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With this thought, we hereby present to you

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**Ramanand & Ors.**  
**Vs**  
**Dr. Girish Soni & Anr.**  
**(CM Appeal No.:**  
**10848 of 2020)**  
  
**A CASE STUDY**

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***Ramanand & Ors. Vs Dr. Girish Soni & Anr.***  
**A CASE STUDY**

*By: Amit Kumar*

**ABSTRACT:**

*The COVID-19 Pandemic has been an event: inevitable and unforeseeable, that has led to several legal difficulties such as non-payment of rent, incomplete transfer of property, etc. Ramanand and Ors v Dr Girish Soni and Anor, is one of the landmark cases which discusses the issue of whether or not the tenants can seek relaxation in rent payment or suspension of rent or waiver from the payment of rent. It is quite intriguing to see the various analysis made by the court, for instance how this case does not come under doctrine of frustration, embodied in the section 56 of Indian Contract Act, as section 56 does not apply to an executed contract, and to examine the application of force majeure clause, or even the consideration of equitable jurisdiction under section 151 of CPC.*

## **FACTS:**

Tenants run a shoe store called 'Baluja', shop no. 30-A in Khan Market, New Delhi. The Tenants got the premises on rent for commercial purposes via a lease deed, executed on 1<sup>st</sup> February 1975 at Rs 300/month. In 2008, Respondents filed an eviction petition under section 15(1)(e) Of Delhi Rent Control Act. Initially, leave to defend was granted, however, a decree for eviction was passed, order dated 18<sup>th</sup> March, 2017. Further, an appeal against the impugned order was dismissed by the Rent Control Tribunal via an order dated 18<sup>th</sup> September, 2017. Consequently, a revision petition was filed in which the High Court stayed the order of eviction with a condition that the Petitioners pay a sum of Rs.3.5 lakhs/month to the Respondents till the final adjudication. Amid Covid-19 spread, an application for suspension of rent was moved.

## **SUBMISSIONS:**

### **Counsel for the Tenants/Appellants submits the following:**

Tenants be allowed to make part-payment of the monthly amount or suspension of rent for at least one month,

To grant some form of relaxation amidst the lockdown period.

### **Counsel for the Landlord/Respondent submits the following:**

Amount of Rs3,50,000/month is not adequate when compared to the prevalent market rate, also the tenants have purchased a neighbouring shop in Khan Market,

Landlord is a Dentist who needs the shop for his own bona fide use, and force majeure does not apply as the case is governed by the DRC Act.

## **ISSUES:**

Whether the case is governed by section 32 or section 56 of ICA?

Whether the case is governed by section 108 of TPA?

Whether the suspension of rent can be sought through equitable jurisdiction?



## ANALYSIS BY THE COURT:

### I. Under section 32 of ICA:

The grounds on which the parties could seek exemption by invoking force majeure clause would be governed by section 32 of ICA, given that there is a contract which embodies an expressed or implied force majeure clause, and in absence of the contract, exemption can be sought under section 56 of ICA, as was held in the case of case of Energy Watchdog v. CERC & Ors<sup>1</sup>. Since, there is no lease agreement or rent agreement in the present case that permits the suspension or non-payment of the rent, section 32 does not apply.

### II. Under section 56 of ICA:

Section 56 of ICA embodies the doctrine of Frustration which in the absence of force majeure clause can be invoked for the ‘impossibility of performance’ of a contract. The Court held that section 56 does not apply to an executed contract. Since a contract for lease is a completed conveyance as held in the case of T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors.<sup>2</sup>, and thus, an executed contract as held in (1968) 3 SCR 339 Raja Dhruv Dev Chand Vs. Raja Harmohinder Singh & Anr<sup>3</sup>. Therefore, in the present case, section 56 does not apply as it applies to an executory contract.

### III. Under section 108 of TPA:

In the absence of a contract, the rights and obligations of a lessor and a lessee are covered under section 108 of TPA. As per section 108(B)(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”, however, in the case of Raja Dhruv Dev Chand Vs. Raja Harmohinder Singh & Anr it was held that temporary non-use by the tenant due to any factors would not entitle the tenant to invoke this section. “where the property leased is not

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<sup>1</sup> (2017) 14 SCC 80.

<sup>2</sup> T. Lakshmipathi v. P. Nithyananda Reddy, (2003) 5 SCC 150.

<sup>3</sup> (1968) 3 SCR 339.

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.” Even if the leased premises is rendered substantially and permanently unfit for the desired purposes, the lessee cannot escape from paying unless the lessee avoids the lease under section 108(B)(e). In the present case, neither the COVID-19 can be construed as rendering the premises substantially and permanently unfit nor did the tenants seek to avoid the lease, therefore section 108(B)(e) cannot be invoked.

#### IV. Suspension of Rent:

The Tenants may seek suspension of rent by invoking the equitable jurisdiction of the Court: section 151 of the code of civil procedure provides that nothing in the code can limit the power of a civil court to pass any orders as it may deem necessary to meet the ends of justice, due to temporary non-use of the premises. Supreme Court in Surendra Nath Bibran v. Stephen Court<sup>4</sup> held that suspension of rent would depend upon the facts and circumstances of each case as in this case the Supreme court directed payment of a proportionate part of the rent as the tenant was not given possession of a part of the property. In addition, mere non-use of land would not entitle the tenant to seek suspension of rent as held in the case of Raichurmatham Prabhakar and Ors. v. Rawatmal Dugar<sup>5</sup> as well as in Aranya Hospitality Management Services Pvt. Ltd. v. K. M. Dhoundiyal & Ors<sup>6</sup>.

While considering the relief of suspension of rent this court considered the following factors:

**Nature of the property** - well known area for commercial purposes.

**Financial and social status of the parties** - The Landlord is a dentist and wants to use the tenanted premises, and the Tenants 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/month.

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<sup>4</sup> AIR 1966 SC 1361.

<sup>5</sup> (2004) 4 SCC 766.

<sup>6</sup> Arb. A. (Comm.) 6/2017, decided on 21st March, 2017.

**Amount of rent** - The monthly payment of Rs.3.5 lakhs, not much when compared in the Khan Market, was set by this Court, as a condition for grant of stay.

**Other factors** - The Tenants are unauthorised occupants' of the tenanted premises as a Decree of eviction has already been passed, making tenants 'unauthorised occupants'.

**Any contractual condition(s)** - No contractual that permits the suspension of rent.

**Protection under any executive order(s)** - The Central and State government has granted protection to some classes of tenants which does not cover the present case. The Court rejected the application of suspension of rent.

### **VERDICT ON 21ST MAY, 2020:**

Though suspension of rent was not allowed, some relaxation in the schedule of payment was granted. In addition, the interim order already granted was allowed to continue.

### **CONCLUSION:**

The Verdict in the present case was quite fair and just, as the court had delivered the verdict taking into consideration every possible law points as well as the contemporary circumstance i.e., lockdown..COVID-19 has heavily impacted the lives of many, especially who are in a precarious position. As lockdown, a consequence of COVID-19, has disabled many people from work resulting in financial plight: unable to meet daily needs or pay rent or pay any other bills, etc. Therefore, it was quite a rumination to decide upon the present matter which also has smoothened the path for the other courts to follow.

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