

25<sup>th</sup> July, 2022

# NOTE ON ASSIGNMENT AND SALE

## A. Assignment

1. Assignment means transfer of contractual rights or liability, claim, property to another. [*CGT v. N.S. Getti Chettiar, (1971) 2 SCC 741, Pr. 11,15,17,18,19*].

2. Obligations under a contract cannot be assigned except with the consent. [*Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd., (1963) 3 SCR 183, 7,8,10,11,12,13*].

3. Section 37 of the Indian Contract Act, 1872 provides that a party can dispense the performance of the contract by the assignment of it to a third party.

Section 37 of the Indian Contract Act, 1872 -  
“Obligation of parties to contract.

*The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law. —The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.” Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract”.*

4. The above concept can also be found in the Transfer of Property Act, 1882. Section 130 of the Transfer of Property Act, 1882 implies that every actionable claim may be transferred and it points out how it may be transferred.

Section 130 - of the Transfer of Property Act, 1882-  
“Transfer of actionable claim.—

*(1) The transfer of an actionable claim [whether with or without consideration] shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee,*

*transferee, whether such notice of the transfer as is hereinafter provided be given or not: Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.*

*(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor’s consent to such suit or proceeding and without making him a party thereto.*

*(Exception) —Nothing in this section applies to the transfer of a marine or fire policy of insurance 3[or affects the provisions of section 38 of the Insurance Act, 1938 (4 of 1938)]”.*

5. A legal assignment would be that which conforms to the requirements specified under Section 130 of the Transfer of Property Act, 1882 as to formalities, intention to assign, communication to the assignee and notice to the debtor. [*Bengal Nagpur Railway Employees’ Urban Bank, Ltd. v. Erie Walter Seager, 1941 SCC OnLine Pat 387, Pr. 4; Balaram Panda v. Gopinath Misra, 1953 SCC OnLine Ori 56, Pr. 21*].

6. Once an Assignment Agreement is entered into, all the rights of the assigner, which are subject matter of the assignment, stand transferred to the assignee. The Assignor is left with no right or claim with respect to the interest assigned by him to another person. [*Rajeev Gupta v J.K. Kashyap, 2011 SCC OnLine Del 1063, Pr. 19.*]

7. To effectuate an assignment, there must be express words of indicating transfer in the instru-



**Amit Meharia**

Managing Partner, MCO Legals

Solicitor

(Supreme Court of England & Wales)

**Expertise:**

Corporate Due Diligence &  
Corporate/Commercial Arbitration

✉ amit.m@mcolegals.co.in



**Paramita Banerjee**

Associate, MCO Legals

B.A., LLB (Hons.)

School of Law, Christ University

Bangalore

**Expertise:**

Litigation and Arbitration

✉ paramita.b@mcolegals.co.in

ment. *[Doraisami v. Doraiswami, 1924 SCC OnLine Mad 524, Pr. 4 & 6]*

## **B. Sale**

1. Section 54 of Transfer of Property Act 1882 defines 'Sale' as "transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

### 2. Essentials –

- i. The parties to the sale should be competent to transfer - The transferor or the seller must be competent to contract and entitled to the transferable property. Parties must not be a minor, should be of sound mind and shall not be disqualified by law to transfer the property. A transferee should be competent to receive the transfer and he shall not be disqualified by law to receive the property transferred. *[Biswanath Sahu v. Tribeni Mohan, AIR 2003 Ori 189, Pr. 2,3,8,9,10]*
- ii. Three requirements of law in regards to sale - transfer of property to take place with help of validly executed deed, by the transferor in writing, properly attested and registered - unless all three conditions are complied with, there is no sale. *[Munnalal v. Atmaram, 2007 SCC OnLine MP 301, 11,12,13,15 &17]*
- iii. A contract of sale must be based on a mutual agreement between buyer and seller. *[Mirahul Enterprises v. Vijaya Sirivastava, 2002 SCC OnLine Del 542, Pr. 25,29,30,31,36]*
- iv. Payment of consideration is the essence of the transfer by Sale. Consideration must be paid, promised, part paid or part promised. *[Nalamathu Venkaiya v. B.S. Neelkanta, 2005 SCC OnLine AP 578, 3,4,19-25]*

### 3. **Difference between Assignment and Sale**

In *Rajiv Kumar & Another vs State Of U.P. & Others, 2017 (7) ADJ 670, Para 10, 14, 15 –*

"The word "Sale" has been defined under Section 54 of the Transfer of Property Act, 1882 which reads as under: "Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

"Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

...  
As per the dictionary meaning, the word "assign" means to allocate to someone or to appoint to a particular task or to transfer legal rights or liabilities. The word "assignee" means a person to whom a right or liability is legally transferred. The meaning of "assignment" is an act of transfer of a legal right or liability or a document effecting a legal transfer of a right or liability.

...  
As per the Black's Law Dictionary Ninth Edition, the word "assign" means 'To convey; to transfer rights or property'. The word "assignee" means 'One to whom property rights or powers are transferred by another'. The word "assignment of lease" means 'The rights or property so transferred'

...  
...from a plain reading of Sections 54 and 105 of the Transfer of Property Act and the dictionary meaning of word "assignment", it is gathered that in the case of a lease, there is a partial transfer and the right of reversion remains with the lessor. Whereas in case of sale, there must be an absolute transfer of ownership and not some rights only as in the case of a lease. The assignment of lease, therefore, would be a transfer by the lessee only on the terms and conditions of the lease deed for the remainder period of the lease. As with the assignment, all rights of the lessee are transferred to the assignee, the relationship of lessee with the lessor is severed and the assignee would be entitled to enjoy the property on the terms and conditions of the lease for the remainder of the term of the lease. He would be answerable to the lessor directly. The lease rent or the price periodically which the lessee would have to pay to the lessor now would be payable by the assignee. In case of reversion, the immovable property, subject matter of deed of assignment, would go back to the lessor. In order to appreciate whether the document is a sale or a lease, it has to be seen whether the demised land was merely an enjoyment of the land or transfer of the ownership. As in case of a sale, there must be an absolute transfer of ownership and not some rights only as in the case of the lease."