CRITICAL ANALYSIS OF SATYABRATA GHOSE V. MUGNEERAM BANGUR & CO: RELATION TO FORCE MAJUERE IN TIMES OF COVID PANDEMIC

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ABSTRACT

Satyabrata Ghose v Mugneeram Bangur & Co is a landmark Indian contract law case regarding contract frustration. This case involves a firm that separated a huge piece of property into numerous smaller ones and sold each one separately. On August 5, 1941, the plaintiff paid 101 rupees to secure the tract of property. The contract was nullified in 1943 when the government seized the site for military use. The buyers could get their earnest money back or buy the whole thing from the corporation after the war. Satyabrata Ghose sued Mugneeran Bangur and the corporation, arguing that the firm was bound by the contract because it signed it in January 1946. The Supreme Court found that the English concepts of Frustration of Contract did not apply to the statutory requirements of the Indian Contract Act and that contract performance had not become impossible owing to the government taking temporary native land. The court also stated that the contract did not specify a time limit for building the roads and drains since both parties believed it would be done in a reasonable length of time. An impossible contract frustrates. When an unanticipated occurrence prevents or dramatically affects contract performance.

Impossibility, illegality, and change of circumstances are key contract frustration grounds. Frustration may arise if a delay substantially changes the deal. Contract frustration—impossibility of performance—applies to many contracts and is difficult to satisfy. Several incidents of frustration of contract have arisen during the COVID-19 pandemic because of lockdowns, travel restrictions, and other unanticipated situations. The phrasing of a force majeure provision will determine whether it applies to pandemics and other public health disasters. "Force majeure" clauses distribute loss risk. French law exempts promisors from non-performance under the notion of force majeure. Fault and exemption principles make up it. The exemption principle makes a party liable for a violation unless it can establish it is exempt, while the blame principle holds a party responsible solely if it did anything wrong. Section 56 of the Contract Act states that a contract that becomes impossible

or unlawful to fulfil owing to an intervening event is invalid. The research paper deals with the analysis of Satyabrata Ghose v Mugneeram Bangur & Co case. It mentions in detail the doctrine of impossibility of performance and frustration with respect to section 56 of the Indian Contract Act. It also compares covid-19 with force majeure. It evaluates the judicial precedents and recent cases about the same.

Keywords: Force Majeure, Covid-19, Frustration, Impossibility of performance.

INTRODUCTION

The defendant in **Satyabrata Ghose v. Mugneeram Bangur & Co**, a property sale case, raised doubts about the plaintiff's ability to carry out the terms of the agreement because of extenuating circumstances. But the judge ruled otherwise. Also, the court found that the provisions of the Indian Contract Act cannot be interpreted under English law. The concept of frustration of contract is addressed. The Supreme Court of India ruled in this decision that parties to a contract can claim frustration if an unexpected occurrence renders the contract impossible to carry out or significantly alters its terms.

The court ruled that a contract can be considered frustrated even if execution is still technically conceivable but the contract's business purpose has been undermined by the occurrence of an unanticipated event. The court also ruled that when a contract is frustrated, the parties are released from future performance without losing the right to be compensated for work already done or accumulated.

In determining whether the COVID-19 pandemic constitutes a force majeure incident that excuses performance under a contract, it may be useful to refer to the principles set forth in the case of **Satyabrata Ghose v. Mugneeram Bangur & Co**. Whether or not a pandemic constitutes a "force majeure" event will be determined by comparing the contract's language with the circumstances.

The enormous COVID-19 epidemic has had far-reaching effects on the global economy and legal obligations. The pandemic has caused a variety of unforeseeable events, some of which may constitute force majeure and excuse performance under a contract; nonetheless, whether or not force majeure applies in any given case will depend on the facts of the contract at issue and the circumstances.

Literature review

Journal Articles

1. The Development of the Doctrine of Impossibility of Performance, by William Herbert Page[1]

- The author talks about the doctrine of impossibility of performance.
- He also mentions the evolution of this doctrine with reference to Roman law.

2. The Rise of Force Majeure Amid the CoronaVirus Pandemic by Cosmos Nike Nwedu[2]

- The author compares Covid-19 to force majeure.
- He talks about the impact of the pandemic on contractual obligations.
- He mentions about the impossibility of performance of contract due to covid-19

3. Study of Dimensions of Principle of Frustration in Indian Contract Law System by Amar Singh Sankhyan[3]

- The author talks about section 56 of the Indian Contract Act.
- He mentions the physical and legal impossibility.
- He also mentions what constitutes a proper explanation for Breach of Contract.

4. Recent Developments in the Law of Contracts by Corbin A. L.[4]

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[1] William Herbert Page, The Development of the Doctrine of Impossibility of Performance, Michigan Law Review, May, 1920, Vol. 18, No. 7 (May, 1920), pp. 589-614, ISSN-0026-2234 https://www.jstor.org/stable/1278026

[2] Cosmos Nike Nwedu, The Rise of Force Majeure Amid the CoronaVirus Pandemic, Natural Resources Journal , Winter 2021, Vol. 61, No. 1 (Winter 2021), pp. 1-18, ISSN-280739 https://www.jstor.org/stable/10.2307/26988893

[3] Amar Singh Sankhyan, Study of Dimensions of Principle of Frustration in Indian Contract Law System Journal of the Indian Law Institute , OCTOBER-DECEMBER 1995, Vol. 37, No. 4 (OCTOBER-DECEMBER 1995), pp. 442-456, ISSN-00195731 https://www.jstor.org/stable/43953245

[4] Corbin, A. L. (1937). Recent Developments in the Law of Contracts. *Harvard Law Review*, *50*(3), 449–475, ISSN- 0017-811X

- The author mentions the applicability of the doctrine of frustration and doctrine of impossibility of performance.
- He claims that there is no specific list of situations where these principles can be applied.
- He says that these principles are subject to evolution.

5. Force Majeure, Impossibility of Performance as a defence[5]

- The journal article mentions the use of the term "Force Majeure" by lawyers in many cases.
- It says that the term had its roots in French law and has no fixed definition.

6. Hardship and Force Majeure by Maskow, D [6]

- The author refers to Force Majeure to be the issue of responsibility.
- He says that it is the fault principle and an exemption principle.

Books

1. Contract & Specific Relief by Avtar Singh[7]

- The author talks about section 56 of the Indian Contract Act.
- He mentions the doctrine of impossibility of performance.
- He talks about doctrine of frustration, essentials and exceptions for the same.

