




DISABILITIES OF A TRUSTEE



Amna Iqbal

TOPIC: INTRODUCTION:

A trust is an obligatory office fraught with duties, discretionary rights, powers and disabilities. So there are certain prohibitive acts for a trustee if he will perform that act he will become disable from his trusteeship.

RELEVANT PROVISIONS:

Chapter;5, sec:46-54 of Trustee Act,1882.

MEANING:

According to Merriam Webster Dictionary:

Disability is a restriction or a deprivation of legal right.

DISABILITIES OF TRUSTEE:

The Trust Act,1882 provides the following disabilities:

1-TRUSTEE CANNOT RENOUNCE AFTER ACCEPTANCE:

Sec:46, has been so designed that a trustee who after acceptance of the trust and after acting for some time as trustee may not opt to renounce the trust because he is liable to the beneficiaries as well as his co-trustees.This is the general rule given by the section but at the same time it has its exception as well.

EXCEPTION TO GENERAL RULE:

- A- With the permission of civil court
- B- With the consent of beneficiaries
- C- By virtue of special powers in the instrument

2-TRUSTEE CANNOT DELEGATE:

A person entrusted with a duty does not fulfill it if he simply lays it on the shoulders of someone else he remains liable for the other persons default so the original principle **“delegatus non protest delegare”**.

EXCEPTION U/S:47

- A- If delegation is provided in the instrument
- B- If delegation is in the regular course of business
- C- If the delegation is necessary
- D- Delegation with the consent of beneficiaries

3-CO-TRUSTEES CANNOT ACT SINGLY U/S 48:

The office of trustee is a joint one and duties of the office must be done by the co-trustees in joint capacity. The act of one trustee done with the sanction of a co-trustee may be regarded as the act of both but such sanction or approval must be strictly proved. **(AIR 1945 PC 23)**

But again its subject to the agreement between the trust parties.

4-CONTROL OF DISCRETIONARY POWER:

Sec:49, if the trustee do not exercise their discretionary power reasonably and in good faith it can be controlled and guided by the court on suitable occasions. This section must be read with **section:15** and especially **illustration (d)** of that section.

5-NO RIGHT OF REMUNERATION:

Sec:50, a trustee has no right to charge remuneration for his services i.e trouble, skill and loss of time in executing the trust. Sec:50, provides and also explains the exceptions to this provision wherein a trustee can get remuneration.

6-TRUSTEE CANNOT USE TRUST PROPERTY FOR HIS OWN PROFIT:

U/S: 51, All the acts of trustee must directed towards the benefit of the trust and beneficiary. If he makes a profit out of it he will be accountable for it.

7-NOT TO USE TRUST PROPERTY FOR PURPOSE UNCONNECTED WITH THE TRUST:

A trustee should not make use of the property for any purpose unconnected with the trust. When he does so, he has to account for the benefit he obtains.

8-TRUSTEE CANNOT BE PURCHASER:

U/S:52, Trustee is absolutely and entirely disabled from purchasing the trust property. Especially whose basic duty is to sell trust property. He cannot become a buyer of the same property at the same time.

Case law:

Plowright V. Lambert

It was held that a trustee for sale cannot sell to himself and that even if he be not a trustee for sale, the burden of proof lies on him to show that every possible advantage has been gained for the trust.

9-TRUSTEE MAY NOT BUY BENEFICIARY'S INTEREST:

Sec:53, lays down a situation that the trustee may not buy or become lessee or mortgagee unless the court permits it for the benefit of beneficiary specifically.

10-CO-TRUSTEES CANNOT LEND TO ONE OF THEMSELVES:

Sec:54, is again a prohibitive in nature and lays down that a trustee or co-trustee whose duty is to invest trust money on mortgage or personal security must not invest it on a mortgage or on the personal security of himself or one of his co-trustees.

CONCLUSION: