

Court Case Management before ADR forum in Landlord Tenant Disputes

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Abstract: The section 89 of the Civil Procedure Code reads to formulate the terms of settlement by the referral judge . But the Order 10 Rule 1-A of the same code, does not require the court to either formulate the terms of settlement or make available such terms of settlement to the parties and then reformulate the terms of possible settlement i.e. after receiving the observations of the parties. The Hon'ble Apex Court in case of *Afcon Infrastructure Ltd vs Cherian Varkey Construction Co. Pvt Ltd, (2010) 8 SCC 24* has discussed the true interpretation of the section 89 and order 10 of the Civil Procedure Code and issued various guidelines while referring a case before ADR mechanism . The Hon'ble Apex court also discussed a case management for referring the disputes before appropriate forum of the ADR.

The judge who refers the case for settlement through any ADR forum is known as referral judge. After considering the facts and prima facie circumstances, the Referral judge has to consider the suitability of the case. He has to ascertain a proper ADR forum to refer the dispute. The concern ADR forum has to find out elements of settlement.

In this paper it is studied that, most of the disputes that covers under Maharashtra Rent Control Act, 1999 are suitable to refer before ADR forum. The scope of the sections in the Rent Act and the area to find out possible elements of settlement is also studied. It is not an exhaustive study and has covered limited circumstances. A little discussion is carried out for drafting the settlement deed. It is studied that, in the Maharashtra Rent Control Act, there is an ample scope to find out the elements of the settlement and therefore many cases can be resolved informally.

Keywords: Settlement elements of settlement, Terms of settlement, referral judge, Landlord and tenant disputes, ADR process.

I. INTRODUCTIONS

The dispute between landlord and tenant arises due to the relationship between them¹. Due to such relationship, it may be presumed that, prior to bringing the suit before the court of law; the parties might have made an attempt to dissolve it. But in making such an attempt the parties may not be able to get success². The unsuccessful negotiation might have been stopped at any stage.³ It might be due to barriers in communications between them or due other reasons. Due to pendency of cases before court and due to a time that requires dissolving the dispute, a simple disputed cause may become more complex. There are other reasons that cause to make the dispute more complex. In many causes, though prima facie the dispute appears to be a simple, but it might have been connected with other complex causes. The litigation for connected complex or other causes might be pending before another forum of court of law. In some of the causes, a third party who has vested or contingent interest might have been playing its role and thereby the dispute in issue cannot get end as early. The parties may be not aware a various factors those are affecting in dissolving their dispute. The section 89 of the Civil Procedure Code, 1908 is helpful to dissolve the dispute at any stage of the case. It reads as, Every Trial Judge before framing issues⁴ has to refer the dispute to the ADR Forum. If the process described in Section 89 of the Civil Procedure is studied then it clearly reads that the task to formulate or reformulate the terms of settlement has to be carried out by the referral judge. But in the same code, the order 10 does not prescribe such process. In case of *Afcon Infrastructure Ltd vs Cherian Varkey Construction Co. Pvt Ltd, (2010) 8 SCC* a Hon'ble Supreme Court interpreted both provisions and provided a guidelines. It is discussed that, it is sufficient, if the referral judge merely describes the nature of dispute (in a sentence or two) and makes the reference. It is not necessary for the referral judge to formulate or reformulate the terms of possible settlement.⁵ It is also

1 Some of the illustrative guidelines to avoid unnecessary litigation in Court are provided by the Hon'ble Supreme Court in *Mohammad Ahmad v. Atma Ram Chauhan & Ors.* <https://indiankanoon.org/doc/958435/> access on 5-3-2017

2 These disputes can be avoided simply by understanding the legal rights and obligations of both landlords and tenants. <http://www.imperialproperties.ca/about/blogs/avoiding-the-most-common-landlord-tenant-disputes> access on 8-3-2017

3 In eviction proceedings, compromise between landlord and tenant should be permitted at any stage. <http://www.legalservicesindia.com/article/article/protection-against-eviction-and-fixation-of-fair-rent-510-1.html> access on 6-3-2017

4 "Issue" means a matter that is in dispute between two or more parties or the point at which an unsettled matter is ready for decision. Framing of issues is necessitated that no party at trial is put to surprise. It guides the parties to the suit to adduce proper evidence during trial. Under Order 14 of the Code of Civil procedure, the court is required to frame issues, only on such controversies, as it perceives between the parties. At the first hearing of the suit, the court shall after reading plaint and the written statement and after examination of parties orally under Order X Rule 2 C.P.C., and also after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. <http://webcache.googleusercontent.com/search?q=cache:AEsk9krtmpIJ:ecourts.gov.in/sites/default/files/FRAMING%2520OF%2520ISSUE%2520AND%2520JUDGMENT%2520WRITING%2520-%2520by%2520Sri%2520S%2520Atheequ%2520Ahmad.pdf+%&cd=3&hl=en&ct=clnk&gl=in>

5 *Afcon Infrastructure Ltd vs Cherian Varkey Construction Co. Pvt Ltd, (2010) 8 SCC 24*

discussed as to how the referral judge to ascertain a proper forum to refer the dispute in hand. Thus from the above discussions it clearly reveals that, after receiving the dispute, the ADR forum has to ascertain [1] whether there exists any element of settlement which may be acceptable to the parties, [2] to formulate the terms of settlement⁶ and give them to the parties for their observations and [3] after receiving the observations of the parties, to reformulate the terms of possible settlement. The ADR forum has to determine the stage where the parties might have stopped to communicate and its reason. Due to a various circumstances involved in the dispute, the ADR forum has to evaluate the dispute objectively.⁷ Such evaluation process helps to know the dispute in real sense.⁸ During the process of objective evaluation, it is necessary to ascertain other factors , like the readiness of party, positive attitude, previous attempt to settle the matter and any attempts between the another tenant with the same landlord or vice versa.⁹ The process for evaluation will be helpful to find out the elements of a settlement that may be acceptable by the parties.

