COMMERCIAL LITIGATION • DEBT RECOVERY

Commercial Office Leases & Summary Debt Recovery: Order XXXVII CPC

Rebutting 6-Month Security Deposit Forfeitures, Enforcing the Lessor's Duty to Mitigate, and Fast-Track Civil Recovery

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Executive Summary & Takeaway: Executive Strategy: Tech scale-ups vacating commercial spaces in Cyber City, Udyog Vihar, and Golf Course Road frequently face unlawful 6-to-9 month security deposit forfeitures by commercial landlords citing boilerplate lock-in clauses or cosmetic fit-out repairs. Under Supreme Court precedent (Kailash Nath Associates) and Section 74 of the Contract Act, automatic forfeiture without proof of actual damage is an illegal penalty. By formally tendering vacant possession and instituting summary recovery suits under Order XXXVII CPC, corporate tenants can compel deposit refunds commanding 18% statutory commercial interest.

1. The Security Deposit Forfeiture Trap Under Section 74

In *Kailash Nath Associates v. DDA (2015)*, the Supreme Court ruled that liquidated damage clauses under Section 74 are compensatory, not penal. A landlord cannot automatically forfeit a tenant's security deposit merely because a lease agreement contains a lock-in forfeiture clause. The lessor must prove actual pecuniary loss resulting directly from the premature exit.

2. The Lessor's Duty to Mitigate Under Section 73

Under Section 73 of the Indian Contract Act, a party claiming damages has a mandatory legal duty to take all reasonable steps to mitigate their losses. A commercial landlord who deliberately leaves premises vacant, rejects creditworthy replacement tenants, or demands inflated rentals cannot recover rent for the unexpired lock-in period. Their failure to mitigate extinguishes their damages claim.

3. Hypothetical Case Study: CloudMesh Technologies (Cyber City, Gurugram)

Series A startup CloudMesh leased 12,000 sq. ft. in Cyber City with a 36-month lock-in and a ₹75 lakh deposit. At month 18, CloudMesh shifted to hybrid operations and served 3 months' notice. The landlord forfeited the full ₹75 lakhs, alleging lock-in default. CloudMesh conducted a joint inspection, returned keys via registered speed post, and instituted an Order XXXVII Summary Suit in the Commercial Court. Confronted with the prospect of an immediate conditional leave-to-defend deposit, the lessor settled within 60 days, refunding ₹68 lakhs.

4. Fast-Track Exit Protocol for Commercial Tenants

1. **Formal Tender of Constructive Possession:** Issue written handover notice; photograph premises; dispatch keys via recorded delivery.
2. **Demand Joint Condition Audit:** Establish that wear-and-tear is ordinary, depriving the lessor of repair offset claims.
3. **Issue Section 106 Statutory Demand Notice:** Demand refund within 15 days, explicitly claiming 18% commercial interest.
4. **File Order XXXVII Summary Suit:** Sue on the written lease as a liquidated debt, placing the burden on the landlord to secure leave to defend.

About the Author & Chambers

Gaurav Arora is an Advocate (Bar Council of Delhi) and Registered Indian Patent Agent (INPA-1900), serving as Founder and Lead Arguing Counsel at Arora IP Counsel (Chambers of Gaurav Arora) in New Delhi / NCR. He holds an LL.M. in Intellectual Property Law from Benjamin N. Cardozo School of Law, New York (Dean’s Merit Scholar), a B.E. in Mechanical Engineering from Punjab Engineering College (PEC Chandigarh), an LL.B. from GLC Mumbai, and passed the USPTO Patent Bar Examination (2016). He is the author of the statutory treatise "Patently Obvious COMMA: Correct Interpretation of the Patents Act, 1970" (2023), deposited in the permanent collection of the WIPO Knowledge Center in Geneva.

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