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Case Comment: Satyabrata Ghose v Mugneeram Bangur

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INTRODUCTION

Section 56[1] pertains to the doctrine of frustration and the theory of supervening impossibility. To examine the expanded scope of this section, the author analyzes it by elaborating on the landmark case and judgment of Satyabrata Ghose v Mugneeram Bangur & Anr[2]. The author explains the facts and legal issues of the case and discusses the application of force majeure, time as an essential, and the doctrine of frustration in Indian and English law. The author also highlights the relevance of the case in the legal background of frustrated contracts and its significance in today's era.

According to **Section 2(h)** of the Indian Contract Act, 1872[3] an agreement enforceable by law is a contract. Non-performance of a contract is considered to be a breach and the party that fails to perform has to compensate the deprived party, but a contract can be discharged in various ways where the liability does not fall on any parties. One such way of discharging a contract is the

[1] Indian Contract Act 1872, s 56
[2] *Satyabrata Ghose* v *Mugneeram Bangur & Co* (1954) SCR 310
[3] Indian Contract Act 1872, s 2(h)

doctrine of frustration as highlighted in **Section 56** of ICA,1872[4]. This explicates the theory of supervening impossibility where the party is rendered performing the contract due to unforeseen circumstances not under the control of either party, making the performance impossible. The section lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties[5].

DELVING INTO SECTION 56

In the realm of fulfilling contractual obligations, **Section 56**[6] covers an important concept of supervening impossibility which was inspired by the doctrine of frustration in England. The clauses under this section cover the aspects of pre-contractual impossibility, post-contractual impossibility, and compensation claim.

***Pre-contractual impossibility*:** An agreement to do an impossible act in itself is void, it is *void ab initio* considered as nullity.

***Post contractual impossibility*:** Supervening impossibility occurs when a contract to do an act becomes unlawful or impossible to perform due to an intervening factor beyond the control of the parties. It may be a physical or legal impossibility or even may become impractical or illogical to perform making the contract void and no obligation of performance exists, but if either party enjoyed unjust enrichment in the cost of the other in due course of the contract they are obliged to return applying **Section 65** of the Indian Contract Act, 1872[7].

The doctrine of frustration is typically used when the subject matter of a contract is destroyed, as in the case of Taylor v Caldwell[8] where the music hall, which was the subject matter of the contract, was destroyed. In this case, Blackburn J. first formulated the doctrine in its modern form. However, even if the performance of the contract is not possible due to the non-occurrence

[4] Indian Contract Act 1872, s 56
[5] *Naithati Jute Mills Ltd*. v *Khyaliram Jagannath* AIR 1968 SC 522
[6] Indian Contract Act 1872, s 56
[7] Indian Contract Act 1872, s 65
[8] *Taylor v Caldwell* [1863] 3 B&S 826

of an event, the death or incapacity of one of the parties, an unexpected outbreak of war, or a change in the legal position, the contract can still be frustrated.

***Compensation for loss through non-performance*:** If one party had knowledge of the impossible or unlawful nature of a contract and intentionally encouraged the other party to enforce it under a unilateral mistake, the innocent party is entitled to claim compensation from the party who enforced it with prior knowledge of its impossibility. The doctrine of frustration is discoursed comprehensively by analyzing the case of Satyabrata Ghose v Mugneeram Bangur.[9]

FACTS

Satyabrata Ghose the appellant in the case sued Mugneeram Bangur & co. for bringing in the defence of supervening impossibility for the non-performance of the contract and demanded specific performance.

The defendant company had a large estate of land in Great Calcutta in the vicinity of Dhakuria Lakes. The company planned to divide the large sum of land into many smaller plots and develop them for residential purposes under the scheme called Lake Colony Scheme No.1. According to this scheme the firm sold all their plots to their prospective buyers receiving only a small earnest amount as initial *quid pro quo* and would claim the remaining consideration amount after installing roads, drains, sewers and all the necessary infrastructure to make it apt for residential purpose. In December 1941, three big chunks of the land under the scheme were requisitioned by the government for military purposes due to the outbreak of war. This made the construction of roads and sewers impossible as the war prolonged over years. Hence the company considered the contract frustrated and in November 1943 it articulated two options: either the company would return the initial deposit or the buyer could pay the balance amount for the current land and the company would later install the infrastructures after the war. It also added that non-compliance with both these options would terminate the contract void and lead to forfeiture of the initial deposit.

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[9] *Satyabrata Ghose* v *Mugneeram Bangur & Co* (1954) SCR 310

Satyabrata Ghose the petitioner was the nominee of Bejoy Krishna Roy one of the buyers of the land who had paid earnest money ₹101. He denied both options and demanded specific performance and to subsist the contract. Bejoy refrained from filing any written statement and was examined by the petitioner as his witness.

The judgement of the case when filed in trial court favoured the petitioner leading the respondent company to approach the district court for appeal. The district court upheld the decision of the trial court and dismissed the case. The resolute respondent sought the high court for a second appeal where the judgment was reversed and the respondent had won the case. The former petitioner in acknowledgment to the high court exercised his right to appeal in the supreme court under **Article 133**[10].