II. ELEMENTS OF SETTLEMENT

The element of settlement is a nucleus in formulation of the terms of settlement. The ADR forum has to carry out a research study of each dispute to find out the elements of settlement. In an adjudication process the judge has to adjudicate, **who is Right?** But while determining the elements of settlement, the ADR forum has to carry out research, to find out the possible terms so that, it's probable result would be **'What is Right?'**.¹⁰ The elements of settlements have to be studied from the pleadings that cover a substantive law for the cause of action, the relied documents, relevant documents and other material placed on the record that is helpful in connecting the fact and relevant facts. The Order 10 to 13 of Civil Procedure Code is material provisions provided in the civil Procedure Code and if it is complied then it may help in finding the minimum requirements of the parties and to identify their willingness to dissolve the dispute at early stage.

III. STUDY FOR LANDLORD & TENANT DISPUTES

There are three major¹¹ kinds of causes under the Maharashtra Rent Control Act.

- 3.1] Rights and Interest of Parties {Including Bonafide need for himself by the landlord }.
- 3.2] Other Bonafide needs.
- 3.3] Conditions of tenancy and rights & liabilities of the parties.

{A flow chart explains the areas for elements of settlement }

⁶ Compromise is an agreement between two or more persons to amicably settle their dispute. Courts consider four factors in deciding whether to approve a proposed settlement: the probability of success in the litigation; the difficulties to be encountered in the matter of collection; the complexity of the litigation involved, and the expense, inconvenience and delay surrounding it; and the interests of the creditors. [<https://compromiseandsettlement.uslegal.com/>]The terms of a settlement agreement do not necessarily need to be equal. One party may give up more than originally intended. However, as long as the parties agree to the terms and the court views the compromise as fair, the settlement will be upheld by the court. A settlement is considered binding, and the court views it as final and conclusive.[<http://legal-dictionary.thefreedictionary.com/Compromise+and+Settlement>]. "Settlement" means a settlement as defined in section 2(b) of the Specific Relief Act,1963.

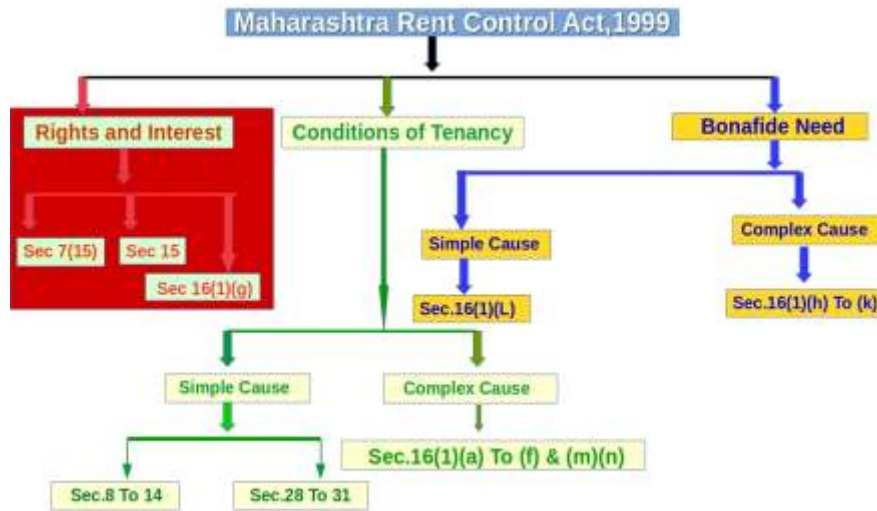
⁷ It is a process of preliminary check up by the referral judge after study to prepare a history with expected areas so that, the ADR authorities may consider it to find out possible way to proceed further.

⁸ Court is not competent to pass a decree with consent of parties on grounds which do not exist in the Rent Act,Nagiadas Ramdas v. Dalpatiam Ichharam, Brijram, (SC),1974 AIR (SC) 471

⁹ In the compromise purshis, the status of the parties as landlord and tenant is accepted. No ground which is available under Section 16 of the Maharashtra Rent Control Act is mentioned, indicated or reflected. Therefore, the decree based upon the terms of the compromise being contrary to Section 16 of the Maharashtra Rent Control Act, becomes nonexecutable. Abedali Khan vs Devidas on 28 September, 2011.Bombay High Court,<https://indiankanoon.org/doc/1566888/> . The terms of the compromise do not indicate that the tenant accepted as valid any of the grounds set out by the landlord. Inderjit Singh v. Randhir Singh, (P&H),1978(1) RCJ 628

¹⁰ It is not who is right, but what is right, that is of importance. Thomas Huxley: <https://www.brainyquote.com/quotes/quotes/t/thomashux1152612.html>. What is right? Comes first and then it will be easy to find out , 'who is right?'. Therefore, prior to settlement of issues the reference to ADR forum is necessary.

¹¹ **Major Provisions of the Rent Control Act,***The Acts typically contain in regard to the following provisions:*
a) control on letting and leasing of vacant buildings to assist tenants in their search for desirable rented accommodation,b) fixation of 'fair' or 'standard' rent,c) protection to tenants against indiscriminate eviction by unscrupulous landlords,d) obligations and duties of landlords vis-avis maintenance and upkeep of their rented properties,e) rights of landlords against tenants who default in paying rent or misuse the premises, and f) rights of landlords for the recovery of premises in specific cases. V.P. Sarthi, Law of Transfer of Property, (Lucknow: Eastern Book Co.) 2005



3.1 Rights and Interest of Parties:

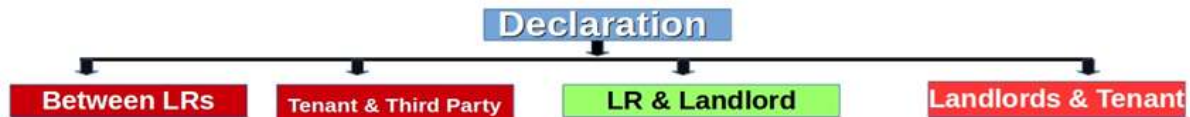
It covers a cause of action for:-

3.1.1] Section 7(15) (declaration as a tenant) or transfer of rent receipt section 31 of Rent Act.

3.1.2] Section 16(1) (g) (bona-fide need for himself by the landlord) and

3.1.3] Section 15 (eviction)

3.1.1 Section 7(15) R/w Section 31 involves causes to declare a Tenant or for the direction to issue rent receipt in the name of legal heir of the deceased tenant.



Between LRS of deceased Tenant: Ordinarily, in such a dispute, a landlord plays a role of spectator. He shows his willingness to accept any of the heirs, to whom the court will declare as a tenant. The word, 'as may be decided' as stated in section 7(15), itself prima facie shows that, the parties always prefer an adjudication by the court. The landlord might be aware about the actual fact as required in section 7(15), but he might be interested in the particular heir of the deceased tenant and it might be due to the contingent interest or other facts, the landlord never discloses the true fact. Due to various circumstances, such disputes those are between the heirs of the deceased tenant has to be studied with the following areas:-

Prima facie areas of elements of settlement for Residence Premises¹²:-

- 1] Number of heirs and history of their residence.
- 2] Who was residing with the original tenant, when the original landlord died?
- 3] Availability or financial capacity to find another of residential premises by the heirs.

Prima facie areas of elements of settlement for Commercial Premises:-

- 1] Who was actually carrying business with the original tenant?
- 2] If more than heirs were doing business with the deceased tenant then the probability to make their joint business as a tenant.
- 3] If the legal heirs are minor, then probability to make them party in the business to make it joint business

In both the above situations, the monetary interest by the heir to get free from the tenanted premises may be one of the hidden causes. Such disputes may be time consuming process in ADR.

Tenant & Third Party: In many causes a third party, who may be in a remote relation with the family of the deceased tenant, moves a claim for his residence during the lifetime of the tenant. He may move claim that, he was treated as a family member or an adopted son or daughter or right devolved through the Will-Deed executed by the deceased tenant. If the suit

12 Court should have regard to the paramount collective interest of the family of the deceased - tenant. Gool Rustomji Lala vs. Jal Rustomji Lala and Ors. AIR 1972 Bom 113

premises are not in the legal or actual possession by the legal heir of the deceased tenant, then in such circumstance, there might be a hidden transactions or humanity ground to allow occupying by the third person by the tenant or his legal heirs. In most of circumstances, the heir of deceased tenant might not be in a need of the premises and third party might be in need of monetary gain from the landlord. In such disputes, the landlord may take plea for subletting or unlawful occupation of the premises by the third person.

Prima facie areas of elements of settlement:

If the legal heirs of the original tenant do not take an initiative to disclose the real fact of residence or unlawful occupation or subletting to the third person, and, If there is a object to get monetary gain from the landlord, then in such circumstances a negotiation is possible but there is little scope to settle such dispute or it will be time a consuming process in ADR.

Landlords & Tenant: Following are material circumstances:

- 1] One of the co-owner can file a suit for the bonafide need. The cause of action arises when more than co-owners claim rent from the tenant or they avoid to accept a rent.
- 2] In case of transferee landlords or power of attorney holder for landlord, may be in the capacity of building developer, avoids accepting the rent. The cause of action may include the demand of rent.
- 3] There is a rule of evidence of *Estoppel*¹³ and moreover the provisions for inter-pleader suit are provided but due to various circumstances and the claims between the landlords over the premises become a complex cause . The Landlords might have filed a separate suit for ownership and tenant might not be aware about such suit, in such a circumstance, the landlord before the Rent Court may not disclose the other facts relevant to causes of action in disputes with the other tenants or between landlords. There may be a possibility that, the alleged landlord before Rent Court may be ready to accept the status of the disputed tenant. The intention behind such acceptance might be that, he might be in a need of recognizance as a Landlord for his contingent interest or other interest, in the premises. He might be accepting the disputed person as a tenant only to get a declaration as a landlord and to use such declaration against the other persons who might be claiming co-ownership over the property.¹⁴ In the above situations, it is necessary to carry out research studies and to find out the mindset of the parties.

Prima facie areas of elements of settlement:

The dispute before Rent control court can be settled upto cause of action extent only, because other causes have no concern with the disputes in hand. Moreover, any other person who is claiming co-ownership is not a party in the suit. However, such dispute resolving process is depends upon many other circumstances. The object of settlement is that, all disputes relating to the suit a premise has to be settled and such object cannot be avoided.

