

RIGHT OF A LESSEE TO RETAIN POSSESSION OF PREMISES SUBSEQUENT TO DETERMINATION OF LEASE BY EFFLUX OF TIME

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A. INTRODUCTION –

The Transfer of Property Act, 1882 (hereinafter referred to as the “Act”) is the legislation which governs ‘transfer’ of ‘immovable property’¹ in India.

In the case of Shree Arcee Steel Private Limited & Anr v. Bharat Overseas Bank Limited², the court held that:

“The meaning of the word "immovable" means permanent, fixed, not liable to be removed. In other words, for a chattel to become immovable property, it must be attached to the immovable property permanently as a building or as a tree attached to earth. Though a moveable property is attached to earth permanently for the beneficial use and enjoyment, is still a movable property. For an illustration, though a sugar cane machine/or an oil engine is attached to earth, it is moveable property.”

Section 5 of the Act defines what constitutes a ‘transfer of property’. The said section is extracted hereinbelow –

“Transfer of property” defined – “In the following section “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, [or to himself] and one or more other living persons; and “to transfer property” is to perform such act.

[In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]”

Further, Section 6³ of the Act details what all may be transferred by and under provisions of the Act. The said section provides that, ‘property of any kind may be transferred except as otherwise provided by this Act or by any other law for the time being in force’.

Furthermore, a ‘transfer’ of an immovable property may be made by various means/ instruments, including but not limited to sale, mortgage, lease, gift, relinquishment, release etc. However, for the purpose of this article, we shall be focusing on the concept of lease.

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B. CONCEPT OF A LEASE –

1. Definition of Lease:

'Lease' of an immovable property is defined and detailed under Chapter V of the Transfer of Property Act, 1882 (hereinafter referred to as the "Act"). Section 105 of the Act defines the term 'lease', 'lessor', 'lessee', 'premium' and 'rent'. The said section has been extracted below, for ease of reference.

Section 105 of the Act - "a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined: The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

2. Essential Ingredients of a Lease:

On review of Section 105 of the Act (extracted hereinabove), the essential ingredients to constitute a 'valid lease' of an immovable property appear to be the following⁴ –

- (a) Transfer of right in the property – An interest in the subject property is to be created in favour of the 'lessee' by the 'lessor'.
- (b) Duration of a lease – Interest created in the property could be for a specified period (either expressed or implied) or even in perpetuity. Parties to the lease are at liberty to decide the duration of the said lease.
- (c) Consideration – A valid consideration needs to be paid, periodically or on specified occasions by the lessee to the lessor.

3. Term of a Lease:

Further, Section 107 of the Act provides that a lease of an immovable property for a term exceeding a year can only be made by a registered instrument⁵. In the event, the same is not made through a registered instrument, then, contrary to what is mentioned in the said lease, the duration of the lease will be assumed to be of a month, and the same may be terminated by either party by providing a fifteen days' notice⁶. However, in case the term is less than a year, then the said lease may be made either by oral agreement accompanied by delivery of possession of the immovable property, or by a registered instrument.

The said Section 107 of the Act is extracted hereinbelow –

"A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee.

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

4. Determination of a Lease:

Section 111 of the Act details the events/ means by which a lease may be determined. The said section is extracted hereinbelow -

"A lease of immovable property determines-

- (a) by efflux of the time limited thereby,
- (b) where such time is limited conditionally on the happening of some event-by the happening of such event,
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event,
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right,
- (e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them,
- (f) by implied surrender,
- (g) 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,
- (h) 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 the other."

Thus, it may be clearly understood that a lease may be determined on occurrence of any of the events as mentioned under Section 111 of the Act.

5. Effects of Determination of a Lease By Efflux of Time:

Upon determination of a lease by efflux of time, all rights, title and interest of the lessee under the lease, cease to exist, and the lessee is bound to put the lessor into possession of the property. "If the lessee continues to remain in possession of the property, without the consent of the lessor, such possession becomes wrongful from the date of the termination of the lease, and the lessee is a mere trespasser and has no right to remain in the property, and the lessor has a right to enter upon the property immediately after the expiration of the term without any further notice."⁷

C. RETAINING POSSESSION OF PREMISES SUBSEQUENT TO DETERMINATION OF LEASE BY EFFLUX OF TIME -

1. Possession Retained by Lessee:

Section 108 (q)⁸ of the Act provides that, upon determination of a lease, the erstwhile lessee is obligated to put the lessor in possession of the property, even if there is no express covenant in the contract.

High Court of Patna, in the matter of Surajmal Marwari And Ors. v. Rampearaylal Khandelwal And Ors⁹, had said that, 'but Clause (q) of Section 108 lays down that on the determination, the lessee is bound to put the lessor in vacant possession of the property. Having regard to these two provisions, it is abundantly clear that when the term of a lease has expired, the lessee can determine the lease by fulfilling his obligation of putting the lessor into possession of the property. But if the lessee does not put the lessor into possession of the property, and on the contrary, remains in possession thereof, then he does not become a trespasser in relation to the property, but his status is that of a tenant on sufferance.'

In M/s. Raptakos Brett & Co. Ltd. v. Ganesh Property¹⁰, the Supreme Court held that, 'when a lease comes to an end by efflux of time, or by notice of termination, or if there be a breach and the lessee's rights are forfeited, the lessee becomes a tenant at sufferance, and it becomes the duty of the lessee under Section 108(q) of the Transfer of Property Act to restore possession to the lessor forthwith.'

Having said so, Section 116¹¹ of the Act states that, continuance of possession of the property by the lessee after expiration of the term of the lease, coupled with acceptance of rent by the lessor or implied assent provided by the lessor towards the lessee continuing to remain in possession of the property, in the absence of an agreement to the contrary, brings into existence a statutory tenancy from month to month (in case of an immovable property) as contemplated under Section 116¹² of the Act. The said concept is more popularly recognized as 'Tenancy by Holding Over'

Notwithstanding the concept of 'Tenancy by Holding Over', in the event a lessee continues to retain possession of a property, without the consent (whether implied or explicit) from the lessor, such retention of possession is unlawful, and the concept is recognized as 'Tenancy at Sufferance'.

The Supreme Court of India in the matter of R.V. Bhupal Prasad vs State Of Andhra Pradesh & Ors¹³, explained the concept of Tenant at Sufferance as follows, 'tenant at sufferance is one who comes into possession of land by lawful title, but who holds it wrongly after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's Transfer of Property Act (7th Edn.) at page 633, the position of tenancy at sufferance has been stated thus: A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has

been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus : The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. 'The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English Law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at sufferance. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.'

Justice Bhagwati in the matter of *Nanalal Girdharlal v. Gulamnabi Jamalbai Motorwala*¹⁴ had explained the concept of a tenant remaining in possession of the property after determination of the lease in India. He had said, '.....but we do not think that a tenant in possession of the property after determination of the lease can be equated to a trespasser. The law in India on this is different from that in England. When a tenant remains in possession of the property after determination of the lease in India, he undoubtedly becomes a tenant at sufferance but if the landlord accepts rent from him or otherwise assents to his continuing in possession, the tenancy is, in the absence of an agreement to the contrary, renewed from year-to-year or month-to-month according to the purpose for which the property is leased vide Section 116 of the Transfer of Property Act. Even if the landlord does not assent to the tenant continuing in possession of the property and the tenancy is not renewed as provided in Section 116 of the Transfer of Property Act, the tenant does not become a trespasser. The tenant has juridical possession of the property and no one can deprive him of such juridical possession except in due course of law. The tenant can as pointed out by Mr. Justice Batchelor in *Rudrappa v. Narsingrao*, (1905) LR 29 Bom. 213 "recover as against a third party who unlawfully dispossesses him." Even the landlord cannot suo motu dispossess a tenant without his consent and if he does so, the tenant would be entitled to recover possession from him by resorting to the remedy provided under Section 9¹⁵ of the Specific Relief Act. The possession of an erstwhile tenant remaining in possession of the property after determination of the lease is thus fundamentally different from that of a trespasser. Whereas a trespasser is never in juridical possession of the property, and he can always be thrown out if the landlord can do so peaceably, the possession of an erstwhile tenant is juridical and he is protected from dispossession otherwise than in due course of law. Therefore, as far as the Indian Law is concerned, a tenant remaining in possession of the property after determination of the lease can never become a trespasser. This view is supported by at least two decisions of the Bombay High Court. One is the decision of Jenkins, C.J. and Batchelor J. in (1905) ILR29 Bom. 213 (supra) and the other is the decision of Chagla C.J. and Dixit J. in *K.K. Verma v. Union of India*.'

