



Dept. of Laws

Panjab University
Chandigarh.

MOOT-COURT

DIARY

NAME Nitesh Mehta.

ROLL NO. 167/22

Section. N (Session 24-25)

INDEX

NAME Nitesh Mehta

LLB

DIV. 3rd year

ROLL NO. 167/22

SUBJECT

Moot Diary (Civil)

P.U. Chandigarh

Date : 21st / April / 2025

MOOT - MEMORIAL
Civil - Law.

Before
The HON'BLE
COUR

Mr. Rakesh ----- PLAINTIFF

v.

M/s. XYZ Ltd. ----- DEFENDANT

WRITTEN SUBMISSIONS ON BEHALF
OF THE PLAINTIFF.

Date : _____

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→ TABLE OF ABBREVIATIONS

V.	versus
Anr.	Another
Ors.	Others
SC.	Supreme Court
Hon'ble	Honourable
Sec	Section
AIR	All India Reported
SCC	Supreme Court Case
SCR	Supreme Court Reported
UOI	Union Of India.
b/w	between.
ICA	Indian Contract Act, 1872
CPC	Code of Civil Procedure, 1908.

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→ INDEX OF AUTHORITIES

→ Statutes.

1. → The Indian Contract Act 1872

2. Civil Procedure Code 1908.

→ Case Law.

→ S.V. Kondaskar v. V.M. Deshpande AIR 1972

→ Raja Dower Dev Chand v. Raja HarMohinder Singh AIR 1968 SC 1024

→ Satyabrata Ghosh v. Mugneeram Borgat Co. AIR 1954 SC 44.

→ Industrial Finance Corporation of India Ltd v. The Cammanore Spinning & Weaving Mills Ltd AIR 2002 SC 1841

→ Allop Parshad & Sons Ltd v. Union of India, AIR 1960 SC 588

→ Union of India v. L.K. Ahuja AIR 1971 Del 120

→ Energy Watchdog v. Central Electricity Regulatory Commission (2017) 14 SCC 80.

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→ STATEMENT OF JURISDICTION.

→ Section 20 of the Civil Procedure Code plays a fundamental role in determining the jurisdiction of the Court. The Section empowers the Court to hear a suit based on the place where the cause of action arises.

→ Additionally, the plaintiff seeks compensation for the breach of contract u/s 73 of the Indian Contract Act, 1872, and Section 74 of ICA, 1872, which empowers this Court to grant relief for damages and compensation for non-performance of the Contract.

Date :

→ Preliminary Submissions:-

- 1 That the present Suit is being instituted by the Plaintiff, Mr. Rakesh a prominent businessman based in Delhi, seeking redressal for breach of Contract by the Defendant, M/s. XYS Ltd., a reputed Construction Company.
- 2 That the Plaintiff and Defendant entered into a valid and binding Construction Agreement, whereby, the Defendant was to construct a Commercial building on the Plaintiff's Property, with an express stipulation that the construction be completed within 12 months from the date of execution of the Contract.
- 3 That as per the terms of the agreement, the Plaintiff duly performed his obligations and made an advance payment of ₹10,00,000 to the Defendant at the commencement of the Contract.
- 4 That the Defendant failed to perform their part of the Contract within the stipulated time, having completed only 60% of the

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Construction within 12 months. The remaining work was delayed by another 6 months on the alleged grounds of shortage of raw materials and labor strike.

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5. That after 18 months of delay and non-performance, the Plaintiff exercised his contractual and legal right to terminate the agreement and sought a refund of the advance amount paid.

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The Defendant denied the refund and instead made a belated offer to complete the remaining construction in an additional 3 months.

6. That the Plaintiff submits that such delay constitutes a material breach of the contract, rendering the continuation of the agreement commercially impractical and unjust.

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7. That the present suit is being filed for a declaration of breach termination of contract, and recovery of the advance payment, along with costs and any other appropriate reliefs as the Hon'ble Court may deem fit.

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Date : _____

→ STATEMENT OF FACTS.

1. That the Plaintiff, Mr. Rakesh, is a prominent businessman based in Delhi who entered into a valid and legally enforceable agreement with Defendant, M/s XYZ Ltd., a reputed Construction Company, for the construction of a commercial building on the plaintiff's property.
2. That as per the terms of the Contract, the construction was to be completed within a period of 12 months from the date of execution of the agreement. An advance payment of ₹ 10,00,000 was made by the Plaintiff to the Defendant at the commencement of the contract.
3. That the Defendant commenced the construction work and completed only 60% of the project within the stipulated time frame of 12 months.

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4. That the remaining work was delayed for an additional period of 6 months due to reasons cited by the Defendant, including labor strikes and shortage of raw materials.
5. That after the lapse of 18 months in total, the Plaintiff issued a notice of termination of the Contract owing to inordinate delay and sought a refund of the advance payment made.
6. That the defendant denied the refund and instead proposed to complete the remaining work in 3 more months, which the Plaintiff rejected on the ground of unreasonable delay and breach of contract.
7. That the Plaintiff has approached this Hon'ble Court seeking appropriate relief for breach of contract, recovery of the advance amount, and other consequential relief as deemed fit by the Court.

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→ ISSUES RAISED

1. Whether there has been a breach of Contract by M/s. XYZ Ltd. for not Completing the Construction within the Stipulated 12-month period?
2. Whether the delay in Construction, due to unforeseen circumstances like Shortage of raw materials and Labor Strikes, constitutes an excuse under Section 56 Of Indian Contract Act, 1872 (Doctrine of Frustration)?
3. Whether Mr. Rakesh is entitled to a refund of the Advance Payment or Should M/s. XYZ Ltd. be allowed to Complete the Construction within the Extended Period?
4. Whether the offer by M/s. XYZ Ltd. to complete the Construction within the next 3 month Amounts to a valid performance of the Contract or whether the delay is so fundamental that it justifies the termination of the Contract?

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- 5 Whether the Principle of frustration or force
majeure can be invoked by M/s. XYZ Ltd. to
justify the delay and avoid liability for
breach of contract?

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Date :

→ SUMMARY OF ARGUMENTS

→ Issue 1: Breach of Contract by the Defendant.

The Plaintiff and defendant entered into a legally binding construction agreement with an express condition that the commercial building would be completed within 12 months.

The Defendant, however, failed to fulfill this core term and completed only 60% of the work during the stipulated time.

This constitutes a clear breach of contract, as time was of the essence.

The incomplete construction disrupted the Plaintiff's commercial interests and financial planning, thereby giving rise to a legitimate claim for breach.

→ Issue 2:- Non-applicability Of Doctrine of Frustration.

The Defendant contends that the delay was due to unforeseen factors.

However, the circumstances cited - material shortages and labor issues - are routine business contingencies and do not amount to a legal impossibility of

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Performance. These risks were not entirely unforeseeable or beyond control. As such, the conditions for invoking the doctrine of frustration U/s 56 are not met.

The contract remained capable of being performed; the delay resulted from inefficiency, not impossibility.

→ Issue-3:-> Entitlement of the Plaintiff to Refund of Advance Payment.

→ The Plaintiff duly paid advance of ₹ 10,00,000 and complied with all contractual obligations when the defendant failed to complete construction within the agreed timeline and further delayed the work, the Plaintiff exercised his right to terminate the contract.

As the contract stands terminated due to the defendant's fault, the Plaintiff is legally entitled to seek refund of the advance amount.

Allowing the defendant to continue the work would amount to rewarding inefficiency and defeat the purpose of a time-bound contract.

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→ Issue - 4 : Effect of Defendant's Subsequent offer to Complete Construction.

The Defendant's Offer to Complete the Remaining Work in an extended period of 3 months was made only after the Plaintiff had terminated the Agreement.

The delay of 6 months had already disrupted the Plaintiff's plans and commercial interest. Hence, the offer is irrelevant and does not cure the breach that had already occurred.

→ Issue - 5 : Non-applicability of force Majeure.

The Circumstances Cited by the Defendant are not covered under force majeure. Industry challenges such as material shortages and labor unrest are foreseeable and do not excuse the failure to perform. Thus, the defendant cannot escape liability under the contract on such grounds.

→ ADVANCE ARGUMENT.

1 Whether there has been a breach of Contract by M/s. XYZ Ltd. for not Completing the Construction within the Stipulated 12-month Period?

