



Building blocks: Clarifying the concept of extension and renewal of lease



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Before taking as well as giving the property on lease, one should clearly discuss and negotiate the terms and conditions of the lease and capture the same in lease deed in order to make one's rights enforceable. It is important to carefully define the term of the lease in order to avoid any confusion regarding the renewal or extension of the lease upon expiry of the term of the lease, where a lessee is desirous of continuing to lawfully occupy the leased premises.

To ensure clarity over their respective rights and entitlements as well as to avoid litigation and uncertainty over the leased premises after expiry of lease term, both lessor and lessee must be aware of the consequences of expiry of lease due to efflux of time - especially of the different implications of choosing between an 'extension' and 'renewal' of a lease.

Renewal of lease is a new lease in itself which is independent of the previous lease and thus need to be again executed for the renewed term as well as stamped and registered by the parties of original lease deed within the time period stipulated in the original lease deed.

It is a misconception that when a lease deed for a fixed term contains a renewal clause for a further fixed term, the original lease deed would automatically stand renewed for such additional period upon expiry of the initial lease term. In several judgements, courts have held that renewal of lease actually



■ **Renewal of lease is a new lease in itself**

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amounts to a fresh lease and that 'renewal' of lease is called so simply because it postulates the existence of a prior lease which generally contains a clause for renewal.

The courts in various cases have also held that a renewed lease would not automatically entitle a lessee to obtain further renewals of the lease. The intention of the parties and wording of relevant clauses of the lease deed shall ascertain whether or not the lessee would be entitled to further successive renewals, where an original lease deed contains a renewal clause, and the parties renew the lease in accordance with such clause. The lessee also has an option to file a suit for specific performance for renewal, where the original lease deed contains a clause for renewal but the lessor fails to execute and/or register the 'fresh' grant of lease for the further lease term despite requests

of the lessee, provided the lessee is not in breach of the original lease deed.

An extension of a lease is principally treated as prolongation of the original lease deed. An extension clause entitles a lessee to opt for an additional lease term upon expiry of the initial lease term, on the same terms and conditions of the original Lease Deed, and is generally subject to increase in rent and security deposit.

It is presumed that lessor has agreed to lease the property for the total tenure contemplated in the original lease deed and hence he is not in a position to challenge or unreasonably deny an extension of lease which is validly sought by a lessee.

One key difference between extension and renewal of lease deed is that unlike a lease deed containing a renewal clause, a lease deed containing an extension clause would not terminate

upon expiry of the initial lease term, if in case the option to extend the lease has been duly exercised as per the terms and conditions of the original Lease Deed.

In *Provash Chandra Dulai v. Bishwanath Banerjee* (1989), the Supreme Court of India held that a Lease Deed is not necessarily required to be executed afresh in order to give effect to an extension of the original lease as the original Lease Deed continues in force during the extended lease term.

Another vital difference is that extension and renewal of lease also have different stamp duty implications. For a lease deed with extension clause, the stamp duty is required to be paid in the first instance and calculated on the basis of the total lease term contemplated in the original Lease Deed.

While in contrast, as a 'renewal' of lease is a fresh lease in itself, the initial lease period cannot be clubbed with the renewed lease period for the purpose of levying stamp duty. The renewed lease deed is treated as a fresh lease deed and independent of the original Lease Deed, hence the two agreements would be chargeable to stamp duty independently as well.

It is important that the lessor and lessee should clearly word the terms of the lease deed more specifically regarding the option of renewal or extension of the lease in order to avoid any uncertainty and ambiguity relating to the term of the lease deed.

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