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https://doi.org/10.2307/1333316

[5] Force Majeure, Impossibility of Performance as a defence, The Yale Law Journal , Mar., 1922, Vol. 31, No. 5 (Mar., 1922), pp. 551-552, ISSN 0044-0094.
http://www.jstor.com/stable/789388

[6]Maskow, D. (1992). Hardship and Force Majeure. *The American Journal of Comparative Law*, *40*(3), 657–669. ISSN- 0002919X
https://doi.org/10.2307/840591

[7]Contract & Specific Relief, Avtar Singh, twelfth Edition, published by East Book Company (EBC), ISBN-9788194800453

2. Force Majeure and Frustration of Contract by Ewan McKendrick[8]

- The author examines the notions of force majeure and contract frustration.
- This book offers a comprehensive examination of the legal foundations underlying these notions, their historical evolution, and their practical implementations in commercial contracts.
- This author investigates the scope and interpretation of force majeure clauses in contracts, as well as their interactions with other contractual terms, such as termination and responsibility

3. Covid-19, Force Majeure and Frustration of Contracts – The Essential Guide' by Keith Markham[9]

    - The book analyses how the COVID-19 outbreak affected contracts and force majeure and frustration.
    - The book covers a range of topics, including the definition and interpretation of force majeure and frustration, how the COVID-19 pandemic has affected the operation of these legal concepts, and the steps that businesses and individuals can take to protect themselves from the legal consequences of the pandemic.
    - The author helps to differentiate between Force Majeure and Frustration

4. Force Majeure and Hardship Under General Contract Principles: Exemption for Unforeseeable and Unavoidable Events? by Christoph Brunner [10]

    - The book examines the origins and development of the concept of force majeure

[8] McKendrick, E. (1995). Force Majeure and Frustration of Contract (2nd ed.). Informa Law from Routledge. https://doi.org/10.4324/9781315849089
[9]Markham, K. (2020). Covid-19, Force Majeure and Frustration of Contracts – The Essential Guide. Sweet & Maxwell. ISBN 978-1-913715-05-2
[10] Brunner, C., 2009. *Force majeure and hardship under general contract principles: exemption for non-performance in international arbitration* (Vol. 18). Kluwer Law International BV.

- It provides a detailed analysis of the legal requirements for invoking force majeure and hardship, including the concepts of unforeseeability and inevitability.

- The book provides a comprehensive overview of the legal principles underlying force majeure and hardship, and their practical implications for businesses and other organisations.

5. Frustration and Force Majeure by G H Treitel[11]

- Treitel examines the various circumstances that may lead to frustration of a contract, such as a change in law or supervising illegality.

- The book also examines the doctrine of force majeure, which is a contractual provision that excuses a party from performing its obligations due to unforeseen events outside its control.

- Treitel explains the requirements for force majeure to apply and the various types of force majeure clauses that may be included in a contract.

- The author also analyses the interaction between frustration and force majeure and explores the differences and similarities between the two concepts. He concludes by providing guidance on how to draft effective force majeure clauses and how to avoid potential pitfalls.

Statement of problem

The Indian Contract Act, 1872, talks about the impossibility of performance and doctrine of frustration. Specifically, section 56 explains that if the acts mentioned in the contract are impossible to perform legally or physically, then the contract stands void. This section is the base for the force majeure clause, which is not expressly mentioned in the Act. In the landmark case of **Satyabrata Ghose v Mugneeram Bangur & Co**, the applicability of section 56 was an issue, where it was held that there was no impossibility of performance. Force majeure is an

[11] Treitel, G. H. (2004). Frustration and force majeure. Sweet & Maxwell. ISBN: 9780421872303.

important clause which helps the contracting parties when there is impossibility of performance due to unforeseeable circumstances. This acts as a defence for the contracting parties. But, there is no specific clause or provision which explains what constitutes force majeure. This has resulted into parties taking undue advantages of force majeure as a defence.

Rationale of study

Covid - 19 was an epidemic which spread throughout the world in the year 2020. This epidemic led to a lot of changes in the social, economic and legal fields. There were a number of contracts which were entered into or which were to be performed during covid-19. However, the performance of such contracts was not possible due to the pandemic circumstances. Thus, some of the contracts had to be declared temporarily suspended and some permanently. This research paper discusses the nature of such contracts. It addresses the covid - 19 pandemic as a force majeure event and how it has affected the contracts. The paper establishes a relationship between covid-19 and force majeure. It talks about how covid-19 has resulted into impossibility of performance. The paper also connects force majeure to section 56 of Indian Contract Act and critically analyses the force majeure clause.

Research objectives

1. To analyse the landmark judgement of Satyabrata Ghose v Mugneeram Bangur & co.
2. To understand the concept of a frustrated contract.
3. To study the grounds that give rise to frustration of contract.
4. To understand the nature of contracts made in Covid-19.
5. To study the concept of force majeure.

Research questions

1. What is section 56 of the Indian Contract Act of 1872?
2. What is the impossibility of performance?
3. What is the doctrine of frustration about and what are its essentials?

4. What is the legislative framework and what are the amendments and law commission reports about Force Majeure and Indian Contract Act?

5. What are the judicial precedents and recent case laws about force Majeure?

6. What are the loopholes in the current clause of force majeure?

Research methodology-

The methods of research methodology applied for carrying out this research is Doctrinal, Analytical and Comparative research. In this research the primary sources of data are Judicial precedents and Indian Contract Act-1872. The secondary sources of data compromises of published books, journals, scholarly articles, online journals and other sources.

Chapter 1

Satyabrata Ghose v Mugneeram Bangur & Co[12] is a landmark case in Indian contract law that deals with the concept of frustration of contract.

Facts of the case

The defendant in this legal case is Mugneeram Bangur and Co. A substantial percentage of the land in the Calcutta area belonged to his company. The company decided that dividing the large piece of land into many smaller ones and selling each one separately would be the best approach to develop the property and make it fit for residential usage.

The business began carrying out its operations in accordance with the plan and entered into specific agreements with different buyers about the selling of plots. In addition to this, it demanded and received monetary deposits from the prospective purchasers. In addition, the corporation took on the task of supplying all that was required for the domestic purposes, whether it was the building of roadways, a proper drainage, or any other requirement.

There was no time restriction stipulated in the agreement for the fulfilment of building of all the necessities and tt was determined that just after each of these building projects were finished, the firm would transfer the land to the respective owners of the plot only when it had received full compensation from the purchasers of the plot.

Because Satyabrata Ghose, the plaintiff in the case, was also seeking to acquire the parcel of property, Mugneeram Bungar and the Company came to an agreement with each other.

- On August 5, 1941, the plaintiff paid an advance payment amount of 101 rupees. In the years that followed, war was a common occurrence, and in 1943, the government made the decision to seize the property and put it to use for military operation.

Due to the fact that it would be impossible to continue development and sell the property, Mugneeram Bangur and the Company came to the conclusion that the contract should be considered null and void. In addition, they sent the same information to the purchasers.

[12] Satyabrata Ghose v Mugneeram Bangur & Co 1954 AIR 44 : 1954 SCR 310

The company gave the purchasers two choices:

1. The primary option was to get their earnest money back.

2. The second was to purchase the whole sum from the company once the war was over and the company resumed its construction work on the land.

Both of these choices were presented by the company as alternatives to the purchasers.

Satyabrata Goshe rejected both of the available alternatives, and on January 18, 1946, he chose to initiate legal action against Mugneeran Bangur and the corporation, claiming that the company was obligated to adhere to the provisions of the contract since it had already signed it in January 1946.

Issues

1. Did the plaintiff have the legal capacity to file the lawsuit?

2. Was the contract void in accordance with Section 56 of the ICA?

3. Does the law of frustration in England apply in India?

Judgement

The Supreme Court ruled that the English principles of Frustration of Contract upon which the High Court's ruling was based do not apply to the statutory provisions of the Indian Contract Act. It also stated that contract performance did not become impossible. In the court's view, there was no disruption of business because the company had not yet begun operations when the land was requisitioned. The second issue is that the contract did not stipulate a deadline by which the roads and drains had to be built. On the issue of Bejoy Krishna Roy's rights at the time the lawsuit was filed, both the trial court and the lower appellate court established that the appellant was a true assignee of Bejoy Krishna Roy. Thus, the appeal was granted.

