

## Specific Relief Act, 1963

### **LECTURE – 11**

#### **Notes - Rectification and Rescission of Contract**

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In this lecture we are going to cover Chapter III ‘Rectification of Instruments’ and Chapter IV ‘Rescission of Contracts’ which are two distinct specific reliefs available in the SRA, 1963.

Rectification of Instruments is covered under Section 26 of the Act. Rectification is the removal of defects or imperfections. It implies that there is an error present in the instrument which is to be corrected. If from a contract one cannot ascertain the real intention of the contracting parties, then rectification is done to correct the error.

It seems similar to Section 62 of the Indian Contract Act, 1872, but has its differences in its application.

#### **Section 26: When instrument may be rectified**

*(1) When, through fraud or a mutual mistake of the parties a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956), applies] does not express their real intention, then--*

*(a) either party or his representative in interest may institute a suit to have the instrument rectified; or*

*(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or*

*(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.*

*(2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.*

*(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.*

*(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:*

*Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.*

Section 26(1) talks about three parties and when they can go for rectification. The first ground present is that the instrument or contract which is sought to be rectified should not be able to express the real intention of the parties. And this error to be rectified should either be due to fraud or a mutual mistake of both the parties.

Instrument means the meaning assigned to it in Section 2(14) of the Indian Stamp Act, 1899. Instrument includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded. It does not include articles of association, but includes all written contracts, wills, promissory notes, bill of exchange, cheques, etc.

When someone intentionally misrepresents to the other, by suggesting an untrue fact, or hiding a known fact or making promises without any intention of performing it to deceive the party into entering a contract, they are committing fraud.

Mutual mistake means a common mistake on the part of both the parties to the contract. Mistakes to form the ground for relief should be mutual, not unilateral. The mistake can be of either fact or law.

An example of a contract that can be rectified under Section 26 - A intending to sell to B his house and one of the three godowns adjacent to it, executes a conveyance prepared by B in which, through B's fraud, all three godowns are included. One of the two godowns which were fraudulently included B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C but it cannot be rectified so as to affect D's lease.

The principle of granting relief by way of rectification is that where a contract as finally made fails to express or embody the agreement between the parties already made,

In filing for a remedy of rectification, there are grounds to be established:-

1. The instrument must be written
2. That there was a mutual mistake or fraud
3. That the instrument did not truly express the intention of the parties

Section 26(1) also tells us about the parties that may claim rectification. They are:-

1. Either party or his representative in interest
2. The plaintiff when the right arising under the instrument is in issue
3. The defendant in any suit may ask for rectification as a difference

The burden of proof of proving the intention which he desires from the contract rests on the plaintiff or whoever has brought the prayer for rectification. A change in intentions from what is decided in the original instrument, even if mutually decided, does not make the suit eligible for rectification. Similarly, even in cases of undue influence or misrepresentation, remedies other than rectification provided in Section 26 would apply. Thus Section 26 has limited application.

Usually a party to a written agreement cannot give oral evidence to contradict written evidence. To prove this, even oral evidence of agreement can be given according to proviso 1 and 2 of Section 92 of the Indian Evidence Act, 1872.

#### Difference between Section 62 of Indian Contract Act and Section 26 of Specific Relief Act

In novation, the previous contract is replaced with a new one whereas in rectification, the old contract simply undergoes a change in its terms and conditions. In novation the old rights and liabilities are extinguished whereas in rectification the old liabilities are not completely extinguished, just altered. Novation can be done by agreement of both parties whereas in rectification, the supervision of the court is required.

Section 26(2) says that if in any suit in which a contract is sought to be rectified, the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties the court may in its discretion direct rectification by amending the language of the instrument. This should be done without prejudice to rights acquired by third persons who have done so in good faith and for value and without notice. The bona fide purchaser/ consumer must be protected.

For example - A intending to sell to B his house and one of the three godowns next to it, execute a conveyance prepared by B, in which, through B's fraud, all three godowns are included. B gives one to C without value and lets the other godown to D for a rent. C and D have no

knowledge of the fraud. The conveyance against B and C can be rectified. But D who has acquired his right to use it in good faith, without notice and for value, shall have his rights protected and the conveyance cannot be modified as to affect his agreement with B.

Section 26(3) says that a party can claim specific performance too in the suit for rectification. If the court deems fit, and after rectification of instrument has been granted, the court can order for specific performance

Section 26(4) and the proviso say that the relief of rectification shall be granted only when specifically asked for. This claim can be done at any stage of the proceeding, provided that the court allows it.

### **Rescission of Contracts (Chapter IV)**

Rescission is another equitable remedy available to parties to a contract which is dependent on the discretion of the court. It is dealt from Section 27 to Section 30 of the Specific Relief Act, 1963. To rescind means to abrogate, annul, avoid or cancel a contract and the rescission is that process of undoing the contract.

The relief of rescission comes handy to a person who has become a victim of an imposition by a contract. This burden of contract has been imposed upon him by means of fraud, illegality or something equivalent which makes the contract either void or voidable. Through this remedy, the plaintiff may ask the court that the contract should be declared as non-binding upon him. This process is known as rescission of a contract.

