

SCRUTINIZING THE CONCEPT OF ACTIONABLE CLAIM AND ITS TRANSFERABILITY UNDER THE TRANSFER OF PROPERTY ACT

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INTRODUCTION

In the current scenario where laws are taking expansion in their scopes and asserts more effective pronouncement of rules in regard to govern the country the rules related to property act are also included in its ambit. The concept of actionable claim is unique and is of much importance where the claim arises on the unsecured debts. The provision regarding the conduct of the actionable claim as per the law are explained under section-130 to 137 of the transfer of property act. Conclusively it means that claims under the purview of actionable claim are exclusive of claim to any immobile property or the claims which are related to the secured debts or movable property which is in the possession of the claimant. In a simple verdict it can be understood that claims under actionable claim are realised by a legal action in relation to simple debt or liability.

LEGAL DEFINATION OF AN ACTIONABLE CLAIM

The term actionable claim is defined in section 3 of the Property Act¹ “which reads as “A claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent².”

DEBT

There are two types of movables from which one is of the tangible type and the other is of intangible type. Tangible movable properties are those types of properties where there is the presence of physical existence and can be possessed while intangible movables are in the form of right which neither can be possessed nor can be present in the physical appearances. In the case of an intangible property claim, actionable claim can be known only when the rights have been claimed by the person by an action in a court of law. Debt in simple language can be defined as a sum of money due by one individual to another. According to the illustration made in the case of³Haridas Acharjia chowdhry v. Baroda Kishore chowdhry, debt includes sum of money due by one person to another and also includes not only the amount payable at a particular time but also includes the sum of money which is not immediately due but might become payable after sometime. In case of⁴Bhupati v. Phanindra, the definition of debt is defined as “A sum of money which is payable or will become payable in future by reason of a present obligation is a debt”.

CONCEPT OF ACTIONABLE CLAIM

In a common way usually claims in courts deals with the claims to a debt that is being secured through pledge, mortgage and hypothecation but in the case of actionable claim situation is reversed. If the particular claim deals with actionable claim then the claim will always be in regard to unsecured debt which will

¹ Transfer of Property Act, 1882.

² Ehtasham Mehmood, Transfer of Property Act,1882 (Mansoor Book House) 35.

³ ILR 27 Cal 38.

⁴ 40 CWN 104

include a claim to a beneficial interest in a movable property, not in possession of the claimant, which can be claimed by person against another person. Such suits are always deal in civil courts in accordance with the prevailing laws. In the ⁵case of sunrise associates v. Government NCT of Delhi, it was held by the court that the act of sale of lottery tickets executes the transfer of actionable claim.

In purview of English Law, actionable claim is defined as a thing in action or choose in action against any preferential choice or money in possession. It exhaustively denotes that corporeal property which is not in the possession of the owner and incorporeal property of all divisions can be enforced or claimed in action. Actionable claim are also called as choose in action act. In the case of ⁶L.I.S palakkal court v. State of kerela, Court held that sale of lottery tickets does not includes the aspect of sales of goods and stated that in the present situation purchaser gets a claim to a conditional interest in the prize money which is not under the possession of the purchaser and hence held that all the rights would falls within the ambit of actionable claim.

The common examples of actionable claim, are right of the partner to sue for accounts, claims for arrears of rent, right to recover insurance money, right to credit in the provident fund etc.

Actionable claim is the part of the hierarchy of claim. Claim in ordinary sense denotes the compliance of demand and liability but in context of the legal definition of actionable claim, here claim is expressed in the form of right although as in the form of incorporeal one. Every claim cannot be determine as an actionable claim, only the claims which are either related to the beneficial interest of the movable property or debt are determine as actionable claim. Beneficial interest in relation to actionable claim can be contingent, accruing, conditional and can be existed one.

CLAIMS WHICH ARE CONSIDERED AS ACTIONABLE CLAIM

As we know actionable claims are of the different nature and hierarchy so what type of claims should be included and what should not be included are categorized differently. The claims which can be incorporated under the purview of the actionable claims are as follow-

- (1) Claims for arrears of rent⁷.
- (2) A share in partnership⁸.
- (3) Claim for the money due under any insurance policy⁹.
- (4) A claim for rent to fall due is future accruing debt¹⁰.
- (5) Claim for the return of earnest money¹¹.
- (6) Claim for unpaid dower of a muslim woman¹².
- (7) Right to get back the purchase money when sale is set aside¹³.
- (8) The benefit of an executory contract for the purpose of goods is a beneficial interest in the movable property¹⁴.
- (9) The right to proceed of a business¹⁵.

