APPRENTICESHIP

Preliminary Note

A deed is not necessary to bind a person as apprentice for training in any craft, trade, or profession, for a contract can ordinarily be made by parole. But where the period is long, or terms are complicated, it is usual to have a deed embodying the articles of apprenticeship. A deed is necessary if the Apprentices Act, 1961, is applicable. Such a deed has to be registered with the Apprenticeship Advisor, vide Sec. 4 (4) of the Act. The terms and conditions of such a deed should not be inconsistent with any provisions of the Act of 1961 or the Rules made thereunder, vide Sec. 4 (3) of the Act. The person in respect of whom an agreement under the Act can be entered into should not be less than 14 years of age, vide Sec. 3 (a) of the Act, and if he is a minor, the contract must be entered into by his guardian. All disputes between the employer and the apprentice are to be referred to the Apprenticeship Advisor whose decision is appealable to the Apprenticeship Council, vide Sec. 20. For cases not covered by the Act, any form may be used. The Act applies to a "designated trade" which means a trade or occupation or any subject field in engineering or technology specified in that behalf from time to time by Central Government in the official gazette.

An Apprentice Deed containing stipulation that the apprentice "shall be absorbed in the department if there are vacancies" creates reciprocal obligation on both parties. One must take a broad and common sense view of the terms of employment. It is not proper in such case to indulge in a hair spliting approach and find an escape for defeating the rights of employees.[1] However, the apprentice has to go through examination/interview as provided in the Recruitment Rules.[2]

Stamp duty is governed by Article 9 of the Stamp Act.

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1 *Narinder Kumar* v. *State of Punjab*, A 1985 SC 275 (Para 3 & 4)

2 *U.P. Rajya Vidyut Parishad Apprentice Welfare Association* v. *State of U.P.*, A 2000 SC 2621.

PRECEDENTS

1—Apprenticeship Deed

THIS APPRENTICESHIP DEED made the——day of —— BETWEEN AB, etc., (hereinafter called "the apprentice") or, *when the apprentice is a minor*, acting through his guardian CD, (hereinafter called "the guardian") of the one part AND the Governor of———(hereinafter called "the Government") of the other part;

WHEREAS the apprentice having completed————years' training in Electrical and Mechanical Engineering at the————College applied to the Superintending Engineer, Circle I, ———(hereinafter called "the Superintending Engineer") for practical training at one of the power houses of the———Hydro-Electric Scheme;

AND WHEREAS the Superintending Engineer accepted the said application and agreed to give practical training to the apprentice at the power house of the Hydro-Electric Scheme at ——on the conditions hereinafter appearing;

NOW THIS DEED WITNESSES as follows :

1. Period

The apprentice of his own free will binds himself (*or*, the guardian with the consent of the apprentice binds him) to the Government to receive practical training in Electrical and Mechanical Engineering for a term of at least————months from the date of his admission to the power house at————.

2. Apprentice's Covenants

The apprentice (guardian) covenants with the Government as follows:

(*a*) That he (the apprentice) will during the said term receive no remuneration and shall at the conclusion of his apprenticeship have no claim to any appointment under the Government;

(*b*) That he (the apprentice) will work an eight hour shift in the power house and will sign an attendance register when he comes to work at the power house and when he leaves;

(*c*) That he (the apprentice) will obey and carry out all orders given to him by the officer-in-charge of the power house at———;

(*d*) That he (the apprentice) will under no circumstances start up or shut down any machine or operate any switch unless ordered to do so by the officer-in-charge of the power house;

(*e*) That he (the apprentice) will keep diaries of work done and experience gained by him and will submit them to such officer and at such intervals as the Superintending Engineer may direct;

(*f*) That in respect of what is not expressly provided herein, the right and liabilities of the apprentice and the Governor, shall be governed by the provisions of the Apprentices Act, 1961 and the rules framed thereunder.

3. Covenants by Government

The Government covenants with the apprentice (guardian) that the apprentice duly and faithfully observing all the conditions of his apprenticeship hereinbefore mentioned, the Government will allow the apprentice to work and obtain practical training in Electrical and Mechanical Engineering at the power house at———during the period of the apprenticeship.

IN WITNESS WHEREOF, etc.

2—Ditto, Another form

THIS APPRENTICESHIP DEED made on between A, (the father of B), etc., (called the "Father") and B, etc., (called the "Apprentice") and E, etc., (called the "Employer").

WHEREAS the Father and the Apprentice requested the Employer to take the Apprentice in his trade of manufacture of electrical goods, and the Employer has agreed to it.

NOW THIS DEED WITNESSES as under :

1. Covenants Regarding Training

i) The age of the Apprentice is 15 years. He is willing to learn the trade of manufacture of electrical goods and to work with the Employer for a period of five years. The Father has agreed to the Apprentice so working with the Employer, and the Employer has agreed to train the Apprentice in his trade to the best of his ability during the agreed period of training.

ii) The Father has agreed with the Employer that the Apprentice shall faithfully discharge the duties assigned to him and to the best of his ability shall endeavour to learn the trade.

iii) The Employer shall provide for the boarding and lodging of the Apprentice during the term of the agreement, and shall arrange for his medical expenses in case of illness.

2. Covenants by Employer

In consideration of Rs.————paid by the Father to the Employer (who acknowledges its receipt), the Employer covenants that:

(*i*) He will duly instruct the Apprentice in the trade of the manufacture of electrical goods so as to enable the apprentice to work as an independent craftsman in the trade.

(*ii*) He will not inflict any corporal or other punishment on the Apprentice and shall not do anything, which may adversely affect the health of the Apprentice.

(*iii*) He will pay to the Apprentice Rs.————per mensem as pocket money during the period the Apprentice is working with him.

SIGNED BY :

ARBITRATION

Preliminary Note

The jurisdiction of an arbitral tribunal is basically consensual in character. The agreement to submit differences and disputes to arbitration may be made before or after they have arisen or may even be contained in the rules of trade association of which the parties are members. The general principle is that arbitration enables cases to be dealt with speedily, cheaply and in some instances without lawyers, and with the parties presenting their cases free from legal technicalities with decisions made by experts who know practices, usages and customs of relevant trade or business. Interminable, time consuming, complex and expensive court procedure impelled jurists, it has been observed, to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap. Proceedings under the Arbitration Act, 1940 however became highly technical accompanied by unending litigation, at every stage. In order to overcome the difficulties in the working of the Arbitration Act, 1940, and to bring it on par with International norms, the Arbitration and Conciliation Act, 1996 has been enacted and the Arbitration Act, 1940 repealed. The provisions of 1996 Act have to be interpreted uninfluenced by the principles underlying the 1940 Act.[1]

How Reference is made

Reference is made by an arbitration agreement, which means a written agreement to submit present or future or existing or apprehended disputes or differences to arbitration, whether an arbitrator is named or not [Sec.7 of 1996 Act]. Its terms must be definite and it must express a clear intention to submit to arbitration.[2]

In the absence of any usage or custom or trade to the contrary, the implied authority of a partner under section 19(2) (a) Partnership Act extends to submit a dispute relating to business of the firm to arbitration.[3]

The new Act does not make any provision corresponding to old Sec. 20 for arbitration with the intervention of a court where no suit is pending.

Arbitration Agreement

An agreement of reference may be entered into separately when a dispute arises or a clause for reference in case of future dispute may be embodied in an agreement relating to any transaction between the parties. It will operate as a

1 *Sunderam Finance Ltd.* v. *NEPC India Ltd.*, A 1999 SC 565.

2 *Wellington Association Ltd.* v. *Kirit Mehta*, A 2000 SC 1379.

3 *Sawarmal Dal & Flour Mills* v. *[illegible]*

reference when such a dispute actually arises.[4] A prayer may also be made to a court of competent jurisdiction for filing the agreement and making a reference of the dispute to arbitration, as per terms of the agreement. Such a reference can only be made when a dispute has already arisen.[5]

An arbitration clause when contained in the main contract is a collateral term of the contract as distinguished from its substantive terms, but nevertheless it is an integral part of it. It, therefore, perishes with the contract, *i.e.* it will not have effect if the contract itself be *non est* or void *ab initio* or if it be substituted by a new contract. However, if it is only the performance of the contract, as distinguished from the contract itself, that is alleged to have come to an end, e.g. by repudiation, frustration, breach, etc., the arbitration clause continues to operate.[6] If it is necessary to have recourse to the terms of the contract for the purpose of deciding a matter in dispute, the matter would be within the scope of the arbitration clause and the arbitrators would have jurisdiction to decide it.[7]

The test for determining whether a dispute is one "arising out of the contract" or "in connection with the contract" is whether recourse to the contract by which both the parties are bound is necessary for the purpose of determining whether the claim of the party is justified or otherwise. If it is necessary to take recourse to the terms of the contract for the purpose of deciding the matter in dispute, it must be held that the matter is within the scope of the arbitration clause and the arbitrators have jurisdiction to decide that dispute.[8]

Reference in A Pending Suit

Unlike Sec. 21 to 24 of the Arbitration Act 1940, the Arbitration and Conciliation Act 1996 makes no specific provision for a reference in a pending suit. It seems thus that if the parties to a suit have decided to refer the dispute to arbitration they will file an application under Order 23, Rule 3, C.P.C. to the court stating that they have agreed to refer the dispute to arbitration. The application will itself set out the terms of an ordinary arbitration agreement. The Court can then dispose of the suit in terms of such compromise which shall form part of the decree. The Court itself will not make a reference to the

4 *Banwarilal* v. *P.C. Aggarwal*, (1985) 3 SCC 255.

5 *Union of India* v. *Birla Cotton Spinning and Weaving Mills Ltd.*, A 1967 SC 688 (690).

6 *Union of India* v. *Kishorilal*, A 1959 SC 1362 (para 10).

7 *Union of India* v. *Salween Timber & Construction Co.*, A 1969 SC 488, (1969) 2 SCR 224.

8 *Union of India* v. *Salween Timber & Construction Co.*, supra; *Ram Baboo Lal* v. *Harish Chandra Burman*, A 1974 All 433; *Renusagar Power Co. Ltd.* v. *General Electric Co.*, (1984) 4 SCC 679.

arbitrator. The parties will do it in accordance with the compromise application." No separate precedent is therefore being given for it.

Place for arbitration

According to the Arbitration and Conciliation Act 1996 the parties are free to agree on any place in India as the place of arbitration in case of domestic arbitrations [Sec. 20 (1)]. Option for foreign award may be exercised by the parties to the arbitration agreement only if at least one of them is a foreign national or a company or other body incorporated in a foreign country or a foreign government [See Sec. 2 (f): definition of "international commercial arbitration"].

Number of Arbitrators

Under the Arbitration Act 1940 if a reference was made to two arbitrators they first appoint an Umpire. The Umpire was to decide the dispute all alone in case of difference arising between the two arbitrators. Until then he had no role. Under the new Act of 1996 either an odd number of arbitrators is appointed by the parties themselves, or they nominate only one each, and the two have to agree on a third arbitrator, all the three acting together throughout. Thus an even number of arbitrators is ruled out.

Valuation

The amount of value should be stated in the award [Sec. 31 (7)].

Stamp Duty

Stamp duty on an agreement of reference is governed by Article 5 and on an award is governed by Article 12 of the Schedule to the Stamp Act.

Registration

An agreement of reference does not require registration. An award would require registration only if it embodies a transaction covered by section 17 (1) (b) or (c) of the Registration Act *i.e.*, if it purports or operates to create or declare, assign, limit or extinguish, whether in present or future, any right, title or interest, whether vested or contingent, of the value of Rs.100 and upwards, to or in immovable property.[10]

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9 In *Rajinder Krishan Khanna* v. *Union of India*, A 1999 SC 463, the Hon'ble Supreme Court instead of disposing of the case immediately on an arbitration agreement being concluded kept it pending till the arrival of the award. This was however not on a suit but on a writ petition, hence it is submitted, not to be treated as a precedent for the procedure to be followed in a suit. Also see *Kukanya Holdings (Pvt.) Ltd.* v. *Jayesh H. Pandya*, A 2003 SC 2252.

10 *Satish Kumar* v. *Surinder Kumar*, (1969) 2 SCR 244 : A 1970 SC 833.

PRECEDENTS

1—General Clauses of Arbitration in an Agreement[1]

(*a*) Every dispute, difference, or question which may at any time arise between the parties hereto or any persons claiming under them, touching or arising out or in respect of this agreement (deed) or the subject-matter thereof[2] shall be referred to the arbitration of XY, etc., or, if he shall be unable or unwilling to act, to another arbitrator, to be agreed upon between the parties or failing agreement, to be nominated by———— [*or*, failing agreement to three arbitrators, one to be appointed by each party to the difference and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator and the decision of the arbitrator (*or*, arbitrators) shall be final and binding on the parties].

(*b*) In the event of any dispute, difference or question arising out of or in respect of this agreement or the commission of any breach of any terms thereof or of compensation payable therefor or in any manner whatsoever in connection with it, the same shall be referred to the Chamber of Commerce (*or*, the Association of ————) for arbitration as provided in Rules framed by the said Chamber (*or* Association) for the purpose. The decision or award so given shall be binding on the parties hereto.

(*c*) All disputes arising between the partners as to the interpretation, operation, or effect of any clause in this deed or any other difference arising between the partners, which cannot be mutually resolved, shall be referred to the arbitration of ———— , failing him to any other arbitrator chosen by the partners in writing. The decision of such an arbitrator shall be binding on the partners.

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1 In these forms future disputes are also agreed to be referred, hence it is not necessary for parties to consent again after disputes have arisen : *Banwarilal* v. *D. C. Aggarwal*, (1985) 3 SCC 255; however, for reference of a specific question of law fresh consent is required: *Thawardas* v. *Union of India*, A 1955 SC 468; see also, *Shah Construction Co.* v. *Municipal Corpn.*, A 1985 Del. 358.

2 The expressions 'arising out of', 'in respect of', 'in connection with', 'in relation to', 'in consequence of', 'concerning' or 'relating to' the contract are of widest amplitude and content and include even questions as to the existence, validity and effect or scope of the arbitration agreement: *Renusagar Power Co.* v. *General Electric Co.*, A 1985 SC 1156; *Bindra Builders* v. *D.D.A.*, A 1985 Del 370.

(*d*) In the event of any dispute or difference arising out of or in any way relating to or concerning these presents or the construction or effect of these presents (the settlement whereof has not been hereinbefore expressly provided for), the same shall be referred to the sole arbitration of a person appointed by AB[3]. CD will not be entitled to raise objection on any such appointment on the ground that the sole arbitrator is a servant of AB or that he had dealt with the matters to which these presents relate or that in the course of his duties as such servant he had expressed views on all or any of the matters in dispute or difference. In the event of such arbitrator being transferred or vacating his office or refusing or being unable to act for any reason whatsoever, it will be open to AB to appoint another person in his place. The Arbitrator so appointed will be entitled to proceed with the reference from the stage at which it was pending. From time to time, the Arbitrator may, with the consent of both the parties to these presents, extend the time for making the award. The award of the Arbitrator shall be final and binding on the parties. Subject as aforesaid the Arbitration and Conciliation Act, 1996 and the rules made thereunder shall apply to the arbitration proceedings under this clause.

(*e*) (*i*) [*May be inserted in clause (d) above*]. It is also a term of this contract that no person other than a person appointed by AB as aforesaid should act as arbitrator and if for any reason, that is not possible, the matter is not to be referred to arbitration at all.[4]

(*ii*) It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each dispute.

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3 Such a stipulation is usually made in favour of Government or a public corporation. Its validity has been upheld in *S. Rajan* v. *State of Kerala*, A 1992 SC 1918 and *I.D.P.L.* v. *Indo Swiss Manufacturing Co.*, A 1996 SC 543. Officers of Government or such corporation even when deciding disputes between their employer and a private party are expected to act fairly and impartially. If however an arbitrator so appointed fails to act fairly he will be committing a breach of Sec. 18, and the award may be set aside under Sec. 34(2). Any challenge earlier is also possible under Sec. 12.

4 Even with a clause (d) or (e) the court can in case the bias of the arbitrator is established, set aside his appointment and appoint an arbitrator itself, as held in some cases under the old Act. See discussion in *U.P. Co-operative Federation* v. *Sunder Brothers*, A 1967 SC 249; *Fertiliser Corpn. of India* v. *Domestic Engineering*, A 1970 All 311. Under the 1996 Act, the power vests in the Chief Justice (Sec. 11).

(*iii*) The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to CD shall be withheld on account of such proceeding.

(*iv*)[5] The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of the first hearing.

(*v*) The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

(*vi*)[6] The venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

(*f*)[7] Every dispute, difference or question touching or arising out of this deed shall be referred to the sole arbitration of a person nominated by the Legal Remembrancer-cum-Judicial Secretary to Government of—— who shall be a serving officer not lower in rank to that of Joint Legal Remembrancer-cum-Joint Secretary in the Judicial Department.

The arbitrator may from time to time with the consent of the parties enlarge the time for making and publishing the award.

(g)[8] If any difference arises as to the amount of any loss or damage such difference shall independently of all other questions be referred to the decision of an arbitrator, to be appointed in writing by the parties, or if they cannot agree upon a single arbitrator to the decision of three persons as arbitrators, one to be appointed by each party and they shall appoint the third arbitrator who shall act as the presiding arbitrator.

(h) Except where it has been provided otherwise, any dispute or difference arising out of or in connection with the agreement between the parties including any dispute or difference relating to the interpretation of

5 See Sec. 21 (Act VIII of 96): "Unless otherwise agreed by the parties the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

6 See Sec. 20. (Act VIII of 96).

7 This form of arbitration clause will be appropriate only in deeds executed between two or more Government companies or other undertakings controlled by the same Government.

