DOCTRINE OF FRUSTRATION OF CONTRACT IN INDIA: AN ANALYSIS

Sudarshan Kumar*

Dr. R.K. Gupta**

INTRODUCTION:-

What is 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 form the point of time of occurrence of that event.

CONCEPT OF 'FRUSTRATION':-

The doctrine of discharge from liability by frustration has been explained in various ways- sometimes by speaking of the disappearance of a foundation which the parties assumed to be at the basis of their contract, sometimes as deduced from a rule arising, from impossibility of performance, and sometimes as flowing from the inference of an implied term.

In Indian Contract Act the word frustration in not mentioned Section 56 provides that "A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."

* Research scholar, Deptt. of Law Singhania University, Singhania Pacheri Bari, Jhunjhunu, Rajasthan

**(Supervisor) Former Chairperson and Dean Faculty Of Law, Kurukshetra University, Kurukshetra

JUDICIAL TREND

Turning to the Supreme Court decisions, mentioning the word frustration and explaining the doctrine of frustration of contract, reference may be made to *Ganga Saran* v. *Firm Ram Charan,*[1] where mention is made of doctrine of frustration of contract by observing that "clearly the doctrine of frustration cannot avail a defendant when the non-performance of a contract is attributable to his own default", and also observed that "in these circumstances, this is obviously not a case in which the doctrine of frustration of contract can be invoked. It is further observed that: "It seems necessary for us to emphasize that so far as the Courts in the country are concerned, they must look primarily to the law as embodied in sections 32 and 56 of the Indian Contract Act."

Ganga Saran v. *Firm Ram Charan* has been followed in *Satyabrata* v. *Mugneeram,*[2] wherein Supreme Court has observed "The first argument advanced by the learned Attorney General raises a somewhat debatable point regarding the true scope and effect of Section 56 of the Indian Contract Act and to what extent, if any, it incorporates the English rule of frustration of contract.

The doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of section 56 of the Indian Contract Act. It would be incorrect to say that section 56 of the Contract Act applies only to cases of physical impossibility and that where this section is not applicable, recourse can be hand to the principles of English law on the subject of frustration. It must be held also, that, to the extent that the Indian Contract Act deals with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English law 'dehors' these statutory provisions. The decisions of the English courts possess only a persuasive value and may be helpful in showing how the courts in England have decided cases under circumstances similar to those, which have come before our courts. The law of frustration in England developed, as is well known, under the guise of reading implied terms and contracts. The English law passed through various stages of development since then and the principles enunciated in the various decided authorities cannot be said to be in any away uniform. In many of the pronouncements of the highest courts in England the doctrine of frustration was held 'to be a device by which the rules as to absolute contract are reconciled with a special exception which justice demands'. These differences in the way of formulating legal theories really do not concern us so long as we

[1] Ganga Saran v. Firm Ram Charan, AIR 1952 SC 9.
[2] Satyabrata v. Mugneeram. AIR 1954 SC 44.

have a statutory provision in the Indian Contract Act. In deciding cases in India, the only doctrine that we have to go by is that of supervening impossibility or illegality as laid down in section 56 of the Contract Act, taking the word 'impossible' in its practical and not literal sense. It must be borne in mind, however that section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties. When such an event or change of circumstance occurs which is not fundamental as to be regarded by law as striking at the root of the contract as a whole, it is the court which can pronounce the contract to be frustrated and at an end. The court undoubtedly was to examine the contract and the circumstances under which it was made. The belief, knowledge and intention of the parties are evidence, but evidence only on which the court has to form its own conclusion whether the changed circumstances destroyed altogether the basis of the adventure and its underlying object.[3] This may be called a rule of construction, by English Judges but it is certainly not a principle of giving effect to the intention of the parties which underlies all rules of construction. This is really a rule positive law and as such comes within the purview of section 56 of the Indian Contract Act.

Again, *Satyabarat Ghose* v. *Mugneeram Bangur* & Co.,[4] has been followed in *Mugneeram Bangur & Co. v. Gurbachan Singh*[5] wherein Supreme Court has observed on Page 1525, "Insofar as discharged of contract by reason of frustration is concerned there is no question of implying a term in the contract a term fundamental for its performance, as is done by the Courts in England because we have here the provisions of section 56 as well as those of section 32 of the Contract Act. This is what was held by this Court in the earlier case and that decision binds us. No doubt, a contract can be frustrated either because of supervening impossibility of performance or because performance has become unlawful by reason of circumstances for which neither of the parties was responsible. In the earlier case this Court has held that where the performance of an essential condition of the contract has become impossible due to supervening circumstances the contract would be discharged. This Court has further held that the impossibility need not be an absolute one but is sufficient if further performance becomes impracticable by some cause for which neither of the parties was responsible. It, however, held that the performance of an essential term of the contract, that is to say, of undertaking development of the area under the scheme could not be undertaken because the land had been requisitioned, did not have the effect of frustrating the contract.

[3] Vide Morgan v. Manser, 1947-2 AII ER 666 (L).
[4] Satyabarat Ghose v. Mugneeram Bangur & Co., AIR 1954 SC 44.
[5] Mugneeram Bangur & Co. v. Gurbachan Singh, AIR 1965 SC 1523.

For though the term regarding development was an essential term of the contract, the requisitioning of the land was only for a temporary period.

CONCLUSION & SUGGESTIONS

It is an interesting and fascinating study to trace the development of the doctrine of frustration of contract as an inroad into the old doctrine of absolute liability of the contract. There was a time when contract was considered as a piece of private legislation, sacred, sacrosanct, to which man was required to do obeisance from afar but not to go near the sanctum sanctorum. Parties stood in awe of the sacred pact as it were placed on par with Holy Scripture so sanctified as no to be defiled by human touch. Even the judges shied from touching the contract by supplying an obvious gap or implying a term, by pleading helplessness in the matter. It was repeatedly averred by the courts that it was for the parties to make the contract and for the courts to enforce it. Like all human institutions, nothing is static but the change is so imperceptible that it is difficult to pinpoint any point of time when the old doctrine was discarded and the new doctrine evolved. When the courts pleaded impotence and proceeded to enforce the contract as worded, despite the fact that the enforcement perpetrated injustice, there was certain amount of resentment in the minds not only of the lawyers but the judges themselves apart from the litigating public and a search was made for a solution. It was unthinkable to take it lying down that the courts were instruments of doing injustice by enforcing such an atrocious covenant. It was very strongly felt that the court should do its duty as an instrument of doing justice and find a way out how to go about it. English ingenuity did not fail to meet the situation and a doctrine of implied term was resorted to by courts. Once the courts assumed the role of interfering with the contract in order to do justice between the parties by introducing implied terms as fair and reasonable, the old and impregnable fortification of absolute liability crumbled.

The object of the doctrine of frustration is to find a satisfactory way of allocating the risk of supervening events. The doctrine does not prevent the parties from making their own provision for this purpose. They can expressly provide that the risk shall be borne by one of them, not by the other, or they can apportion it or deal with it in any other way they like or let it lie where it falls.