Rent Receipt: If a heir is claiming a rent receipt, then the landlord might have avoided to issue a rent. This might be due to the existence of other legal heirs or lack of knowledge to the landlord. It is not expected that, the landlord should know which legal heir was residing with the deceased tenant. Due to various reasons, the claim by *only heir* for issuing the rent receipts might have been avoided by the landlord.

Prima facie areas of elements of a settlement:

If all the heirs of deceased tenant are disclosed, and, If there are other heirs did not object to issue rent receipt in the name of claimant heir, then the matter can be settled. There is a probability that, other heirs may not be interested in the premises or they might be interested to get monetary gain from the claimant heir. Therefore a negotiation to settle dispute in a monetary consideration or making any other arrangement for such legal heir is possible. But it is a time consuming process before the ADR forum.

3.1.2 Bonafide Need of Landlord for Himself:-

Cause for Section 16(1)(g): If the cause is for bonafide need '*himself*' by the landlord then there would be a question of hardship.

In this process it is necessary to ascertain:

Bonafide:

- Whether the action is for some oblique motive or is motivated by fanciful and whimsical reasons?
- Whether the details of the entire building are pleaded for such need?
- Whether other reasonable accommodation being available to the landlord and the tenant?

Reasonable:

- It must have relation to the actual need of the landlord and that need must relate to the standard of requirement of a reasonable man.
- The size of the family of the landlord, his social status, his style of living.
- It means not only obtaining the facts surrounding the dispute, but also attempting to find out as much as possible about the other party or parties, their background and their negotiating interests are the relevant facts.

¹³ Estoppel is eminently a matter of pleadings. If not set up in the pleadings or issues, it cannot be availed of Gobinbhai v. Dahvabhai AIR 1937 Bombay 326.

¹⁴ Attempt to ascertain the intention of the parties and then proceeded to decide the nature of the relationship created between the parties by the provisions of the compromise decree. Ramjibhai Virpal Shah vs Gordhandas Maganlal Bhagat on 6 January, 1954, AIR 1954 Bom 370

Prima facie areas of elements of settlement:

- 1] Accommodation available to the landlord and his conduct to dispose of the other portion from the same building or other buildings possess by the landlord, to another person.
- 2] Greater hardship to the landlord or tenant.
- 3] Possibility of tenant to get alternate accommodation within the area.
- 4] Interest of tenant to get monetary gain to quit the premises.
- 5] If a building is under Slums Act, then tenants interest in Slums scheme.

Most of the causes of the bonafide need for **'himself'** prefer adjudication by the Rent Court. If the parties settled the dispute by way of compromise, then also it is necessary to see the effect of Rent Act and the validity of the terms of settlement. The process for settlement of such dispute may be time consuming before the ADR forum.

3.1.3 Eviction:

In most of the causes, the allegations are noticed that, the landlord did not accept the rent from the alleged tenant. It is also noticed that, the tenant is not vigilant in sending or paying the rent to the landlord. But such cause for not accepting rent or not-paying the rent by the landlord or tenant might be deeply connected with the hidden causes. The cause of eviction also arises where the tenant has committed a breach of conditions or landlord has a contingent interest in the premises. These circumstances have to be studied with the following points.

i] Tenant and landlord: The pleadings and documents filed by the parties is helpful to find out defaulting party.. If there is a dispute for demand of excess rent then there is a scope to settle the dispute in certain circumstances. If the tenant has made default in compliance of the provisions of law, then there is a little scope to dissolve the dispute.

ii] Heirs of deceased Tenant and landlord: The deceased tenant might have paid rent or might not have paid rent. There may be many circumstances for such payment or non payment of rent. In such circumstances, there may be many prima facie causes: If there is a dispute is in between legal heirs of the deceased tenants and none of them paid rent to the landlord. The landlord might be ready to accept the rent from the person to whom the court will declare as a tenant. This cause of action might be closely related with the section 7(15). This dispute may be time consuming before ADR as discussed above.

iii] New landlord and Tenant: If a landlord is a transferee landlord [*new landlord or developer with power of attorney to collect the rent*], the demand of rent or non payment of rent to the new landlord may also depend upon a document like letter of **Attornment** issued by the old landlord or demand of arrears of rent by new landlord. The causes start from the demand notice for arrears of rent or refusal to pay the arrears of rent within limitation and other conditions to show readiness and willingness to pay the rent. The demand or refusal to pay arrears of rent can be categorized as :-



Prima facie areas of elements of settlement:

- 1] Allegations for exorbitant demand or excess demand if the cause is connected with wrong calculation or proportionality in imposing of rent is arise.¹⁵
- 2] If the tenant complied with the demand notice and raises a claim for fixing the standard rent by moving in a separate application.

In such circumstances, a landlord shows his confidence that, he will evict to the tenant. The tenant may show his confidence that; he will get success in prolonging the court case for years together, though he did not comply with the section 15 of the Rent Act. If the landlord is really interested in demanding arrears of rent¹⁶ then there would be correspondence between them, for the financial conditions, any discount or time period etc disclosed by the parties to each other. In fact, the demanded rent or the arrears of rent should be legally recoverable, but to show default, the landlord moves claim with an allegations for a various past activities in delay in paying rent by the tenant and breach of other conditions that acts might have been continued and allowed by the landlord for many years.

Prima facie areas of elements of settlement for the cause of Rent:

- i] Whether landlord wants to retain the tenant?
- ii] Whether tenant wants to retain the premises as a tenant?
- iii] Whether landlord wants the premises for re-development of the property or to transfer to some other person / tenanted free?

¹⁵ Dial Chand Vs. Mahant ChandKapoor (1967)69 P.L.R. 248). It is the responsibility of the tenant that he calculates and pays the arrears and the interest thereon at the rate of 6% per annum. The wrong claim by the landlord will not render invalid tender to be valid one.

¹⁶ Shivshankar Gurgar vs Dilip: (2014) 2 SCC 465, it has been held that if the time-limit is fixed by the order of the court, the court has power to extend the same however, in cases where time-limit is fixed by agreement of the parties, the court executing the decree would have no power to extend the time-limit fixed by the parties.

Prima facie areas of elements of settlement:

- i] Whether the parties are ready to fix the standard rent?
- ii] What is an outstanding due?
- iii] Whether, the legal rate of rent is demanded?
- iv] Scope to provide discount in interest of an amount?
- v] When the arrears of rent have to be paid?
- vi] What would be the mode of payment of the arrears of rent?
- vii] What would be remedied, if the default is caused for the non payment of arrears of rent as agreed ?

If the tenant has wilfully committed default, **Prima facie areas of elements of a settlement:**

- [i] Whether tenant does not want to retain the premises?
- [ii] To quit premises, whether a tenant is interested in monetary gain from the landlord?

In such circumstances it may require to consider the following circumstances:

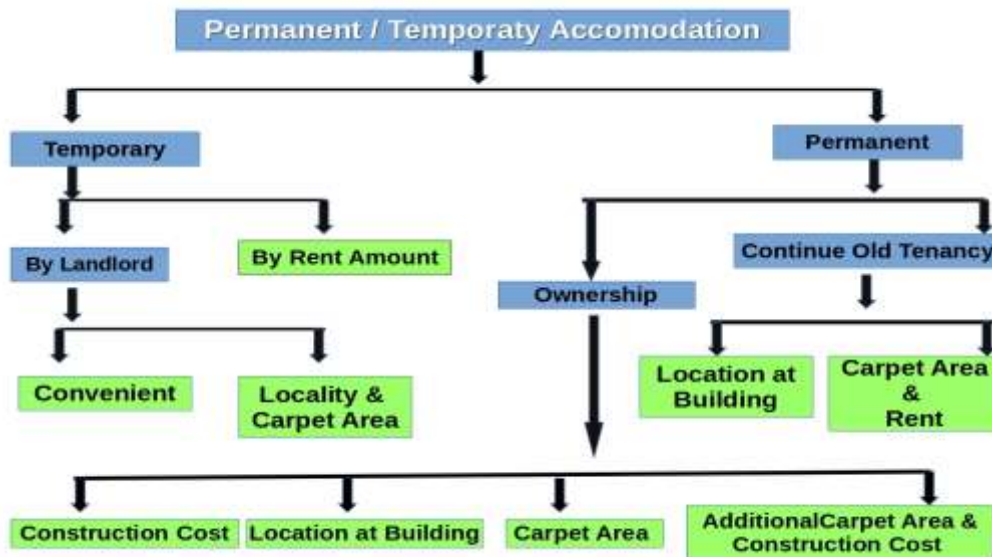
- i] Potential value and range of the premises.
- ii] Scope of exchange of range of amount so that, both parties can abide it.
- iii] Scope to demand or readiness to pay a reasonable amount.

Hidden causes: In case of tenancy that was created prior to the Rent Act, the landlord might have accepted rent by intervals, for a year together as paid by the tenant. In such circumstances, it is necessary to ascertain, the mindset of the landlord to issue a demand notice for the default period. In such causes, the pleading by the parties for the cause of action and documents relied by the parties may not be helpful to ascertain the interest of the parties because the parties may avoid to plead hidden interest. The history of their relationship will be helpful in findings the connected elements of settlements. But such process may be time consuming before the ADR forum.

3. 2 Other Bonafide Needs:

3.2.1 Bonafide need Section16 (1)(i)(j)(k):

The interest of the landlord and Tenants may be reflect in the following areas:-



Prima facie areas of elements of settlement / Interest of Landlord:

- 1] Tenant to quit the premises, after taking satisfied amount.
- 2] Tenant to take the premises on ownership basis , on paying the amount of consideration.

Prima facie areas of elements of settlement/ Interest of Tenant :

- 1] To get permanent alternate accommodation to a suitable area and at a suitable location of the proposed building.
- 2] To get temporary accommodation with suitable area at suitable location or to get an amount for getting such temporary accommodation as per the desired rate for carpet area.
- 3] To quit the premises after taking satisfied amount.

3.2.2 Complex causes in section 16(1)(h) To (j) :

It has to be studied into two parts:

Without vacating the premises:-

If the landlord insists to all tenants to vacate the entire building first, and makes the assurance that, he will protect the rights of the tenants then also it is necessary to go through the following areas:

Prima facie areas of elements of settlement:

i] Whether the entire building vacating is required for such repairs?

ii] Whether the landlord can repair the building as per repairing stages / floors or for the portion of the building?

If the landlord issued a written permission to tenant to repair the premises then such repairs should be tenatable repairs only. If such repairs require permission from the municipal corporation, then repairs should be as per permission granted by Municipal Corporation. While making any repairs, it is safe to carry out the inspection from an expert, to avoid any further allegations for any breach of condition for addition and alteration in permanent nature.

Repairs:-

i] Whether it is a repair as laid down in the law.

ii] Whether such construction is beneficial to the use of premise and does not require a permission from municipal corporation?

3.2.3 On Vacating the Premises: The conditions are already provided in the Maharashtra Rent Control Act. . If conditions are agreed then, it makes easier to frame a term of the settlement.

3.2.4 Reasonably and Bonafide Requirement Demolishing for New or raising floors: The conditions are already provided in the Maharashtra Rent Control Act along with requirement and undertaking by the landlord. If conditions, requirement and undertaking are agreed by the parties then, it makes easier to frame a term of the settlement. But it is necessary to consider the material problem to provide the temporary accommodation to the tenant.

Temporary accommodation:-

Prima facie areas of elements of settlement:

i] Rate of carpet area willing or demanding by the parties.

If the landlord is ready to provide temporary accommodation then, elements of the settlement will be hidden at :

i] Whether alternate temporary accommodation is suitable for the tenants?

ii] What is the locality and carpet area that will be provided by the landlord in temporary alternate accommodation?

For permanent alternate accommodation to the tenants, the elements of settlements will be hidden causes may be as:

i] Whether landlord is ready to continue to tenant in redeveloped building ?

If yes, what will be the location of the premises and its carpet area?¹⁷

ii] If the interest of the parties is towards to provide permanent alternate accommodation on ownership basis , then elements of settlements will be hidden as :

i] Location of premises at building

ii] Carpet area

iii] Construction costs, if any has to be paid

iv] Additional carpet area and its construction cost.

3.2.5 Reasonably and Bonafide Requirement Demolishing due to Municipal Authority: The cause of dispute may arise due to the notice issued by the municipal corporation or letter of Evacuation. In the Maharashtra Rent Control Act, the situation is not described and therefore this vacuum is fill up by the Hon'ble High Court in case of *Municipal Corporation Of Greater ... vs M.M.R.D.A* .¹⁸ If the parties are ready to comply the conditions then it become easy to formulate the terms of settlement.

3.3 Conditions of tenancy and rights & liabilities of parties: Most of these causes might be breach of conditions of tenancy, against an individual tenant therefore those are less complex, so there is a ample scope to find out the elements of the settlement.

3.3.1 Permanent structure:



Following are important facts to find out elements of settlements:

¹⁷ various factors applicable to find out the actual value and importance of the property is discussed in Anderson Wright & Co Vs Amar Nath Roy 2005(5)ALL MR (SC)939

¹⁸ Access on 23 June, 2014, <https://indiankanoon.org/doc/138919108/>

- The Pleadings for the nature of construction, description of building as per the Rent Act.
- What was the intention of the tenant to take the premises on lease and surrounding circumstances?
- Whether such structure brings substantial change in the character of the premises?
- What was the object and purpose behind such construction?
- Whether the object is for better or more complete enjoyment of the premises.
- Whether such construction is against the Municipal Corporation Law?

3.3.2 Nuisance and Annoyance:¹⁹

- What are pleadings for private nuisance?
- How it interferes with the enjoyment of premises or other premises holders?
- Whether a witness is cited for the nuisance in question?
- What are the previous steps taken to remove nuisance?
- In case of commercial premises, whether such alleged nuisance is expected for inducing a tenant?

3.3.3 Sub-let:

Element for exclusive possession by the tenant in the residence or in business is an important factor.



Factors:

- 1] If the tenant is permanently left the premises and the alleged occupant does not cover within the definition of the Tenant then there is little scope to settle the dispute.
- 2] If the tenant has removed himself from the family business or partnership of the firm, then there is little scope to settle the dispute.

In case of sub-let cause moved by the landlord, the original tenant might be helping to alleged occupant. This might be vested interest of the tenant. The landlord might be aware of occupation by the alleged occupant, but he might have negotiated with the alleged occupant to allow in occupying the premises. But, when the tenant could not fulfil the interest of the landlord, then the landlord starts to raise the dispute for sub-let to by the original tenant. Due to hidden causes [such a disputes may be a time consuming process before the ADR forum.

IV. CASE MANAGEMENT²⁰

The Hon'ble Apex court pleased to discuss case management in ADR. Following are some circumstances in case management, sending original record and time limit:-

- a] If the case is simple which may be completed in a single sitting, or cases relating to a matter where the legal principles are clearly the court may refer the matter to Lok Adalat.

Example: Issuing rent receipt in the name of only heir of the deceased tenant, subletting, breach of condition.

- b] In case where the questions are complicated or cases which may require several rounds of negotiations, the court may refer the matter to mediation.

Example: Bonafide need where only one premises is involved.

- c] Where the facility of mediation is not available or where the parties opt for the guidance of a judge to arrive at a settlement, the court may refer the matter to another judge for making an attempt to settle the matter. If the settlement includes disputes which are not the subject matter of the suit, the court may direct that the same will be governed by section 74 of the AC Act (if it is a conciliation settlement) or section 21 of the Legal Services Authorities act, 1987 (if it is a settlement by a lok adalat or mediation which is deemed Lok Adalat) . This will be necessary as may settlement agreements deal with not only the disputes which are the subject matter of the suit or proceeding in which the reference is made, but also other disputes which are not the subject matter of the suit.

Example: disputes where hidden causes or litigation is pending other than rent court.