8 Such a clause is inapplicable where the insurance company repudiates its liability altogether instead of merely disputing the amount of loss or damage allegedly caused by the fire (*Vulcan Insurance Co. Ltd.* v. *Maharaj Singh*, (1976) 1 SCC 943).

the agreement or any clause thereof shall be referred to the sole arbitration of a person appointed by the LESSOR, and the provisions of the Arbitration and Conciliation Act, 1996, and the rules framed thereunder and any amendment thereto, from time to time, shall apply. No objection shall be taken on the ground that the arbitrator so appointed is an employee of the LESSOR or is in any way associated with the LESSOR. The award of the arbitrator shall be final, conclusive and binding on all the parties. The arbitrator shall be competent to decide whether any matter of dispute or difference referred to him falls within purview of arbitration as provided for above.[9]

(i)[10] All claims, disputes, controversies, disagreements or differences between the parties arising out of or in relation to or in connection with this Agreement or a breach thereof shall be determined by arbitration in accordance with the then prevailing rules of Conciliation and Arbitration of the International Chamber of Commerce. The site of such arbitration shall be London, U.K.

(j)[11] "Except where otherwise specified in the contract and subject to powers delegated to him by Agricultural Produce Market Committee, under the Code Rules, then in force the decision of the Chairman for the time being shall be final, conclusive, and binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs, and instructions hereinbefore mentioned and as to the quality of workmanship; or materials used on the work or as to any other question, claim, right, matter, thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications estimates, instructions, orders or those conditions, failure to execute the same whether arising during the progress of work, or after the completion or abandonment thereof."

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9 The last sentence of this clause will not normally exclude the jurisdiction of the Court to finally decide on the ambit of the arbitrator's powers : Sec. 16 (6) read with Sec. 34.

10 The clause in the Maruti Udyog - case : See *Suzuki Motor Corporation* v. *Union of India*, (1997) 2 Arbi LR 477 (Delhi). Sec. 20 provides for parties to agree on the place where arbitration proceedings shall take place.

11 *Lachmanna B. Horomni* v. *State of Karnataka*, A 1998 Kant 405.

(k)[12] In case of any dispute or difference between the parties to the contract, either during the progress or after the completion of the works, or after determination, abandonment, or breach of the contract, as to the interpretation of the contract, or as to any matter or thing arising thereunder .....then either party shall forthwith give to the other notice of such dispute or difference and such dispute or difference shall be, and is hereby referred to the arbitration of.....and the award of such arbitrator shall be final and binding on the parties unless contested by either party in a court of law ..... Either party may, within a period which shall be fixed by the arbitrator, file before the arbitrator a statement of the case and also all the documents relating to, or having a bearing on the case..... The arbitrator shall have power to view the subject matter of dispute with, or without the parties or their agents. The arbitrator shall have also power to open up, review, and revise any certificate, opinion, decision, requisition or notice, save in regard to matters expressly excepted, and to determine all matters in dispute which shall be submitted to him and of which notice shall have been given as aforesaid.

Clauses not held to Arbitration Clause[13]

a)[14] "Except where otherwise specified in the contract the decision of the Superintending Engineer for the time being shall be final, conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs, drawings and instructions herein mentioned. The decision of such Engineer as to the quality of workmanship, or materials used on the work, or as to any other question, claim, right,

12 See P.V. Subba Naidu v. Govt. of A.P., (1998) 9 SCC 407 in which a clause in these terms was interpreted. It was held that the arbitration clause was valid though it was very wide and did not confine merely to any question of interpretation of the contract. It also covered any matter or thing arising thereunder.

13 It may be noted here that sometimes an officer of the employer, - for instance the Government, is entrusted with powers of supervision in a works contract, and in that capacity he is given certain powers to decide certain questions. Such an empowering clause does not necessarily amount to an arbitration clause. *State of U.P. v. Tipper Chand*, (1980) 2 SCC 341: A 1980 SC 1522. It should, therefore, be ensured that the clause, if intended to be an arbitration clause, should expressly use either the word "arbitration" or the words "dispute" and "decision" see *Rukmini Bai v. Collector*, A 1981 SC 479.

14 *State of U.P. v. Tipper Chand*, (1980) 2 SCC 341 : A 1980 SC 1522; *State of Orissa v. Damodar Das*, (1996) 2 SCC 216 : A 1996 SC 942.

matter or things whatsoever in any way arising out of or relating to the contract, designs, drawings specifications, estimates, instructions, orders or these conditions, or otherwise concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment of the contract by the contractor, shall also be final, conclusive and binding on the contractor."

b)[15] "9. Implementation will be done in consultation with the financial institutions. For all disputes, clarifications etc., in respect of implementation of this agreement, the same shall be referred to the Chairman, IFCI or his nominees whose decisions will be final and binding on both the groups."

c) "23. Except where otherwise specified in the contract, the decision of the Executive Engineer shall be final, conclusive and binding on both the parties to the contract on all questions relating to the meaning, the specification, design, drawings and instructions hereinbefore mentioned, and as to the quality of workmanship or materials used on the work or as to any other questions whatsoever in any way arising out of or relating to the design, drawings, specifications, estimates, instructions, orders or otherwise concerning the works or the execution of failure to execute the same whether arising during the progress of the work, or after the completion thereof or abandonment of the contract by the contractor shall be final and conclusive and binding on the contractor. Decision of the MD of the UPSIC on all other matters shall be final.

d)[16] "24. Except as provided in clause 23 hereof, the decision of the Managing Director of the UPSIC shall be final, conclusive and binding on both the parties to the contract upon all questions relating to any claim, right, matter or thing in any way arising out of or relating to the contract or these conditions or concerning abandonment of the contract by the contractor and in respect of all other matters arising out of this contract and not specifically mentioned herein."

(*For arbitration clause in an Agency Agreement, Works Contract, Electricity Supply Agreement and Partition Deed see respective precedents*).

15 *K.K. Modi* v. *K.N. Modi*, (1998) 3 SCC 573; It was held, after discussion of authorities, that such a clause did not amount to arbitration agreement but to reference of issues to an expert for decision.

16 *Bharat Bhushan Bansal* v. *U.P. Small Industries Corpn.*, (1999) 2 SCC 166: A 1999 SC 899.

2—Agreement of Reference to Arbitration for Partition of Joint Family Property

THIS AGREEMENT is made on the ——day of——— BETWEEN AB, etc., acting for himself and as guardian of EF, etc., a minor, of the first part AND CD, etc., of the second part AND GH, etc., of the third part.

WHEREAS—

Recitals[1]

(1) The said AB, CD, and EF are members of a joint Hindu family and are joint owners of all the property, movable and immovable owned and possessed by them, whether acquired by their ancestors or by themselves in their joint names or by any of them in his separate name, and of all cash and jewellery possessed by them and of all debts outstanding in their favour, described in schedules————annexed hereto.

(2) The said AB has by an order of the District Judge of——— dated the———been appointed guardian of the person and property of the said EF minor who is the son of JK, a deceased brother of the said AB and CD.

(3) The shares of the parties in the property are AB ——— CD ——— EF ———.

(4) Differences have arisen between AB and CD with regard to their state of jointness and they are desirous of having the said family property partitioned.

(5) Under the Hindu Law, the said GH being the mother of the said AB, and CD, and grand mother of EF, is on partition entitled to a one-fourth share in the family property.

(6) The said GH has agreed to take for her life in lieu of the said one-fourth share, property yielding an annual profit of Rs.————and a residential house fit for her residence for her life.

(7) The proposed partition will also be for the advantage of the minor EF.

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1. These italicised headings in this and in the other forms following are not to be reproduced while adapting the draft.

(8) The said AB, acting for himself and as guardian of the said EF minor and considering it to be for the advantage of the said minor and for the benefit of his property, and the said CD and the said GH, have agreed to refer the question of the manner of partition of the aforesaid family property to the arbitration of Shri———

NOW IT IS HEREBY AGREED as follows :

(1) Reference & Powers of Arbitrator

The parties hereto hereby refer the question of partition by metes and bounds of aforesaid property to the arbitration and decision of the said Shri— — — —.

(2) To Reserve House for Mother

The said arbitrator shall select out of the aforesaid joint property, property yielding an annual profit of Rs.———and a residential house fit for residence of the said GH and allot the same to the said GH to be held by her for her life, and after her death to be divided equally between the said AB, CD and EF or per stirpes between their heirs.

(3) To Divide Rest

The said arbitrator shall divide the rest of the aforesaid property consisting of immovable and movable property, cash, jewellery, and outstanding debts into three equal shares according to the best of his judgment and allot one such shares each to the said AB, CD, and EF.

(4) To Award Compensation

If necessary for equalizing the shares, the said arbitrator may award such money compensation from one party to another as he may consider necessary.

(5) To Convert Movables into Money

If for any reason the arbitrator finds it inconvenient or inexpedient to divide any movable property, he may convert the same into money and divide such money equally between the said AB, CD, and EF.

(6) To Take Evidence

For the purpose of determining the extent and value of the joint family

property and of giving his award the arbitrator may take such evidence and make such investigation and adopt such procedure as he may think proper.

(*See Note under clause 2 of the next form No.3*).

(7) Award Final

The award of the said arbitrator shall be binding on the parties.

IN WITNESS, etc.

3—Agreement to Refer Existing Disputes to Arbitration

THIS AGREEMENT is made on the ——— day of ——— 1996 BETWEEN AB, etc., and CD, etc.

WHEREAS —

Recitals

(1) CD has made the following claims against AB :

1. ———

2. ———

3. ———

(2) AB does not admit the said claims of CD;

(3) Disputes have arisen between the parties respecting these claims; and

(4) The parties agree to refer the said disputes to arbitration.

NOW IT IS AGREED between the parties as follows :

1. Reference

All matters in dispute between the parties touching the claims of CD are referred to the award and final determination of XY as arbitrator.

2. Powers of Arbitrator

The arbitrator may take such evidence and make such inquiries[18] as he deems proper. He may proceed *ex parte* in case a party fails, after reasonable notice, to attend before him.

18 The expression "such inquiries as he may deem proper" does not include the power of making secret inquiries behind the back of any party. If it is intended to give such power of secret inquiries, it should be stated clearly in the agreement

3. Award Final

The award of the arbitrator shall be binding on the parties[19] and this submission shall not be revoked by the death of a party before the making of the award.

IN WITNESS, etc.

4—Agreement of Reference to Three Arbitrators (giving elaborate directions)

THIS AGREEMENT, etc.

WHEREAS

1. ———————

2. ———————etc.

Describe facts leading to the dispute and showing briefly the nature of the dispute.

3. The parties hereto have agreed to refer the aforesaid matters and dispute to arbitration.

NOW IT IS HEREBY AGREED between the parties hereto as follows:

1. Matters of Reference

The following questions and matters are hereby referred to the award and final determination of X, Y and Z, as arbitrators.

(*a*) ———————

(*b*) ———————

(*c*) ———————, etc.

2. Award Final[20]

The decision and award of the arbitrators shall be final and conclusive and binding on the parties hereto.

3. Fee

The arbitrators shall be paid a fee of Rs.———and such fees as

19 This is subject to Sec. 34.

20 Such a clause will not however preclude recourse under Sec. 34 against the award. Sec. 34 is not subject to any agreement to the contrary.

well as the costs of this reference and other expenses incidental to the arbitration shall be borne and paid by such of the parties or by both parties in such proportion as the arbitrators shall by their award direct.

4. Commencement of Arbitration

The arbitrators shall enter upon the reference on or about the ——.

5. Presiding Arbitrator

The said X shall be the Presiding arbitrator of the tribunal of arbitration.

6. Duties of Presiding Arbitrator

The Presiding Arbitrator shall preside at every meeting of the arbitrators and will be in charge of all the papers and proceedings and will fix dates and times for the sittings of the arbitrators and will issue all notices and summons as required to be issued by the arbitrators under his own signatures.

7. Absence of an Arbitrator[1]

The arbitrators shall hold proceedings and deliberate jointly, but at any sitting of the arbitrators at which only oral evidence is to be recorded or local inspection is to be made, if any of the arbitrators is unable to be present for any unavoidable reason, then the Presiding Arbitrator may with another arbitrator proceed with the business and report the proceedings at the next joint meeting of the arbitrators.

8. Difference of Opinion

In case of difference of opinion on any point, the opinion of the majority of the arbitrators shall prevail and in case of difference of opinion about the award, the award of the majority shall be deemed the award of the arbitrators and shall be binding.

9. Proceedings before Arbitrators

The parties shall not be entitled to be present at each and every sitting of the arbitrators, and for such sittings, at which their presence may be necessary, due notice shall be given to them by the Presiding arbitrator,

1 The Act does not make any provision regarding quorum. Hence this will be covered by Sec. 19 (2).

but the parties will be entitled to submit written arguments presenting their respective cases to the arbitrators on all the points in dispute and the arbitrators may, if they think it necessary, hear the parties personally or by counsel on any of the points in dispute in arbitration but will not be bound to do so.

10. Documentary Evidence

The arbitrators may, from time to time, call upon any party to submit such documents as they may require for perusal and consideration in connection with the arbitration. The parties will also be entitled to adduce such documentary evidence as they may think fit by such date as the arbitrators may appoint or whenever permitted by the arbitrators to do so thereafter.

11. Award of Money Compensation

The arbitrators will be entitled to award money compensation if absolutely necessary in order to equalize the value of the lots to be allotted to the parties.

12. Land

If the arbitrators are of opinion that it will be more to the advantage of the parties and to the better enjoyment of the property that any land should not be partitioned they will be at liberty to allot the same to one of the parties and to equalize the lot of the other party either by allotment of other house property or by money compensation.

13. Oral Evidence

No oral evidence shall be adduced or taken on the first question of reference (viz.——————), but the said question shall be determined by the arbitrators on their own interpretation of———after seeing and considering such documents as the parties may produce or the arbitrators may like to refer to. On other questions the parties will have a right to produce oral evidence.

14. The submission hereby made shall not be revoked either by the death or incapacity or any act of either party hereto but the said arbitrators shall proceed as if no such act or event had occurred.

IN WITNESS, etc.

5—Appointment of Presiding Arbitrator by Arbitrators (by Endorsement on the Agreement of Reference)

We, the within named arbitrators, in pursuance of the powers given to us by the within contained agreement appoint AB, etc., as Presiding arbitrator.

6—Award by Sole Arbitrator or Arbitral Tribunal of three or more Arbitrators[2]

Before JK (LM and PQ) ——————— ARBITRATOR(s)

IN THE MATTER OF ARBITRATION

BETWEEN

AB, etc. ——————————————— *Claimant*

AND

CD, etc. ——————————————— *Respondent*

By an arbitration agreement dated ——————— certain disputes arising between the parties were referred to me (*or*, to an arbitral tribunal, the parties nominating two of us, namely LM and PQ who jointly appointed JK as the presiding arbitrator).[3]

---

2 Under the Arbitration Act 1940, non-speaking award was permissible unless otherwise required by the arbitration agreement. On the other hand, the Arbitration and Conciliation Act 1996 Sec. 31 (3) requires reasons to be given unless (a) the parties have agreed that reasons are not to be given, or (b) the award is on agreed terms, *i.e.*, based on a compromise.

3 Sec. 10 of 1996 Act requires that the number of arbitrators shall not be an even number, and unless otherwise stated the arbitral tribunal shall consist of a sole member. Sec. 11 (3) provides for the appointment of the third arbitrator who is to act as the presiding arbitrator. This does away with the system of Umpire who, under the old Act, conducted the arbitration only after the original two arbitrators had differed. It is not necessary that the third arbitrator must always be appointed by the two nominees of the parties. It is open to the parties to agree on all the three/five arbitrators in advance among themselves, as in precedent No. 1, *ante*. Sec. 10 (1) and 11 (2).

AB, etc. submitted his claim to us on —— —— and CD etc., submitted his defence in a Written Statement to us on —— ——.[4]

(The respondent has also made a counter claim to the effect that ——

To this, the defence of AB, etc., claimant is that ——).[5]

The parties filed their respective documents and adduced oral evidence. After conclusion of evidence they (*or*, their counsel) advanced arguments before me (us). At the close of arguments on —— I (we) had (have) reserved my (our) award.

Now after [discussion among ourselves (*these words to be omitted in case of a sole arbitrator*)] perusal of the record and consideration of arguments I (We) am (are) making this award unanimously (*or*, two of us LM and JK are making this agreed award while the remaining member of the arbitral tribunal PQ finding himself unable to agree with us on some points has not signed the award and is appending his dissenting opinion hereto)[6]. (*The words "unanimously" or the alternative phraseology to be omitted in case of sole arbitrator*).

The claimant's case is as follows ——.

The respondent's case is that ——.

The following points (*or*, issues) arise for determination, namely :

1.

2.

3. etc.

Findings

Point (or issue) No. 1 :

(Discussion of case, evidence and law, followed by conclusion).[7]

4 If any 'replication' by claimant was permitted the same should also be mentioned. Further, if there is a counterclaim the same and the defence thereto should also be referred to here.

5 Omit if there is no counter claim.

6 Sec. 31 (2) requires signatures of the majority with reasons for the omitted signature. There is nothing in the Act about a dissenting opinion, but it seems there can be no objection to a dissenting member appending reasons for his dissent if he so desires.

7 Stating only the conclusion without reasons is not enough. Some inefficient judges and arbitrators think it to be sufficient to state the materials on the record and then to state their conclusion. This is illegal. Reasons, which are the foundation for the conclusion, are absolutely necessary.

Point (or issue) No. 2,3 etc.:

(*Similar*)

Conclusion

In the result, I (We) hold that ——— .

Award[8]

Accordingly I (we) award :

1.

2.

3.

Dated : the ——— day of ———

Place[9] ———

Let a signed copy of this award be delivered to each party.[10]

Signed [11] ———

Signed ———

Signed ———

---

8 Sec. 31 (7) provides for direction as to interest. Arbitrator can award interest for all four stages: (1) from the stage of accrual of cause of action till filing of the arbitration proceedings (2) during pendency of the proceedings before the arbitrator (3) future interest arising between date of award and date of decree and (4) interest arising from date of decree till realisation of award: *T.P. George* v. *State of Kerala*, A 2001 SC 816. Sec.31(8) provides for direction as to costs. These should be studied. Directions as to these should also be added to the operative portion of the award.

9 The place of signing the award shall be the same as was determined under Sec. 20 for arbitration proceedings to take place : Sec. 31 (4).

10 Sec. 31 (5).

11 Once the award is made and signed it becomes complete and final and the arbitral tribunal cannot then change it : *Satwant Singh* v. *State of Punjab*, (1999) 3 SCC 487 (paras 8 to 11), A 1999 SC 1040. This legal position is now subject to the power of the tribunal under Sec. 33 to make any correction to or give an interpretation of a specific point or part of the award.

