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Material Metamorphosis of Contracts

By  
B. Padmanabha Rao\*

INTRODUCTION

Due to many factors a contract may change its colour and when a party is called upon to perform such a contract he may be subjected to hardships and it may be a windfall for the other party or an unjust enrichment. Obviously the party to whom the factors are adverse tries to wriggle out of the bonds of contract. He will point out that he presupposed certain conditions when he entered into the contract but due to factors beyond his control the circumstances have changed the colour of the contract to such an extent that even in his dreams the other party would not have expected its performance or bargained for it. In English Law these cases of metamorphosis of contracts fall under the doctrine of frustration. Under Indian Law the cases fall under S.56 of the Indian contract Act. In U.S.A. these cases are considered under "commercial impracticability." The Law Commission of India in its 13th Report disposed of the matter as follows. "This section (56) marks a departure from the English Common Law to a considerable extent and it is neither profitable nor necessary to examine which of the various theories underlying the doctrine of frustration in English Law are applicable to cases arising under this section. The Supreme Court of India in the case of *Satyabratha v. Mugneram*<sup>1</sup> has repelled the suggestion that section 56 is not exhaustive. The word 'impossible'

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\* College of Law, Andhra University, Waltair.  
I.A.I.R. 1954 S.C. 44.

is to be construed in its practical rather than its literal sense. It is worthy of note that the impossibility referred to in the section was never understood to include what is known as commercial impossibility. We are not aware of any occasion when in practice the application of this section, as it stands, has involved any in convenience or difficulty of interpretation and therefore we are in favour of leaving the section intact." The specific Relief Act 1963 has laid down certain provisions for relief in cases of hardship or change of circumstances but has failed to tackle the matter in a pragmatic way. The problem to be tackled is how far the metamorphosis of a contract affects the rights and liabilities of the parties.

### Material Metamorphosis

Material metamorphosis may be defined as a change in the fundamental nature of the contract or a change which goes to the root of the contract or a change which perpetually conceals the core of contract, as a direct consequence of the change in the presupposed conditions or circumstances. Every change cannot affect a contract because a party to a contract expects some fluctuations or changes. Disappointed expectations do not amount to material metamorphosis. The change which affects the party unfavourably cannot be treated as material metamorphosis because he cannot escape the obligations he has undertaken just because he may be a loser due to the change. On the other hand the material metamorphosis is that change which gives the other party which he never expected as a reasonable and prudent man. He cannot unduly benefit by the change of circumstances or unjustly enrich himself or it should not be a windfall for him. Contract is not a lottery or a raffle but a business transaction and nothing more. Therefore if a reasonable business man enters into a contract for example expects usually 10% profits, by change of circumstances he may get 20% profits if the contract is performed because the wind is blowing in his favour but supposing he gets 200% profits, it will not be proper to ask the other party to perform the contract. The Equitable principle that he who comes to equity must do equity may be applied to relieve the hardship on the dependent and the plaintiff may be compelled to pay compensation to the dependent

if the plaintiff wants the specific performance of the contract which has undergone the metamorphosis. The gross values may be taken into consideration instead of the net values. If P is the gross value under the contract as expected by the promisor, and Q the value expected by the promisee before the change, if X is the gross value from the stand point of the promisor due to ordinary fluctuations and Y for the promisee at the time of performance due to metamorphosis. The value  $P/Q \neq X/Y$ . If the ratio is abnormal it may be treated as material metamorphosis and a party may be relieved from the obligations under such a contract.

### Commercial Impracticability

Commercial impracticability may be treated as one kind of material metamorphosis. The party who is adversely affected by the circumstances may be completely excused from performance. This should be distinguished from impossibility, frustration of performance, frustration of the adventure. Commercial impracticability may be more applicable to commercial contracts. Examples laid down in the uniform commercial code may be useful.<sup>1</sup> Increased cost due to unforeseen contingency which alters the essential nature of performance. Severe shortage of material due to war, embargos local crop failure, unforeseen shut down of major sources of supply. If a particular sources of supply is exclusive under the contract and it fails. The general policy to ~~is~~ apply equitable principles and furtherance of commercial standard and good faith. So according to the circumstances court may be justified in completely excusing the party from performing his obligations or readjust the terms of the contract or provide for such compensation as circumstances demand or permit substituted performance.

### Conclusion

Material metamorphosis may be introduced as a special head in the discharge of contracts. It need not be applicable only to commercial contracts. It may be of a general character capable of application to any contract whatsoever. It should be different from impossibility of performance or frustration of contracts. The test should be objective and not subjective. The intention of the court should be to do real justice to the parties. The court need not make a contract for the parties but where circumstances demand it should

<sup>1</sup> Section 2-615. Article 2. p. 184 U.C. C.

not fail to find a just and equitable solution or a just and reasonable solution. Material metamorphosis may be treated as an independent head of specific relief. If the dependent sets up alteration or variation due to metamorphosis, the court can grant the specific performance of the contract subject to reasonable alteration or readjust the terms of the contract as justice demands. Such remedies may be purely discretionary. Akin to the doctrine of fundamental term where a party cannot be permitted to escape the fundamental obligations by abusing the freedom of contract, so also a party should not be compelled to perform the obligations under a contract if there had been a material metamorphosis. The terms in the contract which have become paralysed by the metamorphosis should be cut out and grafted with new terms. The court has to do this new kind of judicial surgery to give life to deal terms in the contract.

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