

The Making of a Good Contract

INTRODUCTION:

Broadly speaking, the law of Contract is that part of the law which deals with obligations which are self-imposed. It pre-supposes a society and a legal system in which people have the right to choose what obligations they wish to assume.

With the economic and social development of modern societies, the need for a law of contract becomes far more pressing for at least two reasons. In the first place, the division of labour, which is such a fundamental feature of modern societies, creates an increasing demand for the transfer of property from some members of the community to others and for the performance of services by some members of the community for others. The legal machinery by which these transfers of property and performance of services is carried out is, broadly speaking, the law of contract. Contract law is thus, in large part the law of exchange, the law which regulates the methods by which individuals exchange goods and services usually in return for money.

Good intentions do not always make a good contract. Proper expressions and documentation, help. For this purpose it is necessary to familiarise oneself with the legal aspects of basic contract law.

WHAT IS A CONTRACT?

The most commonly accepted description of a contract is "**a promise or a set of promises which the law will enforce**". The promise may be to act in a certain way as, for example, by rendering services or delivering goods or it may be a promise that something is so, as, for example where a seller guarantees that goods are fit for a certain purpose. The law of contract determines which promises the law will enforce and how it will enforce them.

Promises, generally, may be enforceable though they are purely oral, in writing, by conduct or by a combination of two or three of these methods. A contract for the sale of goods of any value - say, diamonds worth Rs.10 lacs - is enforceable though there is no writing. An important exception is a contract disposing of an interest in land.

Virtually all offers to contract can be reduced to the form: "**I promise this if you will do, or promise to do, that**". A contract is made when the promisee does the act or makes the promise requested. The consideration is doing the act or making the promise, as the case may be. If the *promisor* asks for a promise, which is given, we describe the resulting contract as a "*bilateral contract*". I promise to pay you Rs.1000/- a week from the beginning of next month if you will promise to work for me for a year. When you promise, the contract is made. We describe it as "bilateral" because both parties have binding promise. The consideration for each promise is the making of the other promise. Contracts, then, are bargains, and a natural way of concluding a bargain is by offer and acceptance. One party must first state the terms on which he is willing to be bound before the other can express his concurrence. The law looks for an offer and acceptance, not for some technical reasons, but because this is the natural, and often the only possible, way in which a bargain can be made. The essential thing is, however, the

bargain and, if this can be discerned from the conduct of the parties, there is a contract even though it may be impossible to say who is the offeror and who the acceptor. As a general principle, an offer must be reasonably definite and require nothing to complete except acceptance. An offer also needs to be distinguished from a mere invitation to do business.

DURATION OF AN OFFER:

An offeree's power of acceptance may be terminated by -

- (a) Rejection or counter-offer by the offeree, or
- (b) Lapse of time, or
- (c) Revocation by the offeror, or
- (d) Death or incapacity of the offeror or offeree, or
- (e) The non-occurrence of any condition of acceptance under the terms of the offer.

ACCEPTANCE

Acceptance must be absolute and unconditional, and must indicate a willingness to contract on the exact terms put by the offeror. A purported acceptance which seeks to add to, or vary some terms of the offer is, in law, no acceptance at all although such a purported acceptance can and will be treated as a counter offer, itself capable of acceptance. Moreover, a counter offer amounts to a rejection of the original offer, which then ceases to be capable of acceptance. These rules are somewhat rigid and may well be too rigid. It often happens that a person intends to accept an offer and writes a letter stating that he does accept it, but then adds some further remarks or some question (eg. 'I presume payment by cheque will be acceptable') which may be relatively unimportant or trivial. But these further remarks or questions may be held to qualify the purported acceptance to such a degree that they prevent it having the legal character of an acceptance. The offeror may then be free to withdraw at the last minute. If, however, he simply fails to reply to the additional remarks raised by the offeree, but proceeds with the performance of the contract, it may be possible to hold that the counter-offer has in turn been accepted by conduct. It follows, therefore, that a conditional acceptance may fail to count as a real acceptance at all.

LETTERS OF INTENT:

It is these days not uncommon to find companies issuing '**letters of intent**' recording their intention to enter into a formal agreement and requesting the addressee to take necessary preliminary steps towards the performance of that agreement. Such a letter of intent (when accepted or perhaps when relied upon) can itself be sufficient to create contractual liability, provided that there are no obvious and fundamental disagreements on the terms still to be negotiated.