In the matter of *M.R.S. Ramakrishnan v. Assistant Director of Ex-Servicemen Welfare*¹⁶, the Madras High Court said that, 'the law in India and English Law in this respect are different. The landlord in India, even if the lease had expired, will not be entitled to dispossess his tenant except by due process of law, and the principles of English Law that a tenant whose term of the lease had expired, could not complain against his landlord's entry of his property, so long as it has been peaceably made is not applicable to India, and under Indian Laws a person continuing in possession of the property after the expiry of his tenancy, is not regarded as a trespasser, for his entry was lawful.'

The Supreme Court of India, in the matter of Raptakos Brett And Co. Ltd v. Ganesh Property¹⁷, said that, 'in view of the aforesaid settled legal position, it must be held that on the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent court as per the relevant provisions of law. The status of an erstwhile tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession.'

Thus, on a conjoint review of the Act and several judgments, we may conclude the following –

(a) The Act provides that upon determination of a lease, the lessee is bound to handover possession of the premises to the lessor;

(b) In the event the lessee continues to retain possession of the premises after determination of the lease, the lessee may either become a 'Tenant at Will/ Holding Over' or a 'Tenant at Sufferance', depending upon having the consent (implied/ express) of the lessor to retain such possession;

(c) However, in no event will such a lessee/ tenant be classified as a 'trespasser', as a tenant/ lessee has juridical possession over the property and the said tenant/ lessee cannot be deprived of such juridical possession except in due course of law.

2. Remedies available with the Lessor:

Subsequent to determination of lease by efflux of time, in order for the lessor to regain possession of the premises from the lessee, the lessor may to institute a Suit for Ejectment against the lessee.

This is the very type of a suit, which the Rent Control Acts prohibited and instead provided their own machinery for eviction of the tenant. However by reason of Section 3(c)¹⁸ as inserted in the Delhi Rent Control Act, premises where the rent exceeds Rs. 3,500/- per month have been taken outside the purview of Rent Control Act and therefore in respect of such premises, suits for ejectment are once again maintainable.¹⁹

A suit for ejectment may be instituted once it is established that the tenancy has expired by efflux of time or otherwise by service of a notice to quit expiring with the end of a particular tenancy month and there being no assent to continuation or waiver of the quit notice.

Such a suit, in most cases, could be decided at the first hearing itself either on the pleadings and documents, or, if need be, by examining the parties under Order X of the Code of Civil Procedure.²⁰

The Supreme Court of India, in T. Arivandandam v. T.V. Satyapal, has held that, 'and, if clear drafting has created the illusion of a cause of action, nip in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist Judge is the answer to irresponsible law suits. The Trial

Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI), could be called in aid, be it the pleading by a plaintiff or that by a defendant.'

The dismissal of a Suit for Ejectment does not, and can by no stretch of imagination, extinguish the reversionary rights (ownership) of the lessor and confer the same upon the lessee so as to make him an absolute owner. Similarly, it cannot convert a month-to-month lease into one in perpetuity. At the very best it operates as 'waiver' under Section 113²¹ of the Act or an 'assent' of the lessor within the meaning of Section 116 of the Act, and is therefore renewed from year-to-year, or from month-to-month, according to the purpose for which the property is leased. The lessee remains a lessee. He continues to be liable for the rent that accrues. He does not become the owner. His rights consequent to the dismissal would thenceforth be that not of a tenant at sufferance but of one from month-to-month and terminable at any future date as provided by Section 106 of the Act.²²

D. CONCLUSION

On review of the provisions laid down in the Act alongwith various judicial pronouncements on the subject, it may be concluded that, upon determination of a lease due to efflux of time, the lessee is mandated under law to handover possession of the premises to the lessor. Even in case of a dispute between the parties, the lessee does not have a right to retain possession of the premises subsequent to determination of the lease by efflux of time. However, if a lessee/ tenant acts in contravention and does not handover possession of the premises to the lessor despite determination of the lease by efflux of time, then the lessee shall either become a 'Tenant at Will/ Holding Over' or a 'Tenant at Sufferance', depending upon the lessor's consent (express/ implied).