ISSUES

- Whether the application of English law by the High Court is valid.
- Whether the petitioner had locus standi to sue and demand specific performance.
- Whether the doctrine of frustration according to **Section 56**[11] is applied in this case.
- Whether delay in performance would hamper the contract.

CONTENTIONS

Petitioner Contention: The petitioner sued on 18th January 1946 and contended that the contract must subsist and the petitioner was entitled to get a conveyance executed and registered by the defendant on payment of the consideration money mentioned in the agreement and in the manner and under the conditions specified therein.[12]

The attorney general representing the petitioner made the following contentions:

- English law only has a persuasive influence in India and is not directly applicable.
- English law does not extend to the sale of land, even if extended to the Indian context.

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[10] Constitution of India 1950, art 133
[11] Indian Contract Act 1872, s 56
[12] *Satyabrata Ghose v Mugneeram Bangur & Co. & Anr* 1993 CALLJ 336

- The events according to the facts of the case do not amount to frustration.

Respondent Contention: The respondent's contentions are as follows:

- According to **section 42**[13] this suit cannot be pursued.
- The petitioner does not have locus standi to file the suit.
- The doctrine of frustration is attracted since the supervening impossibility altered the main material of the contract.

OBSERVATION OF THE COURT

The Attorney-general argued in the appeal that the high court's judgment was based on English law which is not applicable in India. Even if applicable it is not extended to the sale of land as held by the English court. But in India, the doctrine of frustration can be extended to the sale of land as codified in **Section 54**[14]. And he finally argued that there had been no frustration at all.

Firstly, English law cannot be implied in India and is only persuasive. Secondly, in accord with the doctrine of foreseeability, the war was foreseen and mere difficulty or delay in performance cannot hamper the contract. Thirdly, Force majeure cannot be applied in this case since it is applied in a special and conditional manner.

The statement of Lord Loreburn 'if substantially the whole contract becomes impossible of performance or in other words impracticable by some cause for which neither was responsible'[15] was referred to check where frustration is applicable. In addition, Viscount Maugham observed that the 'doctrine of frustration is only a special case of the discharge of contract by an impossibility of performance arising after the contract was made'.[16] Although in English law such cases are dealt with under, the doctrine of frustration in Indian law there is a separate provision for continent contracts in **Section 32**[17].

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[13] Specific Relief Act 1963, s 42
[14] Transfer of Property Act 1882, s 54
[15] *Tamplin Steamship Co. Ltd.* v *Anglo-Mexican Petroleum Products Co. Ltd*. [1916] UKHL 433
[16] *Joseph Constantine Steamship Line Limited v Imperial Smelting Corporation* Ltd. [1941] 70 Ll.L.Rep. 1
[17] Indian Contract Act 1872, s 32

JUDGEMENT

The Judgment of the Court was delivered by MUKHERJEA J. It was held that impossibility as mentioned in the said Section is used in a practical and not in the literal sense, 'the events which have happened here cannot be said to have made the performance of the contract impossible and the contract has not been frustrated at all.'[18]

The petitioner in this case was made as a nominee of the purchaser on 30th November 1941 and hence his suit was valid. Also, the war was foreseen by the defendant firm and hence the requisitioning of the land did not alter the root of the contract, and since there was no stipulated time due to the tough nature of installing the infrastructure, time was not an essential of the contract as per **Section 55**[19] the delay in performance will not hamper the contract. The construction work had not begun and hence even the defence of interruption of work cannot be held and the requisition was only temporary. Thus, the doctrine of frustration according to **section 56**[20] cannot be used in this case and the defendant firm had to perform as per contract after the war. The decision in favour of the appellant was based on an analysis of various factors such as foreseeability of the event, contractual obligations, and relevant legal provisions related to frustration, impossibility, and stipulation of time.

DEVELOPMENTS AFTER SATYABRATA GHOSE

This case has set a precedent in many other cases to determine the applicability of the doctrine of frustration, resulting in numerous developments in this field. Businesses and other sectors have faced hardships fulfilling contractual obligations during and after the COVID-19 pandemic, raising questions about the relevance of **Section 56** in these circumstances. In the case of Suneesh K S v Travancore Devaswom Board & Ors[21], the Kerala high court held that mere commercial difficulty or hardship to fulfill the contract cannot stand as a defence to back out from the contract agreed upon in the first place.

[18] *Satyabrata Ghose v Mugneeram Bangur & Co. and anr.* 1993 CALLJ 336
[19] Indian Contract Act 1872, s 55
[20] Indian Contract Act 1872, s 56
[21] *Suneesh K S* v *Travancore Devaswom Board & Ors* Civ WP No 19896/2021

Likewise, in the case of Easun Engg. Co. Ltd. v Fertilizers and Chemicals Travancore Ltd.[22], A contract had been established for the supply of power transformers with a fixed amount stipulated in the agreement. Additionally, the contract contained a clause stating that if a 'force majeure' event took place, the affected party would not be able to claim damages. However, due to an exorbitant increase in the price of transformer oil, it became impossible for the party to perform their end of the deal. The court held that the drastic price increase was substantial and not a natural occurrence, and therefore deemed the contract to be frustrated.