1. → That the Plaintiff, Mr. Rakesh, a prominent businessman in Delhi, entered into a legally binding Contract with the Defendant, M/s. XYZ Ltd., a reputed Construction Company, for the Construction of a Commercial building on his property.

15 → The Contract expressly Stipulated that the Construction was to be Completed within 12-months from the Commencement date.

20 → To facilitate the Smooth execution of the Contract, the Plaintiff made an advance payment of ₹10,00,000 to the Defendant, as per the terms of the agreement.

2. → Breach of Contract by the Defendant

That the Defendant, despite being well-versed in the Construction industry and Equipped with the necessary resources, was able to Complete only 60% of the work within the

Date : _____

Stipulated - 12- month period.

→ The remaining 40% of the work was delayed by another 6 months, due to factors which the defendant claims were unforeseen, including shortages of raw materials and labor strikes.

→ However, it is humbly submitted that these delays do not absolve the defendant from their contractual obligations, as these events were not beyond their control nor were they unforeseeable in the course of ordinary business practices.

3- Time is of the Essence:-

→ That the contract entered into b/w the parties clearly provided that time was of the essence, and the defendant was required to complete the construction within the agreed upto 12 month period.

→ Hind Construction Contractors v. State of Maharashtra, AIR 1979 SC 720. SC held that where time is of the essence, any failure to complete performance within the stipulated time entitles the aggrieved party to terminate the contract.

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4-> That the plaintiff upon noticing the delay and its adverse effects on his commercial plans, notified the defendant of his intent to terminate the Contract.

5-> As per section 55 of the Indian Contract Act, 1872, if the performance of a contract is delayed beyond the agreed time, the aggrieved party is entitled to terminate the contract and demand a refund of any advance paid.

10-> The Plaintiff exercised this right by demanding a refund of ₹ 10,00,000 from the defendant, in accordance with the terms of the contract.

15-5-> That the defendant has sought to justify the delay by attributing it to unforeseen circumstances, such as shortages of materials and labour strikes.

20-> However, it is well-established in law that such explanations cannot justify a breach unless the contract specifically provides for a force majeure clause, which, in this case, it does not. The Indian Contract Act, 1872, u/s 32, provides for situations where performance becomes impossible, but no such impossibility has been shown by the defendant in this case.

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6. → Kok. Verma v. Union of India (1954) 2 SCR 235.
 Hon'ble Court Stated that where there is a breach
 of Contract by the non-performance of a term within
 the stipulated time, and the Contract is
 rescinded, any subsequent performance offered
 by the defendant is irrelevant.
- In this Case the defendant offered
 to Complete the remaining work in the next 3
 months After the plaintiff's termination of
 the Contract Cannot revive the original
 Contract, as the plaintiff has already exercised
 his right to terminate based on the breach.

- 7 → That the delay in Construction was significant,
 lasting an additional 6 months beyond the agreed-
 upon period, and the defendant did not seek
 a formal Extension of the Contract.

In Pharmaceuticals v. Ramaniyan Real
 Estates Pvt Ltd. (2011) 9 SCC 147, the Court held
 that where time is of the essence and
 performance is delayed without agreement,
 it constitutes a material breach. The
 delay undermined the purpose of the Contract
 and caused significant financial and
 business disruption to the Plaintiff.

Date :

Issue-2 :- Whether the delay in Construction, due to unforeseen circumstances like shortage of raw materials and labor strikes, constitutes can excuse under Section 56 of the Indian Contract Act, 1872 (Doctrine of Frustration)?

1-> The petitioner humbly submits that the delay of 6 months beyond the agreed construction period of 12 months can not be excused under Section 56 of the Indian Contract Act, 1872, as the doctrine of frustration applies only when performance becomes impossible, not merely burdensome or delayed.

2-> That the Construction was not rendered impossible. M/s xyz Ltd. Completed 60% of the construction within 12 months, and later offered to complete the remaining work - clearly indicating that performance was always possible, albeit delayed. Hence invoking frustration under Section 56 is legally untenable.

3-> Doctrine of frustration under Indian law is interpreted strictly and narrowly. It applies only when

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→ There is complete impossibility of performance, or.

→ The object of the contract is entirely destroyed.

