

Research on the concept of Fulfilment of Condition Precedent

Black Law's Dictionary (9th Edition) defines the term 'Condition Precedent' as:

"An act or an event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises.

If the condition does not occur and is not excused, the promised performance need not be rendered. The most common condition contemplated by this phrase is the immediate or unconditional duty of performance by a promisor."

As per **Restatements (Second) of the Law**, in contract law, a condition precedent is an event which must occur, unless its non-occurrence is excused, before performance under a contract becomes due, i.e., before any contractual duty exists.

Legal Provision

Section 51 of the Indian Contract Act, 1872

"Promisor not bound to perform, unless reciprocal promisee ready and willing to perform - When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise."

Concept

Parties often enter into contracts which are subject to the satisfaction of certain outstanding conditions, known as Conditions precedent. There is no deal, until the condition is fulfilled, satisfied or waived. In a contract, a condition precedent is an event which must take place before a party to a contract must perform or do their part.

Conditions subsequent refers to conditions which occur after the formation of a contract. This phrase refers to an occurrence which terminates the duty of a party to perform or do his/her part. Although there is a binding contract, one party has an escape clause provided that the contract terminates should certain conditions arise, i.e. - if a company goes bankrupt.¹

Where an acceptance is made a question may arise whether such acceptance is conditional and therefore not binding on the offeror. This would depend on whether such a condition is:

- a condition precedent to the formation of the contract or
- a condition precedent to performance of the contract

If it is a condition precedent to the formation of the contract, then there is no contract. But if it is a condition precedent to performance, then the acceptance in such cases is considered to be unconditional and results in a contract.²

The word 'condition' can also be used to refer to a term that, unless and until it is satisfied, prevents a contract coming into existence. However, care must be taken to decide what type of meaning is to be attached to the words 'condition precedent'.

The Court in **Perri v. Coolangatta Investments Pty Ltd**³ made it clear that there are two possible options concerning the condition precedent:

- Did the parties intend the term to be a condition precedent to the formation or existence of a contract? In this case, unless and until the condition is fulfilled, there are no enforceable rights between the parties.

¹ Chapter on Condition precedent and subsequent available on <https://www.translegal.com/lesson/7017>

² The Indian Contract Act and Specific Relief Act, Pollock & Mulla (14th Edition)

³(1982) 149 CLR 537

- Was the term a condition precedent to the performance of a party's obligations under a contract? Here there is a contract, though the obligation of a party, or perhaps both parties, to perform depends on the fulfilment of the condition precedent. Non-fulfilment entitles them to terminate, for example, the purchase of a car subject to the seller obtaining a roadworthy certificate. In this case there is a binding contract, but performance depends on the fulfilment of the condition precedent.

Thus, a condition will not be construed as a condition precedent to the formation of a contract unless the contract read as a whole plainly compels this conclusion.

Precedents

- In **Rajasthan Co-op Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service Pvt. Ltd.**⁴, where letters of intent were issued on the term that the contractor would sign the contract and would furnish irrevocable bank guarantee of a scheduled bank and the contractor failed to do the same, the court held that the two conditions were conditions precedent to the formation of the contract and the revocation of the letters of intent was valid.
- In **Raj Rani Bhasin And Ors. v. S. Kartar Singh Mehta**⁵ where a contract for sale of land was made and the buyer failed to tender a stamped sale deed and, to pay the purchase price, the court observed that since the buyer purported to wait for the supply of certain documents from the seller as mentioned in the contract and did not supply the sale deed and the purchase price, it was a condition precedent to his performance of the contract. Thus, he wasn't entitled to specific performance from the seller since he himself did not supply the requisite documents.
- In **M/s Arosan Enterprises Ltd. v. Union of India & Anr.**⁶, the court observed that the contract itself provides reciprocal obligations and in the event of non-fulfilment of some such obligations and which have a direct bearing onto them question of continuing with the notion of the time being the essence of the contract would not arise. The obligations are mutual and the terms of the agreement are inter-dependent on each other. The Agreement must be read as a whole with corresponding obligations of the parties so as to ascertain the true intent of the parties. So, when the condition precedent being naming the Port of Discharge and appointment of Surveyor was not fulfilled by the seller, the question of any payment by the buyer would not arise.
- In **Satya Narain Bansal v. DDA**⁷ the court observed that there are large number of authorities laying down that the condition precedent to the enforcement of a contract by way of a suit for specific performance is that the plaintiff must aver and prove that he has performed or has always been ready and willing to perform the essential term of the contract. It is however, not necessary to refer to them. The plaintiff in the instant case was required to pay premium in accordance with the policy decision of the Government of India regarding acquisition, development and disposal of land in Delhi. The plaintiff did not prove that he was ready and willing to perform his part of the obligations at all points of time and hence, his suit was dismissed.
- In **Shanti Builders v. CIBA Industrial Workers' Coop. Housing Society Ltd.**⁸, where the contract consisted of reciprocal promises to be performed by the parties, the contractor had to carry out certain construction work within two months and the society had to perform various obligations like subdividing their plot, to transfer a portion of their plot to contractor in lieu of the amount already due etc. All these obligations were to be performed upon the execution of the agreement itself. The court held that since the Society did not perform its reciprocal promises, it could not call upon the contractor to perform his obligations.

⁴ (1996) 10 SCC 405

⁵ AIR 1975 Delhi 137

⁶ (1999) 9 SCC 449

⁷ MANU/DE/3334/2013

⁸ (2012) 6 Bom CR 209