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Frustration of Contract - A Comparative Study

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ABSTRACT

“It is true, that a Law of Contract based on causae will always be an arbitrary and inelastic law; but it is a kind of law with which some great nations are satisfied at the present day.”

~Edward Jenks

This article throws light upon the significance and implications of frustration of contract. It is an automatic involuntary extinction of the contract relieving both parties of their liabilities from the point of time of occurrence of that event. It also covers the conditions which are required for proving whether the contract is frustrated or not.

It also covers the specific grounds for frustration of contract such as destruction of subject matter, change of circumstances, non occurrence of contemplated events, death or inability of parties, government intervention etc.

Then it throws light upon various types of impossibility of contract including initial impossibility, supervening impossibility and subsequent impossibility.

It also covers the measures which can be taken to avoid making any contract frustrated.

A frustrated contract is valid until the time of the supervening event but is automatically ended thereafter, whereas a contract void on the grounds of mistake is a complete nullity from the beginning.

I. INTRODUCTION

The Indian Contract Act, 1872, does not define the term “frustration of contract”. However, the doctrine of frustration is enshrined under section 56 of the Act. It says that any act which was to be performed after the contract is made becomes unlawful or impossible to perform, and which the promisor could not prevent, then such an act which becomes impossible or unlawful will become void².

The origin of the 'Doctrine of Frustration' has been from the Roman laws. It was part of the Roman contract law which doused obligations of innocent parties where the 'thing is destroyed

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² Mentioned in Section 56 of Indian Contract Act 1872.

without the debtor's act or default', and the contract purpose has "ceased to be attainable".

What do you mean by frustration of contract?

This question can be replied by putting attention and searching reply of two different questions. First is, what is frustration? Second, what is contract? In order to fully comprehend the concept of contract, it may be said that contractual obligation is fully and truly founded on the consent of the parties consensus ad idem that is meeting of the minds agreeing to the same thing in the same sense. Under the law, unforeseen or unforeseeable supervening events make the performance of the contract impossible for no fault of the party concerned, contract may be frustrated. Frustration is by operation of law. It results in automatic involuntary extinction of the contract relieving both parties of their liabilities from the point of time of occurrence of that event.

Frustration is an act irrespective of the contract due to which the completion of a contract becomes impassable. After the parties have concluded a contract, events beyond their control may occur which frustrate the purpose of their agreement, or furnish it very difficult or impossible or as even illegal, to perform. The non-availability of a party, due to death, illness, or other exceptional circumstances. For example, you hire a famous band to play at a party, but the lead singer is taken ill and can't perform.

Doctrine of frustration with respect to applicability in India lays down a rule of positive law and does not leave the matter to be determined according to the intension of the parties. This section clearly does not apply to a case, in which although consideration of contract is lost, performance of promise on other side is still possible.

A contract, which is sacked by frustration, is clearly different from the contract which is void for mistake. A frustrated contract is valid until the time of the supervening event but is automatically ended thereafter, whereas a contract void on the grounds of mistake is a complete nonentity from the beginning. It is also called as doctrine of supervening impossibility.

II. CONDITIONS REQUIRED FOR PROVING FRUSTRATION OF CONTRACT ARE AS FOLLOWS:-

- **Existence of a valid contract:-** According to section 10 of Indian contract act 1872 a valid contract must fulfilling the conditions like:-
 - (i) The parties must be competent to contract
 - (ii) The agreement must be with their free consent
 - (iii) It must be for a lawful consideration and for a lawful object

(iv) It should not be expressly declared to be void by any law for the time being in force

- **The contract is not performed yet:-**This means that the parties to the contract have not performed the act till now which was required by them to perform under the obligations of the contract.
- **The performance of the contract has become impossible:-** This means that the contract has become impossible or impassable due to the non-availability of a party, due to death, illness, or other exceptional circumstances.

For example:- A contracts to act at the theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

- **The impossibility has occurred due to event uncontrollable by both the parties:-**

This means that the frustration of contract has been caused due to any event uncontrollable by both the parties as it was impossible on the part of the parties to foresee such kind of event precisely and correctly and to make remedies or contingencies for it.

For example:-A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

III. SOME SPECIFIC GROUNDS FOR FRUSURATION OF CONTRACT

1. **Destruction of Subject-Matter:-** The doctrine of impossibility affixes with full force where the actual and specific subject-matter of the contract ceases to exist .

In the famous case of Taylor v. Caldwell³ there was a promise to let out a music hall which got frustrated due to the destruction of hall. Similarly it was held in a case in which the defendant contracted to sell a fixed quantity of potatoes grown on his farms but failed to supply it as the crop got destroyed by a disease, it was held in this case that performance had become impossible due to which the contract got frustrated.

But if the parties can still perform their main obligation despite the fact that the subject-matter has gone uncontrollable, frustration of contract may not follow. Thus in one case where a ship was chartered for five years and three years after that, it was requisitioned by the Government, as the other person was paying more money than the freight agreed between the parties, it was held that the contract was not frustrated and the charterer was bound to pay the freight and that

³ EWHC QB J1,(1863) 3B & S 8826,122 ER 309

he could still pay and, therefore, he was entitled to collect the money from the Government..Hence there was no frustration of contract as the subject matter which got destroyed was restored again and the performance of the act can be achieved again.

II. Change of Circumstances:- Under this a contract will get frustrate when there is change of circumstances which will make the performance of the contract impossible in the manner and at the time contemplated. Change of circumstances affects the performance of the contract to such an extent as to make it practically impossible or even extremely tough or precarious.

In one of the cases one party contracted to supply to the other certain classes and quantities of American piece-goods. The contract was constituted in Karachi before partition of India and Pakistan. The goods arrived there after some delay due to which the defendant refused to accept them on the ground that both the qualities and quantities offered for delivery were not according to the particular contract. The plaintiff called upon defendant to refer the dispute to the elected arbitrator who was residing in Karachi. But then the partition happened which made it impossible for non-Muslims to go to Karachi.

Thus it was held that the contract was frustrated on the ground of change of circumstances as the arbitrator could not proceed without the parties' presence.

”But there is no general liberty reserved to the courts to absolve a party from liability to perform his part of the contract, merely because on account of non contemplated turn of events, as the performance of the contract may become onerous”. The Supreme Court laid down this principle in **Alopi Prashad v Union of India**⁴.

Foreknown chances of alteration — Where the possibility of alteration of circumstances was within the rumination of the parties at the time of the contract, they can hardly complain of any such alteration. Thus, for example if a railway company accepted goods for transport and happened to convey them to a wrong destination, which on account of partition fell in Pakistan and the railways could not bring them back into India, they were not permitted to plead frustration to their liability to pay for the loss of the goods.

III. Non-occurrence of Contemplated Event :- At times the performance of a contract remains entirely possible, but due to the non-occurrence of an event contemplated by both parties as the reason for the contract, the value of the performance gets destroyed owing to unforeseeable conditions. In the famous case of **Krell v Henry**⁵ there was a contract to hire a

⁴ 1960 2 SCR 793

⁵ 2 KB 740

room to view a proposed coronation procession which was held to get frustrated when the procession was postponed. For this result to follow it is necessary that the happening of the event should be the foundation of the contract.

IV. Death or Incapacity of Party:- It states that a party to a contract is excused from performance if that person perishes or becomes too ill to perform the aforesaid act or condition. This condition is followed where the nature or terms of a contract requires personal performance by the promisor, but the death or incapacity of the party puts an end to the contract.

In the famous case of *Robinson v Davison*⁶, there was a contract between the plaintiff and the defendant's wife, who was an eminent pianist that she will have to play the piano at a concert to be given by the plaintiff on a specified day. On the morning of the day concerned, she informed the plaintiff that she was too ill to attend the concert. The concert had to be postponed and the plaintiff lost a sum of money. The plaintiff's action amounted to breach of contract but it got rejected under the court of law. The court said that under the circumstances she was not merely excused from playing, but she was also not at liberty to play, as she was unfit to do so. The contract was clearly subject to the condition of her being well enough to perform the aforesaid act.

V. Government or Legislative Intervention:- It means that the contract will get dissolved when legislative or administrative intervention will directly operate upon the fulfillment of the contract for a specific work as to refurnish the contemplated conditions of performance. In the famous case of *Satyabrata Ghose v Mugneeran Bangur & Co.*⁷, the defendant company started a scheme for the development of a tract of land into a housing colony and the plaintiff was granted a plot on payment of earnest money. The company undertook to construct the roads and drains necessary for making the lands ready for building and residential purposes and as soon as they were completed, the purchaser was to be called upon to complete the conveyance by payment of the balance of the purchase money. But before anything could be done, a considerable portion of the land was requisitioned by the State during the World War II for military purposes. The judge held that the contract was frustrated as there was government intervention between the performance of the act which made the performance uncontrollable on the part of the defendant.

⁶ LR 6 Ex 269

⁷ 1954 AIR 44 1954 SCR 310

IV. TYPES OF IMPOSSIBILITY OF PERFORMANCE:

➤ **Initial impossibility:-** It deals with those cases where the contract was impossible to perform from the very beginning of the contract. For example, if a married man knowing that he cannot marry again promises to do so, then he is bound to compensate the other party.

▪ **Known impossibility:-** It means one or both the parties have the knowledge that a promise to perform is impossible even though they entered into the concerned contract. Example: Pratap enters into a contract with Mohan to bring a dead man to life. It was known to the parties at the time of making the agreement that the performance is impossible. Thus the contract is void ab initio

▪ **Unknown impossibility:-** It means that both the parties genuinely believe that the performance of the promise is possible in reality it is impossible to perform as there is a bilateral mistake of parties. Example:- Ravi agrees to sell certain goods to Seema which were supposed to be on their way from Kolkata to Chennai in a certain ship. Unknown to both the parties the ship got sunk in the deep sea and the goods ceased to exist at the time of the contract. The contract became void when the impossibility of the performance is discovered by the parties to the contract.

▪ **Supervening impossibility:-** It is an impossibility which arises subsequent to the formation of contract shall make the contract void⁸. A contract becomes void on account of the subsequent impossibility only if the following conditions are followed:-

- The act must have become impossible after the formation of the contract.
- The impossibility must have been caused by a reason of some event which was beyond the control of the promisor.
- The impossibility must not be the result of some act or negligence of the promisor himself.

➤ **Subsequent impossibility:-** It deals with cases where the contract was possible to perform when it was entered but because of some event, the performance has become impossible or unlawful and therefore it discharges the party from performing it. For example, if “A” purchased Tickets from “B” for watching a cricket match and he pays 50% as an advance. If the match is cancelled then “A” cannot recover the aforesaid amount from B as the cancellation of match was beyond the control of A. Thus it comes under the purview of subsequent impossibility.

⁸ Mentioned in Section 56(2) of the Indian Contract Act 1872.

V. CONCLUSION

It is well settled that frustration automatically brings the contract to termination at the time of the frustrating event as the doctrine of frustration comes into play when an unforeseeable event occurs furnishing performance of the contract preposterous. This is in contrast to discharge by breach of contract where the innocent party can choose whether to treat the contract as repudiated. Moreover, a contract, which is discharged by frustration, is clearly different from one, which is void for mistake. This doctrine is an exception to the general principles of contract under when compensation is usually given for breach of contract. But when the doctrine of frustration is applied there is no fault of the parties and therefore, the party should not be made to compensate in such an event. A frustrated contract is valid until the time of the supervening event but is automatically ended thereafter, whereas a contract void on the grounds of mistake is a complete nullity from the beginning.

At last we will have to keep a check that unless the law provides for a fair distribution of the loss resulting from the supervening event; it may not be satisfactory simply to hold that the contract is frustrated.