SANCTITY OF A WRITTEN CONTRACT:

Where the parties have reduced their contract to writing it is not permissible, as a general rule, to adduce oral evidence to add to, vary or contradict the written

instrument. Similarly, neither party can rely on evidence extrinsic to the contractual document of terms alleged to have been agreed but not contained in the document. But, if the written document was not intended to set out all the terms agreed between the parties, extrinsic evidence of the other terms is admissible.

CONSIDERATION:

Consideration means a reason for the enforcement of the law, may consist either in some rights, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other. Therefore, an act or forbearance of the one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value, is enforceable. If the promisor gets what he asks for in return for his promise, he has received sufficient consideration and is bound.

It is immaterial that his promise is far more valuable than the price he has asked for it. The courts are generally concerned only with the question whether the promisor has made a bargain, not with whether he has made a good bargain. They will not inquire into the adequacy of the consideration he has asked for and received, except when one party is able to take unfair advantage of another.

EFFECT OF MISTAKE IN THE MAKING OF OFFER OR ACCEPTANCE:

A contracting party who had made a mistake simply had himself to blame. Unless, of course, the mistake was actually induced by something said or done by the other party, in which case there might be remedies for fraud or misrepresentation or, perhaps, breach of a contractual term.

STATEMENTS MADE DURING NEGOTIATIONS FOR A CONTRACT AND THEIR EFFECT:

It is common for one party to make statement during the course of negotiations for a contract with the object and, perhaps, the effect of inducing the other party to contract. Sometimes, such statements may be held to amount to promises and to become part of the contract so that, if they are unfulfilled, an action for breach of contract will lie. On other occasions, the statement will be held not to form part of the contract. For example, where a contract of sale has been reduced to writing, assurances which were given by the seller as to his goods, will probably be held not to form part of the contract, if they are not referred to in the document itself. The rule excluding oral evidence (where there is a written document) would apply to exclude evidence which would add to, vary or contradict the written document.

IMPLIED TERMS:

The courts will generally enforce consequences logically implied in the language of the contracts. In fact, judges are accustomed to read into documents and transactions many terms that are not logically implied in them. They may be broadly classified as (i) terms that the parties probably had in mind but did not trouble to express; (ii) terms that the

parties, whether or not they actually had them in mind, would probably have expressed if the question had been brought to their attention and (iii) terms that the parties, whether or not they had them in mind or would have expressed them if they had foreseen the difficulty, are implied by the court because of the court's view of fairness or policy or in consequence of basic rules of law. Of these three, the first is an effort to arrive at actual intention, the second is an effort to arrive at hypothetical or conditional intention - the intention that the parties would have had, if they had foreseen the difficulty and, the third is not concerned with the intention of the parties, except to the extent that the term implied by the court may be excluded by an expression of positive intention to the contrary.

CONSIDERATION:

Only those promises which are supported by a legal consideration are legally binding; other promises are not binding even if the promisor intends to bind himself by his promise. Law distinguishes between gratuitous and non-gratuitous promises. The doctrine of '**Consideration**' rests on two legs, the first is the idea that a promise is legally binding if it is given in return for some benefit which is rendered, or to be rendered, to the promisor. The second is the notion that a promise becomes binding if the promisee incurs a detriment by relying upon it, that is, if he changes his position in reliance on the promise in such a way that he would be worse off if the promise is broken than he would have been if the promise had never been made at all.

NATURE AND EFFECT OF CONTRACTUAL TERMS

Condition and Warranty:

'Condition' is a promise in a contract of so important a nature that a failure to perform it entitles the other party to terminate the contract as well as to sue for damages. In contrast is '**Warranty**' which also is a promise, but one of a subsidiary nature, the breach of which entitles the injured party to damages only and, not to terminate the contract.

Jurisdiction:

An agreement purporting to oust the jurisdiction of the courts is illegal and void on grounds of public policy.

Capacity to Contract:

A corporation, has necessarily to contract through an agent and, to avoid disputes as to the agent's authority, it is laid down that a contract by the corporation must be under seal, although it is not necessary that every one of its contracts should be under seal. Similarly in case of partnership or Sole proprietorships, the contracts are to be executed by persons who have the specific authority to do so.

Discharge of Contracts:

The obvious mode of discharge is by performance, precise and exact. Or when one party is ready and willing and offers to perform the promise according to the agreed

terms, but the other side refuses to accept the performance, the contract is discharged by **tender**, and the party who offered performance is excused from performance.