But in the case of Adani Power versus the Central Electricity Regulatory Commission[23], where there arose a dispute from the MUPP project involving Adani & TATA power Adani and Tata agreed to use non-scalable tariffs as they had long-term fixed-rate coal supply agreements. However, changes in Indonesian law led to a significant increase in coal prices, making Adani's non-scalable tariff unfeasible. Adani claimed contract frustration due to force majeure and sought relief. The Supreme Court held that a mere increase in price doesn't hamper the performance and Adani had willingly agreed to use a non-scalable tariff and hence the contract is not frustrated according to **Section 56**. Since the case of Satyabrata Ghose v/s Mugneeram Bangur & Anr, there have been many developments in interpreting the Indian Contracts Act regarding the doctrine of frustration. It is important to note that this doctrine does not provide a complete solution to all cases, and its limitations are still being explored. As time goes on, the boundaries of this doctrine continue to expand.

ANALYSIS

The case of Satyabrata Ghose v Mugneeram Bangur & Anr is a landmark case in the legal history of India that first analyzed the concept of force majeure and various questions regarding the frustration of contracts. **Section 56** found in Chapter IV of the Indian Contract Act is a very peculiar provision that discharges a contract without posing liabilities on parties. The difficulty in performance and its validity in frustrating a contract was briefed. The case on the sale of land

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[22] *Easun Engineering Co. Ltd. v The Fertilisers and Chemicals* AIR 1991 MAD 158
[23] *Energy Watchdog* v *Central Electricity Regulatory Commission & Ors* AIR 2017 SCC Online 378

led to widening the aspects of the term impossibility. Before the impossibility was associated only with physical view but this case extended its dimensions including legal impossibility, change in material fact rendering the original purpose of the contract, radical differences, and illogical nature of performance. Application of force majeure which means '*event or effect that can be neither anticipated nor controlled . . . [and] includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes, and wars)*' was enhanced. Contracts often contain a force majeure clause that is negotiated between parties and specifies the events that qualify as force majeure events such as acts of god, wars, terrorism, riots, labor strikes, embargos, and acts of government, epidemics, pandemics, plagues, quarantines, and boycotts.[24]

The Supreme Court has held that when a force majeure event is relatable to a clause (express or implied) in a contract, it is governed by **Section 32** of the Act whereas if a force majeure event occurs dehors the contract, **Section 56** of the Act applies.[25]

- The decision is highly structured and addresses the legal principles behind the force majeure clause and frustration.
- The clear-cut differentiation applied between **Section 32** and **Section 56** aids in the precise application of the force majeure event.
- The approach of limiting the application of the global legal landscape in India by referring only to the persuasive nature of English law increases the credibility and coherence of the judgment.
- It's important to only claim frustration when the very purpose of the contract is undermined, rather than using it casually and no foreseeable event can be held as a defence for frustration.
- The judgment prevents unnecessary termination of a contract by holding that time is not an essential element and delay not altering the fundamental basis of the contract cannot induce frustration.

[24] Adarsh Saxena et al., 'Force Majeure in the Times of Covid 19' (*Cyril Amarchand Mangaldas,* 30 April 2020) <https://corporate.cyrilamarchandblogs.com/2020/04/force-majeure-in-the-times-of-covid-19/> accessed 15 January 2024

[25] *Satyabrata Ghose v Mugneeram Bangur & Co (1954) SCR 310*

- The court provided a nuanced understanding of the temporary nature of the requisition and the judgment stands valid as a mere delay in performance would not amount to frustration when the fundamental contract stands intact.

The case was posited as a legal precedent for many upcoming court judgments. Especially during the COVID-19 pandemic many contracts got frustrated and many suits were filed to check the possibility of performance and validity of force majeure. It is being repeatedly quoted in all cases that are being put forth under section 56[26].

CONCLUSION

In conclusion, the case of Satyabrata Ghose v Mugneeram Bangur & Anr holds a prominent place in the legal history of the application of the doctrine of frustration and force majeure. The court coherently scrutinized the legal provisions of supervening impossibility under the Indian Contracts Act 1872 established the difference in **Section 32** & **Section 56** and also upheld the time not being an essence to contract by avoiding unwanted termination of contracts. The judgment emphasized the temporary nature of the requisition done by the military to the land according to the facts of the case. It established that unless and until the fundamental base of the contract is altered frustration cannot be placed. The doctrine of frustration has gained momentum and increased its relevance in the present landscape due to the uncertain nature of the social and economic nature due to unexpected events such as floods, novel virus outbreaks, war, etc. The legal application of defences and widened scope of supervening impossibility was probed meticulously in this case. Through this case, the application of **Section 56** should be deciphered based on the facts of the case before discharging the contract.

The case is increasing in its relevance in spreading the frontiers of the contract law. As businesses and sectors grapple with unforeseen events, the principles established in this case provide a robust foundation for the analysis of frustrated contracts and the application of force majeure clauses.

[26] Indian Contract Act 1872, s 56