

# Non-Payment of Rent: Ground for Eviction in COVID Era

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## Abstract

The paper aims at representing the problems faced by people due to non-payment of rent during the COVID-19 period, resulting in them facing eviction from their rented houses. Most of the tenants in this case belonged to lower sections of the society - people working in the informal sectors in search of work and livelihood. They were left helpless on the streets because their source of earning was dependent on daily basis works and all their sources of income were stopped due to lockdown. The government though provided them with the basic facilities through shelter homes and hunger camps. The same happened with people operating their businesses from rented offices or shopping complexes. They were also not able to pay the rents due to fall in income and various other problems. Overall, the spending capacity of consumers has declined, and all these factors are affecting the nation's economy steadily. The rent agreements are governed by various statutes such as The Indian Contract Act 1872, Transfer of Property Act 1881, and many other rent management acts. Ministry of Home Affairs (MHA) has also passed certain rules regarding the relief and exception from demanding rent from labour migrants and workers during the pandemic lockdown. Additionally, many PILs (public interest litigations) have also been filed in the high court and the supreme court because of the unexpected and unprecedented conditions resulting due to the COVID-19 pandemic. Court has accepted many exceptions which include non-payment of rent during lockdown, non-deduction of wages during the period and waiver of interest on EMIs etc. Violation of these orders will lead to imposition of criminal actions against persons responsible in their respective jurisdictions.

**Keywords:** Non-Payment, Rent, Eviction, COVID-19

## Introduction

The spread of COVID-19 has led to serious implications across the globe, and India is no exception. The virus has caused unusual and inestimable damage to the economies worldwide, a situation equated to the Great Depression 1921, and caused deaths of millions of people across the World. It has led to such a circumstance that even day-to-day activity such as access to print media is difficult. The lack of demand resulting into lesser production has led to the loss of millions of jobs worldwide apart from causing inestimable damage to the social and economic conditions around the globe. Among all these pertinent issues which are being faced by people, one which is affecting the most is the effect of coronavirus on businesses. Even as the economy has virtually come to a halt and people are being directed to remain quarantined in their respective homes, several occupants are being removed by their landlords due to their inability to pay the rental amount.

## Intersection between Landlord-Tenant Disputes Due to COVID-19

As most of these tenants (occupants), belonged to the lower status of the society and were primarily migrants working in the informal sectors, they were left helpless, high and dry, on the streets. With the situation turning drastic, the Government had to step in to provide them basic facilities through shelter homes and hunger help camps. Further, a majority of these tenants were living in the tenanted property on the basis of oral agreement and with the understanding that rental charges would have to be paid on a month-to-month basis, thus denying them of many necessary safeguards provided under the law.

Insofar as commercial rental is concerned such as those of shops in a shopping complex, office spaces, etc., it is

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a bit ambiguous whether the tenant can take the option to the force majeure clause, presuming that such a clause is present in the contract deed in the first place, to avoid paying the rental amount till the lockdown continues. There is a lack of clarity on this issue due to a lack of authentic judicial precedent. Even after the lockdown is raised, the businesses are finding it difficult to pay the rent amount as it will take reasonable time for the economy to bounce back to the same level as it was prior to the lockdown. Further, there is a significant cutback in consumer spending post the lockdown due to less purchasing power of the consumer.

## Statutory Framework and Force Majeure Clause

In India, the relation between the owner and the tenant is ruled by varied statutes viz. the Contract Act, 1872 (hereafter, the Contract Act'), the Transfer of Property Act, 1881 (hereafter, the Property Act'), and the rent management acts of various states. Section 56 of the Contract Act stipulates, the circumstances when even a written agreement obligation could also be exempt. an extract whereof is reproduced herein below:

“56. Agreement to do impossible act. Contract to do an act afterwards becoming impossible or unlawful. - A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful”.

However, it should be a bone of contention if one takes the recourse of the above-stated provision to crawl out of its liability under a written rent agreement, particularly once the agreement between the parties is ruled by the Property Act or the Rent Management Act. Because the case could also be, as each these 2 statutes area unit special statutes and its well-settled law the special law convert the final law. Further, because the relationship between the property owner and the tenant is primarily based upon the lease deed/lease agreement that is a legal written agreement, therefore the disputes, together with non-payment of rent, if any, shall be ruled strictly under the terms and conditions provided thence.

In addition to the definition of inevitable accident provided under Section 56, to know its true import, one could also consult its definition in a general sense.

*Black's Law Lexicon* (Eighth Edition), defines inevitable accident as: “A written agreement provision allocating the danger if performance becomes not possible or impossible, especially as a result of an occurrence or result that the parties couldn't have anticipated or controlled”.

Similarly, *Oxford Dictionary* defines force majeure as “unexpected conditions, such as war, that can be used as an excuse when they stop somebody from doing something that is written in a contract”.

It is to be noted that that term ‘force majeure’ is not to be construed as an ‘Act of God’ as the former is of broad import than the latter. However, it has to borne in mind that since the one-time is an exception to the general rule of performance of contract, the same has to be understand narrowly.<sup>1</sup>

However, it is not the first time that the contracting parties have resorted to force majeure clause citing frustration of performance, some of these cases wherein it has invoked earlier are:

In *Bikram Chatterji v. Union of India*,<sup>2</sup> it has been opined by the Supreme Court that (SCC Online para 129):

“129. A transparent breach of the act of RERA has been done by the Amrapali Group. Since RERA observe timely completion of projects once the booking has been granted Under Section 5 and addition of registration. Under Section 6, it is only in the event of force majeure in case there is no default on the part of the promoter, booking can be grown in collection for the period not exceeding one year”.

Similarly, in another case *Dhanrajamal Gobindram v. Shamji Kalidas and Co.*, the Supreme Court has opined as under: “19. McCardie, J. in *Lebeauvin v. Crispin*, has given an account of what is meant by “force majeure” with advice to its history. The announcement “force majeure” is not a mere French sort of the Latin expression “vis major”. It is no doubt a term of wider import. The strain has arisen in the past as to what could legitimately be comprising in “force majeure”. Judges have agreed that strikes, failure of machines, which, though normally not cover in “vis major” are included in “force majeure”. An inspection of the decision on the subject into which it is not mandatory in this case to go shows that where reference is

<sup>1</sup> See *Energy Watchdog v. CERC* (2017) 14 SCC 80

<sup>2</sup> 2019 SCC Online SC 901

made to “force majeure”, the aim is to save the performing party from the upshot of anything over which he has no control. This is the vast meaning which will tend to “force majeure”, and “even majeure”, and albeit this be the meaning, it’s obvious that the condition about “force majeure” within the agreement wasn’t vague. The use of the word “usual” makes all the difference, and therefore the meaning of the condition could also be made certain by evidence of a few acts of God clause, which was in contemplation of parties...”

In a very latest judgement provide by the Bombay High Court in *Standard Retail Pvt. Ltd. v. G.S. Global Corp.*, the Supreme Court has refused to simply accept the contention that the COVID-19 pandemic and therefore the lockdown declared by the Central/State Government would either tantamount to frustration, impossibility, and impracticability of the contract or the same can be termed as a ‘force majeure clause’, and thus have declined to restrain the respondent therein from encashing the Letters of Credit opening inter alia that production of steel comes within the ambit of essential commodity and there was no restriction of movement of an equivalent. An extract of the judgement is reproduced herein below:

“2 It is the case of the requester, that in view of the COVID-19 pandemic and thus the lockdown announced by the Central/State Government, its contracts with Respondent 1 were terminated as unenforceable on account of anger and impossibility. The petitioners have relied upon Section 56 of the Contract Act, 1872”.

However, the Delhi Supreme Court in *Halliburton Offshore Services Inc. v. Vedanta Limited* has opined in para 20 that “The countrywide lockdown, which came into place on 24<sup>th</sup> March 2020 was, in my opinion, clear within the nature of force majeure”, and thus thereby allow an ad interim stay on mentioned and encashment of the bank guarantees. Pertinently, both the two forestated cases were instituted under Section 9 petition of the Arbitration and Conciliation Act, 1996, seeking the relief of injunction against the respondent.

Although, these aforesaid cases may be distinguished on the premise of the facts that they weren’t touching on landlord-tenant dispute even so they do aid in deciphering the term ‘Force Majeure Clause’, as maybe it’s been the primary time, since the Spanish respiratory illness in 1919, that an illness has unfolded to such unthinkable extent that it had been termed as a world pandemic by UN agency, and that

only adds to the ambiguities due to lack of authoritative judicial precedent on the issue in hand i.e., if the unfolding of COVID-19 amounts to disaster.

Also, one might argue that albeit the imprisonment is in continuance, the tenants have continued to get pleasure from the possession of the occupied premise and therefore have unjustly enriched themselves at the value of the owner, therefore the tenant have to be compelled to have pay the rent and lack of business therefrom shall not be a ground for non-payment of rent. In this regard the judgement rendered by the province supreme court in ‘Gandavalla Munuswamy v. Marugu Muniramiah’, is apt. The relevant extract therefrom is reproduced herein below:

“9...In my opinion, such indirect and, what’s an additional, ambiguous course of action on the part of a tenant cannot be considered adequate for the conveyance of title to the proprietor his and intention to treat the lease as void underneath section 108(e). The tenant should directly and unconditionally be categorical to the proprietor about his intention to treat the lease as void. Otherwise, it’ll be legitimate for the proprietor to treat the lease as subsisting. There’s nothing in Section 108(e) of the Transfer of Property Act that compels a tenant to treat a lease as void. It’s ex gratia for him to try to do this or to refrain from doing this. This facet of the matter makes it all the more additionally necessary that unambiguous declaration of the lessee’s intention to treat the lease as void should be communicated to the proprietor. The proprietor wouldn’t well be ready to take acceptable steps on the footing that the lease has returned to Associate in Nursing finish and he’s thus at liberty to handle the property as he chooses. What’s even additionally vital is that a mere declaration of intention to treat the lease as void isn’t adequate. The tenant should conjointly deliver possession of the property to the proprietor pro re nata by the availability of section 108(q) of the Transfer of Property Act. He cannot continue in possession and nevertheless declare that he has treated the lease as void. That may clearly be Associate in Nursing inconsistent and impermissible position to adopt. Ciao as a tenant has not relinquished to his proprietor the possession that he obtained from the latter at the time of the lease, he cannot free himself of his obligations underneath the lease. His holding to the possession into that he was inducted by his proprietor can stop him from disputing the power of his proprietor to evict him and to recover possession from him.”

Recently, the city Delhi High Court in *Ramanand v. Dr. Girish Soni*, has opined with respect to a landlord-tenant dispute ruled by the Rent Management Act, that suspension of payment of rent by tenants because of COVID-19 imprisonment crisis wouldn't be valid even though some relaxation is also given within the schedule of payment, the relevant extract is reproduced herein below:

“3. The imperative application into account, raises numerous problems about the suspension of payment of rent by tenants because of the COVID-19 imprisonment crisis and therefore the legal queries close the same.....

Finally, within the absence of a contract or a written agreement stipulation, as within the gift case, the tenant could usually obtain suspension of rent by invoking the just jurisdiction of the Court because of temporary non-use of the premises. The question on whether or not the suspension of rent got to be granted or not would depend on the facts and circumstances of every case as stated by the Supreme Court in *Surendra Nath Bibran v. Writer Court*. Within the same case, the Court directed payment of a proportionate part of the rent because the tenant wasn't given possession of a locality of the property... The aforementioned case throws some light if one will depend on the inevitable accident clause to justify non-payment of the rental quantity, however, the same case is distinguished on the premise of the facts, as therein case, the Court had already directed eviction of the tenant abundantly before the coronavirus pandemic and therefore the same judgement came to be delivered upon associate application seeking suspension of rent. Moreover, the Court has itself noted in para twenty-six that the question of whether or not the suspension of rent got to be granted or not would depend on the facts and circumstances of every case as opined by the Supreme Court in *Surendra Nath Bibran v. Writer Court*, additional the complete contract, if any, dead between the owner and therefore the tenant needs to be unbroken in mind whereas deciding if non-payment of rent was even or not.