It may also happen that, owing to change of circumstances, both the contracting parties or (when one has performed his obligation) the party entitled to demand performance may be willing to waive it. The contract is then discharged by **consent**.

It may also be that, at the time when the parties entered into the contract, they knew or must have known that the contract was to be performed, only if a certain set of circumstances exists, and if circumstances are so altered that, what they bargained for could not be had, then, there ensues what in law is called "**impossibility of performance**". The basic idea of impossibility of performance as a mode of discharge, is really the implied understanding that the common object of the contract can no longer be achieved because, in the light of the circumstances, a situation fundamentally different from that contemplated when the parties entered into the contract has unexpectedly emerged. In such a case the party is excused from performance.

Finally, if a contract is not performed, or if the party entitled does not waive performance, or if there is no valid excuse for non-performance, then the other party becomes liable for **breach of contract** and the party entitled can sue for damages or claim specific performance, injunction etc.

Act of God, ?Force Majeure':

Generally defined as "an extra-ordinary occurrence or circumstance which could not have been guarded against, or more accurately, an accident due to natural causes, directly and exclusively, without human intervention and which could not have been avoided by any amount of foresight and care." In such cases also, a contract is discharged.

Frustration:

Performance is also excused where a fundamental assumption underlying the contract has become impossible in the sense that the substantial object which the parties had in view is no longer attainable.

The intention of the parties is frustrated owing to a supervening event, since the contract was made. The basis of the doctrine of frustration is that the parties have impliedly agreed that the contract when performed would be different from the contract as agreed to be performed, then the contract need not be performed.

Time as essence of the contract:

In Indian law, the question whether or not time is of the essence of the contract would essentially be a question of the intention of the parties to be gathered from the terms of the contract. Even where the parties have expressly provided that time is of the essence of the contract, such a stipulation will

have to be read along with the other provisions of the contract. If the contract were to provide for, say, extension of time in certain contingencies or for payment of liquidated damages or penalty for every day or week the work remains unfinished, such clauses

would be considered as rendering ineffective the express provision relating to time being of the essence of a contract.

The party accepting performance after the due date must give notice, while accepting, that he intends to claim compensation, otherwise he is deemed to have waived such right.

Some thumb-rules in Contract Management:

a. General conditions of contract in many PSUs and Government Departments require the commencement of a work within 7 days of receipt of the letter of acceptance of tender, and completion in stages, as per time-schedule of completion (to be agreed to with E-in-C etc. within one month of acceptance of tender).

This should be strictly enforced, and any default is to be recorded and communicated in writing to the contractor, promptly, and with the notice that the contractor will be held liable for the consequences of such default.

b. All extensions of time granted to the contractor should be against specific requests, in writing, and should be qualified so as not to prejudice your rights to recover liquidated damages for the delay and / or to cancel the contract and make alternate arrangements, at the cost and the risk of the contractor. Similarly, such extensions granted should be without any additional financial implications to you.

c. All damages, monitory or otherwise, actually resulting from delays in performance/non-performance should be quantified and recorded promptly. These should also be communicated to the contractor, simultaneously. Documents/evidence in support should be carefully preserved for possible legal scrutiny, at a later date and when the need arises.

d. All contract variations should be only by mutual consent and, recorded either as minutes signed by both parties or by exchange of letter. Minutes signed by both sides are excellent pieces of evidence to support any claims from your side. In all other modes of communication, such as telephone discussions, there should be a confirmatory file note etc. available, as evidence. It may also be advantageous to send to the contractor written confirmation of such communication.

e. As per general conditions of contract, in many organisations, all notices to the contractors are to be served either personally, at site, or by registered mail. This should be strictly followed, in order to be legally effective. Wherever possible, acknowledgement should be obtained.

f. Sometimes, the GCC entitles you, under certain circumstances, to determine / terminate a contract. In all such cases, it would be preferable to do this by mutual consent, minuted and signed by both parties. If it has to be done unilaterally by you, it is better that your lawyer is consulted before taking any action, more so when such cancellation is done while the contractual delivery time is not yet over.

g. Whenever a contract is cancelled / terminated and alternate agreement for supply or performance is to be made, it would be preferable to check on the legal aspects of such action, in order to ensure its legal validity.

h. All letters from contractors - which call for actions or sanctions or supply / delivery on your part - must be responded to, promptly. In cases of difficulties / differences, these should be resolved by mutual agreement and confirmed in writing. This will avoid the contractor taking undue advantage of any unintended or innocent neglect to so respond.