5 → *Satyabrat Ghose v. Magneeram Bamgur & Co.* AIR 1954 SC 44.

10 → Supreme Court held that mere delay or difficulty in performance due to war or government order does not amount to frustration.

→ In present case, raw material shortage and labour strikes fall under similar economic hardships - they do not destroy the foundation of the contract, and hence do not attract Section 56.

15 → *Alopi Parshad & Sons Ltd v. Union of India*, AIR 1960 SC 588

20 → The Court ruled that economic hardship, increased costs, or shortage do not frustrate a contract unless performance becomes legally or physically impossible.

→ *Naihati Jute Mills Ltd v. Khyaliram Jagannath* (1968) 1 SCR 821

25 → The Court emphasized that the parties must perform the contract despite market

Date :

difficulties unless an unforeseen event fundamentally changes the Contract's nature.
 → In present matter, no such fundamental change occurred.

4 → It is further submitted that Contractors are expected to factor in ordinary market fluctuations and disruptions like labour strikes and material shortages, which are common in the construction industry. These do not qualify as grounds for frustrations.

5 → The respondent, M/s XYZ Ltd., never issued a notice of frustration nor invoked Section 56. at the time of delay. The attempt to use frustration only after breach and termination by Mr. Rakesh is an afterthought and lacks legal sanctity.

6- The Hon'ble Court must also consider that the Contractor's offer to complete construction after 18 months defeats their own claim of frustration. A Contract cannot be frustrated and capable of performance at the same time.

Date :

→ Issue 3:- Whether Mr. Rakesh is entitled to a refund of the advance payment, or should M/s XYZ Ltd. be allowed to complete the construction within the extended period?

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→ That Mr. Rakesh, a prominent businessman, entered into a contract with M/s XYZ Ltd. for the construction of a commercial complex to be completed within a defined period of 12 months. He paid an advance of ₹ 10,00,000 to initiate the project. However, despite the clear contractual obligations, the defendant executed only 60% of the work, and the remaining construction was delayed by more than six months beyond the agreed period.

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→ Upon observing continued inaction and unjustified delay, the plaintiff lawfully terminated the agreement and demanded a refund. The defendant, instead of complying, proposed an additional

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three-months extension without obtaining the plaintiff's consent, which was lawfully rejected.

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→ As per Section 55 of Indian Contract Act 1872, when time is of the essence and

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the promisor fails to perform the contract within the fixed time frame, the promisee is entitled to void the contract. In commercial dealings, especially concerning infrastructure and business property, time is often regarded as the essence of the contract.

→ M.L. Devender Singh v. Syed Khaja (1973) 2 SCC 515,

Supreme Court held that where a time bound obligation is not fulfilled, particularly when the objective of the agreement is commercial in nature, the aggrieved party has the right to repudiate the contract and seek restitution.

→ Similarly, in Simplex Concrete Piles (India) Ltd v. Union of India (2010) 8 SCC 385,

Apex Court ruled that delays caused by logistical or labor-related constraints, in the absence of any express contractual provision permitting extensions, amount to a breach of contract.

In the present matter, no clause exists enabling unilateral extension, nor has any mutual extension been agreed upon.

Date :

Issue-4 → Whether the Offer by M/S. XYZ Ltd.
to Complete the Construction within 3 more
Months Validates the Performance or if the
delay is fundamental Enough to Justify
Termination of the Contract?

1 → That the Agreement b/w Mr. Rakesh and M/S
XYZ Ltd. Specified that the Construction would
be Completed in 12 months.

This is a key term in the Contract. U/s 55 of
Indian Contract Act, 1872, time is often
Considered "of the essence" when the Contract
Clearly Stipulates a Specific deadline. The
failure to meet the deadline means there is a
fundamental breach of the Contract.

→ K.S. Vidyaradam & Ors v. Vairavan, (1997) 3 SCC 1

In this Case, the Hon'ble Supreme Court held
that in Commercial Contracts, especially where
development or Construction is involved, time
must be Considered the essence, and failure
to perform within that time can justify Cancellation.

2 → That the Impact of delay On Plaintiffs business?
Plaintiff need for the building within 12
months is Connected directly to his business.

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Plaint. The delay of 6 months directly affects his ability to use the property as intended.

→ This delay is not something that plaintiff should have to tolerate, as the completion of the building is essential for his operations.

→ Section 39 of Indian Contract Act allows a party to terminate a contract if there is a fundamental breach of its terms, which is what has happened here.

→ *Sarla Goel v. Kishan Chand*, (2009) 7 SCC 658

Supreme Court observed that a delay that defeats the very purpose of entering into a contract gives the affected party the right to rescind it, especially where business interests are materially affected.

3 → That the proposal by M/s XYZ Ltd. to finish the remaining 40% of construction in an extra 3-months does not amount to valid performance once the time period under the contract is breached, such an offer cannot end the fundamental non-performance.

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→ M/s Simplex Concrete Piles (India) Ltd v. Union of India, (2010) 8 SCC 263

→ The Court held that where there is significant delay in contractual performance, subsequent offers to complete the work cannot be treated as proper compliance with original contractual terms.

4 → M/s XYZ Ltd. may argue that since 60% of the work was completed they substantially performed the contract. However, Indian Courts have consistently rejected this doctrine where time is essential and the delay affects the core of the contract.

→ Aro San Enterprises Ltd v. Union of India, (1999) 9 SCC 449. SC ruled that partial or substantial performance is irrelevant when the contract requires full performance within a stipulated time and failure to do affects the contractual objective.

5 → Under Section 39 of the Indian Contract Act, 1872, if one party refuses or disables themselves from performing a contract in its entirety, the other party is entitled to put an end to the contract.

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→ State of Kerala v. M.A. Mathai (2007) 10 SCC 725

→ The Supreme Court reaffirmed that
deliberate or unjustifiable delay in fulfilling
a Contract gives the non-breaching party
the right to rescind the agreement.

Date :

Issue 5:- Whether the Principle of Frustration or Force Majeure Can Be Invoked by M/s XYZ Ltd. to Justify the Delay and Avoid Liability for Breach of Contract.

→ The doctrine of frustration, as embodied u/s 56 of the Indian Contract Act, 1872, applies only when an unforeseen event renders the performance of the contract physically or legally impossible. It does not extend to cases of commercial hardship or delay.

→ U/s 56 of the Indian Contract Act, 1872, a contract becomes void when an act becomes impossible due to an event that the promisor could not prevent. However, frustration cannot be invoked merely due to delays or commercial hardships unless the event renders the entire contract impossible to perform.

→ *Naihati Jute Mills Ltd v. Kheyatram Jagannath* (1968) 1 SCR 821, the Hon'ble Supreme Court held that frustration applies only when the event destroys the very foundation of the contract, not just because the contract becomes inconvenient or delayed.

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Therefore, routine risks like labor strikes or shortage of materials - as claimed by M/s XYZ Ltd - are not grounds for frustration unless they are severe and prolonged.

→ A force majeure clause, if present in the contract, only excuses delay if the event was unforeseeable and completely prevented performance.

However, Courts interpret these clauses narrowly -

→ *Dhanrajamal Gobindram v. Shamji Kalidas & Co*, (AIR 1981 SC 1285),

SC ruled that force majeure must be expressly provided in the contract, and even then the event must make performance impossible, not merely delayed or more difficult.

→ *South East Asia Marine Engineering & Constructions Ltd v. OIL India Ltd* (2020) 5 SCC 164,

the Supreme Court clarified that inconvenience, hardship, or delay does not amount to frustration. A party cannot escape performance merely because the circumstances become unfavorable.

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→ PRAYER :-

The Plaintiff, having utmost faith in the 5 fairness and wisdom of this Hon'ble Court, most humbly and respectfully Prays that this Hon'ble Court may graciously be pleased to:

10. 1 → Declare that Defendant has failed to fulfill its Contractual obligations by not completing the construction within the Stipulated period of 12 months and is thereby in breach of contract.
15. 2 → Direct the defendant to refund the advance payment of ₹ 10,00,000 made by Plaintiff, along with interest as this Hon'ble Court may deem just and fair.
20. 3 → Award Suitable Compensation to the Plaintiff for the losses suffered due to the inordinate delay and non-availability of the Commercial premises.
25. 4 → Pass such other and further Orders as may be deemed fit, proper, and necessary in the interest of justice, equity and good Conscience.