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ANALYTICAL STUDY OF DIMENSIONS OF PRINCIPLE OF FRUSTRATION IN INDIAN CONTRACT LAW SYSTEM

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ABSTRACT

Initially the Indian courts including the Privy Council appear to hold the opinion that the law under section 56 is not exhaustive on the subject. However with the passage of time and their repeated dealings with the provisions of section 56, the courts appear to have changed their opinion. In view of the provisions of section 56, the Indian law on the subject appears to be comparatively on a more sound footing than the English Law. The Indian courts have developed it seeming on more correct lines by the process of interpretation. The part played by the Supreme Court, placed it on a comparatively clear foundation through its remarkable judicial craftsmanship and interpretation. The law has thus crystallized itself into a clear form and whatever ambiguity there had been in the past has been settled substantially in the application of the doctrine.

INTRODUCTION

Impossibility or Frustration means something that cannot be done by human beings; any act which is not possible for a human being to do. In dictionaries, the meaning is confined to physical impossibility, i.e. what a man cannot do physically. Law, however, embraces legal and practical impossibility. Also, on the basis of time when the act is impossible, impossibility can be classified into two:

i) Initial Impossibility,
ii) Subsequent Impossibility.

Initial Impossibility renders an agreement void; while subsequent impossibility renders a contract becomes void and not void ab initio because contract is void is a wrong concept, contract always becomes void, it differs from void agreement. A void agreement is not enforceable by law at the beginning. A contract becomes void is enforceable by law at the beginning, but later ceases to be enforceable by law due to some supervening event and parties to contract are discharged from their contractual obligations as they are excused from performing their respective contractual obligations as per law.[1] When the act to be done as per promise is impossible in itself, i.e. impossible by its very nature or impossible initially when the agreement is made, it is called initial impossibility and the agreement is void.

Sometimes a contract is made between parties, but due to subsequent impossibility contract may not be performed. Thus, the contract is discharged by subsequent impossibility and the contract becomes void. This is the concept of contract becomes void and not of void agreement. Initially, in England, the law had been that if once a contract has been made, it must be performed. No excuse was allowed whatever the changes in circumstances may be. This is called "Absolute Contract Theory", i.e. once a contract always a contract. This law was laid down in *Paradine v. Jane*[2]. This rule was thought to be harsh and unjust. So, Blackburn J, in the case of in *Taylor v. Caldwell*[3], modified and softened the rule.

[1] Prof. (Retd.) R C Srivastava, The Principles of Law of Contract, Bloomsbury Publishing India Pvt. Ltd., 2018, P. 269,270.
[2] 82, Eng, Rep, 897.
[3] (1863) 3 B & S 826.

In India, Section 56, para II excuses from performing the contract on the basis of subsequent impossibility. Whether it is a case of initial impossibility or subsequent impossibility, the law justifies excuse to promisor on the principle then law should not compel any person to do whatever is impossible. It will be unjust to ask to perform impossibility. Initial impossibility renders an agreement void and subsequent impossibility render a contract becomes void on the basis of two maxims, i.e. *Lex non cogit impossibilia* (Law does not recognise what is impossible), and *Impossibilium nulla obligation est* (What is impossible does not create an obligation). The provision of Section 56, para II need proper analysis, as per the provision, if the conditions are fulfilled, a contract becomes void i.e. Initially the parties enter into a contract, an agreement enforceable becomes law, later on it because of some events performance of promise becomes impossible or unlawful, and which the promisor could not prevent that is called supervening event. The contract becomes void means that the contract ceases to be enforceable by law. A contract becomes void from the time its performance becomes impossible or unlawful, before that, it was a contract.[4]

STATUTURY PROVISION

Section 56 of the Indian Contract Act embodies the doctrine of frustration as obtains in India. It finds place in chapter IV of the Indian Contract Act which relates to the performance of contracts and it purports to deal with one class of circumstances under which performance of a contract is excused or dispensed with on the ground of the contract becoming void.[5]

It is here in section 56 that the Indian contract law system, has taken a definite, and if one could say so, a well advised step forward in the matter of legal reform, based upon considerations of practical convenience and sound common sense. It varies the common law to a large extent, and moreover the Act lays down positive rules of law on the question, which English and American courts have of late, more and more, tended to regard as matters of construction depending upon the true intention of the parties.[6]

FRUSTRATION AND EXISTING IMPOSSIBILITY IN CONTRACT LAW SYSTEM

The first paragraph of section 56 of the Indian Contract Act hereinafter referred to as the Act, lays down that an agreement to do an act impossible in itself is void. This is known as initial or pre-contractual impossibility. This paragraph of the section lays down the law in the same way as is laid down in the English legal system. There is no difference between the English ideas and the Indian doctrine of impossibility. In both legal systems, if the parties purport to agree to do something which is obviously impossible it is deemed to be a case in which they are not interested to perform their respective obligations or they do not understand at all as to what they are agreeing for. It speaks of something which is impossible inherently or by its very nature and no one can obviously be directed to perform such an act. The phrase "impossible" in itself seems to mean impossible in the nature of things and obviously refers to the pre-existing impossibility. But impossibility here not only means physical but also legal impossibility. If there is no possibility of performance of the contract because it would be unlawful to do that, the agreement is void, such cases would also fall under section 23 of the Act which declares that every

[4] Prof. (Retd.) R C Srivastava, The Principles of Law of Contract, Bloomsbury Publishing India Pvt. Ltd., 2018, P. 269-272.