i. Any unauthorised variation from contractual performance / obligations is to be recorded and intimated to the contractor, promptly, and followed up, effectively, and progress payments certified only after satisfactory compliance or explanations.

j. Whatever obligations you have undertaken to perform under a contract must be performed by you promptly and recorded. Any delay in such events entitles the contractor to a corresponding delay in

performing his obligations, besides likely cost escalation claims. Examples are, approval of drawing / samples, inspection, import licences, supply of your own materials or facilities, delivery of site, etc.

k. Any discrepancies by the contractor in following your instructions, any alteration in specifications and designs and extra work should be fully documented and got acknowledged by the contractor.

l. Wherever the contract requires that the contractor should submit regular progress report on the work to be done, any lapse should be immediately recorded and intimated to the contractor as breach of the contractual terms and with all the agreed consequences.

m. The contractor should be made fully aware of the inspection agency, inspection standards, inspection methods etc. at the time of executing the contract. Any failure to pass inspection or failure to offer goods / work promptly for inspection should be notified to the contractor, promptly, pointing out that it is a breach of the contract with all agreed consequences.

n. No casual or unauthorised promises or commitments should be made to the contractor at any stage since these can cause significant legal embarrassment to those who do it, when they are cited by the contractor as witnesses in any legal action.

In conclusion, it may be noted that all legal processes are observed more by "**proof**" and "**evidence**" than by "**truth**". Therefore, it should be ensured that there is documentary evidence built-up as the execution of the contract progresses, and oral understandings and commitments are to be totally avoided.

BREACH OF CONTRACT AND REMEDIES

1. The breach of a contract arises from the failure or refusal to perform it. When there is a failure to perform an entire obligation it is termed as a total breach of contract. When an agreement is broken only in part, it is termed as partial breach. If a party announces before his performance is due, his definite unwillingness or inability to fulfil the contractual obligation, it is termed "**anticipatory breach**". Any breach of contract without sufficient excuse or justification becomes actionable ie. a suit or other appropriate legal proceeding can be initiated for getting relief. The law of contract does

not (at least in theory) seek to punish; its purpose is compensation and compensation alone.

2. Remedies available in law for the breach of contract are damages, specific performance and injunction, cancellation and rectification. Sections 73 and 74 of the Contract Act deal with damages. When a party suffers loss or damage in consequence of a breach of contract, by non-performance or defective performance, he is entitled to recover compensation from the party breaking the contract. The principle is that the injured party should, as far as possible, be placed in the same position, in terms of money, as if the contract had been performed by the party, in default. This is based on the doctrine of restitution, which is, that a person cannot unjustly enrich himself. The principle of restitution is not based on loss suffered by the plaintiff but on the benefit received by the defendant which he is wholly unjustified in retaining.

3. On default by a contracting party, a right to sue alone would arise. That right to sue will furnish a cause of action for the suit for damages. Therefore, a party who commits a breach of contract does not automatically incur any pecuniary liability. It would also not be true to say that the other party to the contract who complains of the breach has any amount due to him from the other party. The only right which he has is the right to go to a court of law and recover damages. Also, no pecuniary liability arises till the court has determined that the party complaining of the breach is entitled to damages.

4. There is a difference in law between 'damage' and "damages". "Damages" is not the plural form of "damage". "Damage" means and includes loss of money, comfort, health or the like. "Damages" means money compensation, claimed by the injured party, for the injuries suffered. Damages may be termed as liquidated or unliquidated. 'Unliquidated damages' are compensatory in character. This is ascertained with the fundamental consideration to place the innocent party in the position he would have occupied, had the contract been performed according to its terms. 'Liquidated damages' is the actual sum named in the contract, which the parties have themselves calculated would be a fair compensation, for breach of the contract. It is clear that the purpose of liquidated damages is to compensate the injured party for the loss suffered. The injured party has no right to make a profit out of this. It, therefore, follows that although parties may have agreed to a fixed sum payable as damages, if such sum exceeds the actual loss, the injured party will get nothing more than the actual loss suffered. Hence it is clear that, in India, there is no distinction between the two ways of naming a sum of compensation, as 'penalty' or as "liquidated damages".

5. Section 74 of the Indian Contract Act reads as follows:-

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or as the case may be, the penalty stipulated for".