The court determined that the contract's execution by either of the parties did not become impossible because of the given case. The court stated that the land taken by the government was of temporary native because the government did not take the land for a purpose that was intended to be permanent. Only for a short length of time was it applicable. In addition,

Mugneeram Bngur and the firm did not begin their work until after the government had already acquired possession of the property. Therefore, there has been no instance of the job being interrupted.

Analysis

In addition, the court made notice of the fact that the contract did not include a time restriction for the completion of the building of the roads and drains. This was due to the fact that both parties agreed that the work would be finished within a fair amount of time. As a result, the task needed to be finished within a reasonable amount of time, and because the parties entering into the contract were aware of the war circumstances that were occurring at the time, the reasonable amount of time needed to be adjusted accordingly.

Therefore, the contract had not become difficult to fulfil in accordance with section 56, which refers to an agreement to carry out actions that are impossible. As a result, the judge ruled in the plaintiff's favour and granted the requested relief.

Due to the fact that the work could proceed after the conclusion of the war, the court did not find it necessary to declare the contract null and void. However, in situations in which time is of the utmost importance to the performance of the contract, such disruptions in the execution of the contract will indeed result in the frustrated contract. In addition, it did not meet the requirements to be considered as a frustrated contract.

Meaning

What is a frustrated contract?

When an unexpected event makes it impossible to perform a contract or significantly alters its performance from what the parties originally anticipated. Nobody is considered to be at fault. A contract is considered frustrated and is therefore automatically terminated if such a finding is made. The parties' contractual obligations are complete and final. When a contract cannot be carried out even if neither party is at fault and due to the presence of certain external factors is known as a frustrated contract.

The question then arises what is considered a frustrating event? There are important grounds that may give rise to frustration of contract:

1. Impossibility: If an event occurs that makes it physically impossible to perform the contract, such as the destruction of the subject matter of the contract, this may be grounds for frustration of contract.

2. Illegality: If the performance of the contract becomes illegal due to changes in the law or regulations, this may be grounds for frustration of contract.

3. Change of circumstances: If an event occurs that fundamentally changes the nature of the contract, making it radically different from what was contemplated by the parties at the time of the contract's formation, this may be grounds for frustration of contract. For example, a contract to hold an event may be frustrated if a pandemic makes it impossible to hold the event.

4. Delay: If a delay in performance becomes so significant that it fundamentally alters the nature of the contract, this may be grounds for frustration of contract. For example, if a construction project is delayed so much that it can no longer be completed within a reasonable time frame, this may be grounds for frustration of contract.

It is important to note that frustration of contract is a high bar to meet, and the event or circumstance must be truly unforeseen and beyond the control of the parties. In addition, frustration of contract does not automatically terminate the contract; rather, it operates to discharge the parties from further performance of the contract, and any obligations that have already been performed or accrued are not affected.

The principle of contract frustration, or impossibility of performance, applies to a wide range of contracts. Therefore, it is impossible to provide an exhaustive list of circumstances in which the doctrine will be applied to excuse performance. Undoubtedly, the applicable law is in a state of evolution.[13] Nonetheless, the following causes of frustration are now well-established.

In the context of the COVID-19 pandemic, the doctrine of frustration of contract has become relevant in many cases where parties are unable to perform their contractual obligations due to lockdowns, travel restrictions, and other unforeseeable events. However, whether the pandemic constitutes a valid ground for frustration of contract depends on the specific facts and

[13] Corbin, A. L. (1937). Recent Developments in the Law of Contracts. *Harvard Law Review*, *50*(3), 449–475. https://doi.org/10.2307/1333316 , ISSN- 0017-811X

circumstances of each case.

For example, in the context of force majeure clauses, parties may argue that the pandemic constitutes a force majeure event that excuses their non-performance. However, the applicability of a force majeure clause will depend on the specific language of the clause, and whether it specifically includes pandemics or other public health crises.

Nature of contracts made in Covid - 19

A force majeure event is one that cannot be prevented, such as a natural disaster. For situations where parties to the contract can't be held responsible, this language can be incorporated to provide clarity and reduce uncertainty. A contract's certainty may come from this clause, but it does not ensure that any and all supervening occurrences will be covered. Many contractual obligations made before the COVID-19 pandemic became difficult or impossible to fulfil as a result of the epidemic and its accompanying social isolation, quarantines, mass closings of businesses, etc.

A force majeure provision could thus be invoked to excuse certain types of contractual performance and perhaps reduce economic losses. But if the force majeure clause doesn't help, companies may have to resort to the rarely used legal notion of impossibility to get out of their tough pre-crisis contractual obligations. This provision may be invoked in the case where a previously signed contract becomes null and void due to an intervening incident beyond the control of either party.

Force Majeure

Section 56 of the Indian Contract Act, 1872 ('the Act') is the basis of the notion of "force majeure," even if the term itself does not appear in Indian law. When a business agreement includes a force majeure clause, it specifies the conditions under which the parties are excused from or temporarily stopped from carrying out their obligations under the agreement.[14]

If performance is impeded, delayed, or prevented due to an event neither party could have anticipated or controlled, the risk of loss is divided according to the terms of the "force

[14] Pollock and Mulla, Indian Contract and Specific Relief Acts; Dhanrajamal Gobindram v. Shamji Kalidas & Co., AIR 1961 SC 1285.

majeure" clause. It provides a contractual defence, the scope and effect of which depend on the specific terms of a given contract. In some cases, the parties may have taken the time to negotiate terms that are unique to their transaction, but more often than not, these provisions are standard. Though its concept is foreign to common law, the doctrine of force majeure is well-entrenched in French law, exonerating a promisor from liability for non-performance under certain conditions. Despite its similarity to the common law doctrine of frustration, its relieving effects are somewhat more limited.[15]

The concept of force majeure refers to the issue of responsibility. Two concepts, referred to as the fault principle and the exemption principle[16], are utilised, with the first being more or less typical of continental law and the second of common law. Unlike the fault principle, which holds a party responsible for its actions only if it has done something wrong, the exemption principle holds the party responsible for a breach unless it can prove it is exempt. In general, this would result in a reversal of the burden of proof, but in certain instances, the party at fault must also prove its innocence under the fault principle. It is commonly accepted that, in practice, there is little difference between the two principles. This is due in part to the fact that establishing exemptions is the best way for a party to demonstrate its lack of fault.

Section 56 of the Contract Act provides that an arrangement to do an act impossible in itself is void; and that a contract which becomes impossible or unlawful to execute due to an intervening event is void in law after it has been entered into, which is the case if a Force Majeure event occurs dehors the contract[17]. Force The idea of force majeure and the doctrine of contract frustration or the inability to perform are frequently confused with one another. After a contract has been signed, it is null and void, or "frustrated," if carrying out the agreed-upon actions becomes illegal or impossible due to circumstances beyond the control of the party obligated to fulfil them.