4.1 Sending original record²¹: Make available only copies of relevant papers to the ADR forum. However if the case is referred to a Court annexed Mediation Centre which is under the exclusive control and supervision of a Judicial Officer, the original file may be made available wherever necessary.²²

¹⁹ Section 16(1)(c) Nuisance or Annoyance : The landlord has to prove :The tenant is guilty of conduct which is nuisance or annoyance to the adjoining or neighboring occupier. The tenant is convicted under section 394(1) and 394-A of the Mumbai Municipal Corporation Act, or of section 376 (1) or of section 376A of the Bombay Provincial Municipal Corporations Act, 1949.

²⁰ Afcon Infrastructure Ltd vs Cherian Varkey Construction Co. Pvt Ltd, (2010) 8 SCC 24

4.2 Time Limit: For disposal of matters referred for mediation, there is a time limit of 60 days from the first date and in exceptional situations, with the consent of the parties, the time limit can be extended by 30 days. However, time may be extended beyond 90 days, only with the permission of the referral judge, provided both parties agree to it. If the above mentioned time limit is over, then the case should be sent back immediately, with the report that the matter could not be settled.

4.2 Steps to find out elements of settlements

Following are the steps that may be helpful to proceed to find out the elements of settlements.

- a) Firstly, to identify the key issues
- b) To consider the interest of the party and the counter interest of the other party.
- c) To consider the expectation to continue the landlord-tenant relationship in the future.
- d) In case of group matters [either pending or may arise as a pre-litigation],²³ it is necessary to consider the previous strategy of the landlord to settle the matters and also consider the interest of tenants who had already settled the matters.
- e) Most of the group matter may be with complex causes. The factor for unreasonable demands has to be considered, either to avoid it or probability of range of negotiations.

4.3 Steps to find out probable terms of settlement:-

- 1) What are hidden issues and interest of the parties?
- 2) What are the interests, priorities?
- 3) Then set the goals of probable settlement and also consider the limits of such goals?
- 4) To consider the factors that the dispute should be dissolved and there will be no chance to arise dispute on the same cause of action or issues.

4.4 Impediments in finding elements of settlements: In most of the causes the parties fails to disclose the description of the property / building along with its city survey number, carpet area, built up area, four boundaries, age of construction of building etc. They fails to produce the factual position and a description of the entire building. They did not produce the position of the premises as to, When the tenant was firstly inducted, What was the use of the premises, dimension of rooms, loft, staircase, Bathroom etc . It is a rule of pleadings that, parties to plead for any other pending case between parties for the same cause of action. It is not mandatory to plead the other pending cases by or against the landlord or another tenant from the suit building. If the parties voluntarily disclose the relevant facts and other related causes for the same building, pending cases or cases decided with the other tenants etc, then it may become more easy to find terms of settlement. In most of the causes the party executes an agreement [*privately without considering the provisions of the Maharashtra Rent Control Act*] and then avoids to produce such agreement before the court. The reason may be that, such agreement might not be admissible in evidence before court of law. The cause of the dispute might be connected with such agreement document. It is studied that, such agreements may be useful for collateral purpose and to find out the elements of settlement.²⁴

4.5 Factors Affecting in studying the terms of the settlement:

- 1) If the legal position for the cause of action is settled in any case-law then mere on the facts in issue it is not easy to apply the same legal position to the fact in issue.
- 2) If the law of precedent is based on the facts of its own case only, then on considering the facts in issue, it is easy to convenience of the parties to go to settlement.
- 3) Group cases: If the party expresses views of the facts in issue,²⁵ then, a guideline provided in a Manual by the Hon'ble High Court is useful for the ADR authority. Each dispute has to be dissolve on its own footing.

4.6 Formulation of Terms of Settlement: Terms of the settlement should be in precise and unambiguous terms.²⁶ It may include refraining or ceasing and desisting from committing the breach of the terms of agreement in the future.

²¹ Afcon Infrastructure Ltd vs Cherian Varkey Construction Co. Pvt Ltd, (2010) 8 SCC 24

²² 'private mediation' is governed by a completely different legal framework, i.e., the Indian Contract Act, 1872, and specifically the 1996 Act. This seems logical as a court-referred mediation would require a different procedural framework since it's under the directions of a court where no-settlement can send you back to the court for the case to be decided through trial on merit.

²³ Court proceedings of any type should be avoided at all times. Well-defined contracts will greatly help landlords to convince tenants that they (the landlords) are likely to win the case in court. As stated above, eviction cases can last up to 10 or even 20 years. <http://www.globalpropertyguide.com/Asia/India/Landlord-and-Tenant> access on 1-3-2017

²⁴ If the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the Court to act on that admission and make an order for possession in favour of the landlord without further enquiry. K.K. Chari v. R.M. Seshadri, 1973 RCR 342 : AIR 1973 Supreme Court 1311

²⁵ Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., reported in AIR 2010 SCW 4983

²⁶ Roshan Lal v. Madan Lal, AIR 1975 Supreme Court 2130, on the basis of evidence produced by the parties, if grounds exist then even if same are not mentioned in the order of the Rent Controller the eviction order can be passed on the statements made by the parties.

4.7 Need of Effective Communications: After framing the terms of the settlement, a copy should be provided to the parties and their counsels. During the entire process, the advocates for parties to assess the mindset of the client and it are expected that, they shall always try to motivate for settlement.