## Government and Judicial Intervention

In the United Kingdom, the Government has passed the Coronavirus Act, 2020<sup>3</sup> w.e.f. 20<sup>th</sup> March, 2020, in

<sup>3</sup> Available at <http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>, last visited on October 01, 2020.

view of the mess of tenants, with the objective to save the tenant's interest and thereby hang the landlord's right to remove business tenancies in England and Wales till normalcy is restored.

Similarly, even in India, the Ministry of Home Affairs (MHA) vide order dated 29<sup>th</sup> March, 2020<sup>4</sup> has *inter alia* directed the landlords of rented accommodation not to demand rent for a period of one month from workers as well as migrants. Further it also has been directed that the landlord shall not force labour and students to leave their premises and any violation of the order thereof shall foist criminal action on them including but not limited to the Disaster Management Act, application whereof is the duty of the particular State Government and Union Territory. In adding to this, several PILs also have been filed before the Supreme Court and High Courts looking for exception from paying rent during the lockdown,<sup>5</sup> non-deduction of wages during the lockdown period, non-ending of employees by the employers, waiver of interest on EMIs during COVID lockdown, etc. Unnecessary to say that the higher judiciary, which is already working in a limited capacity and conducting its cases through video conferencing, has become the hub of PILs.

## Conclusion

In view of the preceding, it is difficult to say with certainty as to whether the tenants can avoid paying lease amount for the period of lockdown citing force majeure clause, firstly due to lack of judicial precedent combined with the factum that the regard of tenants is being protected by controlling direction rather than legislative command. All in all, it is quite certain that once the lockdown is raised and the normalcy of courts is restored, many cases are going to be started either seeking eviction or arrears of rental amount from the tenants.

According to me, since the COVID-19 has broken the financial stability of the lower middle class and poor families, the government of respective states in consultation with the central government should take appropriate steps to safeguard them. For example,

<sup>4</sup> Notification No. 40-3/2020-DM-I(A), dated March 29, 2020.

<sup>5</sup> Many PILs have been filed on this subject such as Supreme Court Bar Association's PIL on Government scheme for payment of office rent during lockdown; PIL to restrain landlords from evicting student and labourers; PIL on welfare schemes for migrant workers, etc.

State governments should try to identify families that were evicted or those who though not evicted but now are in great financial hardships to pay the past rents and effectively:

- After identifying these families, steps should be taken to give preference to such families in providing MNREGA work.
- Like farmers are provided direct payments through the “Kissan Samman Nidhi” scheme, similarly payments should be facilitated via direct bank transfer to help these families.
- Vacant government lands can also be used to make temporary accommodation in case a family is forced to live on road and in case there is paucity of space in the shelter homes.
- Ration provided to the BPL families should also be provided to these families without causing hardships by requiring unnecessary paper formalities.
- Fast track courts to deal with cases that have been filed in this COVID era so that people do not face any further problems at the hands of judiciary.

### Limitations of the Study

The study was undertaken to seek out the deficiencies in the application of the general rule mentioned above and also to address deviations, if any, to uphold the objectives and purposes of statutes susceptibly called into question. It is further addressed through the study itself as to whether any absolutism is called for when resorting

to such practices. The study conclusively addresses the question of upholding rights and liabilities in relation to the will of the parliament, when the same comes within the judicial scanner. It further seeks to harmonise the statutory expectations in the light of the growing legal domain. The scope of the subject is restricted only to the study of the concept of Non-Payment of Rent: Ground for Eviction in COVID ERA in India. The study further observes the influence of other legal systems upon the Indian judiciary while tackling situations of these sorts. The scope of the constitutional mandate in securing a right of this sort is another object of the study taking into consideration cases of extreme deprivation through violation of the basic human rights which the state and its legal functionaries are under an obligation to secure. The study further seeks to address the role of state functionaries in upholding the rule of law by purposive interpretations in case the application of any such meaning finds itself resting on ambiguous grounds. Further, the study also mandates a brief concentration on the school of thought underlying the jurisprudential aspect behind the enactment in question.

### References

#### Websites Referred

- [www.legislation.gov.uk](http://www.legislation.gov.uk)

#### Acts Referred

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- Transfer of Property Act, 1881
- Contract Act, 1872