ASSIGNMENT OF ACTIONABLE CLAIMS, AND OF DECREES, ETC.

Preliminary Note

Definition of "Actionable Claim"

"Actionable claim" has been defined in the Transfer of Property Act as meaning a claim to any debt other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent (Sec.3). It includes copyright, patents and trade marks, which are movables being "choses in action".

Distinguished from a mere Right to Sue

It is necessary to note this definition carefully as under the law all claims which come under this definition can be transferred while a *mere* right to sue which does not amount to an actionable claim cannot be transferred [Sec. 6 Transfer of Property Act]. For example, a right to recover damages for tort or breach of contract, or to recover mesne profits cannot be assigned, as such damages do not amount to a "debt". A "debt" is only an obligation to pay a liquidated or certain sum of money, e.g. loan, dower debt, rent.[1]

A contract for sale of goods is ordinarily assignable but not where personal obligations are involved.[2] The rights and obligations under the contract should not be of a personal nature. Rights under a lottery ticket have been held to be assignable as they involve beneficial interests in movable property.[3]

A fixed deposit in bank is an actionable claim,[4] so is the case with arrears of rent,[5] unpaid sale price,[6] amount left with vendee for payment to another, but not paid,[7] Provident Fund amount due,[8] arrears of annuity,[9] recovery of earnest

1 *Sahju Sahib* v. *Noordin*, 22 Mad 139.

2 *Khardah Co. Ltd.* v. *Raymon & Co.*, A 1962 SC 1810; See also *Delhi Cloth Mills* v. *Harnam Singh*, A 1955 SC 590.

3 *H. Anraj* v. *Tamil Nadu Government*, (1986) 1 SCC 414.

4 *Maiyan Dalip* v. *Mohan Bikram*, A 1945 All 409.

5 *Madhabilata Devi* v. *Butto Kristo Roy*, A 1944 Pat 129, 134; *N.M. Engineer* v. *Narendra Singh Virdi*, A 1995 SC 448.

6 *Baij Nath* v. *Permeshwari Dayal*, A 1934 Oudh 240.

7 *Agrenath Misir* v. *Ram Ratan Pandey*, A 1938 All 544.

8 *Bhupati Mohan Das* v. *Phanindra Chandra Chakravarty*, A 1935 Cal 756.

9 *Satindra Nath Choudhury* v. *Jatindra Nath Chaudhury*, A 1935 PC 165.

money, when vendor fails to execute sale deed.[10] A transfer of a decree is not transfer of an actionable claim.[11] Precedents relating to transfer of decree, etc., are set out hereinafter apart from those relating to actionable claim.

A marine or fire policy cannot be transferred without transfer of the property insured (Sec. 130, exception, and Sec. 135 of the Transfer of Property Act.)

How made

Under the Transfer of Property Act, an assignment of an actionable claim must[12] be made by an instrument in writing signed by the transferor or his duly authorized agent [Sec. 130(1)]. In the territories to which, vide Sec. 1, that Act does not apply, it may be made orally. The instrument of transfer need not be attested or registered. No particular form of writing is prescribed. It may be a formal deed of transfer or an endorsement[13] on the deed creating the actionable claim.

The word "transfer" appearing in Sec. 130 connotes a transfer in present. A promise by the debtor to pay money to his creditor, which he, the debtor, might receive a debt due to him by a third person, does not constitute an assignment of the debt so as to charge the debt in the hands of the third person. For example, an undertaking by the debtor to the effect, "I will deposit at your shop all cheques that I may get from the Public Works Department" or "I will be giving you cheques in satisfaction of the money due to you" does not amount to a present transfer or assignment of the debt but merely an agreement to assign in future. In such case the creditor does not get lien on the cheques.

The transfer takes effect from the execution of the instrument irrespective of the notice to the debtor so far as the transferor and the transferee are concerned. The section does not require the transfer to be in any particular form or to be couched in technical language; the transferor's intention should be clearly indicated by the instrument in writing.

The words "whether with or without consideration" in Sec. 130 denote that the assignment of an actionable claim may be by gift, as mentioned above, or by sale or mortgage. The transaction is complete and effective no doubt

10 *Chiman Mal* v. *Ganesh*, A 1952 Raj 187.

11 *Jugal Kishore Saraf* v. *Raw Cotton Co. Ltd.*, A 1955 SC 376, (per *N.H. Bhagwati J.*, the other two Judges expressing no opinion on this. The judgments also contain good discussion on equitable transfer and transfer by operation of law).

12 The word "only" in the phrase "*only* by the execution of an instrument in writing" occurring in Sec. 130(1) is significant: see *Doraisami* v. *Doraiswami*, A 1925 Mad 753.

13 *Hunsraj* v. *Nathoo*, (1907) 9 Bom. L.R. 838, relied on in Mulla's Transfer of Property Act, 7th edn., at p. 813.

upon the execution of the instrument in writing duly signed by the transferor or the authorised agent on his behalf, but it remains open to challenge on ground of fraud, misrepresentation or the like on which any other contract can be impeached.

Contents of an Instrument

An instrument of assignment should be drafted as a deed of transfer between the assignor and assignee and should consist of the same parts as a deed of transfer (*see* Introduction, Part II). Particulars as to how the actionable claim has arisen and of the agreement of assignment, if any, may be mentioned in the recitals, though in a simple case recitals may be omitted. The assignor, who may be called either "the assignor" or "transferor", describes himself in the operative part of the deed as claimant in case of debts and as "beneficial owner" in respect of any other interest in movable property as he is entitled to the benefit arising out of the actionable claim. The operative word is "transfers" or "assigns". If the assignment is absolute, the word "absolutely" may be added. If it is as a security the word "absolutely" should be omitted and the conditions of the security should be clearly and expressly stated. The only covenant which is usual in such deeds is one by the assignor to the effect that the debt is still owing and due to the assignor.

If the instrument is not to be a separate one but is to be endorsed on the bond or other deed creating the actionable claim, full particulars of the claim or its basis need not be mentioned but a reference may be made to the "within written bond" or deed.

The instrument of assignment can also be drafted in the form of a deed poll in the first person.

Negotiable Instruments

Negotiable instruments, stocks, shares,[14] debentures or mercantile documents can be transferred according to the law governing them, and the Transfer of Property Act does not apply to their assignment (Sec. 137). For instance, a promissory note may be transferred by endorsement or delivery or if payable to bearer, by delivery only. But this does not mean that a separate deed of transfer will not be effective.[15]

A transferee takes the actionable claim subject to the equities mentioned in Sec. 132, Transfer of Property Act. However a holder in due course under an assignment by endorsement, will not[16] be subject to such equities as Sec. 36,

14 But assignment of dividend due on shares is assignment of an actionable claim : *Sheth Dahyabhai* v. *Sheth Ambalal*, A 1981 SC 1556, (1981) 3 SCC 644.

15 *Jia Lal* v. *Jag Mohan*, A 1937 Oudh 405, 168 IC 922.

16 *Muthar Sahib* v. *Kadir Sahib*, 28 Mad 544; *Akhoy* v. *Haridas*, 18 CWN 494, 22 IC 500.

Negotiable Instruments Act provides that every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Stamp Duty

Subject to States' variations, stamp duty is payable on the transfer of –

(i) unsecured debt under Article 23; and

(ii) interest secured by a bond, policy of insurance etc., under Article 62, of the Schedule to the Stamp Act.

PRECEDENTS[1]

1—Assignment of a Bond Debt

(In the Form of Deed)

THIS ASSIGNMENT made on the ——— ———day of ——— BETWEEN AB, etc., (hereinafter called "the assignor") of the one part AND CD, etc., (hereinafter called "the assignee") of the other part.

WITNESSES as follows :

1. In consideration of the sum of Rs. ——— paid by the assignee to the assignor (the receipt of which is hereby acknowledged) the assignor [as claimant] hereby transfers to the assignee ALL that debt due and owing to the assignor by XY, etc., on a bond dated the——— ———and all interest due and to become due for the same to the assignee absolutely.

2. The assignor hereby covenants with the assignee that the said debt is still due and owing to the assignor from the said XY.

IN WITNESS WHEREOF, etc.

2—Assignment of a Bond Debt

(In the Form of Deed Poll)

I, AB, etc., in consideration of the sum of Rs. ——— received by me from CD, etc., transfer absolutely to CD, the debt due to me by XY, etc., under a bond dated ——— ———and all interest due and to become due for the same and the full benefit and advantage thereof and covenants with the transferee that the debt is still due to me from the said XY.

Signed this the ——— day of ———

3—Assignment of Book Debts in Consideration of a Debt due to the Assignee[2]

THIS ASSIGNMENT is made, etc., (*as in Form 1*).

WHEREAS the assignor has for sometime past carried on the

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1 See also precedents under NOTICE, *post* (Notices of Assignment).

2 Sec. 130 read with the definition of "actionable claim" in Sec. 3, Transfer of Property Act covers transfer of only unsecured debts. If rights as mortgagee are to be transferred a registered deed will be required: See precedent No. 33 under SALE, post. However the benefit of any pledge of movable with the assignor can be transferred.

business of at under the name and style——————and in connection with such business the several persons whose names are set out in the first column of the schedule hereto have been and now are indebted to him in the several sums set opposite to their respective names in the second column of the said schedule ;

AND WHEREAS the assignor had agreed with the assignee to assign to him the said debts in satisfaction of the debt due from the assignor to the assignee under a bond dated

NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. ——————, due and owing from the assignor to the assignee, from which sum the assignee hereby releases the assignor, the assignor as claimant hereby assigns to the assignee ALL the several debts specified in the schedule hereto and the benefits of all securities for the same and all interest, if any, due and to become due for the same TO HOLD the same to the assignee absolutely.

2. The assignor covenants with the assignee that the said debts hereby assigned are still due and owing to the assignor from the several persons named in the said schedule.

IN WITNESS WHEREOF, etc.

The Schedule herein referred to

Serial No.	Name of Debtor	Amount due on the date of this Deed

4—Assignment of Debts upon Trust to Collect and to Pay sum Due to Assignee and Balance to Assignor

THIS ASSIGNMENT is made on the, etc. (*as in Form* 1).

WHEREAS the assignor is indebted to the assignee in the sum of Rs. due under a mortgage deed dated executed by XY, the deceased father of the assignor.

AND WHEREAS the assignor is entitled to the several debts particulars of which are specified in the schedule hereto and has agreed to assign them to the assignee upon the trust hereinafter declared.

NOW THIS DEED WITNESSES as follows :

1. The assignor, as claimant, hereby transfers to the assignee ALL the several debts or sums of money specified in the third column of the schedule hereto which are owing to the assignor from the several persons whose names are respectively set opposite to the said debts or sums in the second column of the said schedule and all other sums, if any, due and owing to the assignor from the said several persons and the benefit of all securities for the same and all interest, if any, due and to become due for the debts respectively TO HOLD the same to the assignee absolutely but upon trust to collect the said debts and sums of money and out of the moneys so realized to pay the costs, charges, and expenses of collection and out of the balance to retain and pay himself the said sum of Rs.— with such further interest as may become due and to pay the surplus (*if any*) to the assignor.

2. The assignor covenants with the assignee that the said debts hereby assigned are still due and owing to the assignor from the several persons named in the said schedule.

IN WITNESS WHEREOF, etc.

The schedule herein referred to

Serial No.	Names of Debtors	Amount due on Date of this Deed	Nature of Debt
1	2	3	4

5— Assignment of Decree obtained by Assignor Benami for Assignee[3]

THIS AGREEMENT is made, etc. (*as in Form* 1).

WHEREAS the assignor instituted in the court of a suit against XY, etc., being original suit No. of and obtained a decree for Rs.———and costs;

3 Entering into any benami transactions is now made a punishable offence and no property held benami is now recoverable by suit: Secs. 3 and 4 Benami Transactions (Prohibition) Act 1988. The only exceptions are purchases of property in the name of the wife or the unmarried daughters, in which case it shall be presumed, unless the contrary is proved, that the property had been purchased for the benefit of the latter: *Rebti Devi* v. *Ram Dutt*, (1997) 11 SCC 714. The prohibition is not retrospective: R. Rajgopal v. Padmani; A 1996 SC 238. Also see *C. Gangacheran* v. *C. Narayanan*, A 2000 SC 589.

AND WHEREAS the assignee was the real beneficial owner of the amount claimed in the said suit and the assignor was only a *benamidar* for her;

AND WHEREAS the assignee cannot execute the decree without a deed of assignment from the decree holder, the assignor has agreed to assign the said decree to the assignee.

NOW THIS DEED WITNESSES as follows :

1. In consideration of the premises the assignor hereby assigns to the assignee ALL the benefits and advantages of the said decree full particulars of which are given in the schedule hereto together with the decretal debts due under the said decree and future interest that may be due thereunder and all the rights and interest of the assignor as decree-holder under the said decree TO HOLD the same to the assignee absolutely.

2. The assignor hereby covenants with the assignee that the said decree is in full force and effect, and that the whole of the sum due under the said decree remains owing thereunder.

IN WITNESSES WHEREOF, etc.

The schedule herein referred to

Particulars of the decree hereby assigned

(a) Name of court passing the decree

(b) Name of decree-holder

(c) Name of judgment-debtors

(d) No. of case

(e) Date of decree

Amount due :

Amount mentioned in the decree (including principal money, interest and costs)

Execution costs

Future interest up to *(date of Assignment Deed)*

6—Assignment of a Final Decree for Sale under Order 34, Rule 5, C.P.C.

THIS AGREEMENT is made, etc. (*as in Form* 1).

WHEREAS the assignor obtained a preliminary decree in suit No.————of———— under Order 34, Rule 4, C.P.C. for sale of certain property specified in the said decree against———— from the court of————.

AND WHEREAS on the basis of the said decree the assignor has obtained a final decree under Order 34, Rule 5, C.P.C. for sale of the said property and has put the said final decree in execution;

AND WHEREAS the assignor has agreed to assign and the assignee has agreed to purchase the aforesaid final decree with all the rights and interest of the assignor thereunder for a consideration of Rs.————.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the aforesaid agreement and in consideration of the sum of Rs.————paid by the assignee to the assignor before or at the time of execution of these presents (the receipt of which the assignor hereby acknowledges) the assignor hereby assigns to the assignee ALL the benefits and advantages of the final decree full particulars of which are given in the schedule hereto together with the decretal debt due under the said decree and future interest that may be due under the same and all the rights and interests of the assignor as decree-holder under the said decree TO HOLD the same to the assignee absolutely.

2. The assignor hereby covenants with the assignee that the said decree is in full force and effect, and that the whole of the sum due under the said decree remains owing thereunder.

IN WITNESS WHEREOF, etc.

The schedule herein referred to

Particulars of the decree hereby assigned;

(*a*) Name of court passing the decree;

(*b*) Name of the decree-holder;

(*c*) Name of judgment-debtor;

(*d*) No. of case;

(*e*) Date of decree;

Amount due :

Amount mentioned in the decree (including principal money, interest and costs)

Execution costs

Future interest upto (*date of Assignment Deed*)

7—Assignment of a Life Policy[4]

THIS ASSIGNMENT is made, etc. (*as in Form* 1).

WHEREAS by a policy of assurance issued by the Life Insurance Corporation of India dated the day of and numbered the sum of Rs. is assured to be paid on the death of the assignor subject to the payment of the annual premium of Rs.———.

AND WHEREAS the assignor has agreed with the assignee for the sale to him of the said policy for the price of Rs.

NOW THIS DEED WITNESSES as follows :

1. In consideration of Rs. ———now paid by the assignee to the assignor (the receipt of which is hereby acknowledged) the assignor (as beneficial owner) hereby assigns to the assignee the aforesaid policy of assurance and all moneys assured by or to become payable under or by virtue thereof TO HOLD the same to the assignee absolutely subject to the payment of all future premiums thereon.

2. The assignor covenants with the assignee that the said policy is now valid and in force, and that he will not do/omit or knowingly suffer anything whereby the said policy may become void or voidable or the assignee be prevented from receiving the moneys thereby assured or any bonus or addition thereto.[5]

8—Assignment[6] of Life Policy for Love and Affection

THIS AGREEMENT, etc. (*as in Form* 1).

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4 This is permitted by Sec. 38 (1) Insurance Act : either by a separate instrument as in this or in the next precedent, or by endorsement as in the precedent No. 9 *post*. In either case attestation by at least one witness is necessary. Re.: assignment of marine insurance policy, see *New India Assurance Co.v. G.N. Samani*, (1997) 6 SCC 383) (Secs. 52 and 53, Marine Insurance Act 1963), (The policy can be assigned before or after the loss but the assignee must have an insurable interest in the subject matter). Also see precedents under MORTGAGE, *post*.

5 This covenant should be in the negative form. A positive covenant to do and perform all acts necessary for continuing the policy caused trouble when the assignor committed suicide and it was held that as he had not agreed not to do any act so as to make the policy void but had agreed only to do all necessary acts, there was no breach and the assignor's estate was not liable for damages (*Dormay v. Borrodail*, (1847) 10 Beav. 335).

6 Mere nomination does not confer title on the nominee. He or she gets only a right to collect the amount due, but the heirs of the deceased can thereafter recover it from the nominee. A bequest or assignment, on the other hand, confers

WHEREAS by a policy of assurance (*as in Form* 7).

AND WHEREAS the assignor had agreed to assign the said policy to the assignee who is the assignor's wife in consideration of his love and affection for her and the assignee has accepted the said assignment.

NOW THIS DEED WITNESSES as follows :

1. In consideration of the love and affection which the assignor has for the assignee, the assignor (as beneficial owner) hereby assigns to the assignee the aforesaid policy of assurance and all moneys assured by or to become payable under or by virtue thereof TO HOLD the same to the assignee absolutely.

2. *Same as in para* 2 *of Form* 7.

IN WITNESS WHEREOF, etc.

9—Assignment of Policy by Endorsement[7]

I, AB, etc., in consideration of natural love and affection for CD, etc., hereby assign absolutely to the said CD, the within written policy of assurance dated the———.

Signed.....

10—Assignment of Patents[8]

THIS ASSIGNMENT of, etc. (*as in Form* 1).