[5] . Satyabrata Ghose v. Mugneeprom & Co ., A.I.R. 1954 S.C., 310.

[6]

agreement of which the object or consideration is unlawful is void.18 The impossibility should be pre-existing in fact or law to attract the first para in section 56.[7]

Frustration, supervening impossibility and contract law

The second paragraph of section 56 lays down the effect of subsequent impossibility of performance on the contract. Sometimes the performance was quite possible when the contract was made, but supervening events renders its performance impossible or unlawful. This is called post-contractual or supervening impossibility. Blackburn J., formulated the rule that supervening impossibility contract,[8] but Viscount Simon L.C. said that the explanation of supervening impossibility is at once too broad and too narrow. He observed that frustration is the occurrence of an intervening event or change of circumstances so fundamental as to be regarded by law both as striking at the root of the agreement and as entirely beyond what was contemplated by the parties when they agreement.[9] Lord Wright in a Privy Council case[10] rightly said: It means that a contract has ceased to bind the parties because the common basis on which by mutual understanding it was based has failed. It would be more accurate to say not that the contract has been frustrated but that there has been a failure of what is in the condition or purpose of the performance. The English courts on the one hand appear to be anxious to uphold the strict common law rule that a promisor ought either to perform his contract or else pay damages for non -performance while on the other they could not shut their eyes to the harshness of the rule in certain situations, where performance becomes impossible by the causes, which could not have been foreseen and provided for by express terms and which were beyond the control of the parties. In India, the courts had to proceed on the basis of the principle of supervening impossibility laid down in section 56 of the Act and this situation relates to performance of contracts and it purports to deal with one class of circumstances under which performance of a contract is excused on the ground of the contract being void. Commenting upon this section, Mukherjèe J. in a case stated, "The first paragraph of the section laid down the law in the same way as in England. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done."[11]

EXISTING AND SUPERVENING IMPOSSIBILITY

The first paragraph of section 56 of the Act is merely an enunciation of the principle of law that an agreement to do an act impossible in itself is known as existing or pre- contractual impossibility. It postulates that in the event of an act being known to be impossible to both the parties the agreement is void. In other words existing impossibility means that impossibility which arises before performance of the contract was made. On the other hand sometimes the performance was quite possible when the contract was made but some supervening events render its performance impossible or unlawful. This is called post- contractual or supervening impossibility. It has been a fruitful source of litigation. There is also no difference between the law relating to existing impossibility under the English and Indian legal systems. In both systems the law is same and if the parties purport to agree to do something which is obviously impossible it is deemed to be a case in which they are not interested to perform their respective obligations or they do not understand at all as to what they are agreeing for. But if there was impossibility

[7] See. R.K. Bangia, Law of Contract 332 (3rd ed. 1987).
[8] Taylor v. Caldwell, (1863) 122 F.R. 309.
[9] See. Joseph Constantive Steamship Line case (1942) A.C. 154 at 185.
[10] Twentsche Overseas Trading Co. Ltd. v. Uganda Sugar Factory Ltd., A.I.R. 1945 P.C. 144.
[11] Satyabrata Ghose v. Mugneeram Bangur & Co., A.I.R. 1954, SC, 44.

of performance existing unknown to the parties, at the time of the agreement itself, the result would generally be that the agreement is void.[12]

CONCLUSION

Only one thing has to be seen in India that, whether performance of the contract has become impossible or not by subsequent superviewing event. There is no need to bother about the terms of the contract, intention of the parties or what is just and reasonable.

References :

1. Satyabrata Ghose v. Mugneeprom & Co ., A.I.R. 1954 S.C., 310.
2. R.K. Bangia, Law of Contract 332 (3rd ed. 1987).
3. Taylor v. Caldwell, (1863) 122 F.R. 309.
4. Joseph Constantive Steamship Line case (1942) A.C. 154 at 185.
5. Twentsche Overseas Trading Co. Ltd. v. Uganda Sugar Factory Ltd., A.I.R. 1945 P.C. 144.
6. Satyabrata Ghose v. Mugneeram Bangur & Co., A.I.R. 1954, SC, 44.

[12] Amar Singh Sankhyan, Source: Journal of the Indian Law Institute, Vol. 37, No. 4 (OCTOBER-DECEMBER 1995), pp.442-456, Published by: Indian Law Institute, Stable URL: https://www.jstor.org/stable/43953245