. In *W. Suryabhan V. Maharashtra Revenue Tribunal, Nagpur*¹⁹, it was held that, where the landlord recovers the rent from statutory lessee after obtaining an order of termination of lease under Berar Regulation of Agricultural Leases Act, 1952, it was held that there is no waiver of his right to obtain the possession of land. The institution of the suit is simply a mode of manifesting the possession of land. On re- admission after determination of the tenancy upon the forfeiture the old tenancy is not revived. In *Chengiah V. Damara Kumara*²⁰, it was held that the lessee is bound to pay compensation for use and occupation.

In *Davenport v. Smith*²¹, it was held that, the waiver of the past breaches does not preclude the lessor from enforcing forfeiture when the same or any other condition is subsequently broken, the condition being such that the breach thereof provides for re-entry. The rent accepted which is pleaded as a waiver under Section 112, TPA, must have accrued after the date of the forfeiture and not prior to it.

(2) Distress for Rent

Forfeiture is waived by distress for rent due since the forfeiture. In case of a continuing forfeiture as for non-repair, there is no waiver after the time of distress. In *Swarnamavee v. Afaraddi*²², it was held that, no waiver is operative unless the lessor waives with knowledge that the forfeiture has been incurred. The onus would be on the lessee to prove knowledge of the lessor. Similarly the Proviso 2 expressly says that where rent is accepted after the institution of suit to eject lessee on ground for

¹⁷ Raj Mohan De v. Mati Lal Saha Poddar, (1915) 22 CLJ 546; Chotu Mian v. Mt. Sundri, AIR 1945 Pat 260

¹⁸ Padmanabhaya v. Ranga, (1911) 34 Mad 161; Puramal Jaiswal v. Onkar Nath Choudhary, AIR 1959 Pat 128

¹⁹ AIR 1970 Bom 167

²⁰(1913) 24 MLJ 263.

²¹ (1921) 2 Ch.270

²²(1933) 60 Cal 47

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forfeiture, such acceptance is not a waiver. In *State v SS Devi*²³ it was held that, the rent claimed for the period subsequent to the forfeiture in a suit for eviction on ground of forfeiture can be accepted by the landlord only after the institution of the suit. It was further laid down that if the acceptance itself does not amount to waiver, the mere claim acceptance in respect whereof can take place only after the institution of the institution cannot be said to be under the mischief of the clause 'any other act on the part of the lessor showing an intention to treat the lease as subsisting' in Sec 112. Once the election to forfeit is complete and irrevocable by the institution of the suit, claim for rent in that suit cannot be taken as waived of forfeiture. However, there is an exception to the general rule. The section provides that acceptance of rent due after forfeiture has been incurred is not waiver, if it is accepted after the institution of a suit in ejection against the lessee.

DETERMINATION OF LEASE BY NOTICE TO QUIT

Sec 111(h) provides that the determination of lease by notice to quit. A lease may be terminated by a notice to quit given by the lessor, or of his intention to quit given by the lessee.²⁴ In *Periaswami Pillai v. Sri Arunjadeswaraswamy Temple*²⁵ the court held that, a lease may be terminated on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to another. In other words, a tenancy at will is terminated by a demand for possession. A tenancy for a fixed term determines on the expiration of the term. A periodic tenancy, however, is terminated only by a proper notice to quit. Since notice is a unilateral act performed in the exercise of a contractual right, it must conform to the terms of the contract;²⁶ and the onus of proof of its validity is upon the person who gives it.²⁷

WAIVER OF NOTICE TO QUIT

According to Section 113 of the Transfer of Property Act, 1882, a notice to quit is waived with the implied or express consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

²³ AIR 1972 Pat 200

²⁴ Section 111(h), The Transfer of Property Act, 1882

²⁵ AIR 1967 Mad 257

²⁶ Dugger v. Shepherd, (1946) 1 All ER 133

²⁷ Lemon v. Lardeur, (1946) 2 All ER 329

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(1) Scope of the Section

If after determining the tenancy by notice the landlord chooses to accept rent again from the tenant, a notice for determination of the lease already given by the landlord to the tenant will be deemed to have been waived. No question of waiver arises after the landlord has brought a suit on the basis of a valid notice given for determination of the lease, though it is always open for the landlord to renew the lease at any time he pleases.²⁸ Section 113 clearly indicates that there should be an indication on part of both lessor and lessee. In *SailabalaDassee, Smt. v. HA Tappassier*²⁹, the court held that, in order to determine the question of waiver of a notice to quit, it is necessary to find out from the conduct of the landlord, whether the lease is intended to be treated as subsisting or not.

(2) Interpretation of the Section

According to the section, once a valid notice to quit has been served it automatically brings the tenancy to an end on the expiration of the notice and cannot be withdrawn or waived. After a valid notice to quit has been served, however, the landlord and the tenant may expressly or by implication for the grant of a new tenancy to take effect on the expiry of the notice.³⁰ Questions of waiver usually arise when some act is done by the landlord after the expiration of the notice, which either necessarily or prima facie imports the recognition of an existing tenancy.³¹ Where a landlord having instituted a suit pursues it in spite of receiving rent, there is no question of waiver, although he may not specifically call it compensation for use and occupation and may inaccurately call it rent. The payment of the rent by the tenant for a period subsequent to the termination of the tenancy and acceptance of the same has been laid down as a statutory proof of the intention of both the parties to treat the lease as subsisting. It is one of the modes of proof of the agreement to treat the lease as subsisting. But the amount is paid as rent and received as such. In order to constitute waiver the two ingredients must exist concurrently. Otherwise, the act of acceptance of rent by itself without reference to the intention of the lessor cannot be deemed to be waiver.

²⁸ Moti Lal Basant Lal, AIR 1956 All 175 at p. 177

²⁹ AIR 1952 Cal 455 at p. 462

³⁰ Dr. Sir Hari Singh Gour, Commentary on The Transfer of Property Act, 1882, Volume I, Delhi Law House, 12th Edition (2010) at p. 2221

³¹ 23 Halsbury (Salmond), 527

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In *Muthu M V. Arulmigu Sundareswararswamy Devasthanam*³², it was held that, the addition to the receipt of the rent by the landlord to establish waiver there should be other conclusive evidence to show that the landlord is inclined to treat the lease as subsisting. The notice can be waived by the mutual consent of the lessor and the lessee. The consent of the lessee can be given expressly or by implication, it can be inferred and the intention on part of the lessor to continue to treat the lease as subsisting can be shown by any act of the lessor. The acceptance of rent expiry of the notice by itself may not constitute waiver. But it is an act on the part of the lessor which will go to show the intention on his part to treat the lease as subsisting. If after the service of notice landlord accepts rent Section 113 of the Act will be attracted.³³ The acceptance of rent subsequent to the filing of the suit will not operate as a waiver in the usual course. In *Purohit Lakshmanchandji v. Vetcha Venkata Sree Ramachandra Murty*³⁴, it was held that, there is no warrant for the view that mere receipt of rent, whatever may be the intention of the lessor, should be of its own force, divorced from the circumstances of the case, be regarded as amounting to a waiver.

(3) Principle

Once a valid notice is given, the tenancy will be determined upon its expiration. The parties can waive the notice. The consent of the parties makes a new agreement. The parties can nullify the operation of the notice as to quitting, by agreeing upon a new tenancy, whether on the terms of the former or not, to commence from the time of its expiration. However the tenant has to establish that the rent taken by the landlord was legal rent indicating his assent to the former's continuing in possession.³⁵ A waiver of notice to quit cannot be merely inferred by an act on part of one of the parties and either one of the actions or any act which thereby does not spell a contract or agreement between the parties to a particular effect spelling a waiver. Waiver essentially presupposes an election by the landlord and also on the part of the tenant where the tenant consents to the notice being waived. An election is not a matter of inference but is a matter of positive choice. In *Ramjilal v. Gulabrao*³⁶ it was held that,

³²2001 (1) CTC 438 at p.44

³³ Jagannath Karanani v. Sayed Abdul Wahed, AIR 1962 Assam 148 at pp. 149, 150

³⁴ AIR 1976 AP 428 at pp. 429, 430

³⁵ Mohan Lal Goela v. Siri Krishnan, AIR 1978 Delhi 92 at pp. 98, 99

³⁶ AIR 1979 Bom 95 at p. 98

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hence an election should not be merely inferred from the circumstances that after the institution of the suit for the ejectment, payment was received by the landlord. Section 113 would come into picture only when there is an act on the part of the lessor showing an intention to treat the lease as subsisting. There could not be any occasion for the landlord to show such an intention when he has already filed a suit on the basis of the termination of tenancy. In such a case, it is the suit that has to be decided and mere payment of some amount of rent would be irrelevant, unless a party pleads and proves that on account of the said payment, there was a compromise of the suit.³⁷

(4) Applicability

Section 113 of The Transfer of Property Act, 1882 can hardly come into play in the case of a statutory tenant, that is, a person who is entitled to remain in possession of the premises by virtue of the provisions of a Rent Control Act. Section 113 is restricted to a notice given under Section 111(h) of The Transfer of Property Act, 1882, namely, the consequences of waiving a notice to determine the lease or to quit the property. However, in the case of a statutory lease, he is bound to pay the amount of lease money not only till the statutory lease comes to end by an order of the Court but until possession is given. The right being created by statute, the corresponding obligation to pay the statutory rent until possession is delivered is implicit in such a situation.³⁸

(5) In case of Joint Owners

A joint notice of demand relating to a joint tenancy by the two co-landlords could not be waived by a single landlord. In *Chhangur Ram v. Ganesh*³⁹, it was observed that a waiver to be effective or binding must be made by the entire body of the joint owners and it was not open to one of the joint owners to waive such notice.

CONCLUSION

The laws relating to waiver of forfeiture and waiver of notice to quit play a vital role in balancing the rights and obligations of landlords and tenants. These principles are based on fairness, equity, and the conduct of the parties after a breach or termination notice has arisen. Waiver of forfeiture occurs when a landlord, after becoming aware of a tenant's breach of

³⁷ Hashmatrai v. Tarachand, AIR 1979 Bom 95 at p. 98

³⁸ Waman Suryabhan v. Maharashtra Revenue Tribunal, Nagpur, AIR 1970 Bom 167 at pp. 170, 71

³⁹ 1978 All LJ 486

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lease conditions, acts in a manner that recognizes the continuance of the tenancy, such as accepting rent. By doing so, the landlord loses the immediate right to terminate the lease on that ground. This doctrine protects tenants from arbitrary eviction and ensures that landlords act consistently with their intentions. Similarly, waiver of notice to quit arises when either party, after serving or receiving a valid notice to terminate tenancy, behaves in a way that indicates the tenancy continues. This prevents sudden or unfair termination where conduct suggests otherwise. These legal concepts are significant because they encourage honesty, certainty, and good faith in landlord-tenant relationships. They also prevent misuse of technical rights and promote justice by giving importance to actions rather than mere formalities. Courts generally examine the facts, conduct, and intention of the parties before deciding whether waiver has taken place. Therefore, the laws on waiver of forfeiture and waiver of notice to quit serve as important safeguards in property law, ensuring that termination of tenancy rights is carried out fairly, lawfully, and in accordance with equitable principles.

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