

## Specific Relief Act, 1963

### **LECTURE – 12**

#### **Notes - Cancellation of instruments**

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Cancellation is one of the remedies available to parties under a contract and Section 31, 32 and 33 deals with cancellation of instruments through the court. Section 31 explains when cancellation can be enforced in a void/ voidable contract. Section 32 deals with partial cancellation and Section 33 talks about the powers to aggrieved party after cancellation and orders to the defendants after cancellation.

Before understanding this chapter, one must be aware of its objectives. Section 31 provides a relief based on protective justice. It also involves the doctrine of '*quia timet*'. It means 'because he fears' and is a doctrine that allows a person to seek the court's help to prevent future harm to their rights or interests. In the case of *Quadricon Pvt. Ltd. v Bajrang Alloys Ltd. (2007)*, the SC examining a litany of cases on Section 31, said that actual injury or attempt to injure is not necessary to maintain an action under Section 31. A reasonable apprehension of a serious injury is sufficient. The question whether or not there is a reasonable apprehension of actual injury must depend upon facts of each case.

For example, A tries to make a contract with B to sell his property and trying to defraud his creditors C, D and E. Since the contract is voidable in the favor of the three creditors, and if they have reasonable apprehension that this contract is to defraud them, they can go to the court under Section 31 to get the contract between A and B cancelled.

#### **Section 31: When cancellation may be ordered**

*(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.*

*(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.*

This section tells us that any person (not necessarily the parties) against whom a written instrument is void or voidable and has a reasonable apprehension of injury from such instrument may seek the cancellation of that instrument.

Any person may seek the cancellation of the written instrument. Here, any person has a wide meaning and may be any party against whom the instrument is voidable and has an apprehension of injury from it. The meaning of any person has been clarified by the SC in a few cases.

In *Md. Noorul Joda v. Bibi Raifunnisa and ors. (1995)*, the Supreme Court said that under Section 31, any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such a instrument, if left outstanding may cause him serious injury is entitled to sue and the word 'person' is wide enough to encompass person seeking derivative title from his seller.

The written instrument that is sought to be cancelled is defined under Section 2(14) of the Indian Stamp Act, 1899. It 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.

But even in written instruments, awards or judgements, even though they seem to come under the definition of instruments is not under the sense of instrument defined above. In the case of *Pratabmull Rameshwar v. K.C. Sethia (1959)*, the SC interpreted the meaning of written instruments and said that instruments means an instrument which has not been adjudged by any formal court or tribunal.

The written instrument must be voidable against/ in favor of the persons applying for cancellation. If an instrument is valid, no question arises of its cancellation. If an instrument is void, the person affected can simply go for substantive relief. In the case of *Sanjay Kaushish v. D.C. Kaushish (1992)*, the court opined that it is a well-settled principle of law that the person affected by a void document can ignore the relief of cancellation and file a suit seeking substantive relief which may be available to him.

Now after a party fearing the effect of a voidable instrument has filed a suit at the court, the court still can exercise its discretion while adjudging the cancellation. This discretion shall be given on sound legal principles and on the fact that it is sought in time and with clean hands. The court will not assist a party to an illegal transaction. For example, a woman who makes a contract with a

person to be kept as a concubine cannot come to the court to get it cancelled as both the parties are knowingly committing an illegality.

In the case of *K.M. Viswanatha Pillai v. K.M. Shanmugham Pillai (1968)*, the Court held that it may deny cancellation where both parties to the written instrument are a party to an illegality or fraud. This comes from the doctrine of *pari delicto* (in equal fault). It says that a situation where two or more parties are equally responsible for a wrongful or illegal act, neither party can sue the other for damages.

Limitation in cases like these is within three years from the date of accrual of cause of action.

Thus the essentials/grounds for getting a suit of cancellation are:-

1. The written statement should be void or voidable against the plaintiff.
2. The plaintiff has reasonable apprehension of serious injury from the instrument if left outstanding.
3. The court, in view of the circumstances and facts surrounding the case, considers it reasonable and necessary to cancel the instrument.

Section 32(2) says that if an instrument is cancelled by the court, and that instrument is registered under the Indian Stamps Act, 1899, the officer shall make a note of the cancellation on the copy of the instrument in the books.

### **Section 32: What instruments may be partially cancelled**

*Where an instrument is evidence of different rights and different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.*

As is clear, if the instrument has some part of the different rights and obligations of the instrument which can be cancelled by the court and the left part of the instrument can stand on itself, the court can allow that. Section 32 can be applied whenever in case the rights and obligations advanced are distinct and separable. Any inconsistent or voidable portion of an agreement may be partially cancelled by the court. Such partial cancellation shall not affect the performance of the remaining rights and obligations under this argument.

In *Ram Chander v. Ganga Sharan (1916)*, the court determined that the plaintiff had asserted that an endorsement on a document was a forgery, and subject to cancellation. But since this

endorsement which underwent cancellation was distinct from endorsements done before, only one endorsement was cancelled. The example below is based on such a case.

For example, A draws a bill on B who endorses it to C, by whom it appears to be endorsed to D, who endorses to E. C's endorsement is forged (i.e. D forged the endorsement to E). C is entitled to have the instrument cancelled, leaving the instrument (bill) to stand in other respects.

### **Section 33: Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable**

*(1) On adjudging the cancellation of an instrument, 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.*

*(2) Where a defendant successfully resists any suit on the ground--*

*(a) that the instrument sought to be enforced against him in the suit is voidable, the court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;*

*(b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872), the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.*

This provision relates to the court's ability to order the restoration of benefits received and the fair compensation to be paid when an instrument is cancelled. This section equally applies to a minor.

The object of this section is to restore the parties to their original position (doctrine of equitable restitution). 'He who seeks equity must do equity' is the maxim that drives this. It places a duty on the person who gets the relief of cancellation to pay any reparation or to make good whatever advantage they may have received.

According to Section 33(1), when cancellation of instrument is granted, the court may require the plaintiff, who receives the benefit of the remedy of cancellation to :-

1. Restore, as much as possible, any benefit which he has received from the other party
2. To make any compensation which justice may require.

Section 33(2) states that when the defendant has successfully gets the instrument cancelled on the fact of it being voidable and voidable in his favor, he may also be required to restore the benefit received by him or any compensation for that benefit. If the defendant puts an argument that the agreement made is void on the basis that he was incompetent to contract as under Section 11 of the Indian Contract Act, 1872, he may be required to restore as far as possible the benefit received by him from himself or his estate.

### **Differences between rescission and cancellation**

Rescission of a contract is the ending of a contract as if it never existed and it has the effect of erasing the existence of a contract. Whereas in cancellation, the contract is terminated from the point of cancellation, and the liabilities and obligations up to that point are enforceable.

Rescission is sought in case of fundamental defects in the contract. Cancellation has a much wider scope of application.