

DE JURE NEXUS LAW JOURNAL

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**NON-APPLICABILITY OF SECTION 56 OF INDIAN CONTRACT
ACT, 1872 TO LEASE AGREEMENTS**

Introduction

The research paper aims to explain the doctrine of frustration as provided under Section 56 of the Indian Contract Act, 1872 and its impact on lease agreements formed between the lessor and the lessee, who are bound by the contractual obligations imposed upon them by the terms of the lease deed, governed by the Transfer of Property Act, 1882. After going through the research paper, one would be able to understand the doctrine, and its application and non-application in terms of agreements to lease and lease deeds.

In order to understand the topic well, we first need to understand the terms 'Agreement to lease' and 'Lease deed'.

What is an Agreement to Lease?

It is an agreement between two or more parties to enter into a lease on a fixed date or upon the satisfaction of the conditions mentioned in the agreement to lease or lease agreement. In its nature it is an executory contract.

What is a Lease Deed?

It is defined under Section 105 of the Transfer of Property Act, 1882 and the section basically states that 'A lease deed is a contract under which the lawful owner of a property transfers the possession of his immovable property to another person for an amount of consideration for a particular period of time'. In its nature it is an executed contract.

The transferor here is called the 'Lessor' and the transferee here is called the 'Lessee'.

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What is Section 56 of the Indian Contract Act, 1872?

Section 56 of Indian Contract Act, 1872 states the following –

1. Where there is an agreement to do an impossible act, it renders void.
2. Where there is an agreement under which the promisor undertakes to perform certain an act, which afterwards due to by reason of some event which the promisor could not prevent or the act which the promisor had undertaken to perform becomes unlawful, then the contract becomes void.
3. Where under an agreement, the promisor undertakes to perform an act, he being aware of its impossibility or with reasonable diligence could have known of its impossibility, and the promisee being unaware of its impossibility. The promisor here is bound to compensate the promisee for any loss sustained by reason of non-performance of the promise.

Section 56 of the Indian Contract Act, 1872 is also known as the 'Doctrine of frustration'.

Does Section 56 of the Indian Contract Act, 1872 apply on Agreements to Lease and Lease Deeds?

This question was well answered by the High Court of Delhi in its judgement in the case between *Ramanand & Ors. v. Dr. Girish Soni & Anr.*

Facts

The appellants i.e., *Ramanand & Ors* were the owners of a shoe store 'Baluja' in Khan Market, Delhi. The tenanted premises was leased to them by Dr. Girish, through a lease deed which came into being i.e., was executed on February 1, 1975 and the monthly rent stipulated was

¹ Available at: <https://taxguru.in/corporate-law/lease-agreement-lease-license-differences.html> [Last accessed on 21st July, 2021].

300 INR. Then in 2008, the respondents i.e., Dr. Girish Soni and Anr. filed a petition to evict the appellants from the premises, under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The Senior Civil judge cum Rent Controller (RC) initially granted leave to defend to the appellants on March 31, 2012. However, by an impugned order on March 18, 2017, a decree to evict the appellants was passed. This order was then challenged and appealed, although the appeal was dismissed by the Rent Control Tribunal (RCT) via an order dated September 18, 2017 on the ground that the appeal was unfit to be maintainable. Then another petition (present one) challenging the order of eviction decreed on September 18, 2017, was filed before the Delhi High Court. The petition filed was first heard on September 25, 2017, and a single judge put a stay on the order of eviction subject to appellants paying the respondents a sum of 3.5 lakhs INR for every month by the 10th day of the month, this being in effect from October 2017.

Then came the Covid-19 outbreak, and in this regard an application of suspension of rent was filed before the Delhi High Court, during the period of lockdown. The appellants contended that due to the lockdown, there was a downright disruption of all the business activities, including the business run and owned by the appellants. The appellants further contended that the Covid-19 lockdown is a force majeure event and beyond their control. They asked for complete waiver of the monthly payment of rent as directed on September 25, 2017 or at least some concession or partial relief, or postponement or part payment of the said amount.

Issues

- (I) Whether Section 32 of the Indian Contract Act, 1872 is applicable in the given case.
- (ii) Whether Section 56 of ICA is applicable only to ‘executory contracts’ and not to ‘executed contracts’.
- (iii) Whether temporary non-use of the premises would render the lease void.

Arguments

By the Appellants

They contended that this application was made with respect to the interim order dated September 25, 2017 which stated that any default in payment of rent will lead to eviction.

