




RIGHTS & POWERS OF A TRUSTEE



Amna Iqbal

TOPIC: RIGHTS & POWERS OF TRUSTEE

INTRODUCTION:

Rights constitute correlative of duties. In its generic sense it connotes and may be defined as any advantages or benefit conferred upon a person by a rule of law.

DEFINITION:

PARTIES OF A TRUST:

RELEVANT STATUTORY PROVISIONS:

Chapter:4, Sec:31-45 of Trust Act,1882.

RIGHTS OF TRUSTEE:

The rights of trustee are enumerated in **sec:31-35**, which are as follows:

1-Right to Title deeds:

In the eyes of law, a trustee is the owner of the trust property and therefore he is entitled to have in his possession **U/S:31**,

- a- The instrument of trust
- b- All other documents of title relating specifically to the trust property

2-Right to reimbursement of expenses:

U/S:32 It is the right of trustee to reimbursed as all expenses which he incurred in connection with the;

- a) Execution of the trust
- b) Realization
- c) Preservation
- d) Protection

Of trust property and support of beneficiary.

3-First charge on trust property:

If expenses are incurred by trustee out of his pocket, such expenses shall be the first charge over the property. And before such property is disposed of, this charge must be settled.

4-Right to be recovered for over payments:

Sec:32 states that where trustee has by mistake made an over payment to the beneficiary, he may reimburse the trust amount from the beneficiary's interest.

5-Right to indemnify from gainer by breach of trust:

U/S:33 a person gaining an advantage from the breach of trust must indemnify the trustee to the extent of the benefit obtained by him from the breach.

6-Right to seek courts direction:

U/S:34, a trustee may apply to civil court asking for its opinion, advice or direction regarding questions of:

- a) Management
- b) Administration

Of trust property.

However, in question of detail, difficulty and importance no such petition for courts advice can be filed. It is the courts discretion to decide whether the questions are worthy of summary disposal.

6-Right to settlement of accounts:

U/S:35, on the completion of his duties of trustee, he is entitled to have the trust account examined and settled.

7-Right to employ agent:

Through case law it has been settled that the trustee has a right to employ an agent according to the ordinary course of business.

POWERS OF TRUSTEE:

Vesting of powers in trustee is necessary for proper and efficient discharge of his duties. Exercise of powers depends upon the nature of a trust. Powers must be exercised for the benefit of a trust and its exercise must be;

- a) Bonafide
- b) Reasonable
- c) Impartial

Sec:36-45 deals with the powers of trustee which are as follows;

1-General authority of trustee:

Sec:36, confers general authority on a trustee, a trustee may do all the proper and reasonable acts suitable for the;

- a) Realization
- b) Protection
- c) Benefit of trust property
- d) Benefit, protection, realization and support for the beneficiaries who are not competent to contract

Restriction upon this authority

- a- Restrictions contained in the instruments
- b- subject to provisions of sec:17(trustee should be impartial where there are more than one beneficiaries)

2-Power to make improvements in trust property:

A trustee has the power to maintain and improve the trust property. However, he is not allowed to make unnecessary and overly expensive changes in the property.

3-Power to sell trust property:

As already known a trustee has no power to sell trust property. **Sec:37**, however gives such a power to the trustee provided he has been authorized to do so under the trust instrument.

Thus if trustee is empowered to sell;

He may sell the property either together or in lots by public auction or private contract either at one time or at several times unless the instrument otherwise directs.

4-Power to convey:

U/S:39, trustee has a power to convey or otherwise dispose of the property sold in such manner as may be necessary.

5-Power to vary investments:

U/S:40, a trustee can call in the trust property already invested and reinvest the same in any of the securities mentioned u/s:20. A trustee can use his discretion where beneficiary is minor. But where beneficiary is competent to contract, his consent in writing is a must for varying the investment.

6-Power with regards to minor beneficiaries:

U/S:41, A trustee has the power to pay either the whole of the income of trust property or a part of it to the guardian of minor.

This income of minor shall be used for the minor's:

- a) Education
- b) Maintenance
- c) Advancement in life
- d) Religious worship
- e) Marriage

7-Power to give receipt:

U/S:42, any trustee can pass a valid receipt for the money, securities and other movable property;

- a- Payable
- b- Transferable
- c- Deliverable

To him in respect of the trust property. And the receipt so obtained shall discharge the payer from all the liabilities with regard to it, thereafter.

8-Power to compound:

Sec:43, states that two or more trustees may accept any composition or any security for any debt and property. Allow time for payment of debt, compromise, compound, abandon, submit to arbitration.

May settle any debt, account and claim relating to trust.

However, it must be remember that all these powers are subject to the trust deed.

9-Death or disclaimer by a trustee:

Sec:44, when an authority is given to several trutees and one of them disclaim or dies the authority may be exercised by the continuing trutees unless the trust deed requires that authority is to be exercised by a number in excess of that of remaining trustee.

10-Suspension of trustee's powers:

Sec:45, Where a decree has been made in execution of a trust, the trustee must not exercise any of his power except in conformity with such decree.

CONCLUSION: