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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st May, 2020

\+ **RC. REV. 447/2017**

RAMANAND & ORS. ... Appellants

Through: Mr. Rajiv Talwar and Mr. Tarun Rana, Advocates. (M: 9810669233)

versus

DR. GIRISH SONI & ANR. ... Respondents

Through: Mr. Sanjeev Mahajan, Advocate. (M: 981156437)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 10848/2020

1. This is an application for exemption from filing the duly affirmed affidavit and the requisite court fee. With an undertaking to deposit the court fee within 72 hours from the date of resumption of regular functioning of this Court, exemption is allowed, subject to all just exceptions. Undertaking filed by the Appellants is accepted.

2. Application is disposed of.

CM APPL. 10847/2020

Brief Facts

3. The urgent application under consideration, raises various issues relating to suspension of payment of rent by tenants owing to the COVID-19 lockdown crisis and the legal questions surrounding the same. The COVID-19 pandemic has had large-scale implications for human life. Contractual

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relationships and jural relationships between parties are severely affected due to the lockdown. The question as to whether the lockdown would entitle tenants to claim waiver or exemption from payment of rent or suspension of rent, is bound to arise in thousands of cases across the country. Though there can be no standard rule that can be prescribed to address these cases, some broad parameters can be kept under consideration, in order to determine the manner in which the issues that arise can be resolved.

Background facts

4. The present revision petition was filed by the Appellants/Tenants *(hereinafter, "Tenants")* challenging the order dated 18th March, 2017 passed by the ld. Senior Civil Judge-cum-Rent Controller *(hereinafter, "RC")* granting a decree of eviction in respect of Shop No. 30-A, Khan Market, New Delhi *(hereinafter, "tenanted premises")*. The Tenants run a shoe store called '*Baluja'* in Khan Market where they sell various types of foot wear. The Landlord i.e., Respondent No.1 *(hereinafter, "Landlord")* is a Dentist. The tenanted premises was given on rent for commercial purposes through a lease deed executed on 1st February, 1975 at Rs.300/- per month. In 2008, the Respondents filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 *(hereinafter, "DRC Act")*. Initially, leave to defend was granted by the RC on 31st March, 2012. However, vide the impugned order dated 18th March, 2017, a decree for eviction was passed. The Tenants filed an appeal against the impugned order which was dismissed by the ld. Rent Control Tribunal *(hereinafter, "RCT")* vide order dated 18th September, 2017 on the ground that the same is not maintainable. Hence, the present petition challenging the eviction order dated 18th March, 2017.

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5. The petition was first listed before this Court on 25th September, 2017, on which date, the ld. Single Judge had stayed the order of eviction subject to certain terms. The relevant observations in the said order are set out below:

> *"9. I have enquired from the counsels, the effect if any of the landlord, after institution of the petition for eviction under Section 14(1)(e) of the Act, having entered into an agreement to sell and which agreement to sell has admittedly not fructified. It prima facie appears that it is not into the domain of the Rent Control Act to decide even prima facie whether there was any such agreement to sell or not. It has further been enquired, as to what will be the effect, if any, on the petition for eviction under Section 14(1)(e) of the Act which has to be decided at least at the first stage summarily, having remained pending at the stage of leave to defend itself for nearly four years and what will be the effect of the landlord for his urgent requirement, having in the interregnum at one stage considered sale of the property.*
> *10. Since there are allegations with respect to several documents and new documents which were obtained under the Right to Information Act, 2005, have also been filed, it is deemed appropriate to call for the Trial Court record.*
> *11. The counsel for the respondents also states that all the documents have not been placed on record.*
> *12. The Trial Court record be requisitioned forthwith.*
> *13. Issue notice.*
> *14. Notice is accepted by the counsel for the respondents.*
> *15. Subject to the petitioners, with effect from the month of October, 2017, paying to the respondents a sum of Rs.3.5 lakhs per month, month by month, in advance for each month by the 10th day of the English Calendar month, there shall be stay of the order of eviction.*
> *16. If there is any default in payment, the stay of execution of the order of eviction shall stand vacated and the respondents shall be entitled to execute the order of eviction.*
> *17. Needless to state that the aforesaid payments are subject*

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to the final adjudication of this petition and are repatriable in the event of the petitioners succeeding in this petition.
18. CM No.35119/2017 is disposed of.
19. List on 29th November, 2017."