Having said so, in no event will the lessee be construed as a 'trespasser', since a tenant/ lessee has juridical possession over the property and the said tenant/ lessee cannot be deprived of such juridical possession except in due course of law.

Thus, in such an event, wherein a tenant refuses to handover possession of the premises despite determination of a lease by efflux of time, the lessor has a right to regain possession of the premises by instituting a suit for ejectment against the lessee (tenant), in the competent court.

However, a suit for ejectment is prohibited under various Rent Control Acts²³ and a different mechanism for eviction of the tenant is provided thereunder. Therefore, in case there is a prohibition under the applicable Rent Control Act, then the lessor would not have the right to file a suit for ejectment, and thus, the lessor would be bound to comply with the procedure provided under the applicable Rent Control Act.

ENDNOTES

¹ 'Immovable Property' has been defined in Section 3 of the Transfer of Property Act:

Section 3: Interpretation clause—In this Act, unless there is something repugnant in the subject or context, — “immovable property” does not include standing timber, growing crops or grass; “instrument” means a non-testamentary instrument; [“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;] “registered” means registered in [any part of the territories] to which this Act extends] under the law for the time being in force regulating the registration of documents; “attached to the earth” means—

(a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached; 5[“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;] 6[“a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated;] Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act. Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof. Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material: Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

² AIR 2005 Kant 287

³ Section 6: What may be transferred—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,—

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him; 1[(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;]

(e) A mere right to sue 2[***] cannot be transferred;

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military 3[naval], 4[air-force] and civil pensioners of the 5[Government] and political pensions cannot be transferred;

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) [for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 of 1872]], or (3) to a person legally disqualified to be transferee; 7[(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.]

⁴ B. Arvind Kumar v. Government of India and Ors [(2007) 5 SCC 745]

⁵ Rajendra Pratap Singh v. Rameshwar Prasad [AIR 1999 SC 37]

⁶ Modern Food Industries (India) Ltd. v. I.K. Malik, 2003 (1) RCR (civil) 118: 2002 (2) RCR (Rent) 690 (Del) (DB)

Section 106: Duration of certain leases in absence of written contract or local usage—

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.]

⁷ Digambar Narain Chaudhary v. Commissioner Of Trihut Division [AIR 1959 Pat 1, 1958 (6) BLJR 659]

⁸ Section 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 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:—

(B) Rights and Liabilities of the Lessee:-

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

⁹ AIR 1966 Pat 8

¹⁰ [1998] 7 SCC 184

¹¹ Section 116: Effect of holding over—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106. Illustrations

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year. COMMENTS Tenant at sufferance A person who is a tenant at sufferance has no estate or interest in the leasehold property. A tenant holding after the expiry of his term is a tenant at sufferance, which is a term useful to distinguish a possession rightful in its inception but wrongful in its continuance from a trespass which is wrongful both in its inception and in its continuance. A co-owner can maintain a suit by himself in ejectment of a trespasser or a tenant at sufferance; B. Valsala v. Sundram Nadar Bhaskaran, AIR 1994 Ker 164.

¹² Section 116: Effect of holding over—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106. Illustrations:

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¹³ 1996 AIR 140

¹⁴ AIR 1973 Guj 131

¹⁵ Section 9: Defences respecting suits for relief based on contract—Except as otherwise provided herein, where any relief is claimed under this Chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

¹⁶ AIR 1982 Mad 431

¹⁷ [1998] 7 SCC 184

¹⁸ Section 3(c): Act not to apply to certain premises –

Nothing in this Act shall apply-

(c) To any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees; or.....

¹⁹ Mec India Pvt. Ltd. v. Lt. Col. Inder Maira And Ors. – (80 (1999) DLT 679)

²⁰ Supra note 19.

²¹ Section 113: Waiver of notice to quit—A notice given under section 111, clause (h), is waived, with the express or implied 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.

Illustrations:

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee; notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

²² Supra note 19.

²³ As per the Seventh Schedule of the Constitution of India, land laws, including the relation of landlord and tenant are a subject of 'State List', and therefore the law governing a landlord and tenant relation may differ from state to state.

Fortunately, by reason of Section 3(c)²³ as inserted in the Delhi Rent Control Act, premises where the rent exceeds Rs. 3,500/- per month have been taken outside the purview of Rent Control Act and therefore in respect of such premises, suits for ejection are once again maintainable.