(emphasis added)

6. The language of the section has made its interpretation difficult. The trouble is that, even now, the courts have not arrived at any clear or certain interpretation to make it absolutely free from difficulty. The section provides that reasonable compensation only is payable. At the same time, it also provides that the reasonable compensation is payable whether or not actual damage or loss is proved to have been caused by the breach. If it is a case of reasonable compensation then surely such reasonableness would depend on the facts and circumstances of each case. But the Section says that

it makes no difference whether or not actual damage or loss is proved. It further says that the reasonable compensation is not to exceed the amount named in the contract. The words of the section give a wide discretion to the court in the assessment of damages. Although the discretion of the court in the matter of reducing the amount of damages agreed upon is left unqualified, the expression "*reasonable compensation*" used in the Section necessarily implies that the discretion must be exercised with care, caution and on sound principles. E.g.: the measure of damages for failure to complete a building in time, where time is the essence of the contract, is the rental value of the building for the period of delay and not the rent paid by the owner, during the delayed period, for the house he occupied. In some contracts, it may be possible for the court to assess the compensation but, in some others this assessment may be extremely difficult.

7. In cases where the reciprocal obligations of the opposite party is unfulfilled, there will not be any right for them to levy or claim damages, even if liquidated. It has been further held that, any stipulation for unliquidated damages in a contract gives rise only to a right to sue on default and no right to any amount.

8. It is the essence of '**liquidated damages**' that it should run from a fixed date. It is, therefore, essential to specify time limit within which the performance is to be completed. It is not necessary to state that '**time shall be the essence of the contract**'.

9. The owner may lose his right for liquidated damages in the following circumstances:

1. Provision for extension of time is made in the contract, but extension is not granted in spite of just reasons.

2. When any act of the owner itself renders it impossible for contractor to complete the work, on schedule.

3. If the Architect or the Engineer of the owner gives certificate of satisfactory completion and certifies the balance due to the Contractor.

Normally, right to liquidated damages excludes the right to claim unliquidated damages.

10. Construction contracts, usually, contain stipulation for forfeiture of earnest money or security deposit of the contractor if he commits breach of contract. Usually earnest money paid along with the tender is forfeited if the contractor fails to keep the offer open for the period mentioned in the tender notice or fails to sign and complete the contract documents and furnish the security deposits specified in the tender notice.

11. '**Earnest Money**' is the term commonly used in a contract where it is considered as an earnest to the bargain and creates by fear of its forfeiture a motive in the contractor to

perform the rest of the contract. In short, it is a guarantee for the performance of the contract. It is supposed to show an earnestness or ardent desire on the part of the contractor to go forward with the contract. In that sense, it is a security deposit for performance of the contract and, invariably, the terms of the contract do stipulate, that it will be converted into security deposit on signing of the contract by the contractor.

12. The right reserved in the terms of an invitation to tender to forfeit the earnest money for failure of the contractor to keep the offer open is clearly without consideration and not enforceable. The forfeiture of earnest money can be considered only after the tender is accepted and the contractor refuses to sign the agreement or perform it, because in that case, the acceptance of a tender converts it into a legally binding agreement and the contractor becomes liable for breach of it. Even in such cases the owner may not be entitled to forfeit automatically the earnest money. The situation gets even more complicated when the tender invitation reserves for the owner the right to reject any / all tenders or not to accept the lowest tender.

13. In most construction contracts, the practice of accepting bank guarantee in place of cash security is followed. This has the advantage of the working capital of the contractor not getting locked up and, as a result thereof, the owner getting the benefit of a lower rate than the rates which the contractor would have quoted if he were to provide cash security. But, when a demand is made for the encashment of a bank guarantee, the court is approached by the contractor to get an injunction to restrain the bank from making the payment to the owner. A bank guarantee is very much like an irrevocable letter of credit and, the Courts will do the utmost to enforce it, except when it is obtained by fraud, coercion etc. The liability of the Bank under the guarantee is absolute.

14. Provision is also usually made in contracts to enable the owners to recover amounts due to them from any other sums of the Contractor, in the hands of the owner. Such a clause has been held to be valid and binding on the parties.

15. Apart from damages, another relief which could be obtained through the Courts is injunction. An injunction is an order made by the Court forbidding or restraining a person from doing a certain act or acts. In general, an injunction forbids a person from doing certain acts, but, sometimes, it forbids the continuance of a wrongful state of affairs, that already exists. An injunction forbidding the continuance of an existing thing is called a mandatory injunction. An injunction can also be directory, in the sense that a person can be ordered to do certain positive acts. In short, an injunction is an order of court framed according to the circumstances and needs of the case, commanding an act which the Court regards as essential to justice or restraining an act which it considers as contrary to equity and good conscience.