The petition has thereafter remained pending for hearing.

6. Following the outbreak of COVID-19, an application for suspension of rent has now been moved, during the lockdown period. The stand of the Tenants is that due to the lockdown, there has been complete disruption of all business activities, including the business of the Tenants. It is pleaded that the circumstances are *force majeure* and beyond the control of the Tenants. Thus, it is claimed that the Tenants are entitled to waiver of the monthly payment directed vide order dated 25th September, 2017, or at least some partial relief in terms of suspension, postponement or part-payment of the said amount.

Submissions of parties

7. Mr. Rajiv Talwar, ld. counsel for the Tenants, submits that he has moved the present application by way of abundant caution as, vide the interim order dated 25th September, 2017 this Court had directed that any default in payment would lead to execution of the eviction decree. Ld. counsel submits that his clients are willing to make part-payment of the monthly amount. Alternatively, he prays that the rent be suspended for at least one month. He submits that since there has been no business during the lockdown period, his clients are entitled to some form of remission.

8. On the other hand, Mr. Sanjeev Mahajan, ld. counsel appearing for the Landlord, submits that the Tenants have been enjoying the tenanted premises since 1975 for a poultry sum of Rs.300/- per month. Ld. counsel

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submits that the Tenants are well-to-do business persons who have also purchased a neighbouring shop in Khan Market. He further submits that the amount fixed by this Court i.e., Rs.3,50,000/- per month, is a very meagre amount compared to the prevalent market rate. He cites the example of Shop No.33 in Khan Market for which the monthly rent is approximately Rs.22 lakhs for a 1,456 sq. feet property. A photocopy of the lease deed of the said property has also been submitted. Thus, it is submitted that the tenanted premises would earn much more than the amount fixed by this Court. Ld. counsel submits that *force majeure* does not apply as the case is governed by the DRC Act. He further submits that the Landlord is a Dentist who needs the shop for his own *bona fide* use. Ld. counsel contends that mere disruption of the business cannot exempt the Tenants from making the monthly payments as the Landlord also depends on the income from the tenanted premises.

9. On behalf of the Tenants, it is submitted that some rebate may be given only for the period of the lockdown and that otherwise the Tenants are willing to regularly make the monthly payments.

Analysis and Findings

10. This Court has considered the submissions of the parties. The relationship between a Landlord and Tenant, a Lessor and Lessee and a Licensor and Licensee can be in multifarious forms. These relations are primarily governed either by contracts or by law. In the realm of contracts, the respective rights and obligations of the parties would be determined by the terms and conditions of the contract itself.

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11. Contracts of tenancy and leases could be of different kinds including–

(i) Oral tenancies with a month to month payment of rent;

(I i) Short term tenancy agreements with a monthly rent payable;

(iii) Long term leases with *force majeure* clauses;

(iv) Lease agreements which are structured as revenue sharing agreements and;

(v) Lease agreements which are in the nature of monthly payments as a percentage of the sales turnover.

The above list is however not exhaustive. The question of waiver, suspension or any remission in the rental payments would operate differently for each category of agreements. Where there is a contract, whether there is a *force majeure* clause or any other condition that could permit waiver or suspension of the agreed monthly payment, would be governed by the contractual terms. If, however, there is no contract at all or if there is no specific force majeure clause, then the issues would have to be determined on the basis of the applicable law.

12. In circumstances such as the outbreak of a pandemic, like the current COVID-19 outbreak, the grounds on which the tenants/lessees or other similarly situated parties could seek waiver or non-payment of the monthly amounts, under contracts which have a *force majeure* clause would be governed by Section 32 of the Indian Contract Act, 1872 *(hereinafter, "ICA")*. This section reads as under:

> "***32. Enforcement of contracts contingent on an event happening.*** *— Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.*

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> *If the event becomes impossible, such contracts become void."*

13. `*Force Majeure'* is defined by Black's Law Dictionary as *"an event or effect that can be neither anticipated nor controlled"*. As per the dictionary, *"The term includes both acts of nature (e.g. floods and hurricanes) and acts of people (e.g. riots, strikes and wars)"*.

14. The Supreme Court in ***Energy Watchdog v. CERC & Ors., (2017) 14 SCC 80*** has clearly held that in case the contract itself contains an express or implied term relating to a *force majeure* condition, the same shall be governed by Section 32 of the ICA. Section 56 of the ICA, which deals with impossibility of performance, would apply in cases where a *force majeure* event occurs outside the contract. The Supreme Court observed:

> *"34. "Force majeure" is governed by the Contract Act, 1872. Insofar as it is relatable to an express or implied clause in a contract, such as the PPAs before us, it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof. Insofar as a force majeure event occurs dehors the contract, it is dealt with by a rule of positive law under Section 56 of the Contact Act."*

Thus, in agreements providing for a *force majeure* clause, the Court would examine the same in the light of Section 32. The said clause could be differently worded in different contracts, as there is no standard draft, application or interpretation. The fundamental principle would be that if the contract contains a clause providing for some sort of waiver or suspension of rent, only then the tenant could claim the same. The *force majeure* clause in the contract could also be a contingency under Section 32 which may allow the tenant to claim that the contract has become void and surrender the premises. However, if the tenant wishes to retain the premises and there is no clause giving any respite to the tenant, the rent or the monthly charges

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would be payable.

Section 56 – Frustration of Contract

15. In the absence of a contract or a contractual term which is a *force majeure* clause or a remission clause, the tenant may attempt to invoke the Doctrine of Frustration of contract or `*impossibility of performance'*, which however would not be applicable in view of the settled legal position set out below. The said doctrine of `*impossibility of performance'* is encapsulated in Section 56 of the ICA, which reads as under:

> ***"56. Agreement to do impossible act.*** *— An agreement to do an act impossible in itself is void.* ***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.*
> ***Compensation for loss through non-performance of act known to be impossible or unlawful.*** *— Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."*

16. There are various conditions that have to be fulfilled to satisfy the conditions of `impossibility' under Section 56. However, in the context of a tenant's obligations, the Supreme Court had the occasion to consider this doctrine in the case of ***Raja Dhruv Dev Chand v. Raja Harmohinder Singh & Anr., AIR 1968 SC 1024*** where the tenant who had rented

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agricultural lands in Punjab which he could not utilise due to the 1947 Partition, sought refund of the rent paid by him for the said land for Kharif season 1947 and Rabi season 1948. The Supreme Court, after considering the law on *`impossibility of performance'* from various jurisdictions, held that in the Indian context Section 56 *"lays down a positive rule relating to frustration of contracts and the Courts cannot travel outside the terms of that section"*. The Court held that Section 56 does not apply to lease agreements. The Court drew a distinction between a *`completed conveyance'* and an *`executory contract'* and observed:

> "*9. We are unable to agree with counsel for the appellant in the present case that the relation between the appellant and the respondents rested in a contract. It is true that the court of wards had accepted the tender of the appellant and had granted him a lease on agreed terms of lands of Dada Siba Estate. But the rights of the parties did not after the lease was granted rest in contract. By Section 4 of the Transfer of Property Act the chapters and sections of the Transfer of Property Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872. That section however does not enact and cannot be read as enacting that the provisions of the Contract Act are to be read into the Transfer of Property Act. <u>There is a clear distinction between a completed conveyance and an executory contract, and events which discharge a contract do not invalidate a concluded transfer.</u>*
> *10. <u>By its express terms Section 56 of the Contract Act does not apply to cases in which there is a completed transfer</u>. The second paragraph of Section 56 which is the only paragraph material to cases of this nature has a*

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limited application to covenants under a lease. A covenant under a lease 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. But on that account the transfer of property resulting from the lease granted by the lessor to the lessee is not declared void.

11. *By the agreement of lease the appellant undertook to pay rent for the year 1947-48 and the Court of Wards agreed to give on lease the land in its management. It is not claimed that the agreement of lease was void or voidable. Nor is it the case of the appellant that the lease was determined in any manner known to law. The appellant obtained possession of the land. He was unable to continue in effective possession on account of circumstances beyond his control. Granting that the parties at the date of the lease did not contemplate that there may be riots in the area rendering it unsafe for the appellant to carry on cultivation, or that the crops grown by him may be looted, there was no covenant in the lease that in the event of the appellant being unable to remain in possession and to cultivate the land and to collect the crops, he will not be liable to pay the rent. Inability of the appellant to cultivate the land or to collect the crops because of widespread riots cannot in the events that transpired clothe him with the right to claim refund of the rent paid….”*

17. The above judgment laid down unequivocally that a lease is a completed conveyance though it involves monthly payment and hence, Section 56 cannot be invoked to claim waiver, suspension or exemption

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from payment of rent. This view of the Supreme Court has been reiterated in ***T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors., (2003) 5 SCC 150,*** as also in ***Energy Watchdog (supra)*.**

18. Recently, a ld. Division Bench of the Delhi High Court in ***Hotel Leela Venture Ltd. v. Airports Authority of India, 2016 (160) DRJ 186***, observed:

> "*34. The consideration for the lease being one; albeit having two constitutive elements, the law declared by the Supreme Court in the decision reported as (1968) 3 SCR 339 Raja Dhruv Dev Chand Vs. Raja Harmohinder Singh & Anr would squarely be applicable; and if it was the claim by the lessee that the consideration for the lease failed or became oppressed, the claim would fail because neither the doctrine of frustration applies to a lease nor broad principles thereof to a lease. The reason being that executory contracts alone are capable of being frustrated and not executed contracts. For example, 'A' a retailer of shoes purchases shoes from 'B' who is the manufacturer of shoes. The agreed quantities of shoes are delivered and part sale consideration paid. On account of change in import policy the market is flooded with imported shoes which are much cheaper vis-a-vis the price payable by 'A' to 'B'. 'A' cannot plead frustration requiring the Court to reduce the price and relieve him the obligation to pay the balance sale consideration to 'B'.*
>
> *35. A contract for lease whereunder the lessee obtains possession from the lessor is an executed contract and during the duration of the lease, since it is a term of the agreement that consideration shall be rendered*

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> *periodically, the agreed consideration has to be paid and it hardly matters that rents have fallen in the meanwhile. The result of a lease is the creation of a privity of estate inasmuch as lease is the transfer of an interest in immovable property within the meaning of Section 5 of the Transfer of Property Act, 1882, as was held in para 20 of the decision reported as 2003 (5) SCC 150 T. Lakshmipathi & Ors. Vs. P. Nithyananda Reddy & Ors. That apart, as held in the decisions reported as (1960) 2 SCR 793 Alopi Prashad Vs. UOI and (1975) 2 SCC 633 Panna Lal Vs. State of Rajasthan a contract is not discharged merely because it turns out to be difficult or onerous for one party to perform and none can resile from a contract for said reason.*"

From the above judgments and the settled law, it is clear that Section 56 of the ICA would not apply to a lease agreement and other similarly situated contracts which are `*executed contracts*' and not `*executory contracts*'.

Provisions of the Transfer of Property Act, 1882 governing landlord-tenant relationships qua Force Majeure

19. In the absence of contracts or contractual stipulations the provisions of the Transfer of Property Act, 1882 *(hereinafter, "TPA")* would govern tenancies and leases.

20. The doctrine of *force majeure* is recognised in Section 108(B)(e) of the TPA. Section 108(B)(l) also enumerates the `*Rights and Liabilities*' of the lessee. The relevant clauses of the TPA are as under:

> "***108. Rights and liabilities of lessor and lessee.***—*In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one*

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another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—
(A) Rights and liabilities of the lessor-
…
(B) Rights and liabilities of the lessee-
…
(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:
Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision: …

(f) to (k)…….

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;"

A perusal of the above shows that the provision itself would apply only in the absence of a contractual stipulation. Further, on the occurrence of any of the situations contemplated under (e) above, which would render the property `substantially and permanently unfit' to be used for the purpose for which it was leased, at the option of the lessee, the lease would be void.

21. In ***Raja Dhruv (supra)*** the Supreme Court, while interpreting as to what constitutes `*substantially and permanently unfit'* held that temporary non-use by the tenant due to any factors would not entitle the tenant to invoke this section. The relevant observations of the Court are:

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__17.__ The case strongly relied upon by counsel for the appellant was Gurdarshan Singh v. Bishen Singh [ILR 1962 Punjab 5]. In that case a lease was executed on January 8, 1947 in respect of agricultural land situated in an area which on partition of India fell within West Pakistan. The Court found that possession of the demised land was not given to the lessee, and the landlord was on account of riots unable to deliver possession. Obviously on that finding the tenant was entitled to claim refund of the rent paid. But the Court proceeded to consider the question "whether the doctrine of frustration applies to a contract of lease of agricultural lands" and recorded an answer that the doctrine of frustration applies to leases. The Court observed at p. 13 — "that the doctrine of frustration does apply to leases, but even if it does not apply in terms to a contract of lease of agricultural land the broad principle of frustration of contract applies to leases". <u>We are unable to agree with that observation, and the observation at p. 11 that "According to Indian law, sales of land as also leases are contracts".</u> Under a lease of land there is a transfer of right to enjoy that land. If any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let out, because of fire, tempest, flood, violence of an army or a mob, or other irresistible force, the lease may, at the option of the lessee, be avoided. This rule is incorporated in Section 108(e) of the Transfer of Property Act and applies to leases of land, to which the Transfer of Property Act applies, and the principle thereof to agricultural leases and to

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> *leases in areas where the Transfer of Property Act is not extended. Where the property leased is not destroyed or substantially and permanently unfit, the lessee cannot avoid the lease because he does not or is unable to use the land for purposes for which it is let to him.*"

22. In ***T. Lakshmipathi (supra),*** on the question of what constitutes permanent destruction of a property, the Supreme Court cited with approval ***Woodfall's Laws of Landlord and Tenant (28th Edition, Vol.1)***:

> "**21.** *In Woodfall's Laws of Landlord and Tenant (28th Edn., Vol. 1) the relevant law is so stated:*
>
> *"Where the lessee covenants to pay rent at stated period (without any exception in case of fire), he is bound to pay it, though the house be burnt down; for the land remains, and he might have provided to the contrary by express stipulation, if both parties had so intended. And this rule applies, although the lessee's covenant to repair contain an exception in case of fire. Similarly, an action for use and occupation still lies in respect of the whole period of the tenancy notwithstanding the destruction of the premises by fire."*
>
> *(para 1-0778)*
>
> *"In a lease of land with buildings upon it the destruction of even the entirety of the buildings does not affect the continuance of the lease or of the lessee's liabilities under it, unless so provided by express contract."*
>
> *(para 1-2055)*
>
> *"A demise must have a subject-matter, either corporeal or incorporeal. If the subject-matter is destroyed entirely, it is submitted that the lease comes automatically to an end, for there is no longer any demise. The mere destruction*

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of a building on land is not total destruction of the subject-matter of a lease of the land and building, so the demise continues. But if by some convulsion of nature the very site ceases to exist, by being swallowed up altogether or buried in the depths of the sea, it seems clear that any lease of the property must come to an end."

(para 1-2056)"

23. In ***Shaha Ratansi Khimji & Sons v. Kumbhar Sons Hotel Pvt. Ltd. & Ors., (2014) 14 SCC 1*** the Supreme Court clarified that in cases concerning a lease agreement, Section 108(B)(e) of the TPA cannot be interpreted by assuming that when a building or structure is leased out, it is only the superstructure that is exclusively leased out. The lease is also a lease of site. In view of the law laid down in ***T. Lakshmipathi (supra)***, it was held that even though the tenanted premises had been demolished and destroyed, the tenancy cannot be said to have been determined.

24. More recently, this view has been reaffirmed by this Court in ***Sangeeta Batra v. M/s VND Foods & Ors., (2015) 3 DLT (Cri) 422*** wherein it has been held that the fact that the leased premises, intended to be run as a restaurant, was sealed on two occasions is of no relevance as the tenants did not choose to avoid the lease. Interpreting Section 108 of the TPA, the ld. Single Judge of this Court observed:

"***26.*** *Section 108 of the Transfer of Property Act deals with the aspect of rights and liabilities of lessor and lessee. The rights and liabilities of the lessee are enumerated from clause (d) onwards upto clause (q). Clause (e) of Section 108 reads:*

"(e) if by fire, tempest or flood, or

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> *violence of an army or of a mob, or other irresistible force, any material part of the property be* ***wholly destroyed or rendered substantially and permanently unfit*** *for the purposes for which it was let,* ***the lease shall, at the option of the lessee, be void****:*
>
> *Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;" (Emphasis supplied)*
>
> ***27.*** *Thus, if the leased premises is rendered substantially and permanently unfit for the purpose for which it was let, the lessee has the option to avoid the lease. Unless the lessee so avoids the lease, he cannot avoid his obligation contained in clause (l) of Section 108, which states that "the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;".*

25. Thus, for a lessee to seek protection under sub-section 108(B)(e), there has to be complete destruction of the property, which is permanent in nature due to the *force majeure* event. Until and unless there is a complete destruction of the property, Section 108(B)(e) of the TPA cannot be invoked. In view of the above settled legal position, temporary non-use of premises due to the lockdown which was announced due to the COVID-19 outbreak cannot be construed as rendering the lease void under Section 108(B)(e) of the TPA. The tenant cannot also avoid payment of rent in view of Section 108(B)(l).

Suspension of Rent

26. Finally, in the absence of a contract or a contractual stipulation, as in

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the present case, the tenant may generally seek suspension of rent by invoking the equitable jurisdiction of the Court due to temporary non-use of the premises. The question as to whether the suspension of rent ought to be granted or not would depend upon the facts and circumstances of each case as held by the Supreme Court in ***Surendra Nath Bibran v. Stephen Court, AIR 1966 SC 1361***. In the said case, the Court directed payment of proportionate part of the rent as the tenant was not given possession of a part of the property.

27. In ***Raichurmatham Prabhakar and Ors. v. Rawatmal Dugar, (2004) 4 SCC 766*** the Supreme Court held that suspension of rent may be claimed by the tenant if the lessee has been dispossessed. Thus, mere non-use may not always entitle the tenant for suspension of rent.

28. This view has been followed by a ld. Single Judge of this Court in ***Aranya Hospitality Management Services Pvt. Ltd. v. K. M. Dhoundiyal & Ors. [Arb. A. (Comm.) 6/2017, decided on 21st March, 2017],*** where the Court considered the *force majeure* clause of the contract to hold that the mere non-approval by the concerned authority for running a restaurant would not entitle the tenant to seek suspension of rent. The Court held that under circumstances wherein the tenant cannot use the property for the purpose for which it was leased, the tenant would have no right to continue enjoying the property and seek suspension of rent at the same time.

29. In relation to some contracts which are not classic tenancy or lease agreements, where the premises is occupied and a monthly pre-determined amount is paid purely as `Rent' or `Lease amount', the manner in which pandemics, such as COVID-19, can play out would depend upon the nature of the contract. In contracts where there is a profit-sharing arrangement or an

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arrangement for monthly payment on the basis of sales turnover, the tenant/lessee may be entitled to seek waiver/suspension, strictly in terms of the clause. Such cases would purely be governed by the terms of the contract itself, and the tenant's claim could be that there were no sales and no profits and thus the monthly payment is not liable to be made. Thus, the entitlement of the client in such a situation is not governed by any overriding *force majeure* event but by the consequence of the said event, being that there were no sales or profits.

Conclusions:

30. In light of the above legal position, the Tenants' prayer for suspension of rent in the present case is to be considered. There is no rent agreement or lease deed between the parties and hence Section 32 of the ICA has no applicability. The case is governed by the provisions of the Delhi Rent Control Act, 1958. Section 56 of the ICA does not apply to tenancies. The Tenants also do not urge that the tenancy is void under Section 180 (B)(e) of the TPA. The tenants are also not `Lessees' as an eviction decree has already been passed against them.

31. The Tenants' plea is for extension of the doctrine of suspension of rent to cases which are covered by lockdown due to COVID-19. Insofar as this prayer is concerned, this Court considers the following factors as necessary for determining the question as to whether the Tenants herein are entitled to any relief of suspension of rent:

i. **Nature of the property:** The tenanted premises are located in the prime commercial area of Khan Market for running of a shop. It is well-known that the commercial area of Khan Market is a sought-after location for business purposes.

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ii. **Financial and social status of the parties:** The Landlord is a dentist who wishes to use the tenanted premises and has sought eviction on the ground of *bonafide* use under Section 14(1)(e) of the DRC Act. The Tenants, on the other hand, run a footwear shop on the tenanted premises, which they have been in possession of since 1975 at a monthly rental of merely Rs.300/-.

iii. **Amount of rent:** The monthly payment of Rs.3.5 lakhs has been fixed by this Court, as a condition for grant of stay for continued use and occupation, after the decree of eviction was passed. The Tenants do not wish to vacate the property due to the lockdown but wish to continue to occupy the property. The amount being paid, when compared to the prevalent market rent in the area, is on the lower side. This is clear from a perusal of the lease deed of a neighbouring property placed on record by the Landlord. Even if the said lease deed is to be ignored and not taken on record, judicial notice can be taken of the fact that the prevalent rent in Khan Market is amongst the highest in the whole of Asia. The amount being paid by the Tenants, though substantial, is on the lower side as compared to other properties in Khan Market.

iv. **Other factors:** The Tenants are `unauthorised occupants' of the tenanted premises as a decree of eviction has already been passed. The monthly payment of rent being made has been fixed by this Court vide the interim order dated 25th September, 2017 in view of the judgment of the Supreme Court in ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705***. The use and occupation charges have to be determined in a manner so as to fully compensate

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the Landlord as if the Landlord had let out the property to a third party. The Tenants are continuing to occupy the premises and do not intend to vacate the same. In any case, the compensation ought to be reasonable and should make up for the loss caused to the Landlord due to delay in execution of the eviction decree. These factors completely tilt the balance in favour of the Landlord.

v. **Any contractual condition(s):** There is no contractual condition that permits non-payment or suspension of rent.

vi. **Protection under any executive order(s):** There are cases where the central and state governments may have, from time to time, given protection to some classes of tenants such as migrants, labourers, students, etc. These include Order No. 40-3/2020-DM-I (A) dated 29th March, 2020 issued by the Ministry of Home Affairs (MHA), Government of India and Order No. F/02/07/2020/S.1/PT. File/81 dated 22nd April, 2020 and Order No. 122-A F/02/07/2020/S.I/9 dated 29th March, 2020 both issued by the Delhi Disaster Management Authority (DDMA), Government of NCT of Delhi. Without going into the legality and validity of such Executive orders, suffice it to say that the present case is not covered by any of these executive orders.

32. The Tenants' application for suspension of rent is thus liable to be rejected inasmuch as while invoking the doctrine of suspension of rent on the basis of a *force majeure* event, it is clear from the submissions made that the Tenants do not intend to surrender the tenanted premises. While holding that suspension of rent is not permissible in these facts, some postponement or relaxation in the schedule of payment can be granted owing to the lockdown.

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33. It is accordingly directed that the Tenants shall now pay the use and occupation charges for the month of March, 2020 on or before 30th May 2020 and for the months of April, 2020 and May, 2020 by 25th June, 2020. From June 2020 onwards, the payment shall be strictly as per the interim order dated 25th September 2017. Subject to these payments being made, the interim order already granted shall continue. If there is any default in payment, the interim order dated 25th September, 2017 would be operational. The said interim order is very clear i.e., if there is any non-payment, the decree would be liable to be executed.

34. The application is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

MAY 21, 2020
Rahul/dk/T