They were however willing and able to make part payment of the monthly rent even though the lockdown existed. In their prayer, they further contented that since there has been no business during the period of lockdown, some form of remission on the monthly rent shall be provided to them. Inter alia, they said that a remission must only be given on the monthly rent amount which had to be paid only during the lockdown period, and otherwise they were willing and ready to pay the monthly rents regularly.

By the Respondents

The respondents contented that the appellants had been using the said premises since year 1975, and have been well off with due to the grace of the sums they have earned from their business operations since then. They (appellants) even purchased a neighbouring shop in Khan Market, Delhi. They further contented that the amount set by Delhi High Court as 3.5 lakhs INR was a very payable amount comparing to the rent amounts prevalent in the market, which is much more than the amount set by the Delhi High Court.

They further contented that Force majeure does not apply in the given scenario since the case comes under the purview of the Delhi Rent Control Act. Further stated that, the respondents needed the place for his own use being a dentist. Adding to this, they said that a mere disruption cannot exempt them from their rent obligations as the respondents relied on the sums received from the tenanted premises.

Observations and Judgment of the Delhi High Court

The court observed that the relationship between a landlord and the tenant can be of various forms. They are either governed by the contracts or the law.

This basically means that when there is a force majeure clause in the contract, and provides for suspension of rent or monthly payment then it is valid and binding, but in case (as in the case here), there is no regards as to any force majeure event, the matter is to be decided with the relevant law applicable in the circumstances. Talking about the circumstances like the Covid-19 outbreak, the grounds on which a tenant or a lessee could obtain relief would be presence of a force majeure clause express or implied in the contract so formed. Contracts of such nature i.e., with presence of a force majeure clause would be governed or come under the purview of

Section 32 of the Indian Contract Act, 1872 which talks about enforcement of contingent contracts.

The Delhi High Court relied on the judgement of the Apex Court in the case between Energy Watchdog v. CERC and Others [(2017) 14 SCC 80], in which it was held that when there is an express or implied clause dealing with a force majeure event, then section 32 would apply and the tenant may obtain relief or remission due to existence of a clause of such nature. But where in cases, a force majeure event falls out of the purview of the terms of the contract, then Section 56 of the Indian Contract Act, 1872 applies which basically deals with impossibility of performance and the absence of clause express or implied in nature, cannot give any chance of respite to the tenant and the monthly charges or the fixed charges would be due as when due and payable as per the terms of the contract. In absence of a clause, the tenant/lessee will definitely try to apply the doctrine of frustration, but the same would not be applicable in the cases of executed contracts, in the same manner as it is not applied to the case we have.

Relying on another judgement of the Apex Court in the case between Raja Dhruv Dev Chand v. Raja Harmohinder Singh and Another [AIR 1968 SC 1024], in which the apex court stated that there is a clear line of difference between an 'executory contract' and an 'executed contract, and Section 56 of the Indian Contract Act, 1872 does not apply to executed contracts. Basically, there is no application of Doctrine of frustration i.e., Section 56 of the Indian Contract Act, 1872 to 'lease deeds', but the doctrine may be applied to 'agreements to lease'.

The Delhi High court also relied on the observations laid down by the Apex court in the case between Raja Dhruv Dev Chand v. Raja Harmohinder Singh and Another [AIR 1968 SC 1024], in which the Apex court held that where there is any property leased, and is in some way not satisfying the purposes of the lessee, he cannot avoid the lease on grounds of such nature. Until and unless there is complete destruction of the property Section 108(B)(e) cannot be brought into the picture by the lessee.

Answering the third issue, The court stated that temporary non-use of premises due to the lockdown cannot render the lease void under Section 108(B)(e), of the Transfer of Property Act, 1882.

The court arrived at a conclusion by disposing off the appeal and stated that since there is no existence of a rent or a lease agreement between the two parties, Section 32 is inapplicable. Section 56 is also inapplicable in the present scenario and the case comes under the purview of

Delhi Rent Control Act. The appellants were further directed to pay the sums due to the respondents and hence no suspension of rent or remission of the same was granted.²

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² Available at: <https://www.ahlawatassociates.com/blog/impact-of-pandemic-consequent-lockdown-upon-payment-of-rent/> [Last accessed on July 21st, 2021].

³ Available at: https://www.livelaw.in/pdf_upload/pdf_upload-375186.pdf [Last accessed on July 21st, 2021]
<https://www.ahlawatassociates.com/blog/impact-of-pandemic-consequent-lockdown-upon-payment-of-rent/>