WHEREAS the assignor has invented a process for the manufacture of———which was duly registered and entered in the Register of Patents at No——— on ——— and duly sealed in the Patent Office at ——— and whereas by an agreement dated ———between the parties to this deed, it has been agreed that the assignor should assign all his rights and interest in the patent above mentioned in favour of the assignee for a consideration of Rs.———

7 As also permitted by section 38 (1), Insurance Act, 1938.

8 Under section 68 Patents Act, 1970 a bilateral agreement in writing is necessary. Its registration with the Controller General of Patents, Designs and Trade Marks, is also compulsory. On assignment of trade marks, see sections 36 to 44 Trade & Merchandise Marks Act, 1958. Under section 19 of the Copyright Act, 1957 a copyright may be assigned only by in writing which may or may not be bilateral, i.e., it may be executed by the assignor alone. The above form can be adapted *mutatis mutandis* for assignment of trade mark or copyright as well. (See also precedents under PATENTS, *post.*)

NOW THIS DEED WITNESSES as follows:

1. That in consideration of the sum of Rs. ——— paid by the assignee to the assignor (the receipt of which the assignor hereby acknowledges) the assignor, as beneficial and sole owner, hereby assigns to the assignee his title to the said patent and all benefits, rights, privileges and advantages accruing from and pertaining to the said patent TO HOLD the same absolutely.

2. That the assignor covenants that he has not assigned or otherwise dealt with the said patent, and that his title to the said patent subsists, and that nothing has been done to prejudice the rights of the assignee as transferee of the patent to use it exclusively.

3. The assignor further covenants that if at any time or times while the said patent is in force, he shall discover, invent or make any improvement or improvements upon the said invention, he shall disclose the same to the assignee and enable the assignee to make such practical use of such method and discovery and do all other acts and execute all such deeds as may be necessary for vesting in the assignee all rights, title and interest in the new invention or improvement and the full and exclusive benefit thereof.

IN WITNESS WHEREOF,etc.

11—Assignment of Business and Its Goodwill

THIS ASSIGNMENT, etc. (*as in Form* 1).

WHEREAS the assignor has been carrying on the business of manufacturing electrical equipment for some years past and has earned a goodwill and established a reputation and business connections with various other firms and persons and the assets and liabilities of the said business are as mentioned in the schedule annexed hereto.

AND WHEREAS the assignee has agreed to take the business of the assignor as a running concern along with its goodwill, obligations and outstandings for a consideration of Rs.———.

NOW THIS DEED WITNESSES as follows :

1. That in pursuance of the said agreement and in consideration of the sum of Rs.———paid to the assignor (the receipt of which the assignor hereby acknowledges) the assignor hereby assigns to the assignee:

(*i*) the goodwill of the business;

(*ii*) all the rights, privileges, advantages, and benefits arising out of all pending contracts and engagements;

(*iii*) all debts and outstandings mentioned in the schedule annexed and all other sums which are or may be found due to the assignor in connection with the business;

(*iv*) stock-in-trade, furniture, fixtures of the business;

(*v*) trade-mark in respect of

TO HOLD the same absolutely. The assignor has no right or interest of any kind left in the same.

2. The assignee hereby covenants that he shall pay and discharge all debts, liabilities and outgoings of the said business up to this day and will at all times keep harmless and indemnified the assignor and his estate and effects from and against all proceedings, costs, claims, expenses and liabilities whatsoever in respect thereof.

3. The assignor hereby covenants and assures the assignee that he shall assist the assignee in claiming and realizing the debts and outstandings of the business and in explaining any items in the account books so as to support any lawful claim in respect of the said debts and outstandings.

IN WITNESS WHEREOF, etc.

12—Assignment of Arrears of House Rent

THIS ASSIGNMENT, etc. (*as in Form* 1).

WHEREAS AB is the owner/landlord of house ---- (*give full description of the house, its boundaries and Number, if any, along with its situation in street mohalla, etc.*). And GH is the tenant from month to month under a lease or rent note dated ---- and is in occupation of the said house at a monthly rent of Rs.———payable on——— day of every month.

WHEREAS the said GH has not paid the rent of the said house for a period commencing from———and ending on————inspite of repeated demands and a written notice dated————. The amount of the past rent due comes to Rs.———.

NOW THIS DEED WITNESSES as follows :

In consideration of Rs.————paid by the said assignee CD (the receipt of which is hereby acknowledged) the assignor AB hereby assigns to the said assignee CD the right to recover Rs.————due as arrears of rent from the said tenant GH. The said assignee has and shall have all the rights to recover the said arrears of rent with interest and appropriate the same to his use.

IN WITNESS WHEREOF, etc.

ATTORNEY, POWER OF

Preliminary Note

Power of Attorney

A power of attorney is an instrument empowering a specified person or persons to act for and in the name of the person executing it. If the appointment is made for a specified act or acts, the deed is called "special power of attorney". If it is made generally for certain acts, it is called "general power of attorney".

Executant

It can be executed by any person who is competent to contract.

Agents

For rights and liabilities See Chap X, Contract Act.

Partners

As will appear from section 19(1) of the Partnership Act, in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not extend to –

(*a*) submit a dispute relating to business of the firm to arbitration;

(*b*) open a banking account on behalf of the firm in his own name;

(*c*) compromise or relinquish any claim or portion of a claim by the firm;

(*d*) withdraw a suit or proceeding filed on behalf of the firm;

(*e*) admit any liability in a suit or proceeding against the firm,

(*f*) acquire immovable property on behalf of the firm;

(g) transfer immovable property belonging to the firm; or

(h) enter into partnership on behalf of the firm;

From the above, it follows that in case, the firm intends to confer any of these powers to a partner, then unless there is any usage or custom of trade conferring on him such authority, a power of attorney will be needed from all the partners of the firm in his favour, specifying the authority conferred.

Form of Deed

A power of attorney is executed in the form of a deed poll, usually in the first person and begins either as "KNOW all men by these presents that I, etc", or "BY this power of attorney I, etc.". The operative words making the appointment are generally introduced directly without any recitals. If recitals become necessary, they should be added after the words "KNOW all men by

these presents" thus "That Whereas, etc.," and after recitals the operative part is introduced thus "Now I, the said AB, etc., hereby appoint, etc.," or the deed may be drafted with the heading "THIS POWER OF ATTORNEY is made on the, etc.," then adding the recitals; the operative part is introduced thus "Now this deed witnesses that I appoint, etc." The powers conferred on the attorney are specifically stated after the appointment, usually in separate paragraphs. Then follows a clause agreeing to adopt the acts and deeds of the attorney and to ratify them. The scope of authority conferred on such an agent is limited to the express terms of the document and in case some ambiguity arises, it may be resolved, from what the terms imply. The purpose of such authority may be looked into to interpret any general terms or words. If there are recitals showing the scope and object of the power, such recitals may be taken to control the general terms in the operative part of the deed. In drafting the clauses about special powers great care should therefore be exercised, as a power of attorney is always strictly construed.[1] An authority given to settle, liquidate or adjust all accounts has been held not to include a power to refer disputes to arbitration. Where, however, a power of wide amplitude has been expressly given in one part of the instrument it cannot be cut down merely because there are ambiguous and uncertain expressions elsewhere.[2] Other rules of interpretation of powers of attorney have already been noticed in the *Introduction*, Part IV *ante*.

Several Attorneys

If several persons are appointed, it is desirable to provide whether they are to act jointly or severally, for in the absence of an express provision authorizing them to act severally, they will be entitled only to act *jointly*.

Duration of Power

Unless expressly or impliedly limited for a particular period, a general power of attorney continues in force until expressly revoked or determined by death of either party. A special power to do an act is determined when the act is done. If it is desired that the power should continue for a particular period or until a certain event happens, an express provision to that effect should be made. An irrevocable power of attorney can also be executed, but the same would be confined to cases where the agent is personally interested in the subject matter of the agency. Such an authority is coupled with interest and cannot be terminated to the prejudice of such interest (Sec. 202 Contract Act). Irrevocable powers of attorney are required also in respect of so called "Power of Attorney Sales" which are now common in cases of high

1 *Ramanathan* v. *Kumarappa*, A 1940 Mad 650; *Syndicate Bank* v. *I.K. Amitha*, A 1985 Kant 213.

2 *Syed Abdul Khader* v. *Rami Reddy*, A 1979 SC 553 (para 17) : (1979) 2 SCC 601.

valuations transactions which require heavy amount of stamp duty or where transfer of property is not allowed by the original lease of the property by various Housing Development Boards.[3] As observed by Powell on Agency (1961 edn., p. 388, footnote 5), "an authority coupled with an interest is really a transfer of property". See, e.g., Form No. 12 and 13, *post*, and also see footnote under Form No. 8, *post*.

Authentication and Registration

It need not be attested or registered, but if it gives authority to present a document for registration under section 32 of the Registration Act, it must be executed before, and authenticated by, the Registrar or Sub-Registrar, or where the Registration Act is not in force, before any Magistrate, or if it is executed outside India, before a Notary Public or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of Central Government (section 33, Registration Act).

Stamp Duty

Subject to States variations, stamp duty on Power of Attorney is governed by Article 48 of the Schedule to the Stamp Act.

3 See Form No.46 (b), under Sale, *post*.

PRECEDENTS

1—General Clauses of Power of Attorney giving Different Kinds of Authority

[*Any one or more of these clauses may, where necessary, and with necessary modifications, be embodied in any power of attorney*].

1. To Collect Debts

To demand, sue for, enforce payment of, and receive and give effectual receipt and discharge of, all moneys, securities for money, debts and legacies which I now possess or to which I am now entitled or which I may possess or to which I may become entitled or which are or may become due owing, payable or transferable to me from any person or persons.

2. To Receive a Sum of Money

To receive from XY the sum of Rs.———— which is due to me from him on account of ———— and to give receipt for the same.

3. To Acquire Lands, etc.

From time to time to purchase, take on lease or mortgage or otherwise acquire and hold all such houses, buildings and lands, as shall be thought necessary or expedient for, or in relation to, any of the purposes or objects aforesaid.

4. To Borrow Money

To borrow from time to time such sums of money and on such terms as the said attorney (*or* attorneys) may think expedient for or in relation to any of the purposes or objects aforesaid upon my personal security or the security of any of my property or otherwise or for such purposes, to give, execute and make such mortgages, charges, pledges or other securities with such covenants, powers, and permission as he (they) may think fit and proper subject to the condition that at no time the total amount of the debts borrowed by the said attorney (*or* attorneys) as aforesaid shall be allowed to exceed the limit of Rs ———.

5. To Manage Trust, Estate

To sell, convert, collect, enter upon or manage or collect or otherwise administer any property movable or immovable which may be vested in me alone or jointly with any other person as a trustee, executor or administrator and to execute and sign any deeds and generally to do any acts which I could lawfully have executed, signed and done in any such capacity.

6. To Let Out Houses and Collect Rents

To collect rents from tenants of houses, shops, plots and compounds belonging to me and to give receipts for the same and to eject tenants from and settle new tenants in the said houses, shops, plots and compounds whenever he considers to be in my interest and to take all necessary legal steps which may be in my interest and which may be required for the purpose.

7. To Appoint Agents and Servants

To appoint and employ any agents, *karindas*, peons or other servants necessary for any of the purposes aforesaid at such remuneration, commission or salary as the said attorney may think proper and from time to time to dismiss or discharge such agents, etc., and to appoint or employ others in their places.

8. To Sell Property

To sell with my permission and consent for proper and adequate consideration any part of my property, to receive the price thereof and to grant receipt or effectual discharge for the same, and to execute and sign and get registered the sale deeds and other deeds necessary to complete the sale.

9. To Sell Goods

To sell and convert into money any goods or things which now belong or at any time or times hereafter shall belong to me.

10. To Draw Bills, etc.

To draw, accept, endorse, negotiate, pay or satisfy any bills of exchange, promissory notes, cheques, drafts, *hundis*, orders for payment

or delivery of money, securities, goods, bills of lading or other negotiable or mercantile instruments or securities which may be deemed necessary or proper in the course of or in relation to the aforesaid business or affairs.

11. To Execute a Deed

To execute and sign a deed of sale of———or of mortgage of——— (*describe briefly the nature of the deed*) to secure——— already prepared and written (*or*, intended shortly to be prepared and written) made (*or*, intended to be made) between———and ———.

12. To Execute Deeds Generally

To execute and sign all such deeds as shall be required or may be deemed proper for or in relation to all or any of the matters or purposes aforesaid.

13. To Take and Defend Legal Proceedings[1]

To take, prosecute or defend all legal proceedings touching any of the matters aforesaid or any other matters in which I am or may hereafter be interested or concerned and also, if thought fit to compromise, refer to arbitration, withdraw or confess judgment in, any such proceedings as aforesaid.

14. To Settle and Compromise

To state, settle, adjust, compound, submit to arbitration and compromise, all suits or other legal proceedings, accounts, claims and demands whatsoever which now are, or hereafter shall be, pending between me and any person or persons in such manner as the said attorney shall think fit.

15. To Invest or Deposit Money

To invest any of the said moneys in or upon any of the Government securities, bonds, promissory notes, stocks or mutual funds in my own name and from time to time to vary the said investments or any of them into any other of the same or like nature and in the meantime, pending any

1 An attorney cannot be empowered by an accused person to appear in a criminal case on his behalf if the court requires his personal presence : *T.C. Mathai v. Distt. & Sessions Judge*, (1999) 3 SCC 614, A 1999 SC 1385.

such investment, to deposit the said moneys or any part thereof in any scheduled bank which the said attorney may think proper.

16. To Vote at Meetings

To vote at the meetings of any company or companies and otherwise to act as my proxy or representative in respect of any shares, stock or debentures now held or which may hereafter be acquired by me and for that purpose to sign and execute any proxies or other instruments in my name and on my behalf.

17. To Appoint Substitutes

From time to time to appoint and remove at pleasure any substitute or substitutes as attorney or agents under him in respect of all or any of the matters aforesaid, upon such terms and on such salaries or remuneration as he shall think fit.

18. Alternative Appointment in case of Inability etc.

AND in case of the death of the said attorney or of his inability or unwillingness through absence, illness or otherwise to act as my attorney in relation to all or any of the matters aforesaid, then I hereby appoint XY, etc., to act as my attorney in place of the said attorney after his death or during such inability or unwillingness and in the latter case either permanently or from time to time during the subsistence of any such inability or unwillingness (*as the case may be*) unless and until this deed shall be revoked or otherwise determined in like manner as if the name of the said XY had been inserted in this deed instead of the name of the said attorney.

19. To Act Generally

Generally to act as my attorney or agent in relation to the matters aforesaid and all other matters in which I may be interested or concerned and on my behalf to execute and do all deeds, acts or things as fully and effectually in all respects as I myself do if personally present.

20. To Ratify Acts

I hereby for myself, my heirs, executors, administrators and legal representatives ratify and confirm and agree to ratify and confirm whatsoever my said attorney shall do or purport to do by virtue of this deed.

21. Keeping alive Previous Power of Attorney

Provided always that this power of attorney shall not revoke or in any manner affect any previous power of attorney given by me to any other person or persons for any purpose but such other power or powers shall remain and be of the same force and effect as if this deed had not been executed.

22. Limiting Duration

Provided always (*or*, Provided also, *if any other proviso is added before*) that this power of attorney shall remain in force for a period of one year only (*or*, until I return from my trip to Europe where I am proceeding shortly.)

23. Restriction on Revocability[2]

And I hereby agree that this power of attorney shall be irrevocable for a period of .

2—Special Power (for a Court Case)

KNOW ALL MEN BY THESE PRESENTS that (*or*, BY THIS POWER OF ATTORNEY) I, AB, son of CD, resident of———being defendant in a civil suit No. ———of———pending in the court of the — do hereby appoint EF son of GH, resident of———my attorney in my name and on my behalf to do or execute all or any of the following acts or things in connection with the said suit :

(*i*) To engage or appoint any legal practitioner to conduct the said case;

(*ii*) To sign, verify and file a written statement or an application for amendment thereof;

(*iii*) To make and present to the court an application in connection with any proceedings in the suit ;

(*iv*) To produce or summon or receive back documentary evidence;

(*v*) To make and file compromise or a confession of judgment or to refer the case to arbitration ;

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2 See Preliminary Note, *ante*, under the topic "Duration of Power" for revocability or otherwise of power of attorney.

(*vi*) To deposit or withdraw any money for the purpose of any proceeding;

(*vii*) To file an application for execution of a decree or order passed in the said suit and to sign and verify such application ;

(*viii*) To receive any money due to me under such decree or order and to certify payment to the court:

(*ix*) To apply for inspection and inspect documents and records ;

(*x*) To obtain copies of documents and papers ; and

(*xi*) Generally to do all other lawful acts necessary for the conduct of the said case.

AND I hereby agree that all acts, deeds and things lawfully done by my said attorney shall be construed as acts, deeds and things done by me and I undertake to ratify and confirm all and whatsoever that my said attorney shall lawfully do or cause to be done for me by virtue of the power hereby given.

IN WITNESS hereof I have signed this deed on this ——— day of———.

3—Special Power to Present a Document for Registration

KNOW ALL MEN BY THESE PRESENTS that (*or*, BY THIS POWER OF ATTORNEY), I, AB,etc., do hereby appoint EF, etc., my attorney on my behalf to appear before the Sub-Registrar of——— district——-and to present for registration the ——— deed dated —— and executed by me in favour of——— to admit the execution thereof to do any act that may be necessary for the registration of the said document and to receive it back when it has been duly registered and to sign and deliver a proper receipt for the same.

IN WITNESS, etc.

[*This power is necessary only when a deed is executed by the Principal. Where the Principal appoints an attorney to execute a deed either in the name of the Principal or in his own name, on the Principal's behalf and the Attorney executes the deed himself under a power of attorney in Form No.4, then a power of attorney in this form is not necessary*].