### **Section 27: When rescission may be adjudged or refused**

*(1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely:--*

*(a) where the contract is voidable or terminable by the plaintiff;*

*(b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.*

*(2) Notwithstanding anything contained in sub-section (1), the court may refuse to rescind the contract--*

*(a) where the plaintiff has expressly or impliedly ratified the contract; or*

*(b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or*

*(c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or*

*(d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.*

*Explanation.--In this section "contract" in relation to the territories to which the Transfer of Property Act, 1882 (4 of 1882), does not extend, means a contract in writing.*

According to Section 27 of the Specific Relief Act, 1963, any person interested in a contract may sue to have a contract rescinded. It is not limited to the parties of the contract. Anyone who receives any benefit, to has to perform a duty or gets an obligation is an interested party and has the right to sue for rescission.

For example, in a contract by a Karta from a Hindu Undivided Family for alienation of a property, any member of the HUF is interested and can sue for rescission if his plea satisfies the requirements.

Section 27(1) provides for two circumstances when an interested person can seek rescission. They are :-

1. When the contract's nature is voidable/ terminable by the plaintiff

A voidable contract is a contract that can be voided by one or both of the parties. Any contract involving failure to disclose material facts, or made due to undue influence or duress is a voidable contract.

A terminable contract is a contract where any party has reserved the right to end the contract on certain conditions. Partnership at will is a terminable contract.

2. When *prima facie* the contracts seems to be lawful but the true meaning of the contract is unlawful, and the defendant is more to blame than the plaintiff for its unlawfulness.

For example, A, an attorney, induces his client B, a Hindu widow to transfer property to him for the purpose of defrauding B's creditors. B does not have much knowledge of law.

Here the parties are not equally at fault and B is entitled to have the instrument of transfer rescinded.

Thus we see that unlike rectification, where the mistake is made by mistake of both parties equally (mutual mistake), here one party is more at fault than the other.

Since this relief is a discretionary relief, the court still holds the power to refuse this remedy. The conditions for refusal of such relief are explained in Section 27(2). They are :-

1. 27(2)(a) Ratification

The plaintiff loses the right of rescission when even after becoming aware of the fact that the contract is voidable, he chooses to ratify it. This ratification can be express or implied. When the party simply starts to enjoy the benefits or starts doing his obligation, he is said to have impliedly ratified the contract.

For example, A contracts with B to hire an off-road vehicle for a trip from Patna to Kathmandu. B gives him a soft-road vehicle. This itself makes the contract voidable in favor of A. A still takes the vehicle which breaks down on the way and he agrees to get the vehicle repaired for compensation from B after informing B of the wrong vehicle and the accident. By doing this action, A has ratified the contract and thus cannot go for rescission.

2. 27(2)(b) When restitution is not possible

This remedy of rescission, like other remedies, seeks to restore the parties to their original position. When due to change of circumstances, like reselling the goods or transforming them, the parties are now in a position that they cannot be restored substantially to their original position, the right of rescission ceases to exist.

For example, A goes to B for a specific kind of cloth that he wants for a suit. B sells him the cloth which is not the cloth that was sought. But A does not realise this fact until he has got the suit made and wears it. Now the position of the seller is substantially changed by the transformation of the cloth into a suit and the cloth cannot be restored anymore. Thus the right of rescission stops existing.

3. 27(2)(c) In case of a *bona fide* acquirer of rights

When a third party has acquired a right without notice, in good faith and for value, his right cannot be prejudiced against. This comes from the principle that law protects *bona fide* purchaser and their rights must be protected.

For example, when a person A obtains goods from B by fraud and then sells it to C who has no knowledge of it being obtained by fraud, and has paid value in good faith, his right over those goods cannot be prejudiced against, i.e. B cannot go for rescission of contract against C's contract with A.

#### 4. 27(2)(d) Severance

Rescission is not allowed of only a part of a contract which cannot be severed from the full contract. The full contract should be rescinded, not a part of it.

### **Section 29: Alternative prayer for rescission in suit for specific performance**

*A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.*

This section says that a suit for specific performance can also have an alternative prayer for rescission. For example, A and B form a contract which is voidable in favor of A. When B does not want to perform his part of the contract, A can sue for specific performance and seek an alternative remedy in the same suit for rescission of the contract.

In the case of **Prem Raj v. D.L.F. Housing and Construction Pvt. Ltd. (1968)**, the Supreme Court said that it is expressly provided by Section 29 that a plaintiff suing for specific performance of the contract can alternatively sue for the rescission of the contract, but the converse is not provided. A party suing for rescission cannot include a prayer for specific performance.

### **Section 30. Court may require parties rescinding to do equity**

*On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.*

This provision is based on the maxim of equity, 'One who seeks equity must do equity.' This maxim alongwith having 'clean hands' and 'no unnecessary delay' are the basic maxims which form the foundation of discretion of courts in granting equity.



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It says that when the party who gets the relief of rescission must restore the other party to its original position. Even if the contract is voidable, the person should not enjoy the benefits as he would be barred from this remedy. If he cannot do that, the remedy of rescission would not be available to him. (Section 27(2)(b)).

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