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An Analysis of Doctrine of Restitution in void Contracts

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Introduction -

Courts in the 17th century in England first established the doctrine of restitution as a contractual remedy. The notion migrated to courts in the USA, and it has since extended beyond its original contractual roots. Various Courts now apply restitution in the area of maritime, criminal law and torts.

- In Halsbury's Laws of England, it is stated, "Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep."
- In law the term "restitution" is used in three senses:
  - (i) return or restoration of some specific thing to rightful owner or status;
  - (ii) compensation for benefits derived from a wrong done to another;
  - (iii) compensation or reparation for the loss caused to another.
- According to Anson, "the principle of restitution is that a person who has been unjustly enriched at the expense of another is required to make restitution to that other."

Illustration: A agrees to sell to B, after six months, certain immovable property and receives Rs. 1,000 as an advance. Immediately thereafter, transfer of immovable property is prohibited by an Act of the Legislature. The contract becomes void, but A must return the sum of Rs. 1000 to B.

The principle of restitution applies in the following circumstances;-

1. When a contract becomes void, all parties who have received benefit under the contract must restore it back to the person from whom it has been received.

2. The principle of restitution also applies where an agreement is void ab-initio but the fact is unknown to both the parties, e.g., mutual mistake regarding existence of the subject-matter.

The principle of restitution is not applicable in the following circumstances:-

1. Where an agreement is known to be void e.g., where an agreement is for some impossible act to do or where it is illegal to the knowledge of both the parties from the beginning. For example, A promises B to produce gold by magic. B pays an advance of Rs. 1,000. B can neither recover Rs. 1,000 nor compel A to produce gold by magic as A and B know or ought to know that the act is impossible.
2. The principle of restitution does not also apply where the party who has to return the benefits a person incompetent to enter into a contract, e.g., minor.

   For example, in the case of Mohiribibi vs. Dharmodas Ghosh, it was seen that the minor was not asked to return Rs. 8,000 obtained by him against the mortgage, although the mortgage was declared void. However, on equitable grounds, the Court may ask the minor to restore the benefit where he has misrepresented his age. The law has not given any license or liberty to a minor to cheat men.
3. The principle of restitution is also not applicable where a party is required to give some earnest money which serves as a security that the depositor will perform his part. Such deposit will not be refunded if the depositor fails to perform his promise.

"In case where restitution of the same benefit is not possible, reasonable compensation will have to be paid to make good the loss of the other party."

Section 65 of the Indian Contract Act, 1872:-

Sometimes, a party does anything or delivers something, under an agreement or contracts whereby the other party receives some advantage. Then, the advantaged party is under an obligation to restore the disadvantaged party. Questions relating to restitution, or restoration of advantage, may arise:

1. If the agreement or contract is void ab initio ; or
2. If the agreement is subsequently discovered to be void; or
3. If the contracts becomes void.

Doctrine of Restitution has no application to agreements or contracts ab initio void and known to be so. Therefore it can be stated that this section restricts to only two cases that can termed as:

1. If the agreement is subsequently discovered to be void; or
2. If the contracts becomes void.

If the case falls within any of the two categories, any person who has received any advantage under such agreement or contract becomes bound to restore it, or to make compensation for it, to the person whom he received it. It is known as Doctrine of Restitution. Section 65 of the Indian contract act, 1872 governs the doctrine of restitution. It may be observed that this section starts from the basis of there being an agreement or contract. If there was no agreement or contract or there could be no agreement or contract then this Doctrine of Restitution has no governance.

Basic prerequisites to be proved by the plaintiff in suit for damages in the case of breach of contract :-

In a suit for damages, the plaintiff is required to prove :

1. 'the existence of a concluded contract between the parties';
2. 'there is clear breach of terms and conditions of the contract by the defendant';
3. 'that breach on the part of the defendant has caused certain losses to the plaintiff contractor, giving rise to a claim to sue for damages';
4. 'proving the actual extent of losses suffered by the contractor directly attributable to the breach of the terms and the clauses of the contract by the employer';
5. 'quantifying the damages and most importantly by mitigation of damages that is to say, a person claiming damages to claim only such extent of damages, which are actually suffered as an inevitable direct consequence of the breach of contract by the defendant, even after the plaintiff had taken all possible prudent steps to minimize the extent of losses, it is only if the plaintiff establishes the actual quantum of damages on the basis of the above principles. A suit for damages can be decreed by courts and not otherwise.'

Theory Of Quantum Meruit

In Latin, this phrase means "what one has earned". In law of contract, this refers to the benefit or enrichment one party receives as a result of the other party's actions. Under the law, the theory means that another party has received an unfair benefit and thus must

provide restitution to the party who provided that benefit. Thus, Quantum meruit is a theory in the law that requires fairness and reasonableness. The theory fosters equity of the parties and helps to ensure that if a person provided a service or a good, that person receives the benefit of the contract. It is an important theory in law because it allows a court to provide a fair result in an unfair situation.

In Case of Venkatesh Construction Company Vs. Karnataka Vidyuth Karkhane Limited (Kavika) (2016) 4 SCC 119

Court held that:-

"The Appellate Court may not interfere with the finding of the trial court unless the finding recorded by the trial court is erroneous or the trial court ignored the evidence on record. The High Court reversed the decree passed by the trial court without discussing oral and documentary evidence and several grounds raised before the trial court. The High Court veered away from the main issue and went on to elaborate on the law of arbitration and the mode of setting aside the arbitral award under Section 34 of the Arbitration Act, which in our view, was not warranted. Without considering the oral and documentary evidence, the High Court erred in interfering with the factual findings recorded by the trial court and the impugned judgment was liable to be set aside.

Trial court directed the respondent to pay a sum of Rs.3,23,000/- to the appellant with interest at the rate of 12% per annum from the date of suit till the date of realization. To award interest from the date of suit to date of decree and from the date of decree till the date of realization is entirely discretionary. The terms of the contract do not specify any rate of interest. In the facts and circumstances of the case and having regard to the fact that the matter was pending for over two decades and in the interest of justice, it was appropriate that the interest of 12% per annum awarded by the trial court be reduced to 6% per annum.

In the result, the impugned judgment was set aside and the appeals were allowed. The judgment and decree passed by the trial court was restored with the modification of reduction of interest at 6% per annum from the date of the suit till the date of realization. In the facts and circumstances of the present case, no order as to costs was made in these appeals.

Conclusion

Even where a person has received a benefit from another he is liable to pay thereof only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it. The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution thereof. Ordinarily benefit to the one and the loss to the other are co-extensive, and the result of the remedies given under the rules stated in the restatement of this subject is to compel the one to surrender the benefit which he has received and thereby to make restitution to the other for the loss which he has suffered. Where benefit and loss do not coincided the amount of recovery is usually limited to the amount by which he has been benefited. Restitution literally means restoration. It is based on the noble principle that a person should not be allowed to unjustly enrich himself at the expense of another. Therefore, when a contract becomes void, the party who has received any benefit under it must restore it to the other party or must compensate the other party by the value of the benefit.

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