⁵ AIR 2006 SC 1908.

⁶ AIR 2007 Ker 178 (DB).

⁷ Daya Debi v. Chapala Debi, AIR 1960 Cal 378.

⁸ Baibridge (in re:), 8 Ch D 218.

⁹ Varjivan Das v. Magan Lal, AIR 1937 Bom 382.

¹⁰ Chidambaram Pillai v. Doraiswamy Chetty, AIR 1916 Mad 974.

¹¹ Lalchand v. Hussainio, (1927) 97 IC 257.

¹² Amir Hasan Khan v. Mohd. Nazir Hussain, AIR 1932 AII 345.

¹³ Chinappareddi v. Venkataramanappa, AIR 1942 Mad 209.

¹⁴ Jahar Mehr Ali v. Budge-Budge Jute Mills, ILR 34 Cal 289.

¹⁵ Alkash Ali v. Nath Bank Ltd, AIR 1951 Assam 56.

CLAIMS WHICH ARE NOT CONSIDERED AS AN ACTIONABLE CLAIM

The claims which are not included under the category of actionable claim are as follow-

- (1) A decree is not an actionable claim¹⁶.
- (2) Right to get damages under the law of torts or for breach of contract¹⁷.
- (3) A claim to mesne profits is not an actionable claim but it is a mere right to sue¹⁸.
- (4) A copyright¹⁹.
- (5) Debt secured by mortgage of immovable property or hypothecation of movable property²⁰.

TRANSFER OF ACTIONABLE CLAIMS

Transfer of actionable claim is defined under section-130 of the Transfer of Property Act, 1882. Section-130 explains about the legal framework required for the transfer of property. It determines about the procedure for the transaction of transfer of actionable claim to be made effective and competent. According to section-130 any type of actionable claims which are either with the consideration or not will be made effective by the execution of the instrument recognized legally in the written form. The particular instrument should be signed by the transferor or his duly authorized agent. The execution of the transfer of actionable claim come into recognition when the instrument is in written form and signed, but it is not mandatory to make the transfer by framing separate document. If the endorsement is made on the back of the document which is accommodating actionable claim will be considered sufficient for the purpose of transfer.

After the signing of the instrument transfer of actionable claim comes in effect and hence all liabilities, rights, and remedies which were vested in the transferor after execution vests in the transferee or we can say assignee. In the case of ²¹ICICI Bank Ltd v. Official liquidator of APS stars industries ltd., Court has illustrated that transferee becomes liable for all the liabilities and equities to which the transferor was subject at the time of the transfer. The type of actionable claim where banking business includes recovery and the transaction is made in regard to it will be considered as valid transaction as it is neither prohibited by the transfer of Property Act, 1882 nor it is violating any measure of public policy. Although for the transfer of the actionable claim the making of notice to the debtor is not mandatory but in good faith transferee should made notice to the debtor as soon as possible. Section-130 of the transfer of property act also includes one exception to its provision which states that the provisions which are enumerated under the section are not applicable on the transfer of marine or fire policy of insurance and also would not affect the provisions of section-38 of the Insurance act.

According to section-137 of the transfer of property act, 1882 it has been conveyed that sections-130 to 136 are not applicable to stocks, shares, negotiable instruments, debentures and on mercantile documents of title to goods. The definition of actionable claim includes the words "with or without consideration" which means that actionable claims also cover gift.

CONCLUSION

As we know transfer of property act is a subject with critical obligations quite complex to understand, the expansion of the scope is enhancing day by day as per the demand of the society. The dynamic changes in the demand of the people and increasing corruption in the society made governing authorities to make compliance even with the minute things considered necessary. Actionable claim in itself is a very vital and versatile concept which is very much needed to maintain the fairness in issues regarding to debt. Although there are still some uncertainties remained which should be add on in the provision to make more clear vision of that but present prevailing laws are undoubtedly successful in making the clear distinction between property (actionable claim) and right to sue.

¹⁶ M. Govinarajulu Naidu v. D.H. Ranga Rao, AIR 1921 Mad 113.

¹⁷ Motilal v. Radhey Lal, AIR 1933 AII 642 (V20).

¹⁸ Jainarayan v. Kishan Dutta, 3 Pal 575.

¹⁹ Savitri Devi v. Dwarka Prasad, AIR 1939 AII 305.

²⁰ Imperial Bank of India v. Bengal National Bank, AIR 1931 PC 245.

²¹ AIR 2011 SC 1521.