16. Injunctions can be temporary (also called interlocutory) or perpetual. Interlocutory injunctions continue until the hearing of the case, upon merits, generally, "**until further orders**". Perpetual injunctions form part of the decree made after the hearing on merits. The Perpetual injunction, in

effect, concludes a right. The interlocutory injunction is merely to preserve the '**status quo ante**' until the hearing of the case. The law relating to injunction in India is incorporated in the Specific Relief Act and the Code of Civil Procedure. Whereas, perpetual injunctions come within the purview of the Specific Relief Act, temporary injunctions are issued under the provisions of the Code of Civil Procedure. The question of injunction in building contracts, generally, arises when an employer wants to exercise his right of forfeiture contained in the contract against his contractor on account of default committed by the latter in the performance of his contract. It is difficult for Court to look after the acts and conduct of a builder, nor can the courts say how far he departs from properly executing the work. Where the case is one in which the personal skill is an important factor, the courts will not be able to enforce it. Besides, if a contractor is unlawfully dismissed, he has the remedy of getting compensation by way of damages, and in such cases specific performance will not be granted by the Court. Thus, no injunction can issue against an employer in a building contract at the instance of the contractor.

17. In these building and engineering contracts, it is also usual to insert provisions empowering the employer to forfeit certain rights or property of the contractor on the occurrence of certain events. For example, the employer may reserve the right to take possession of the work till then performed and to complete the work either by himself or by employing others. Provision may also be incorporated to take possession of or retain the property of the contractor, such as material, plant or money already due to him. In the absence of express terms, the contractor has merely a licence to enter upon the site of the employer to execute the works. Such a licence can be revoked by the employer at any time. But such revocation, if not justified under the terms of the contract, will render the owner liable for damages. In cases where the contractor commits a fundamental breach, this right can be exercised by the employer. Under the general law, the contractor also has a power identical to that of the employer to treat the contract as repudiated, where the employer has shown an intention to abandon it.

18. The usual contingencies where the power of forfeiture may be exercised by the employer can be listed as follows:-

- 1. Contractor not commencing the work;**
- 2. Not regularly proceeding with the work for a certain fixed period;**
- 3. Not proceeding to the satisfaction of the employer;**
- 4. Not proceeding for any reason independently of prevention by the employer;**
- 5. Not exercising due diligence and dispatch as will enable the work to be completed in time;**
- 6. Not completing as stipulated;**
- 7. Not complying with the orders and directions given by the architect or engineer;**
- 8. Not complying with the specifications, stipulations, conditions or drawings;**
- 9. Being guilty of default in fulfilling the contract;**

10. Leaving the work unfinished;

11. Failing after due notice, to rectify defective works;

12. Removing material from the site, unauthorisedly.

19. Apart from these instances, there can be various other cases in which the right to forfeiture of the contract may arise. Where a contract contains a clause conferring an express power of termination upon the contractor, the conditions upon which the exercise of that power is generally made is dependent on the failure of the employer to make interim payments within the specified period, bankruptcy of the employer, non-release of work-fronts or materials, in time , etc.

20. It is a matter of each case, depending upon the terms of the contract, that will justify the determination of the contract. Under the general law, some acts or omissions of any one of the parties to contract may justify the other in regarding the contract as repudiated.

21. The power to forfeit or terminate the contract must be exercised in an unqualified manner. Where under the terms of the contract, the ascertainment of the event sufficient to terminate the contract is left to the employer himself, the rule is that he must act reasonably

22. The question of reasonableness, to a great extent, depends on the particular circumstances of the case. The clause in the contract will be very strictly construed by courts. Sometimes the contract may provide the right or duty of deciding whether the event has happened, giving right to forfeiture to a third person such as the engineer or the architect.

23. The power to forfeit for delay often arises upon the occurrence of either or both of two events, viz., delay in progress and failure to complete the work in time. Forfeiture is a term commonly and somewhat loosely used. Generally, it means the taking possession of works, completely ousting the Contractor from the site. If the employer purports to terminate the contract, or to take possession of the property of the contractor, when the contract does not empower him to do so or, if he exceeds his power or, if the stipulated notice is not given, the Contractor has an option to sue the owner for damages.

Best Regards_Ankur Garg