Suggestions:

- a] If the tenant wants to deposit rent on a fixed date of each month, then there is a need of electronic method to deposit the amount of rent in the court.
- b] Effective use of the Order 10 to 13 of Civil Procedure Code.
- c] Group cases or where there are a number of parties, then such matter be kept before Lokadalat.
- d] The cases pending between the same parties and for same suit premises, and the cases pending between the same building has to be studied by the same ADR forum.
- e] For effective communication, it is necessary to provide, **Android App** , for cell phone / smart phone, works real time technology suitable for the litigants for effective communications.
- f] Need to provide a separate window in website of the court for the ADR forum cases and its disposal/awards.
- g] The Municipal Corporation or concern authorities to take initiative to promote the parties to settle the dispute as per Maharashtra Rent Control or applicable Act and Section 89 of Civil Procedure Code.
- h] To make amendment for the disclosure clause in the Rent Act cases like a provision as provided in Order XI of the Civil Procedure Code, amendment 2015.

V. CONCLUSIONS

The dispute between landlord and tenant may prima facie appear to be a simple dispute, but due to hidden causes, the parties may not show their willingness to settle the dispute. The parties might be concentrating over their interest and demands or benefits.²⁷ But in the Maharashtra Rent Control Act, there is an ample scope to find out the elements of the settlement. The elements of a settlement are helpful in the formulation or reformulation of terms of settlement. It identifies the interest at stake in the conflict. It will clarify the goals of the parties. It gives prima facie range of the possible acceptable outcomes. It may clarify the desired relationship and internal dynamics so that it will be helpful in weighing options to reach to settle the dispute upto aspiration level. In many cases, a dispute between landlords and tenants can be resolved informally through ADR mechanism.

Abbreviation:

- ADR = Alternate Dispute Resolution
- CPC = Civil Procedure Code.
- Slums Act = The Maharashtra Slum Clearance Act, 1971
- Rent Act = Rent Control Act

MATERIAL PROVISIONS FROM THE MAHARASHTRA RENT CONTROL ACT, 1999

Section 7(15): "tenant" means any person by whom or on whose account rent is payable for any premises and includes,-(a) such person,-(i) who is a tenant, or (ii) who is a deemed tenant, or (iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or (iv) who has derived title under a tenant, or (v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts; (b) a person who is deemed to be a tenant under section 25; (c) a person to whom interest in premises has been assigned or transferred as permitted under section 26; (d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,-(i) where they are let for residence, is residing, or (ii) where they are let for education, business, trade or storage, is using the premises for any such purpose, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court. **Explanation--** The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

Section 8: Court may fix standard rent and permitted Increases In certain cases

Section 9: No applications for standard rent In certain circumstances

Section 10: Rent in excess of standard rent illegal

Section 11: Increase in rent annually and on account of improvement, etc. special addition etc. and special or heavy repairs

Section 12: Increase in rent on account of payment of rates, etc

Section 13: Certain Increase in rent excepted

Section 14: Landlords' duty to keep premises in good repair.

Section 15: No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases

Section 16(1)(a): that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882;**Explanation.-** For the purposes of this clause, replacing of tiles or closing of balcony of the

²⁷ The Action Committee for Protection of Tenants Rights (ACPTR) met at a south Mumbai club and decided to push the demand to convert all tenanted properties into ownership.<http://www.therealtypaper.com/mumbai-tenants-demand-to-convert-all-tenanted-properties-into-ownership/100331.cms> access on 4-3-2017

premises shall not be regarded as an act of a causing damage to the building or destructive or permanently injurious thereto; or

Section 16(1) (b): that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure; **Explanation.-** For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney; or

Section 16(1) (c): that the tenant, his agent, servant, persons inducted by tenant or claiming under the tenant or, any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighboring occupier, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes or that the tenant has in respect of the premises been convicted of an offence of contravention of any of the provisions of clause (a) of sub-section (1) of section 394 or of section 394A of the Mumbai Municipal Corporation Act, or of sub-section (1) or of section 376 or of section 376A of the Bombay Provincial Municipal Corporations Act, 1949, or of section 229 of the City of Nagpur Municipal Corporation Act, 1948; or of section 280 or of section 281 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965; or

Section 16(1) (d): that the tenant has given notice to quit and in consequence of that notice, the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession of the premises; or

Section 16(1) (e): that the tenant has, (i) on or after the 1st day of February 1973, in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applied; or (ii) on or after the commencement of this Act, in the Vidarbha and Marathwada, areas of the State, unlawfully sub-let or given on license, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or

Section 16(1) (f): that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after commencement of this Act, to be in such service or employment; or

Section 16 (1)(g): that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or

Section 16(1)(h): that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

Section 16(1)(I): (i) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or

Section 16(1)(j): that the premises let consist of a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the demolition thereof and erection or raising of a floor or floors on such terrace. **Explanation.-** For the purposes of this clause, if the premises let include the terrace or part thereof, or garages, servants quarters or out-houses (which are not on the terrace), or all or any one or more of them, this clause shall nevertheless apply; or

Section 16(1)(k): that the premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority; or

Section 16(1)(L) : that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new building which a municipal authority has approved or permitted him to build thereon; or

Section 16(1)(m): (m) that the rent charged by the tenant for the premises or any part thereof which are sub-let is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium other like sum of consideration in respect of such premises or part; or

Section 16(1) (n): that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

Section 28: Inspection of premises

Section 29: Landlord not to cut-off or withhold essential supply or service

Section 30: Conversion of residential into commercial premises prohibited

Section 31: Giving receipt for any amount received compulsory

REFERENCE

- [1] The Civil Procedure Code, 1908
- [2] The Maharashtra Rent Control Act, 1999
- [3] The Specific Relief Act, 1963
- [4] The Limitation Act, 1963
- [5] The Transfer of Property Act, 1882.