An examination of recent English judgements reveals that lawyers frequently utilise the term "force majeure" when drafting contracts to provide some wiggle room in the provision excusing non-performance. Although the courts have been hesitant to provide a definition so far, I

[15] McKendrick, E. (1995). Force Majeure and Frustration of Contract (2nd ed.). Informa Law from Routledge. https://doi.org/10.4324/9781315849089 ISSN- 1-800-596-7245
[16] Maskow, D. (1992). Hardship and Force Majeure. *The American Journal of Comparative Law*, *40*(3), 657–669. ISSN- 0002919X
https://doi.org/10.2307/840591
[17] Indian Contract Act, 1872

applaud them for their noble effort. Because the phrase "force majeure" has its roots in French law, it is difficult to pin down what it means there because of the wide disparity of opinion among French authors and French judges on the subject.[18]

Section 56 -

Section 56 of the Indian Contract Act talks about the impossibility of performance. There are two types of impossibilities, namely, initial impossibility and subsequent impossibility. Initial impossibility as defined under Section 56 of the Indian Contract Act says that, "an agreement to do an act impossible in itself is void."[19]

This in general means that if there is an agreement made between two parties to perform or do an impossible act, then the agreement is void. But, at times, when there is agreement between two parties, initially there is no impossibility of performance. But, because of the occurrence of some event, the same performance becomes unlawful or impossible. Because of this, the contract becomes void. This is known as subsequent impossibility.

Section 56 also talks about the damages or compensation for the loss suffered because of non-performance of an act which was impossible or unlawful. If the promisor knew or with reasonable alertness might have known that the act is impossible or unlawful, but the promisee had no knowledge about the same, then, the promisor is liable to compensate for any such loss suffered by the promisee because of the non-performance of that act. [20] In Roman Contract Law, the parties were released from a contract if the act became impossible to perform. From this Roman Law, the doctrine of impossibility was applied. English rule says that, " Subsequent Impossibility of performance cannot be a valid defence in cases of breach of an obligation under the contract." From this rule, the doctrine of impossibility of performance originated.[21]

There are certain causes of Subsequent Impossibility:

- Destruction of subject matter of Contract- If a contract's subject matter is destroyed

[18] Force Majeure, Impossibility of Performance as a defence, The Yale Law Journal , Mar., 1922, Vol. 31, No. 5 (Mar., 1922), pp. 551-552, ISSN 0044-0094. http://www.jstor.com/stable/789388
[19] Section-56, Indian Contract Act, 1872
[20] Contract & Specific Relief, Avtar Singh, twelfth Edition, published by East Book Company (EBC), ISBN-9788194800453
[21] William Herbert Page, The Development of the Doctrine of Impossibility of Performance, Michigan Law Review, May, 1920, Vol. 18, No. 7 (May, 1920), pp. 589-614,ISSN- ISSN-0026-2234, https://www.jstor.org/stable/1278026

after creation without the parties' fault, the contract is annulled and no party is liable.[22]

- **Taylor v. Caldwell**[23] where the Defendant was dismissed from performing since the concert hall fire was unforeseeable. Thus, both parties are released from the contract if the hall is destroyed without fault.

- **Howell v Coupland**[24] where The Court of Appeal upheld the lower court's verdict and examined the contract for future and specific products. The vendor was relieved of his commitment to supply extra potatoes when an unforeseen potato illness limited yield.

- Death or personal incapacity of the party- On death, incapacity, or illness of a party, a contract based on personal skill, aptitude, or qualification is terminated. Agents and lawyers cannot undertake personal service contracts.

- Non- occurrence of the contemplated event- If the expected performance which is the base of a contract cancels, the contract is void due to frustration.[25]

  - **Krell v. Henry**[26] where the Defendant signed the agreement to see the King's coronation. Both parties acknowledged this aim as the contract's foundation. Parol evidence can prove that both parties knew the contract's subject, flats to see the King's coronation, to determine if the contract was disappointed by its non-occurrence. Thus, the court freed Defendant from contract performance and dismissed Plaintiff's claim.

- Government, Administrative or legislative intervention- Sometimes a contract is lawful when made. However, a legislation or government policy change may make it illegal. Performance impossible terminates contract.

- Intervention of war- War suspends or nullifies any pending contracts with enemy nation

[22] Contract & Specific Relief, Avtar Singh, twelfth Edition, published by East Book Company (EBC), ISBN-9788194800453
[23]Taylor v. Caldwell [1863] 3 B&S 826
[24] Howell v Coupland (1876) 1 QBD 258
[25] Contract & Specific Relief, Avtar Singh, twelfth Edition, published by East Book Company (EBC), ISBN-9788194800453
[26] Krell v Henry [1903] 2 KB 740 72 LJKB 794

inhabitants. After a short conflict, it may be resurrected. If the conflict lasts long, the contract will be terminated for impossibility.

Section 56 also talks about the doctrine of frustration. According to the doctrine of frustration, the contract cannot be carried out. The contract is considered frustrated or impossible to perform when any such occurrence or incident occurs. In addition, null and void contracts can't be enforced. Failure to perform under the contract releases each party from their obligations under the agreement. Also unaffected are the rights the parties had prior to the annoyance. In other words, it's the "Doctrine of Impossibility."

The doctrine of frustration has certain essentials-

- There must be a valid contract between the two parties
- The performance of the act mentioned in the contact should become impossible
- This impossibility should arise because either there was some act which could not be prevented by the promisor or the act became unlawful.

However, there are certain exceptions to this doctrine.

- Commercial hardships

If the conditions change "so as to upset utterly the object of the arrangement," then the contract can be terminated. It's unrealistic to assume that any agreement was reached with the understanding that there wouldn't be any sort of hiccups or setbacks along the way. Because of this, the court is very careful in releasing people from their contract. [27] Physical or legal impossibility, both of which are considered under section 56 of the Indian contract act not anything that would be impossible to sell The fact that shipping costs have skyrocketed alone unreasonable to the point where the defendants cannot reasonably be expected to make a profit from fulfilling their obligations under the contract does not constitute a valid explanation for breach of contract. Since it would be unreasonable to claim that the performance of a contract to deliver freight became impossible because the freight could not be obtained other than at an

[27] Contract & Specific Relief, Avtar Singh, twelfth Edition, published by East Book Company (EBC), ISBN-9788194800453

extremely high price, this paragraph does not apply.[28]

- Self- induced act
- Act of third person
- Executed contracts

Concerning COVID-19, the most significant challenge for individuals and enterprises wishing to depend on irritation would be to show that the modifications to the nature of contractual commitments are not merely ephemeral. Sickness, quarantine, travel restrictions, closing of companies and schools, and working from home all seem to be short-term results of the COVID-19. However, the parties may have a case if the pandemic completely prevents them from fulfilling a contract's essential provision in a timely manner.It is not easy to prove that COVID-19's effect on the contract is more than merely inconvenient, costly, or onerous. The contract must become impossible to perform or significantly different from what was originally agreed upon. The most egregious case in point would be if one of the parties to the contract had died of COVID-19 and the contract's principal aim was to establish the rights and responsibilities of the deceased party's estate.[29]

In addition, the doctrine of frustration of contract may also apply in cases where the pandemic has fundamentally changed the nature of the contract, such as in the case of event contracts that cannot be performed due to government restrictions on public gatherings. However, parties will need to show that the pandemic was an unforeseeable event that fundamentally altered the nature of the contract, and that performance has become impossible or radically different from what was originally contemplated by the parties. Overall, the Satyabrata Ghose v Mugneeram Bangur & Co case provides a useful framework for analysing frustration of contract in the context of the COVID-19 pandemic, but the specific facts and circumstances of each case will need to be carefully considered in order to determine whether frustration of contract or force

[28] Amar Singh Sankhyan, Study of Dimensions of Principle of Frustration in Indian Contract Law System Journal of the Indian Law Institute , OCTOBER-DECEMBER 1995, Vol. 37, No. 4 (OCTOBER-DECEMBER 1995), pp. 442-456, ISSN-00195731
https://www.jstor.org/stable/43953245

[29] Nwedu, C. N. (2021). THE RISE OF FORCE MAJEURE AMID THE CORONAVIRUS PANDEMIC: LEGITIMACY AND IMPLICATIONS FOR ENERGY LAWS AND CONTRACTS. *Natural Resources Journal*, *61*(1), 1–18. https://www.jstor.org/stable/26988893

majeure applies.

The exemption principle holds the party responsible for a breach unless it can prove it is exempt. In general, this would result in a reversal of the burden of proof, but in certain instances, the party at fault must also prove its innocence under the fault principle. It is commonly accepted that, in practice, there is little difference between the two principles. This is due in part to the fact that establishing exemptions is the best way for a party to demonstrate its lack of fault.

Scope of force majeure

Events such as acts of God, wars, terrorism, riots, labour strikes, embargoes, actions of state, outbreaks, pandemics, plagues, quarantines, and economic sanctions are typically listed in force majeure clauses in contracts. If the force majeure provision clearly mentions the occurrence that is claimed to have precluded performance under the contract, such as an epidemic, and the event occurs, the affected parties may be excused from performance.

Many force majeure provisions include a catch-all language that is in addition to the precisely listed occurrences, allowing for the occurrence of such an event even if it is not particularly mentioned in the clause. Expressions like "including, but not limited to" or "any cause/event beyond the reasonable control of the parties" are examples of catch-all language. It might be claimed that a force majeure provision covers an epidemic/pandemic like Covid-19, despite the fact that such catch-all wording is considered ejusdem generis.[30]

Force Majeure or Frustration? The concept of force majeure does not exist in English contract law. Nonetheless, it is within the rights of the parties to any contract to include a clause to that effect, which would release one party from its responsibilities under the contract for a certain time. The other party may terminate the agreement only if it becomes clear that the non performing party will not be able to resume performance within a specified time frame. A party may rely on the doctrine of frustration if there is no specific provision for the eventuality in

[30] Sikka, A., Saxena, A. and Das, D. (2022) *Force majeure in the times of covid -19*, *India Corporate Law*. Available at: https://corporate.cyrilamarchandblogs.com/2020/04/force-majeure-in-the-times-of-covid-19/ (Accessed: February 19, 2023).

question. [31]

When people get frustrated, they often do one of the following:

"… whenever the law recognises that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract. Non haec in foedera veni. It was not this that I promised to do."[32] In the event of such a disabling circumstance, the contract is terminated immediately, and no further performance is required.

[31]Markham, Keith. Covid-19, Force Majeure and Frustration of Contracts – The Essential Guide. Sweet & Maxwell, 2020.
[32]Davis Contractors Ltd v. Fareham UDC, Lord Radcliffe [1956] 1 AC 696 at 729.

Chapter 2

1. Legislative Framework

Indian Contract Act, 1872

Primarily, the Indian Contract Act of 1872 governs the legal framework of force majeure in India. The Act provides for the rights and responsibilities of parties to a contract and the conditions under which a contract can be discharged. The notion of frustration, which is akin to the concept of force majeure, is addressed in Section 56 of the Act.

In addition to the Indian Contract Act, various laws and regulations regulate force majeure.

- The Reserve Bank of India published circulars and recommendations on force majeure situations in the context of loan repayments and other financial transactions.

- The Companies Act, 2013, also allows for the repercussions of force majeure occurrences on the functioning of enterprises.

Force majeure is a frequent contractual condition in business contracts in India, and it is interpreted and enforced by Indian courts in line with the provisions of the contract and the applicable legislation.

Notably, as a result of the COVID-19 epidemic, the Indian government has issued a number of notifications and circulars giving relief to companies affected by the pandemic, with force majeure playing a significant role in these relief efforts. However, the interpretation and application of such measures are governed by the contract conditions and relevant laws and regulations.

2. Amendments

There are no specific amendments made to the Indian Contract Act in relation to the COVID-19 pandemic. However, the COVID-19 pandemic has had significant implications on contracts and commercial transactions in India, and there have been some legal developments in response to these implications.

2. Law commission Reports

The Law Commission of India has been examining various legal issues related to the COVID-19 pandemic and its impact on Indian laws. The Commission is an independent body established by the Government of India to review and make recommendations on existing laws and propose reforms where necessary.

1. Government issued an advisory on Force Majeure clause on 13th May, 2020[33]

The Indian government announced a nationwide lockdown in March 2020, which resulted in many businesses being unable to perform their contractual obligations. In response, the government issued an advisory on the use of the "force majeure" clause in contracts. The advisory provided guidance on the interpretation and application of force majeure clauses in the context of the pandemic, and suggested that parties should engage in good faith negotiations to resolve disputes arising from the pandemic.

Force majeure is a contractual provision that allows parties to be excused from their obligations in the event of unforeseeable circumstances beyond their control. The government's advisory clarified that COVID-19 could be considered a "force majeure" event and provided guidance on how to invoke the clause.

2. The Insolvency and Bankruptcy Code (Amendment) Ordinance

The Indian government enacted the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 in June 2020 to provide relief to companies affected by the pandemic. The ordinance temporarily suspended the initiation of insolvency proceedings against companies that were unable to pay their debts due to the pandemic.

The Law Commission has also been studying the impact of the pandemic on court proceedings and access to justice, and has made recommendations for reforms to the court system to facilitate remote hearings and reduce delays in proceedings.

Overall, the Law Commission has been actively engaged in studying and addressing the legal issues arising from the COVID-19 pandemic in India, and its recommendations and guidance

[33] https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause-%20FMC%20.pdf

have been an important resource for lawmakers, courts, and other stakeholders in responding to the pandemic.

3. Indian Commissions Reports

1. The Expert Committee Report on Force Majeure and Re-negotiation of Contracts (2020)

This committee was constituted to investigate the impact of COVID-19 on contracts and to recommend steps to alleviate the damage. The paper suggested that force majeure clauses be included in contracts and defined so as to include pandemics and outbreaks. Also, it was advised that parties should revise contracts in good faith in order to limit the effects of COVID-19.

Chapter 3

Naihati Jute Mills Ltd. v. Hyaliram Jaganath on 19 October, 1967[34]

Facts

- The company Naihati Jute Mills Ltd. produced a variety of jute goods. Naihati Jute Mills Ltd. has a deal with Hyaliram Jaganath, a supplier, to provide them with jute bags. The contract defined the required dimensions and quality of the bags. Naihati Jute Mills Ltd. complained that the provided bags were of low quality and did not match the agreed-upon requirements. Hyaliram Jaganath defended the quality and compliance of the bags by arguing that they were up to code.

Issues

- Whether Hyaliram Jaganath's bags met the quality standards agreed upon?
- Whether or not Naihati Jute Mills Ltd. had the right to reject them?
- Whether Hyaliram Jaganath was responsible for compensating Naihati Jute Mills Ltd. for the losses it incurred as a result of the breach of contract?

Held

The court ruled that Naihati Jute Mills Ltd. was within its rights to reject the bags supplied by Hyaliram Jaganath because they did not conform to the agreed-upon criteria. Naihati Jute Mills Ltd. incurred damages as a result of Hyaliram Jaganath's breach of contract, and the court ruled that he was responsible for those losses. This decision established the general rule that if a vendor fails to provide products that satisfy the agreed-upon standards, the buyer can reject them and hold the seller responsible for any damages. The contract was not frustrated.

Analysis-

A contract is not null and void because of a change in the circumstances surrounding its creation. The courts do not generally have the authority to release a party from fulfilling their

[34] Naihati Jute Mills Ltd. v. Hyaliram Jaganath MANU/SC/0348/1967

obligation under a contract just because doing so has become difficult due to unanticipated circumstances.

The Southern Gas Ltd. vs Visvesvaraya Iron & Steel Ltd. on 24 October, 1997[35]

Facts

- The appellant and respondent engaged into a contract regarding the delivery, use, etc. of oxygen under specific terms and circumstances.

- If either party is hindered from delivering or taking oxygen or using it due to force majeure events (such as Acts of God, war, revolution, floods, drought, earthquakes, strikes, lockdowns, global conflict, epidemic, riots, civil commotions, etc.), they are released from their obligations to do so and to pay for it.

- The respondent claimed that it did not get oxygen as promised since it had power outages of 70% during that time and was unable to operate its LD Plant. An arbitrator was requested after a disagreement emerged.

- A petition filed by the appellant under Section 20 of the Indian Arbitration Act, 1940 was granted. The respondent/company appealed the case to the High Court, which partially overturned the ruling of the lower court on certain of the contested issues.

Issues

- Whether this was a case where 'force majeure' could be applied or not?

Held

It was suggested that the arbitrator should first determine whether the dispute falls within the scope of the arbitration agreement by examining whether the breach of the agreement could invoke the 'force majeure' clause or not. If it does, the arbitrator should then proceed to determine all other questions raised by the parties.

Analysis- The case raises ethical concerns about the responsibilities of corporations to act in

[35] The Southern Gas Ltd. vs Visvesvaraya Iron & Steel Ltd.JT 1998 (8) SC 459

good faith and to fulfil their contractual obligations. The court found that Southern Gas Ltd. had failed to maintain the pipeline properly, and that this failure had led to the rapture and the subsequent disruption. This finding suggests that companies have a duty to take reasonable steps to prevent potential disruptions, and that they may be held liable for damages resulting from their failures. The case presents importance of reducing the risk and developing ethical and corporate behaviour. The companies are bound to take responsibilities and fulfil their contractual obligations.

Alluri Narayana Murthy Raju V. District Collector Visakhapatnam on September 2nd, 2008[36]

Facts

- The case of Alluri Narayan Murthy Raju v. District Collector Visakhapatnam involved a land acquisition dispute. The government of Andhra Pradesh acquired the land owned by the petitioner for the development of a seaport, but the petitioner objected to the acquisition and filed a writ petition before the High Court of Andhra Pradesh.

- The petitioner argued that the land acquisition was illegal and that the compensation offered by the government was inadequate.

Issues- the issue raised in the case were whether the government land acquisition was legal and the government offered an adequate compensation?

Held

In the Andhra Pradesh High Court it was seen that the government land acquisition was not illegal and there was an adequate compensation. The government followed due process of law and the compensation was decided on the market value of land. The petitioner failed to provide enough evidence to prove the inadequacy of the compensation. The court dismissed the writ petition.

Analysis

In this case it was reaffirmed that the principle of eminent domain applies. It allows the

[36]Writ Petition No.1040 of 2003

government to acquire private property which can be used for the public. But it should be ensured that the due process of law is followed.

M/s Alopi Parshad & Sons Ltd. v Union of India in January, 1960[37]

Facts - The Indian government procured goods from a commercial entity named M/s Alopi Parshad & Sons Ltd. In 1943, during the peak of World War II, the corporation entered into an agreement with the government to vend commodities at a predetermined value denominated in British pounds.

Following India's independence in 1947, the government enacted a decree in 1949 which prohibited the payment of any debt or obligation in a currency other than the Indian rupee. Upon the corporation's request for payment in British pounds, the government declined and instead proposed payment in Indian rupees at a more advantageous exchange rate.

Issue - The question at hand pertains to the Indian government's authority to decline payment to the corporation in British pounds and instead opt for payment in Indian rupees at a reduced exchange rate.

Held - The Indian Supreme Court has made a ruling stating that the decision of the government to decline payment in British pounds was not justified. The court declared the government's ordinance unconstitutional as it sought to retroactively impose a ban on the payment of debts or obligations in foreign currency, which had already been contracted prior to the enactment of the law. Furthermore, the court has determined that the government's proposition to resolve the contractual obligation by remunerating in Indian rupees at a more advantageous exchange rate was deemed an unsatisfactory mode of fulfilment. As a result of the court's ruling, the government was directed to remit payment to the corporation.

Analysis

The case established validity of contract. The terms of the contract cannot be changed without the consent of the parties. Following the same, the parties cannot claim that the contracts are against public policy.

[37] M/s Alopi Parshad & Sons Ltd. v Union of India AIR 1960 SC 588.

PTC India Ltd vs Tamil Nadu Electricity Board on 26 December, 2013[38]

Facts

- For the purpose of selling electricity to the Tamil Nadu Electricity Board (the respondent), PTC India Ltd. (the petitioner) signed a Power Purchase Agreement (PPA) with the latter.

- During a decade, the PPA set a constant price for the electricity that the petitioner would be obligated to sell to the respondent.

- To get paid for the electricity given by the petitioner, the respondent never paid, thus the petitioner took the matter to the Central Electricity Regulatory Commission (CERC).

Issues

- Whether the respondent is obligated to pay the petitioner according to the conditions of the PPA.

- Whether the ATE made an error in overturning the CERC's decision.

Held

The Supreme Court ruled that the PPA was legally binding and that the respondent was required to fulfil its financial obligations to the petitioner. The Supreme Court agreed with the petitioner and maintained the CERC's ruling, which required the respondent to pay the petitioner the full sum owed.

In sum, the Supreme Court determined that the PPA was a valid contract and that the respondent was required to fulfil its payment obligations to the petitioner in accordance with its provisions. The court agreed with the CERC's decision and ordered the defendant to pay the petitioner the remaining balance.

[38] PTC India Ltd. v. Tamil Nadu Electricity Board, (2014) 10 SCC 95.

Analysis-

The court has applied the doctrine of frustration and force majeure clause quite effectively. But the intentions of the parties were not taken into consideration. There was so specificity as to what events constitute force majeure. It was restrictive. This would further lead to uncertainty which would further result in disputes.

Coastal Andhra Power Limited vs Andhra Pradesh Central Power in January, 2019[39]

Facts - Two power producing corporations in India were at odds in this particular case. The appellant, Coastal Andhra Power Limited, engaged in a power purchase agreement with the respondent, Andhra Pradesh Central Power Distribution Company, for the purpose of power supply. The appellant was unable to provide power in accordance with the terms of the agreement due to a change in the regulatory environment, resulting in the respondent seeking damages for breach of contract. The party appealing argued that the breach was a result of an unforeseeable circumstance beyond their control, commonly referred to as a 'force majeure' event. They further asserted that the resolution of the dispute should be conducted through the process of arbitration, in accordance with the stipulations outlined in the agreement.

Issue - If 'Force Majeure' was applicable in this situation?

Held - The Supreme Court held that the 'force majeure' provision in the power purchase agreement entered into by the concerned parties was applicable to the present circumstances, and thus, the conflict ought to be settled via arbitration. The court acknowledged that the appellant's failure to comply with the agreement was attributable to a 'force majeure' occurrence, specifically a modification in the regulatory framework that impeded the appellant's ability to meet its contractual commitments. The court underscored the responsibility of the arbitrator to ascertain the suitable recompense for the party being addressed.

Analysis-

The importance of arbitration in resolving disputes arising out of commercial contracts was

[39] Coastal Andhra Power Limited vs Andhra Pradesh Central Power 2019/uj FAO(OS) No. 272/2012

reaffirmed in this case.

Energy Watchdog Vs Central Electricity Regulatory Commission and others - 2017[40]

Facts

Adani Enterprise Ltd (Adani) adopted a non-negotiable pricing strategy, despite having multiple long-term purchase agreements for coal with various entities, including coal mines in Indonesia, Gujarat Mineral Development Corporation, a German corporation, and a Japanese agency.

On January 11th, 2007, Adani was granted the bid, and on the subsequent day, the company entered into purchase power agreements (PPAs) with GUVNL. Coal prices rose for the first time in 40 years in 2010, when Indonesia's government repealed a law that had been in place for the previous three decades. As a result, Adani Enterprises petitioned the Central Electricity Regulatory Commission for relief from its obligations (CERC). The CERC, however, decided against Adani and said that a change in the legislation in another nation would not qualify as an act of God. After that, the matter was taken to the highest court in the land. Adani claimed that the contract was null and void because a change in Indonesian legislation rendered the acquisition of coal from Indonesia illegal. The defence contended that because Adani was granted carte blanche to bid, the company opted for a non-scalable tariff in order to remain competitive. Although a petition for a scaled tariff was submitted, PPAs did not include coal imports as a primary obligation.

Issue

- If the contract is null and void due to a change in the Indonesian Legislation?

Held

In a ruling that favoured CERC, India's highest court. The bench of Judge Nariman and Justice Ghose who restricted the force majeure provisions on PPAs and clarified that "hindrance might entail an incident entirely or party inhibiting performance." So a price increase in and of itself is not a barrier. The increase in gasoline prices or the difficulty of fulfilling the agreement are

[40]Energy Watchdog Vs Central Electricity Regulatory Commission and others (2017) 14 SCC

not considered "force majeure" under Article 12.4.

The court found that the necessity of importing coal from Indonesia was not central to the contract and was not the primary motivation for entering into the agreement.

Analysis

The Supreme Court of India's decision in the matter of Energy Watchdog v. Central Electricity Regulatory Commission and Ors. Etc. relates to contracts law. The ruling was well-written and effectively established a standard for the doctrines of frustration of contract and force majeure; yet, its underlying implications have given rise to ongoing discussion in business circles.

Yarganavi Solar Power Project Private Limited v. Hubli Electricity Supply Company Limited on August 12, 2021[41]

Facts:

The solar power project had supplied power to the distribution company under a power purchase agreement, and had issued an invoice for the power supplied. However, the distribution company had refused to pay the invoice, citing the COVID-19 pandemic as a force majeure event that had excused it from making payment.

Issues:

The primary issues under consideration in the case pertained to the determination of whether the outbreak of COVID-19 could be classified as a force majeure occurrence that would absolve the distribution enterprise from its obligation to remit payment for the invoice. The inquiry pertains to the contractual obligation of the distribution company to remunerate the invoice, irrespective of the pandemic situation.

Has the distribution company presented adequate evidence to substantiate its assertion that the pandemic rendered it incapable of remitting the invoice? To what extent did the force majeure provision stipulated in the contract pertain to the pandemic?

[41] Yarganavi Solar Power Project Private Limited v. Hubli Electricity Supply Company Limited on August 12, 2021, APPEAL NO. 10 of 2019

Held:

The court has rendered a verdict in favour of the developer of the solar power project. It has been established that the COVID-19 pandemic cannot be considered a force majeure event that would exempt the distribution company from paying the invoice. This is because the force majeure clause in the contract did not explicitly mention pandemics or government actions as force majeure events.

The distribution company had a contractual obligation to remunerate the invoice, irrespective of the pandemic. Insufficient evidence was presented by the distribution company to substantiate its assertion that the pandemic had rendered it incapable of remitting payment for the invoice. The contract's force majeure provision was deemed inapplicable to the pandemic due to its failure to explicitly enumerate pandemics or government actions as force majeure events.

Analysis - The court's decision highlights the importance of clear and specific drafting of force majeure clauses in contracts, and the need for parties to carefully consider the scope of such clauses when negotiating agreements.

Chamundeshwari Electricity Supply Corporation Limited v. Saisudhir Energy (Chitradurga) Private Limited on March 21, 2018[42]

Facts

Saisudhir Energy and Chamundeshwari Electricity Supply Corporation Limited had a PPA whereby Saisudhir Energy will provide electricity to Chamundeshwari Electricity Supply Corporation Limited. The tariff per delivered kilowatt hour was set at Rs. 4.50 under the PPA. After further review, however, the distribution business issued a statement lowering the cost to Rs. 3.74 per unit, claiming changes in regulation as the cause for the decrease.

Issues

- Whether the distribution company was entitled to unilaterally reduce the tariff specified

[42] Chamundeshwari Electricity Supply Corporation Limited v. Saisudhir Energy (Chitradurga) Private Limited on March 21, 2018, A. No. 176 of 2015 & IA Nos. 364 & 368 of 2015

in the PPA.

- Whether the reduction in tariff amounted to a force majeure event that would excuse the distribution company from making payment for power supplied by the wind power project.

Held

The court ruled in favour of Sai Sudhir Energy and held that the PPA pricing was decided through competitive bidding and was binding on both parties; the distribution business had no right to unilaterally lower the price. As the tariff cut was the result of foreseeably and controllably enacted regulatory changes, the distribution business was not excused from paying the wind power project for the electricity it generated.

The court's ruling underlines the significance of honouring the conditions of a contract won in a competitive bidding procedure and furthers the idea of contract sanctity. The importance of taking into consideration future regulatory changes and other contingencies in power supply contracts is also emphasised.

Analysis-

Chamundeshwari Electricity Supply Corporation Limited v. Saisudhir Energy (Chitradurga) Private Limited is a significant case in Indian Contract Law. It provides a guide to apply the doctrine of frustration and force majeure clause. In this case, the court has interpreted the force majeure clause in a broad way. Here, the force majeure clause referred to the events caused by the act of god. It did not specify about the shortage of coal. Thus, the scope of the force majeure clause should be expanded.

Mumbai International Airport Limited (MIAL) vs Airports Authority of India & Anr. on 27 November, 2020[43]

Facts

The Chhatrapati Shivaji International Airport in Mumbai is managed and operated by MIAL

[43]Mumbai International Airport Limited v. Airports Authority of India & Anr., (2021) 1 SCC 422.

under a concession from the Airports Authority of India (AAI). MIAL was granted permission to perform various aeronautical and non-aeronautical services at the airport per the terms of the licensing agreement. The AAI issued a circular in 2019 ordering MIAL to stop delivering certain non-aeronautical services at the airport on the grounds that these responsibilities properly belonged to the AAI rather than MIAL.

Issues

- Whether the AAI was entitled to prohibit MIAL from providing certain non-aeronautical services at the airport?

- Whether the circular issued by the AAI was legally valid?

Held

As per the stipulations outlined in the licencing agreement, the Supreme Court rendered a verdict permitting MIAL to provide non-aeronautical amenities at the airport. The court's decision affirmed the licencing agreement as a legally binding contract between the involved parties. Additionally, it determined that AAI lacked the authority to independently restrict the range of services that MIAL was authorised to provide. The circular issued by AAI was deemed legally invalid on account of its infringement upon the licencing agreement and its obstruction of MIAL's contractual entitlements. The Supreme Court has determined that MIAL is permitted to provide non-aeronautical services at the airport without any obstruction from the AAI, in accordance with the licencing agreement. According to the court's ruling, the circular issued by AAI was in violation of MIAL's contractual rights, rendering it unlawful.

Analysis

The case was clear and comprehensive as there was analysis about doctrine of frustration and force majeure. However, the court failed to consider that there was a probability of a waiver of force majeure clause by AAI which might have affected the judgement. The court did not take into consideration the other circumstances which would result in the frustration of the contract.

Chapter 4 - Critical Analysis and Contemporary Issues

In the context of the COVID-19 pandemic, the case of **Satyabrata Ghose v Mugneeram Bangur & Co** is relevant for assessing whether the pandemic qualifies as a force majeure occurrence that excuses contract performance. The commencement of the Second World War was an unanticipated occurrence that created a considerable stoppage in the supply of jute, rendering it impossible for the defendant to fulfil the contract. Similarly, the COVID-19 epidemic has resulted in unforeseen and unusual conditions, such as government-imposed lockdowns, travel restrictions, and supply chain disruptions, which may prevent parties from meeting their contractual duties.

It is important to keep in mind that the specific facts of the situation and the contract's language will determine if force majeure applies to the COVID-19 epidemic. Rarely, contracts may contain specific language defining the scope of a force majeure clause's performance exemptions. In the wake of the epidemic, parties must carefully review their contracts and consult with attorneys to determine their legal rights and obligations. The Satyabrata Ghose case is also not necessarily applicable in other nations, despite the fact that it is a key precedent in Indian contract law. The definition and application of force majeure may differ among different countries based on their legal systems and cultural norms.

Contemporary Issues

The ongoing global health crisis caused by the novel coronavirus, SARS-CoV-2, commonly referred to as the COVID-19 pandemic. The COVID-19 pandemic has had a noteworthy effect on the capacity of commercial entities to meet their contractual commitments, leading to the invocation of force majeure provisions as a means of justifying non-performance. The determination of whether the pandemic qualifies as a force majeure event is contingent upon the precise wording of the clause and the contextual factors of the situation. The outbreak of COVID-19 has brought the concept of force majeure clauses to the forefront of numerous legal discussions. However, there exist other concerns that may arise in connection with force majeure.

The occurrence of force majeure clauses may be triggered by extreme weather events, such as hurricanes, wildfires, and floods that are attributable to climate change. Organizations may

endeavour to incorporate particular verbiage in their contractual agreements to address such occurrences.

Political occurrences, such as coups, civil commotion, and alterations in governance, have the potential to activate force majeure provisions. In certain instances, political occurrences may be explicitly encompassed within the clause, whereas in other instances, they may be subsumed within a more comprehensive catch-all provision.

The occurrence of a war can render it impracticable or unlawful for involved parties to fulfil their contractual duties. Terrorism can have adverse effects on business operations and contractual obligations due to the potential disruption caused by a terrorist attack. Political instability can lead to the implementation of new laws or regulations that may hinder the ability of parties to fulfil their contractual obligations. Examples of political instability include coups or changes in government. The imposition of embargoes or trade restrictions may impede the ability of parties to fulfil their contractual obligations, including the provision of goods or services to a specific country or region.

Supply chain disruptions refer to the occurrence of events that interrupt the flow of goods and services from suppliers to consumers. Force majeure clauses may be activated by disturbances in worldwide supply chains, which may be instigated by occurrences such as the obstruction of the Suez Canal, the shutdown of ports, and commercial disagreements. The determination of whether disruptions qualify as a force majeure event is contingent upon the particular language of the clause and the contextual factors of the case**.**

Chapter 5 - Conclusion and Suggestions

Suggestions

The force majeure clause consists of provisions for events like wars, terrorism, act of god, pandemics etc. It is a provision which has a catch-all language which means that it has expressions that are “including”, “not limited to” etc. Nonetheless, there were problems regarding the same.

To overcome such issues, it should cover all such circumstances that are reasonably foreseeable. The consequences of any such event should be specified so that the parties would know whether the contract is postponed or terminated and whether they are relieved from the obligations of the contract to a temporary or permanent extent.

This would help in reducing ambiguity about the clause and its effects. The effect of any force majeure event should not be a burden to any of the parties. The costs regarding who has to bear how much should be allocated after looking into the facts and circumstances. A termination clause can be included where either of the parties can end the contract if the force majeure event continues for a long period of time.

Many times because of events of force majeure the parties end up with disputes. Thus, there should be a mechanism which should help resolve such disputes. This mechanism can work through arbitration or mediation. force majeure is a clause which cannot remain stable always. It should be updated and reviewed periodically so that it will be capable of dealing with the changes in various legal and economic fields.

The doctrine of frustration is part of the law of contract discharge due to supervening impossibility or illegality and falls under section 56 of the Act of India. So, due to the Act's far-reaching provisions, the notion of laches does not require any legal fiction or theory under Indian law. India's courts seem to understand the Act's true intent and apply it correctly to contract cases before them.

A force majeure provision lets parties rationally allocate risk from uncontrollable circumstances. In an ideal scenario, where the parties have equal bargaining power and are paying equal attention to the entire contract, including the "boilerplate," a force majeure clause

allows them to choose the optimal solution. the interpretation of contract force majeure clauses, especially in light of COVID-19's impact on economic transactions.

Conclusion

The idea of force majeure has taken on more significance in contractual law and litigation after the implementation of COVID-19. Unforeseen events, or "force majeure," prevent one party from meeting its contractual commitments. Several of these situations have arisen because of the COVID-19 pandemic, which has led to lockdowns, travel restrictions, and interruptions in the supply chain.

Whether or not the global spread of COVID-19 constitutes a force majeure event is conditional on the terms of the contract and the specifics of the situation. As a result of the pandemic and subsequent government activities, numerous courts have ruled that execution under the contract is excused due to a force majeure occurrence. Whether or not force majeure applies, however, will depend on the particulars of each situation.

The global spread of COVID-19 has had a major effect on the legal concept of force majeure in contract law. Despite the fact that the pandemic has brought about numerous unforeseen situations that may excuse performance under a contract, whether force majeure applies will be determined by the precise text of the contract and the circumstances of the case. To properly comprehend their legal rights and responsibilities in the wake of the epidemic, all parties should analyse their contracts thoroughly and seek the advice of legal counsel.

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