KAMBTP

4—Special Power to Attorney to Execute a Sale Deed

KNOW ALL MEN BY THESE PRESENTS that (*or*,BY THIS POWER OF ATTORNEY) I, AB, etc., hereby appoint CD.etc., as my attorney in my name and on my behalf to do or execute all or any of the acts or things which I have to do in pursuance of an agreement dated — between me and XY and which are hereinafter mentioned, that is to say :

1. To receive from the purchaser or his heirs or assigns the sum of Rs.———being the price agreed to be paid to me by XY for the purchase of (*description of property*) under an agreement dated the———and to give an effectual receipt and discharge for the same;

2. To execute a proper sale deed of the said property or any other deed or assurance necessary for the completion of the sale of such property and to get the same duly registered;

AND I hereby agree, etc. (*as in Form* 2).

IN WITNESS, etc.

5—General Power of Attorney[3]

KNOW ALL MEN BY THESE PRESENTS that I, AB, etc., appoint EF, etc., my attorney in my name and on my behalf to execute or do all or any of the acts or things hereinafter mentioned, that is to say—

(1) To appear and act in all the courts, civil, revenue or criminal, whether original or appellate, in the registration offices and in any other office of Government or District Board, Municipal Board or any other local authority;

(2) To sign and verify plaints, written statements, petitions of claims and objections, memoranda of appeals and petitions and applications of all kinds and file them in any such court or office;

(3) To appoint any advocate or any other legal practitioner;

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3 The common law principle that "every person who is *sui juris* has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right" does not apply "where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation": *T.C. Mathai v. Distt. Judge*, (1999) 3 SCC 614 (para 14), A 1999 SC 1385.

(4) To compromise, compound or withdraw cases, to confess judgments and to refer cases to arbitration;

(5) To file and receive back documents, to deposit and withdraw money, and to grant receipts therefor;

(6) To obtain refund of stamp duty or repayment of court fees;

(7) To purchase property at court auction-sales in execution of my decrees up to the amount of the decree;

(8) To take delivery of possession of property in execution of my decrees or of property purchased for me at an auction-sale;

(9) To realize debts due to me, to collect rents from my tenants of houses and land and to receive any money due to me from any other person and to grant receipts and discharges for the same;

(10) To distrain the crops of my tenants for arrears of rent;

(11) To grant leases of my house property, lands agricultural and non-agricultural;

(12) To file suits for rent and ejectment of tenants, and, when expressly instructed by me, other kinds of suits;

(13) To apply to courts and officers for copies of documents and papers;

(14) To apply for the inspection of and to inspect judicial records;

(15) To accept service of any summons, notice or writ issued by any court or officer against me; and

(16) Generally to do all lawful acts necessary for the above mentioned purposes.

(For forms of other clauses to be inserted, see General Clauses, ante.)

Provided that the powers hereby conferred shall not extend to :

(*a*) granting of an agricultural lease for a term over years or reserving a yearly rent exceeding Rs.———;

(*b*) granting of a lease of house property for a term over years or reserving a monthly rent exceeding Rs. ;

(*c*) compromising or withdrawing a claim valued at more than Rs. or involving property of a value exceeding Rs.———.

(*d*) borrowing any money or hypothecating any property or creating any charge thereon.

AND I hereby agree, etc. (*as in Form* 2).

IN WITNESS, etc.

6—Appointment of One Attorney in Place of Another

KNOW ALL MEN,etc.

WHEREAS by a power of attorney dated———I, AB, etc., appointed CD, etc., as my attorney and gave him certain powers and authorities specified therein with the restrictions and limitations therein mentioned.

AND WHEREAS I am now desirous of appointing EF, etc., as my attorney in place of the said CD, etc.

NOW I hereby revoke all and singular the powers and authorities given by me to said CD, etc., by virtue of the power of attorney dated———.

AND further I hereby appoint the said EF as my attorney in my name and on my behalf to do all acts and exercise all the powers and authorities mentioned in the aforesaid power of attorney dated——— with such restrictions and limitations as are mentioned therein, in as effectual a manner as if the name of the said EF had been inserted in the said power of attorney in place of the said CD.

AND I hereby agree that all acts, deeds and things lawfully done by the said EF for me under powers hereby given to him shall be construed as acts, deeds and things done by me and I undertake to ratify and confirm all and whatsoever the said EF shall lawfully do or cause to be done for me by virtue of the powers given by this deed.

IN WITNESS, etc.

7— Deed Giving Further Powers to Attorney

KNOW ALL MEN, etc.

WHEREAS I, AB, etc., have by power of attorney dated the——— appointed CD as my attorney with the powers therein contained AND whereas I am desirous of giving the said CD further powers and authorities

hereinafter contained NOW I, the said AB hereby give to, and vest in, the said CD the following further powers and authorities, that is to say, in my name or on my behalf to do the following acts :

1. ———————
2. ———————
3. ———————

Provided always that nothing herein contained shall in any way prejudice or affect the powers or authorities given or conferred by the aforesaid power of attorney and this power of attorney shall take effect and be in force concurrently with and solely by way of extension and enlargement of the aforesaid power of attorney.

IN WITNESS, etc.

8—Irrevocable Power Coupled with Interest[4]

(executed by debtor in favour of Creditor Bank)

KNOW ALL MEN, etc.

WHEREAS I, AB, etc., am very heavily indebted to CD Bank and my liability is partly secured by the pledge of my goods and partly by the equitable mortgage of my immovable properties with the said Bank ;

AND WHEREAS a major part of my said liability is unsecured ;

AND WHEREAS I have agreed to appoint CD Bank to be my true and lawful attorney to execute decree in suit No.———of———and to do the following acts, deeds, matters and things for me, on my behalf and in my name and to credit to my account the sum or sums which may be realised in execution of or under the said decree;

4 Held in *Loonkaran* v. *State Bank of Jaipur*, (1969) I SCR 122, that such power was a power coupled with interest and was therefore not revocable. It also amounted in equity to an assignment of the decree as the amount under the decree was specifically earmarked for discharge of the debts due to the Bank and was thus constituted as a special fund for the said purpose. Mere description of power of attorney as irrevocable is not conclusive. It will be irrevocable only if it is coupled with interest. Mere right to earn commission is not an interest rendering a grant of authority irrevocable. The authority, in order to be irrevocable, must be conferred as protection of the agent's interest *(M. John Kotaiah* v. *A. Divakar*, A 1985 AP 30). See Sec. 202 Contract Act and Preliminary Note, *ante*, (Duration of Power).

NOW KNOW ALL MEN BY THESE PRESENTS that I do hereby irrevocably constitute, nominate and appoint the said CD Bank and/or any principal officers and/or any other person or persons that may be appointed by the said CD Bank or its assigns from time to time in this behalf to be my true and lawful attorney for me and on my behalf and in my name to represent me therein and do all acts, deeds, matters and things in connection with the execution of the said decree, that is to say :—

1. To proceed in execution of the said decree and to proceed to realise and recover the decretal amount.

2. To withdraw any amount that may be deposited in any court in the said decree and /or other proceedings in connection with the execution of the said decree or any other order passed or made therein and /or in any Insolvency Court or from the Official Receiver concerning Insolvency of any of the defendants.

9—General Powers of Attorney in connection with Company's Contract Business[5]

KNOW ALL MEN BY THESE PRESENTS THAT We ——— a Company within the meaning of the Companies Act, 1956 having its registered office at ——————— send greetings.

WHEREAS We are engaged in the business of manufacturing and supplying of———and other equipments to various parties,

AND WHEREAS in course of our said business it is necessary to submit quotations, accept contracts and receive monies from various parties;

AND WHEREAS it has been deemed expedient to appoint some authorised agent for the above purpose;

NOW THEREFORE KNOW ALL MEN that we ———do hereby nominate, authorise, empower and appoint jointly and severally (one) AB son of CD by occupation one of our Directors residing at ——— and (two) EF son of GH by occupation one of our Directors and residing

5 This can be adapted also to powers of attorney executed by a firm, society, co-operative society or other association of persons. So far as a company is concerned, the provisions of Secs. 291 to 302 of the Companies Act 1956 and of the Memorandum and Articles of Association of the Company should also be seen.

at ——— to be our lawful attorneys and agents jointly and severally for the following purposes namely :

1. In our name and on our behalf to sign all tenders and correspondence relating to any such tender.

2. In our name and on our behalf to accept and execute contracts with any of our customers or prospective customers.

3. In our name and on our behalf to submit bills and receive payments of money due to us and grant valid discharges therefor.

4. In our name and on our behalf to enter into negotiations with any prospective customers and to execute any contract with any customers and if deemed necessary to affix our Common Seal to such or other documents.

5. In our name and on our behalf to file or make or contest suits or petitions, enter into compromise, refer to arbitration and accept or contest all awards of arbitrators in any matters in which we may or shall be interested.

6. In our name and on our behalf to sign and execute all plaints, written statements, petitions and applications and to sign and subscribe our name thereto.

7. In our name and on our behalf to appoint legal practitioners and other agents for due pursuing of any matters in which we may or shall be interested.

8. In our name and on our behalf to enter into any lawful agreement or contract.

9. In our name and on our behalf to appear before all registering authorities and thereto present for registration and admit execution and otherwise procure valid registration of all documents whether signed by either of them on our behalf.

10. In our name and on our behalf generally to make, do and execute all such acts, deeds and things which either of our said attorneys may or shall deem expedient and lawful for looking after our interest in any matters.

AND we the above named——— do hereby agree to ratify all such acts, deeds and things to be done by either of our said attorneys AB and EF as if the same were done by us in person.

IN WITNESS WHEREOF, etc.

10—Special Power[6] (for a contract)

KNOW ALL MEN BY THIS POWER OF ATTORNEY THAT we a firm registered under the Partnership Act 1932 consisting of the partners (1) AB son of CD resident of———; and (2) EF son of GH resident of———, hereby appoint and constitute WX son of YZ permanent resident of and at present residing at———our lawful attorney.

WHEREAS we———have entered into a contract with the Government of——— detailed below :

(*i*) Details of Contract — Agreement registered in the office of the Superintending Engineer——— as Agreement No. ———of 2004 for the construction of———

(*ii*) Date of signing of original Contract. ———

AND WHEREAS we———have decided to appoint the aforesaid attorney as our lawful attorney for the execution of the said contract.

NOW THEREFORE BY THESE PRESENTS we———hereby authorise and empower the said WX as our lawful attorney for us and on our behalf to do the following acts, deeds and things, that is to say :

1. In our name and as our act and deed, to carry out the said contract and to deal with the Government of the State of———, their officers and other public authorities in matters touching or affecting the said contract or likely to affect or touch the said contract in anyway whatsoever.
2. In our name and as our act and deed, to sign all bills, vouchers, measurement books, accounts and all other papers and documents and instruments in any way concerning or affecting the said contract.
3. To appoint and remove in his absolute discretion any agent in respect of all or any of the matters herein contained upon such terms as he may think fit.

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6 For appointment of trustees (under a composition with creditors) as attorney for disposal of the debtor's property, see precedent under TRUSTS, *post*.

4. To apply for, demand, sue for, recover and receive of and from all and every or any person or persons whomsoever concerned or chargeable therewith all and every sum or sums of money, debts, goods, effects and securities which shall or may belong to or be or become due and payable to us in connection with the said contract.
5. To commence, carry on or defend all acts and other proceedings concerning or touching the said contract. AND to forgo any claims, compound, compromise or submit to arbitration all acts, suits, accounts, claims and disputes between us and any other person or persons in relation to the said contract. And to engage any legal practitioner to appear, plead or act in any case, suit or other proceedings, concerning anything about the said contract.
6. For any of the purposes aforesaid and generally in our name and as our act to draw, endorse and sign any cheque or other negotiable instrument or any investment payable to us and to deposit in and operate upon the account concerning the said contract at any Bank or elsewhere.
7. AND generally to do, execute and perform all and every other act, matter and thing whatsoever in any way necessary or expedient to be done of every nature or kind arising during the execution of the said contract including completion thereof in all respects as fully and effectually as if We ——— could do it ourselves.

AND WE——— hereby agree to confirm and ratify all and whatsoever our said attorney or any agents appointed by him under the power in that behalf hereinbefore contained shall lawfully do or cause to be done.

AND WE ———hereby declare that this power of attorney is executed by us for———years from the date hereof and shall not be revocable during the said period except under prior notice thereof to the Government of the State of———.

IN WITNESS WHEREOF, etc.

11—Power of Attorney required at the time of Incorporation of a Company

We the following Promoters/Subscribers of the ------ (*the proposed Company*) do hereby authorise Sri ---- s/o ----- r/o ------ to file all papers for registration of the aforesaid Company and to carry out necessary corrections, alterations, amendments in all the documents submitted or to be submitted to the Registrar of Companies, ------ in connection with the registration of the Company. We also hereby declare that all deeds, acts and other things done by him in connection with the registration of the Company shall be binding on us.

Sd/-

Promoters/Subscribers

Witness :

12—Irrevocable Power of Attorney in favour of Bank as Security for Financial Accommodation Granted by Bank[7]

KNOW ALL MEN BY THESE PRESENTS (*or*, BY THE POWER OF ATTORNEY) that we a firm registered under the Partnership Act 1932 consisting of the partners

(1) AB son of CD resident of ; and

(2) EF son of GH resident of , (hereinafter called the Principals) carrying on the business of contractors, send greetings.

WHEREAS we are working as contractors to the Government in its various departments and have entered into certain contracts and will in future enter into other contracts:

AND WHEREAS an arrangement has been made between us and the Bank, (hereinafter called the Attorneys) in pursuance of which the attorneys have agreed to finance our contracts and to advance us

[7] An irrevocable power of attorney in this form and another in the next following form were both the subject of detailed consideration in a three-judge special bench decision in *Miran Bakhsh* v. *Emperor*, A 1945 Lah 69 (Stamp Reference). The document was held to be a power of attorney coupled with a mortgage and an agreement, and as such was chargeable under Sec. 5 Stamp Act, with the aggregate amount of duties with which separate instruments, each comprising or relating to one of such distinct matters, would be chargeable.

sums of money against supply bills for payments to be received by us under the contracts issued by the Government in various departments on the conditions inter alia that the attorneys shall have first charge over the cheques in payment of bills and shall also be entitled to realise the amount of the bills direct from the Government and the remittances of such bills will be made direct by the Government to and in name of the attorneys and the attorneys shall repay themselves from such receipts all monies due from us and in consideration of such advances by the attorneys all monies payable to us under the contracts and bills shall be considered under the arrangement as assigned unto the attorneys and we have undertaken not to create any interest, charge, encumbrance or assignment in favour of anyone else over any monies payable or that may become payable to us under the contracts;

AND WHEREAS we, for the purposes of carrying out the terms of the said agreement more effectively and to secure the interest of the attorneys, are desirous of appointing the ——— Bank, as our lawful attorneys;

NOW THEREFORE we do hereby appoint the ——— Bank, a corporation established by the ——— Act as our lawful attorneys for us, in our name and on our behalf, to do the following acts, deeds and things, that is to say:

1. To present and submit supply bills regarding the contracts of the principals to the proper officers, to obtain cheques for sums payable to them under the contracts directly in their own name or in the names of the principals, to cash and receive the amount thereof and to appropriate such receipts towards and in repayment of the advances made or to be made hereafter and all other monies due from the principals to the attorneys in any account whatsoever. No other creditor or representative of ours shall have any concern with such amounts and the payments thereof by the Government, we having undertaken neither to create any encumbrance, interest, charge or assignment over such amounts payable or that may become payable under the contracts taken or to be taken hereafter nor to appoint or authorise any one else to receive payments on our behalf;

2. To ask, demand, sue for, recover and receive, of and from, all and every person all sums of money, which shall or may become due or owing

or payable, or that may become payable to the principals under or in connection with the said contracts and to compound and settle all accounts relating to them;

3. To appoint any counsel, lawyer, solicitor or agent to conduct, prosecute or defend in Court or outside Court any claims or actions arising out of the said contracts and to sign all petitions or documents in connection therewith;

4. To execute or sign receipts, acknowledgements and acquittances and sign other documents required for any of the aforesaid purposes on behalf of the principals.

We hereby bind ourselves to allow, ratify and confirm all and whatsoever the attorneys shall lawfully do or cause to be done in execution of the powers given to them. And we further declare that these presents and all powers hereby granted are and shall be irrevocable as long as any claims of the attorneys against us, whether for principal, interest, costs, charges and otherwise, remain outstanding and unpaid.

And we hereby declare and affirm that we have not heretofore created nor shall we in future create any power of attorney in respect of the said contracts in favour of any person or bank and that the monies, bills, dues payable to us or recoverable by us now or in future in respect of the said contracts are free from any prior charge, encumbrance or assignment, of any kind and that we or any person other than the said attorneys shall not have any right to receive, recover, realise the moneys, etc. in respect of the said contracts.

IN WITNESS WHEREOF, etc.

13 Irrevocable Power of Attorney : Another Form

KNOW ALL MEN BY THESE PRESENTS (*or*, BY THIS POWER OF ATTORNEY) that we ———a firm registered under the Partnership Act 1932 consisting of the partners

(1) AB son of CD resident of ———, and

(2) EF son of GH resident of , (hereinafter called the Principals) carrying on the business of ——— send greetings.

WHEREAS We the said Principals have applied to the Bank for and obtained from it financial accommodations from time to time for the purposes of our aforesaid business.

AND WHEREAS we have requested the said bank to continue the said facilities to us according to their convenience and discretion against the security of ——— and such other things as may be approved by the bank and also against bills submitted by us to the Government Departments and others for goods supplied to them provided we furnish and maintain such margin as may from time to time be fixed by th bank for any or all transactions;

AND WHEREAS the said bank has granted and agreed to continue to grant the said accommodations provided, amongst other things, we vest the said bank with the irrevocable power and discretions as are herein contained;

NOW THEREFORE we do hereby appoint the ——— Bank, a corporation established by the Act (hereinafter called the Attorneys) as our lawful attorneys for us, in our name and on our behalf, to do the following acts, deeds and things, that is to say :

1. To demand and by all legal and effectual means to recover and receive from all and every and any person or persons, firm or firms, corporation or corporations and all other departments of the Government of India and the State Governments all moneys, goods, chattels, which are now and which shall hereafter appear to be due, owing, payable or belonging to us or any moneys or securities for moneys now or hereafter due owing or belonging to us upon any bond or contract, or upon any other account and also to examine, state and settle, all accounts between ourselves and such persons, firms, corporations and Governments, and upon recovery and receipt of any moneys and as our act and deed, from time to time, to sign, execute and deliver such goods and sufficient receipts or other discharges and to do and perform all such other matters and things which may be requisite and on our behalf to sign, execute and deliver any and every deed or document necessary to constitute the Bank's title to moneys or other property held by the Bank as security;

2. To appoint or substitute in their place from time to time any other attorney and to do all acts, deeds or things which might or could be done by the principals themselves;

And we the principals hereby declare that the principals shall allow, ratify and confirm all and whatsoever the attorneys shall lawfully do or cause to be done, and further that everything which the attorneys shall do

or cause to be done in pursuance of the powers given to them shall be valid and effectual in favour of any person claiming the benefit thereof;

And we further declare that the presents and all powers hereby granted are and shall be irrevocable as long as there be any sums whatever due and unpaid by us to the said Bank in respect of advances made by them to us.

IN WITNESS WHEREOF, etc.

BOND

Preliminary Note

A bond is an instrument by which a person obliges himself to pay money or deliver grain or other agricultural produce to another. In section 2(v) Stamp Act, bond is defined as including,

"(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if specified act is performed, or is not performed, as the case may be;[1]

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another."

Thus there are two kinds of bonds, simple and conditional.

Form

A bond is usually drawn up in the form of deed poll. A conditional bond consists of two essential parts, viz. (1) the obligation, and (2) the condition. Sometimes recitals are introduced between the two parts for the purpose of explanation of the conditions which follow them. Usually the executant is a debtor who executes the bond in favour of the creditor. However, the sum named in the bond is sometimes intended to be a penalty, and sometimes liquidated damages. The question whether a sum stipulated for in a contract is a penalty or liquidated damages is a question of law. The intention of the parties is material.[2] When it amounts to a penalty, the obligee is not entitled to recover for the breach of conditions the whole amount but only a reasonable compensation not exceeding such sum (vide Section 74, Contract Act). In any case it is advisable to fix the sum for which a bond is taken at the maximum figure to which damages apprehended from the breach can possibly go, as the sum entered in the bond is the maximum which the obligee can claim, even if damages actually incurred are larger.

The bond is usually commenced by saying "By this bond I bind myself, etc." or "THIS bond executed by, etc." If a departure from the usual practice prevailing is intended, then any of the different forms given in the Precedents can be adopted for drafting a bond.

A simple bond is to be distinguished from a promissory note (See NEGOTIABLE INSTRUMENTS, *post*) inasmuch as money payable under the bond is not payable to the order of the obligee or to the bearer of the instrument

1 This is also the definition of "bond" in Sec. 2 (d), Limitation Act 1963.

2 *K.P. Subbarama Sastri* v. *K.S. Raghvan*, (1987) 2 SCC 424, A 1987 SC 1257.

Use of Bonds

The object in view in the execution of a bond can as well be served by an agreement. The difference between the two is purely formal. A bond is executed in the form of a deed poll and its conditions are mentioned in an indirect form, that is, not that the obligor will do this or that and will pay so much as damages or compensation if he does not do so, but that he will pay so much unless he does this or that. An agreement is executed as a deed between two parties and directly expresses the real obligation intended to be created, e.g., A covenants with B that he will do so and so or will not do so and so and that if he commits a breach he will pay the sum stipulated. Both forms are equally good, but in some cases the latter is preferable. For security bonds when the liability is necessarily limited to the amount of security offered, the bond form is more suitable.

Joint Hindu Family

See Preliminary Notes on MORTGAGE and NEGOTIABLE INSTRUMENTS, *post*.

Heirs and Representatives

Under Sec. 37, Contract Act, promises bind the representatives of the promisors and the right to enforce a promise descends, under the general law, to the heirs and representatives, unless a contrary intention appears from the contract, either expressly or impliedly. The common instance of a contrary intention being implied from the nature of the contract is that of contracts of a purely personal nature, such as a contract to marry, a contract to paint, etc. It is, therefore, unnecessary to mention the personal representatives or successors in title of the obligor or obligee in the "obligatory" part of the bond. In the "condition" part, however, the "heirs and representatives" of the obligor and the heirs, executors, representatives and assigns of the obligee have to be mentioned, because the condition refers not to the persons upon whom the obligation is binding or for whose benefit it ensures but the persons by whom and to whom the act or acts is or are to be done, by the doing of which the obligation is avoided, and they are not necessarily the same as the persons bound by, or entitled to enforce, the obligation. For instance, if an obligor promises that he will pay a sum of money on a certain date, the promise can be enforced after his death against his representatives (Sec. 37, Contract Act). But if the bond is in English form and contains the condition that it shall be void if the obligor pays the money on a certain date[3], there is no law under which it can be said that the bond would be equally void if the obligor's heir pays the money and after obligor's death the bond can be enforced against his heirs under Sec. 37, even though he has paid the money, as it was not the payment by the obligor's heir which could avoid the bond.

3 *cf* precedents 10 to 14, *post*.

Two Rates of Interest

Sometimes the parties agree that in case of default of payment on a certain date, a higher rate of interest would be payable. Such an agreement is penal under Sec. 74 of the Contract Act. In *Nagewaraswami* v. *Viswasundara*[4] a stipulation to pay compound interest on default was held penal. In order to avoid this possibility of the covenant being regarded as penal it is desirable to mention the higher rate of interest originally and provide that if the debtor shall pay on or before a certain date the principal and interest at a specified lower rate, the creditor would accept such lower rate and would not insist on the higher rate originally fixed. Such a contract is, however, possible only when the deed is between parties and is signed by the creditor also and is not in the form of a deed poll, as the covenant about acceptance of reduced interest is one by the creditor and not by the debtor.

Stamp Duty

Article 15 of the Schedule I to the Stamp Act governs the Stamp Duty on bonds of different valuation. There are separate Articles 34 and 57 for Indemnity Bond and Security Bond respectively. Security Bond, even if it creates a charge on immovable property, has been held not to amount to mortgage. This would be so only if such bond is signed by the surety alone as provided by Article 57.

For distinction between bond and simple agreement for purposes of the payment of stamp duty under the Stamp Act, reference may be usefully made to the decision of a special bench of seven Judges in *Mahabir Prasad* v. *Peer Bux*.[5]

Registration

Registration is not necessary unless, as in security and hypothecation bonds, any immovable property is charged or hypothecated.

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4 A 1953 SC 370.
5 A 1972 All 466.

PRECEDENTS

1—Simple Money Bond for Money Borrowed (Short Form)

I, AB son of CD and resident of ——— (*or*, We, AB, etc., and XY, etc.,) having borrowed Rs. from EF, etc., son of GH and resident of (*or*, being indebted to EF, etc., to the extent of Rs. due to him on account of the price of purchased by me, or under a previous bond dated———) hereby promise (*or*, ourselves jointly and severally promise) to pay to the said EF the said sum of money on demand (*or*, on the———, or, within ——— years of this date) with interest thereon from the date of this bond at the rate of———per cent per annum with half yearly rests).

Dated the——— day of———

(Signed)———

Witness———

Witness———

2—Simple Money Bond, for Money Due with Recitals

THIS BOND is made on the———by me, AB, etc.

Whereas I owe Rs. ———to EF, etc., on the following accounts:—

(*i*) On account of the principal and interest due under a bond executed by me in his favour on the , Rs. ;

(*ii*) On account of the price of a bullock purchased by me from him on the ———, Rs. ———;

(*iii*) On account of various loans taken by me from him on *bahi khata* from———to———, Rs.———;

(*iv*) On account of rent for the years , Rs. ;

(*v*) On account of a decree of the Court of———dated———in his favour and against my deceased father CD, Rs. ———;

NOW in consideration of the aforesaid liabilities I hereby promise to pay to the said EF the said sum of Rs. within———years and interest thereon or on so much thereof as shall for the time being remain unpaid at the rate of percent per annum payable half yearly on the day of and the day of ———in each year.

AND I hereby agree that in case any interest is not paid on due date the same shall be added to the principal and shall bear interest at the rate and payable on the dates hereinbefore mentioned.

IN WITNESS WHEREOF I, the said AB, have put my signature hereunder.

3—Instalment Bond

I, AB, etc., having borrowed Rs.———from CD, etc., hereby promise to pay to the said CD the said sum of Rs.———in twelve equal half yearly instalments payable on the———and on the———in each year (*or*, in twelve instalments of the amounts and payable on the dates hereinafter mentioned) and also on the same dates interest at the rate of———percent per annum from the date of this bond on the said sum or on so much thereof as shall remain due on the said dates.

AND I hereby agree that in case I fail to pay up any two consecutive instalments of principal with interest due hereunder on the due dates, the whole amount then due under this bond shall become payable at once.

Details of instalments :

Amount	*Due date*

* * * *

4—Equated Instalments Bond

I, AB, etc., having borrowed Rs.———from EF, etc., hereby promise to pay to the said EF the said sum of Rs. and interest at the rate of——percent per annum in twelve equated instalments of the principal and interest combined of Rs.———each payable on the——day of———and the———day of in each year, the first instalment being payable on the———day of———;

AND I hereby agree that in case any such instalment shall remain in arrears for one month the whole money then due on account of the principal and interest shall thereupon become payable at once.

5—Bond by a Debtor and His Surety for a Loan

THIS BOND is executed on the———day of———by us AB, etc., (*debtor*) and CD, etc., (*his surety*);

WHEREAS EF,etc., has this day advanced a loan of Rs.———to me, the said AB, at the request of my surety the said CD, on the terms and conditions hereinafter appearing ;

NOW we the said AB and CD hereby jointly and severally bind ourselves to pay to the said EF the said sum of money on demand with interest thereon from the date of this bond at the rate of———per cent per annum with half yearly rests.

6—Bond by a Debtor and His Surety for an Existing Liability

THIS BOND, etc. (*as in Form* 5).

WHEREAS I the said AB owe Rs.———to EF, etc., on the following accounts (*as in Form* 2).

AND WHEREAS in consideration of the said EF refraining from instituting a suit for the said sum, I, the said AB, have agreed to give this bond with the said CD as his surety.

NOW we, the said AB and CD, hereby, etc., (*as in Form* 5).

7—Instalment Bond, with Surety, for an Existing Liability (in the Form of a Deed)

THIS BOND is made on the———day of———BETWEEN AB, etc., (hereinafter called "the debtor") of the first part AND CD, etc., (hereinafter called "the surety") of the second part AND EF, etc., (hereinafter called "the creditor") of the third part.

WHEREAS Rs.———is still due to the creditor from the debtor under the decree dated———, passed in suit No.———(*name of parties*) by the court of———on account of the arrears of rent for house

AND WHEREAS the lease of the said house has again been settled with the debtor on the debtor agreeing to undertake payment of the said sum due under the said decree.

AND WHEREAS on the application of the debtor, the creditor has agreed to accept an instalment bond with surety for the said sum due under the said decree without interest.

AND WHEREAS in consideration of the creditor having agreed to accept payment of the said sum by instalments, the surety has agreed to

guarantee payment of the said sum in accordance with the terms of this bond.

NOW THIS BOND WITNESSES and it is hereby agreed and declared as follows :

1. For consideration aforesaid the debtor and the surety hereby jointly and severally covenant with the creditor to repay to him the said sum of Rs.————in six equal half yearly instalments on the———day of——— and the————day of————in each year commencing from the——— day of————next.

2. If any of the said instalments or any part thereof shall be in arrear for thirty days after the said instalments shall have become payable as aforesaid, then the whole of the said sum of Rs.———— or such part thereof as shall for the time being remain unpaid shall immediately become due and payable with interest thereon at———percent per annum up to the date of actual payment thereof and the debtor and the surety hereby jointly and severally covenant to pay the same to the creditor.

IN WITNESS WHEREOF, etc.

8—Bond with Sureties for a Loan Repayable in Equated Instalment with Hypothecation of Property (in the Form of a Deed)

THIS DEED is made on the day of BETWEEN AB, etc., (hereinafter called "the borrower") of the first part AND CD, etc., (first surety) and EF, etc., (second surety) (hereinafter collectively referred to as the "sureties") of the second part AND GH, etc., (hereinafter called "the creditor") of the third part;

WHEREAS the borrower has requested the creditor for the advance of a loan of Rs.————repayable with interest at——— per cent per annum by instalments hereinafter specified ;

AND WHEREAS the sureties have agreed to give security for the repayment of such loan in the manner hereinafter appearing, and the creditor has agreed to advance such loan on such security.

NOW THIS DEED WITNESSES as follows :

1. Covenants

In pursuance of the said agreement and in considerations of the sum of Rs.———advanced by the creditor to the borrower (the receipt of which is hereby acknowledged) the borrower and the sureties hereby jointly and severally covenant with the creditor as follows :

(i) To pay in instalments

The borrower and the sureties will pay to the creditor the said sum of Rs.———with interest thereon at the rate of———per cent per annum computed from the date hereof by four, half yearly instalments of principal and interest combined of Rs. each payable on the following dates:

Instalment	*Due Date*
1st instalment	————
2nd instalment	————
3rd instalment	————
4th instalment	————

(ii) Penalty for Default

If any of the instalments aforesaid shall be in arrears in whole or part, the whole sum then remaining due to the creditor under this deed on account of principal and interest shall thereupon become payable at once and the borrower and the sureties will be liable jointly and severally to pay the same.

2. Hypothecation

For the consideration aforesaid and in further pursuance of the aforesaid agreement the borrower/first surety/second surety[1] hereby grant(s) and transfer(s) by way of simple mortgage to the creditor ALL that property described in the schedule hereto, to the intent that the said property hereby mortgaged shall remain and be charged by way of simple mortgage as security for the payment to the creditor of the said principal

1 If the mortgage is made by one strike off the other two. If it is made by two strike off the third and add "and" between the two. If it is made by all the three, substitute "and the sureties" for "first surety/second surety".

money and interest in accordance with the covenants herein contained.

3. Covenant of No Charge

The borrower/first surety/second surety hereby covenant(s) with the creditor that the said property is free from encumbrances.

4. Enforcement of Mortgagee's Remedies

It is hereby agreed and declared that in case of default in the payment of such sums on account of principal and interest as may become due under the covenant hereinbefore contained the creditor may forthwith enforce against the said property hereby mortgaged or any part thereof, all or any of the remedies of the holder of a simple mortgage.

IN WITNESS, etc.

9—Bond with Sureties for Loan (in the Form of a Deed) with Provision for Lower Rate of Interest in Case of Punctual Payments

THIS DEED etc. (*as in Form* 8).

WHEREAS the creditor has agreed to advance to the borrower a loan of Rs.————repayable in————years with interest at the rate hereinafter specified on the security of the sureties.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and in consideration of the said sum of Rs.————advanced by the creditor to the borrower (the receipt of which is hereby acknowledged) the borrower hereby covenants with the creditor that he will repay the said sum of Rs.———— to the creditor within————years from this date and will in the meantime and for so long as any part of the said principal sum or any money to be treated as principal hereunder remains unpaid pay interest on the said sum or on so much thereof as shall for the time being remain unpaid at the rate of fifteen per cent per annum half yearly on the————and————in each year.

PROVIDED ALWAYS that the creditor shall accept interest at the reduced rate of twelve per cent per annum in lieu of the rate of fifteen per cent per annum for any half year in respect of which the borrower shall pay interest at such reduced rate not later than———— days after the due date.

2. In consideration of the creditor advancing the said loan to the

borrower the sureties hereby jointly and severally guarantee the repayment of the said loan with interest to the creditor in accordance with the covenant hereinbefore contained.

IN WITNESS WHEREOF, etc.

10—Administration Bond by a Person Obtaining Letters of Administration (section 291, Succession Act)

KNOW ALL MEN that we, AB, etc., and CD, etc., (*surety for the said AB*) hereby bind ourselves jointly and severally to Shri[2]——— District Judge of———for the payment to him or his successor in office of the sum of Rs.———.

WHEREAS by an order of the court of the said District Judge of ——— made on the ———day of——— the above named AB has been appointed administrator of the estate of XY deceased subject to the said AB entering into a bond of Rs.———with one surety in the same sum for the due collection, entering upon and administrating the estate of the deceased.

AND WHEREAS the said AB had agreed to enter into the above mentioned bond and the said CD has agreed to enter into the said bond as surety for the said AB.

NOW the condition of the above written bond is this that if the said AB do and shall within six months from the grant to him of letters of administration of the estate of XY deceased, or such further time as the said court may appoint, exhibit in the said court an inventory containing a full and true estimate of all the property, in possession, and all the credits, and also all debts owing by any person to which the said AB is entitled as administrator, and do and shall, within one year from the said grant, or such further time as the said court may appoint, exhibit an account of the estate of the said deceased, showing the assets which have come to his hands and the manner in which they have been applied or disposed off and do and shall, justly and truly administer, the said property, credits and estate according to law, and shall deliver and pay to such person or persons, as shall be lawfully entitled thereto, all the rest and residue of the said

2 As stated in INTRODUCTION, *ante*, a court is not a juridical person, hence the bond has to be executed in favour of its presiding judge and his successors in office.

property, credits and estate which shall be found remaining upon the said administration account, then the above-written bond shall be void but otherwise it shall remain in full force.

Signed, etc.

11—Security Bond Given for the Grant of a Succession Certificate (section 375, Succession Act)

KNOW ALL MEN, etc. (*as in Form* 10)

WHEREAS the court of the said District Judge has on the ——— passed an order for the grant to the said AB of a succession certificate to the estate of XY deceased on condition of the said AB executing a bond with one surety for the amount of Rs.——— for the purpose hereinafter appearing; AND WHEREAS the said AB has agreed to enter into the above bond and the said CD has agreed to enter into the above bond as surety for the said AB.

NOW the condition of the above bond is this that if the said AB shall justly and truly account for the debts and other securities of the said XY deceased received by him and shall indemnify the persons who may be entitled to the whole or any part of such debts and securities then, the above-written bond shall be void but otherwise it shall remain in full force.

12—Administration Bond by Guardian Appointed Under the Guardians and Wards Act

KNOW ALL MEN, etc., (*as in Form* 10)

WHEREAS by an order of the court of the said District Judge——— made on the ———day of——— under section 15 of the Guardians and Wards Act, 1890, the above-named AB has, subject to his entering into a bond for Rs.———, with a surety in the same sum, been appointed guardian of the property, movable and immovable of EF, minor son of GH; AND WHEREAS the said AB has agreed to enter into the above written bond, and the said CD has agreed to enter into the same bond as surety for the said AB.

NOW the condition of the above bond is this that if the said AB do and shall justly and truly account whenever called upon to do so for what

he may receive in respect of the property of the said EF and do and shall carefully observe, perform and keep all orders and directions of the said court touching or concerning the estate and effects of the said minor and his property, and touching and concerning all such moneys as he, the said AB, shall receive as such guardian as aforesaid, and in all things conduct himself properly, then the above-written bond shall be void but otherwise it shall remain in full force.

13—Security Bond by a Debtor under section 21, Provincial Insolvency Act

KNOW ALL MEN, etc.(*as in Form* 10)

WHEREAS AB has been ordered under Sec. 21(1) of the Provincial Insolvency Act to give reasonable security for his appearance until final orders are made upon the insolvency petition filed by him (*or*, his creditor), AND WHEREAS CD has consented to be the surety for the said AB.

NOW the condition of the above obligation is this that if the said AB shall appear before the court whenever called upon by it to do so, then the above written bond shall be void but otherwise it shall remain in full force.

14—Security Bond by a Receiver Appointed in a Suit : Order 40, Rule 3 (a) C.P.C.[3]

KNOW ALL MEN, etc.(*as in Form* 10)

WHEREAS a suit has been filed in the court of the District Judge—by EF, etc., against GH, etc., for the possession of the immovable and movable property entered in the schedule to the plaint in the said suit;

AND WHEREAS by an order of the said court, AB has been appointed receiver of all the property in suit on the terms and conditions mentioned in the said order and subject to his entering into a bond for Rs. with one surety for the purpose hereinafter appearing;

AND WHEREAS the said AB has agreed to enter into the above bond and the said CD has agreed to enter into the above bond as surety for the said AB.

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[3] It is not necessary for the court to file a suit for recovery of the amount of the bond as under Sec. 145 C.P.C. the court's order is directly executable in the manner provided in the Code for the execution of decrees.

NOW the condition of the above bond is this that if the said AB shall duly account for all and every sum and sums of money which he shall as such receiver receive on account of the rents and profits of the immovable property and in respect of the movable property mentioned in the plaint in the said suit and shall submit his accounts at such periods and in such form as the said court shall direct and shall duly pay the balances which shall from time to time remain in his hands and such damages for any loss occasioned to the said property by his wilful default or gross negligence as the said court shall direct and shall during the period of his appointment as such receiver fully obey and follow all the orders and directions passed and issued or which may hereafter be passed or issued by the said court to or for the guidance of the said AB as such receiver, then the above written bond shall be void but otherwise it shall remain in full force.

[*Forms of bonds of security for stay of execution by original court, and by appellate court and for courts of appeal (Order 41, Rules 5,6 and10) are given as Forms No.2, 3 and 4 in Appendix G to the Code of Civil Procedure and as they are statutory forms they may be used for these purposes. The Court may execute its order holding the obligor to be in breach of the bond as if such order were a decree (Sec. 145 C.P.C.). Similarly, security bonds under the Code of Criminal Procedure are in prescribed forms No. 3, 12, 13, 28 and 29 in Sch. II to that Code. They all provide for forfeiture of the specified amount to Government. The amount forfeited is recoverable as fine under that Code :* See *Sec. 546 Cr. P.C.*].

15—Cash Security Bond by an Employee of Government (in the Form of Agreement)

THIS AGREEMENT made on this ---- day of ---- BETWEEN AB (hereinafter called "the depositor") of the one part AND the Governor of the Punjab (hereinafter called "the Government") of the other part.

WHEREAS the depositor has been appointed to the post of ---- in the ---- Department.

AND WHEREAS it was a condition of his said appointment that the depositor should deposit security to the amount of Rs. ---- for the discharge of his duties in the said appointment.

AND WHEREAS the depositor has made the said deposit in cash (*or*, has paid Rs.——— in cash and has agreed to pay the balance by monthly instalments of Rs. ——).

NOW THESE PRESENTS WITNESS and parties hereto hereby agree as follows:

(1) Deposit to be Applied to Indemnify

The said deposit or any part thereof may be taken by the Government for the purpose of indemnifying it, the Government, from any loss caused by an act, negligence, or default of the depositor in losing, misappropriating, injuring, or failing to prevent injury to, any money or property while in his custody or under his supervision as a servant or officer of the said Department, or in permitting or failing to prevent the loss or misappropriation of, or any injury to, any such money or property as aforesaid by any person whosoever.

(2) To Realise Penalty

The said deposit or any part thereof may be applied for the purpose of realising any penalty for which the depositor may become liable under the conditions of his service in force for the time being.

(3) To be Retained for six Months

The said deposit may be retained by the Government for six months after the depositor has either died in the said service or has ceased to be in that service.

(4) To be Repaid

On the expiration of the said period of six months the said deposit will be repaid to the depositor or to the person then entitled to his property after his accounts have been passed by the officer authorised under the rules of the said Department to examine and pass the same and after all sums to which the Government may be entitled under the first two clauses hereof has been deducted therefrom.

(5) Additional Deposit

Any additional sum deposited by the depositor and stated in the schedule hereto and verified by the signature of the depositor and of the

officer accepting the same may be applied in the same manner and shall be refunded subject to the same conditions as the said deposit.

(6) Depositor to make up Deficiency

If the said deposit is insufficient for the purpose set forth in the first and second clauses hereof, the depositor will pay to the Government such sum as may be necessary to make up such deficiency.

(7) Repayment not to Exonerate

The repayment either in whole or in part of the said deposit or any additional deposit made under the fifth clause hereof shall not exonerate the depositor or his estate or effects from liability to make good to the Government any loss or damage for which the depositor was liable under the terms of these presents or the rules of the said Department or the conditions of his service and which was not made good before such repayment as aforesaid was made.

IN WITNESS whereof, etc.

16—Personal Security Bond by an Employee, with Sureties, Pending the Execution of a Hypothecation Bond

KNOW ALL MEN that we AB, etc., (Principal), CD, etc., (First Surety) and EF, etc., (Second Surety), bind ourselves jointly and severally to XY, etc., for the payment to the said XY of the sum of Rs. .

WHEREAS the above bounden AB was on the day of appointed to and now holds and exercises the office of treasurer of the estate of the said XY.

AND WHEREAS the said AB has been called upon to furnish security to the extent of Rs. —indemnifying the said XY against all loss and damage which he might suffer by reason of any property entrusted to the care of the said AB in the course of his duties as such treasurer being wasted, embezzled, stolen, misspent or lost dishonestly, negligently or otherwise by the said AB.

AND WHEREAS the said AB has offered such security in landed property and as the verification of the value and adequacy of the security offered by the said AB is likely to take sometime and the execution of the security bond will consequently be delayed.

AND WHEREAS the said XY has called upon the said AB to execute a personal bond with two sureties temporarily for such time as the security bond aforesaid is not executed and registered.

AND WHEREAS the said AB and the said CD and EF as the said AB's sureties have entered into the above written bond in the penal sum of Rs. conditioned for the due performance of his duties by the said AB and for the indemnity of the said XY against loss from the acts or defaults of the said AB until such times as the said AB offers adequate security and executes a registered security bond.

NOW the condition of the above-written bond is that if the said AB has whilst in the service of the said XY duly performed and fulfilled the duties assigned to him, or if the said AB and the said CD and EF shall indemnify the said XY from all and every loss and damage caused to the said XY from any act, omission, neglect or default of the said AB in the course of discharge of his duties while in the service of the said XY, or if the said AB shall offer adequate security and execute a regular security bond as promised, then the above-written bond or obligation shall be void and of no effect, otherwise the same shall be and remain in full force.

PROVIDED ALWAYS that immediately on the said AB executing, registering and delivering in the security bond hereinbefore referred to, this bond shall cease to have any effect.

PROVIDED ALSO that neither of them, the said CD and EF, shall be at liberty to terminate their suretyship except upon giving to the said XY six calendar months' notice in writing of his or their intention to do so and their joint and several liability under this bond shall continue in respect of all omissions and defaults on the part of the said AB until the expiration of the said period of six months.

Forbearance of Obligee not to Effect Liability

PROVIDED FURTHER that any forgiveness or forbearance on the part of the said XY or his administrators or executors or any of them towards the said AB in respect of his failure or neglect to perform such services and duties shall not in any way release or exonerate the said CD and EF or either of them or either of their executors or administrators in respect of their or his liability under the above-written bond.

IN WITNESS to the above-written bond and to all the terms and conditions hereinbefore contained we have signed hereunder this day of———.

17—Security Bond by Sureties on Behalf of a Claimant to Money due from Government to his Deceased Ancestor

KNOW ALL MEN BY THESE PRESENTS that we, AB, etc., CD, etc., and EF, etc., hereby bind ourselves jointly and severally to the Governor of Assam (hereafter called 'the Government') for the payment to the said Government of the sum of Rs.

WHEREAS XY was at the time of his death in the employment of the Government (*or*, was receiving a pension of Rs.——— from the Government).

AND WHEREAS the said XY died on the and there was then due to him the sum of Rs.———for pay and allowances in respect of his said office (*or*, in respect of his said pension).

AND WHEREAS the above bounden AB (hereinafter called "the Claimant") claims to be entitled to the said sum as heir of the said XY but has not obtained letters of administration of or a succession certificate to the property and effects of the said XY or a succession certificate in respect of his said dues.

AND WHEREAS the Government after making due inquiry is satisfied that the claimant is entitled to the said sum and that it would cause undue delay and hardship if the said Government insisted upon the production by the claimant of letters of administration of or a succession certificate to the property and effects of the XY or a succession certificate in respect of his said dues.

AND WHEREAS the said Government desires to pay the said sum to the claimant but under Government rules and orders it is necessary that the claimant should first execute a bond with two sureties to indemnify the said Government against all claims to the amounts so due as aforesaid to the said XY before the said sum can be paid to the claimant.

NOW THE CONDITION of this bond is that if, after payment has been made to him, the claimant shall refund to the said Government the sum of Rs.———, if the said Government so requires, and shall in any

event indemnify and save the said Government harmless from all liability in respect of the said sum and all costs incurred in consequence of any claim thereto THEN the above written bond or obligation shall be void, otherwise the same shall remain in full force.

IN WITNESS to the above-written bond and the condition thereof we, AB, CD, EF have signed hereunder this——day of———.

18—Security Bond by Surety of the Manager of an Estate (Hypothecating Property)

KNOW ALL MEN BY THESE PRESENTS that I, AB, etc., hereby bind myself to CD, etc., for the payment to the said CD of the sum of Rs.———to be paid to the said CD.

WHEREAS EF, etc., has been appointed by the said CD to the post of manager of his estate on the condition that he shall furnish security to the amount of Rs.——— for the faithful and honest performance of all such duties as may be required of him as such manager as aforesaid.

AND WHEREAS the said AB has in consideration of such appointment being made by the said CD agreed to give security for the said EF, in the manner hereinafter appearing.

NOW THE CONDITION of the above-written bond is that if the said EF shall faithfully and honestly perform all his duties as such manager as aforesaid and shall at all times account for, render and deliver in such manner and to such persons as the said CD may appoint in that behalf all moneys, securities for money and property of any kind whatsoever which he, the said EF, may recover or be entrusted with by virtue of his office as such manager as aforesaid and shall not lose, injure, destroy or in any way take or apply either for his own use or for any purpose other than those for which the same have been received by or entrusted to him any such moneys, securities for money or property as aforesaid then the above written bond or obligation shall be void but otherwise it shall remain in full force and effect.

AND THESE PRESENTS ALSO WITNESS that for the consideration aforesaid and as a security for the payment to the said CD of the said sum of Rs.——— or any part thereof according to the terms and conditions hereof the said AB (hereinafter called the

"mortgagor") hereby transfers to the said CD (hereinafter called the mortgagee) ALL THAT the property described in the schedule hereto, to the intent that the same shall remain and be charged by way of simple mortgage in the manner following, namely that for the purpose of recovering the said sum of Rs. or any such lesser sum as may become due by the mortgagor to the mortgagee by virtue of these presents, the mortgagee may enforce against the said property or any part thereof all or any of the remedies of the holder of a simple mortgage AND the mortgagor hereby covenants with the mortgagee, that the said premises are free from encumbrances PROVIDED ALWAYS that the mortgagor may terminate his aforesaid suretyship on the expiration of six calendar months' notice in writing given by him to the said CD PROVIDED ALSO that notwithstanding the termination of his said suretyship the mortgagor shall remain liable under these presents for any such act or default as aforesaid committed by the said EF before the termination of the mortgagor's suretyship and that for the enforcement of such liability the mortgage hereby created shall continue until released by the mortgagee.

IN WITNESS whereof the said AB has signed hereunder on the day of ----------.

19—Security given by a Legatee under a Lost Will to a Purchaser of Bequeathed Property (with Hypothecation)

KNOW ALL MEN, etc. (*as in Form* 10)

WHEREAS by his last will dated the EF devised the lands known as described in the first schedule hereto, to the above bounden AB absolutely;

AND WHEREAS the said EF died on the but probate of the said will was never obtained;

AND WHEREAS the said will has been diligently sought for by the said AB but cannot be found;

AND WHEREAS by a deed dated the all the children of the said EF have released the said lands from any claim which they or any of them might have thereto whether under the said or any other will or by inheritance if the said EF had died intestate;

AND WHEREAS the parties to the said deed of ———— are the only deseendants of the said EF;

AND WHEREAS the said AB has in this manner come to be the sole owner of the said lands.

AND WHEREAS by a deed of even date hereto the said AB has sold and transferred the said lands to the said CD absolutely;

AND WHEREAS it has been agreed between AB and CD that for the better protection of the said CD and in addition to the ordinary covenants for title contained in the said sale deed the said AB should execute the above-written bond subject to the condition hereinafter contained.

NOW THE CONDITION of the above-written bond is that if the said AB, his heirs, executors, administrators or assigns do and shall from time to time and at all times hereafter save harmless and keep indemnified the said CD from all suits, losses, costs, charges whatsoever in respect of the said land in case it shall appear that the said will does not devise the said lands to the said AB absolutely or that the said will is for any reason invalid or that the said EF died intestate, then and in such case the above written bond shall be void but otherwise the same shall remain in full force. PROVIDED ALWAYS THAT in the event of any suit being brought or claim being made against the said CD in respect of the said lands for any of the reasons aforesaid the said CD will forthwith give notice of such suit or claim to the said AB or his heirs, executors, administrators or assigns and will at his or their expense diligently contest such suit or claim if required by him or them to do so.

AND WHEREAS CD has required security for the payment of the sum named in the above-written bond, the said AB in consideration of the purchase from him of the said lands by the said CD hereby grants and transfers by way of simple mortgage to the said CD the property mentioned in the schedule hereto to the intent that if the said AB, his heirs, executors, administrators or assigns make default in paying any sum which may become due to the said CD under the conditions of the above-written bond the said CD shall have a right to cause the said property to be sold and the proceeds of the sale applied as far as may be necessary in payment of the said sum AND the said AB and CD hereby agree that all the conditions, covenants and stipulations set forth in the aforesaid bond shall form part of this mortgage.

20—Security Bond with two Sureties, the Principal Agreeing to Deposit Cash Security by Monthly Deduction from Pay

KNOW ALL MEN BY THESE PRESENTS that I AB, etc., (Principal) and CD, etc., (First Surety) and EF, etc., (Second Surety) hereby bind ourselves jointly and severally to the Governor of West Bengal (hereinafter referred to as 'the Government') for the payment to him of the sum of Rs. ———.

WHEREAS the above bounden AB was on the——— appointed to, and now holds and exercises the office of ———;

AND WHEREAS by virtue of his appointment as such the said AB has, amongst other duties, the care of, and responsibility for the safe and proper handling and keeping in the places appointed for custody of Government property and money;

AND WHEREAS the said AB is bound, whenever called upon to do so, to show to his superior officer that the said property and money is at all times intact in the places aforesaid and is bound to keep true and faithful account of the said property and money;

AND WHEREAS the said AB in consideration of the said appointment has promised to pay the amount of security of Rs. in monthly instalments of not less than 10 per cent of his pay for the purpose of securing and indemnifying the Government against all loss and damage which it might suffer by reason of the said property and money or any part being wasted, embezzled, stolen, misspent, lost dishonestly, negligently, or otherwise by himself, the said AB;

AND WHEREAS the said AB, and the said CD and EF as his sureties, have entered into the above bond in the penal sum of Rs. conditioned for the due performance by him of the duties of the said office and of the other duties appertaining thereto or lawfully required of him and for the indemnity of the Government against loss from the acts or defaults of the said AB.

NOW THE CONDITION of the above-written bond is that if the said AB has, whilst he has held the post of——— always duly performed and fulfilled the said duties of the said office and the other duties aforesaid or if the said AB or the said CD and EF shall indemnify the Government from all and every loss or damage which during the time the said AB has

held, executed and enjoyed the said office has happened, then the above written bond or obligation shall be void otherwise the same shall be and remain in full force.

PROVIDED ALWAYS and it is hereby agreed and declared that neither of them the said CD and EF shall be at liberty to terminate their suretyship except upon giving to the Government six calendar months' notice in writing of his or their intention to do so, and their joint and several liability under this bond shall continue in respect of all omissions and defaults on the part of the said AB until the expiration of the said period of six months.

AND it is hereby lastly agreed and declared by and between the said AB and the said CD and EF as his sureties and the Government that on the realization of the required security of Rs.——————in cash by monthly deductions from the pay of the said AB as aforesaid the above bond will cease to be in operation.

IN WITNESS, etc.

21—Bond by Sureties of a Student Admitted to a College to Secure the Performance of an Agreement

BY THIS BOND we, JK, etc., and LM, etc., (hereinafter called "the sureties") are bound jointly and severally to the trustees of the —— College (hereinafter called "the trustees") for the payment to the trustees of the sum of Rs. ——

WHEREAS by a deed of agreement dated the —— —— executed by the trustees and AB, etc., (*or* XY , etc., acting as guardian of AB, etc.) the trustees have agreed to educate the said AB at the ———— College and to make him certain payments therein stipulated on the terms and conditions therein specified.

AND WHEREAS for the purpose of securing and indemnifying the trustees, their assigns and successors against all loss and damage which they might suffer by reason of the said AB (*or*, the said XY) making default in the observance and performance of any covenant on his part to be performed and contained in the aforesaid agreement and in consideration of the said education and payment to be given and made by the trustees to the said AB it has also been agreed that the sureties should execute the above written bond subject to the condition hereinafter contained.

NOW THE CONDITION of the above written bond is that if the said AB (and the said XY) shall duly and faithfully observe and perform all the stipulations and conditions on his (their) part to be observed and performed and contained in the aforesaid agreement dated the then the above written bond or stipulation shall be void otherwise the same shall remain in full force.

Signed, etc.

22—Bond by Surety for Due Observance by Another of Terms of Partnership Deed

KNOW ALL MEN that I, AB, etc., hereby bind myself to CD, etc., and EF, etc., for the payment to them of Rs.———.

WHEREAS the said CD and EF have by a deed of partnership dated ---------taken GH, etc., into partnership within the firm styled AND WHEREAS it was part of the arrangement for taking the said GH into the said partnership that the said AB shall enter into and execute a bond for the due observance by the said GH of the terms of the said partnership deed.

NOW THE CONDITION of the above written bond is that if the said GH shall faithfully perform and observe each and every term and all provisions and agreements contained in the said partnership deed and on his part to be performed and observed and if the said AB, his heirs and executors or administrators shall at all times hereafter keep indemnified the said CD and EF and their respective heirs, executors and administrators for all losses, costs, charges and expenses which they or any of them shall or may incur or sustain by reason of the breach or non- performance on the part of the said GH of any of the terms, provisions and agreements aforesaid or by reason of the said GH not doing, performing, observing and complying with any award made by any arbitrator or arbitrators appointed under the terms of the said partnership deed, so and in such manner that he, the said AB, his heirs, executors and administrators shall be answerable to the said CD and EF and their respective heirs, executors and administrators for such losses, etc.,in the same manner as if the said AB had been a party to the said partnership deed in the place of the said GH and not further or otherwise AND so that any alteration which may

be made in the terms of the said partnership deed or the neglect or forbearance of the said CD and EF in enforcing payment of any sums which may become due to them from the said GH on account of breach or non performance aforesaid or the giving of time to him for the payment thereof should not release the said AB, his heirs, executors and administrators in respect of his or their liability under the above written bond THEN the above written bond shall be void but otherwise shall remain in full force.

Signed, etc.

23 Bond by a Trainee (if Minor, by His Guardian) with Sureties

KNOW ALL MEN that we AB, etc., (*or*, XY guardian of AB), CD, etc., (surety No.1) and EF, etc., (surety No.2) bind ourselves jointly and severally to the Governor of ——— (hereinafter called "the Government") for payment to the Government of the sum of Rs.———.

WHEREAS the above named bounden AB has under the order———notification dated———been selected to get training for ——— at——— in———.

WHEREAS by a deed of agreement dated ——— executed between the Government and the said bounden AB (*or*, his guardian XY) the Government has agreed to bear all the expenses in relation to the said training including the passage of the said AB at ——— for———and to make certain payment to the said AB on the terms and conditions therein specified.

AND WHEREAS for the purpose of securing and indemnifying the Government against all losses and damages which the Government may suffer by reason of the said AB making default in the observance and performance of any covenant on his part to be performed and contained in the said agreement and in consideration of the expenses to be incurred on the said training and payments thereof to be made to the said AB, it has been agreed that the said sureties (CD and EF) should execute the above given bond subject to the condition hereinafter contained.

NOW THE CONDITION of the above-written bond is that if the said AB (*or*, the said XY his guardian)shall duly and faithfully observe all these stipulations and conditions on his part to be observed and performed

and contained in the aforesaid agreement dated———then the above written bond or stipulation shall be void otherwise the same shall remain in full force.

Signed, etc.

24—Bond not to Carry on Certain Trade or Business within Certain Limits[4]

KNOW ALL MEN, etc. (*as in Form 18*).

WHEREAS by an agreement dated the ——— , the said CD has taken the said AB into his employment as Sales Manager of his business as manufacturer and dealer of electrical goods on certain conditions one of which is that the said AB will not set up or carry on the business of sale of electrical goods in the town of ——— (*or*, within ———km. from the Collectorate of that district) or solicit the customers of the said CD as hereinafter mentioned (*or*, otherwise to pay to the said CD Rs. ———as liquidated damages), but so that nothing herein contained shall prejudice or affect the right of the said CD, his heirs, executors or administrators or assigns to restrain by injunction any breach by AB of the said agreement and to recover damages from him for any antecedent breach in lieu of taking proceedings under the above written bond.

NOW THE CONDITION of the above written bond is that if the said AB shall not at any time hereafter (*or*, during———years from the date of the said bond) directly or indirectly, and either alone or in partnership with, or as agent, clerk or servant of any other person whomsoever or otherwise set up or carry on the trade or business of electrical goods or business thereof or in any way deal in any of the articles of the said trade or business within the town of———or within———km. from the Collectorate of that district without the consent in writing of the said CD or of the person or persons for the time being carrying on the trade or business now carried on by the said CD at——— aforesaid being first obtained for that purpose AND if the said AB shall not, either himself or by any other person on his behalf, at any time hereafter (*or*, during the said term of———years) solicit or endeavour to obtain the custom of any persons who are now or may hereafter from time to time while the said AB shall be in the service of the said CD be the customers of the said CD

4 Sec. 27 Contract Act.

(*or*, in the event of the said AB failing to observe any of the conditions hereinbefore expressed) then and in such case if the said AB, his heirs, executors or administrators shall forthwith pay to the said CD, his heirs, executors or administrators Rs. ——— as liquidated damages and not as a penalty THEN the above-written bond shall be void but otherwise it shall remain in full force.

IN WITNESS WHEREOF, etc.

25—Bond with Surety when the Principal proceeds on Leave

KNOW ALL MEN BY THESE PRESENTS that I, AB, etc., (Principal), at present employed as ——— in the office of——— AND CD, etc., (Surety) do hereby bind ourselves and our respective heirs, executors and administrators, to pay to the Governor of the State of———, his successors and assigns (hereinafter called "the Government") on demand the sum of Rs. ——— and other expenses, if any, which the Government may incur on the Principal together with interest thereon computed from the day following the expiry of the sanctioned leave at the rate of one per cent over and above the Bank rate in force on the first day of April of the financial year in which the leave has been sanctioned, or, if payment is made in a country other than in India, the equivalent of the said amount in the currency of that country converted at the rate of exchange between that country and India.

WHEREAS the Government has at the request of the above Principal granted him regular leave, followed by extraordinaty leave without pay and allowances, for a period of ——— months ——— days with effect from——— in order to enable him to study at———.

AND WHEREAS the Government has appointed/will appoint a substitute to perform the duties of——— (*designation*) during the period of absence of the Principal on extraordinary leave.

AND WHEREAS failure on the part of the Principal to resume duty on the expiry of the period of the extraordinary leave shall be deemed as resignation of the Principal from the service of the Government, but such deemed resignation shall in no way release the Principal or the Surety from their liability hereunder.

AND WHEREAS it has been agreed between the above Principal and Surety of the one part and the Government of the other part that for the better protection of the interest of the Government, the said Principal and the Surety should execute such bond as above written and with such condition as is hereunder written.

NOW THE CONDITION of the above written obligation is that in the event of the Principal failing to rejoin, on the expiry of the period of extraordinary leave, the post originally held by him and serve the Government after rejoining for such period not exceeding a period of————years as the Government may require or refusing to serve the Government in any other capacity as may be required by the Government on a salary to which he would be entitled under the rules, the said Principal and/or the Surety or their respective heirs, executors and administrators shall forthwith pay to the Government on demand the said sum of Rs.———— and other expenses, if any, which the Government may incur on the Principal together with interest thereon as aforesaid.

AND UPON the Principal and/or the Surety making such payment, the above written obligation shall be void and of no effect, otherwise it shall be and remain in full force.

PROVIDED THAT the liability of the Principal and/ or the Surety hereunder shall not be impaired or discharged by reason of the deemed resignation of the Principal upon his failure to resume duty on the expiry of the period of the extraordinary leave.

PROVIDED ALSO that the liability of the Surety hereunder shall not be impaired or discharged by reason of time being granted or for any forbearance, act or omission of the Government or any person authorised by them (whether with or without the consent or knowledge of the Surety) nor shall it be necessary for the Government to proceed against the Principal before proceeding against the Surety for any amounts due hereunder.

This bond shall in all respects be governed by the laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India.

AND it is hereby agreed and declared by the Principal and the Surety that the Government may, on the certificate of the Secretary to the

Government in the Administrative Department which shall be final, conclusive and binding, recover all dues hereunder from the Principal and the Surety jointly or severally as arrears of land revenue.[5]

The stamp duty shall be borne by the Government.[6]

IN WITNESS WHEREOF, etc.

5 This clause shall be legally enforceable only if there exists a statutory provision, such as that contained in Sec. 3(1) (d) of the U.P. Public Moneys (Recovery of Dues) Act, 1972, sanctioning recovery in this manner of dues agreed to be recoverable as arrears of revenue. See foot note under AGREEMENTS, precedent No.3, *ante*.

6 This clause may be inserted if it is desired that no stamp duty may be payable at all: Sec. 3 Stamp Act.

COMPROMISE, COMPOSITION AND FAMILY SETTLEMENT

Preliminary Note

Compromises

A compromise is the settlement of a claim or a dispute between the parties. When it is a settlement of a pending suit, it is evidenced by an application to the court jointly made by all parties in which the terms of the settlement are mentioned. When the claim or dispute is not the subject matter of a suit, or when the settlement goes beyond the scope of a suit, the compromise is made by a deed which is usually drafted in the form of an agreement. Matters which relate to the suit has to be widely construed. These include all matters which form consideration for the adjustment of the suit whether they form its subject matter or not.[1] In terms of Order 23 rule 3 C.P.C. a compromise decree may comprehend even matters falling outside the subject matter of the suit but relating to the parties. The "words in writing and signed by the parties" imply that the compromise as above mentioned is valid also where it is signed by the parties' counsel in their cause or by their duly authorised agents.[2] Compromise decree if not vitiated by fraud, misrepresentation, misunderstanding or mistake is binding and operates as resjudicata as also estoppel between the parties. An agreement settling disputes arising out of an earlier contract amounts to accord and satisfaction by a substituted agreement.[3]

Composition Deed

A composition deed is an instrument whereby a debtor conveys his property for the benefit of his creditors or secures to the creditors the payment of a composition or dividend on their debts. This is drafted in the usual deed form with recitals and covenants. Where composition or dividend is paid, the debtor and *all* the creditors are made parties, as also the trustee entrusted with the duty of distribution of assets. In case of assignment also, it is better to make *all* the creditors party to the deed otherwise there is a danger of any one not joining in the deed, filing an application for insolvency as the assignment is itself an act of insolvency under the Act. (Sec. 6 Provincial Insolvency Act; Sec. 9, Presidency Towns Insolvency Act). No private assignment or composition can, however, be made after the debtor has been adjudged

1 *Bishambhar Nath Agarwal* v. *Kishori Chand*, 1990 (1) ARC 33 (DB) (All); *Pratap Narain Agarwal* v. *Ram Narain*, 1981 ALJ 591 (DB); *Kalyandas* v. *Gangadevi*, A 1961 MP 67; *Zakarali* v. *Israr Hussain*, A 1947 Nag 53.

2 *Byram Pestonji Gariwala* v. *Union Bank of India*, (1992) 1 SCC 31, A 1991 SC 2234.

3 *Union of India* v. *Kishorilal*, A 1959 SC 1362.

insolvent. After adjudication composition can be made only with the approval of court (Secs. 38 and 29 respectively).

Family Settlement or Family Arrangement

Family settlement is a species of compromise. When members of a family compromise their disputes about family property or the property of a relation about the inheritance of which there is a *bona fide* dispute between them, the transaction is known as a family settlement or family arrangement. The requisites of a valid family settlement are that it should be between members of a family or between possible claimants to an estate, that a dispute or claim should be settled with a view to preserving the family honour or property or to save the parties from a ruinous litigation, that the settlement be *bona fide* and that there must be some consideration. It is now well settled that a family arrangement is for saving the honour of the family by the maintenance of peace and harmony and the avoidance of future discord or the preservation of property, hence it will be binding in the absence of fraud, coercion or undue influence. It is wholly unnecessary that a dispute must be existing actually. It would suffice if it is established that there was an actual or possible claim and a counter claim by the parties in settlement, whereof the arrangement as a whole was arrived at, thereby admitting the title in one on whom a particular property has fallen on the assumption of an actual existence in law that he had an anterior title thereof. The parties may either have an actual antecedent title, claim or interest, or even a possible claim in the property which is acknowledged by other parties. Where a relinquishment is made under such arrangement in favour of a person having no title then the latter's antecedent title will be assumed.[4]

Courts lean strongly in favour of family arrangement.[5] But the family settlement which is accepted by the courts in lieu of partition, is a settlement which gives share to the parties as per their legal entitlement and not a settlement which is made or purported to have been made to circumvent the law. A partition of the property can only be among the parties who have a pre-existing right to the property. Thus under the Hindu law, a female, major or minor has no share in the ancestral property of her husband or father during their lifetime. A female is given a share either in the self acquired property of the husband or the father, or in the share of the husband or the father in the coparcenary property after the property is partitioned. Therefore, there cannot be a partition and hence a family settlement with regard to the ancestral property so long as it is joint, in favour of the wife or the daughter.[6] The family settlement will be binding if honestly made, although it has not been meant as a compromise but

4 *Kale* v. *D.D.C.*, (1976) 3 SCC 119.

5 *Pullaiah* v. *Narasimham*, A 1966 SC 1836; *Shambhu Prasad* v. *Phool Kumari*, A 1971 SC 1337; *Krishna Behari Lal* v. *Gulab Chand*, A 1971 SC 1041; *Kale* v. *D.D.C.*, supra

6 *Hiraji Tolaji Bagwan* v. *Shakuntala*, (1990) 1 SCC 440

has proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are.[7] Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.[8] Where the settlement is with a Hindu widow, it has also to be prudent and reasonable besides being a *bona fide* settlement before it can bind the estate and the reversioner.[9]

A compromise effected between brothers, modifying a previous partition of their joint family property, is valid and binding as a family settlement, if there was a genuine dispute, and the compromise was for the benefit of the family as a whole.[10] The Supreme Court dealing with the question, when can a will operate as a family arrangement, observed that it will not do so where there be no dissensions, no contrary claims and no reasonably anticipated disharmony.[11] This was however a case where the will itself disclosed that all the sons of the testator were on amicable terms and there were no dissensions. Their Lordships however accepted that, as held in *Mathuri Pullaiah* v. *Mathuri Narasimham*,[12] "though conflict of legal claims *in praesenti* or *in futuro* is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bonafide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bonafide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it." An expectation, that such arrangement will result in establishing or ensuring amity and goodwill amongst the relations, can constitute good consideration.

When one of the sons of the family is shown to have not accepted or participated, the family arrangement as a binding agreement among several coparceners must fail. It has been held that a family arrangement between a widow and her daughters is binding on daughters who were parties to it, but not on their minor sons who were not parties to it, not having been represented by their guardians.[13] But if even a minor son takes benefit and gives assent, he cannot later go back on the assent given, on attaining majority. Even where a family arrangement suffers from a legal lacuna or formal defect the rule of estoppel or approbate and reprobate is pressed into service to shut out technical or trivial grounds of objection against it being taken by a person who being a

7 Kerr on Fraud, p. 364 cited in *Kale* v. *D.D.C.* (1976) 3 SCC 119; *Krishna Behari Lal v. Labh Chand*, (1971) 1 SCC 837.

8 Halsbury's Law of England (III Edn.) Vol. 17, pp. 215-16, cited in *Kale*, supra.

9 *Phool Kuer* v. *Prem Kuer*, A 1952 SC 207.

10 *Ramakrishna Raju* v. *Narayana Raju*, A 1949 PC 168.

11 *M.N. Aryamurthi* v. *M.L. Subbaraya Setty*, A 1972 SC 1279.

12 A 1966 SC 1836.

party to it seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself received some material benefits.[13]

No conveyance is necessary for a family arrangement, as a title is presumed already to exist.[14] If an oral compromise has already been arrived at between the parties the document ultimately executed in pursuance of the same may even be unilateral, such as a gift deed or a gift in the garb of a sale deed.[16]

Members of a family :

It is not necessary that all the members should join, and a settlement between some of them is valid. And where the settlement was made between senior members of a family and a compromise was made regarding their rights as well as rights of the other members of their respective branches, it was held binding on all the members and a member who was not a party to it but was beneficially entitled thereunder.[17] The aid of Sec. 23 (c) Specific Relief Act, 1867 was invoked in this case.[18] An arrangement between mere relations is not binding as a family settlement on the heirs of the parties.[19] Persons unborn and illegitimate members of a family are included in the term family. The expression "family" is to be construed widely and is not treated as confined to persons having legal title to the property.[20]

The settlement is binding on the sons and representatives of the parties and on reversioners It may contain any condition or any division of property. Any term may be agreed upon and provided. Even conditions which would not be valid in the case of deeds of transfer under the ordinary law may be inserted. For instance, a defeasance clause which would be void in a deed of gift or will may be inserted in a family settlement.[1]

A compromise in the nature of a family settlement is not an alienation by one party to another but a family settlement in which each party takes a share

13 *Sahu Madho* v. *Mukund Ram*, A 1955 SC 481.

14 *Kale*, v. *D.D.C.*, supra; *Bakshi Ram* v. *Brijlal*, 1994 Supp (3) SCC 198.

15 *Sahu Madho* v. *Mukund Ram*, supra.

16 *Mania* v. *Dy. Director Consolidation, U.P.*, A 1971 All 151.

17 *Tegh Bahadur Khan* v. *Nakko Khan*, 99 IC 472; Taraknath v. Sushil Chandra, (1996) 4 SCC 697 (para 4), (even though one of the brothers was not a party, as he was abroad, it was presumed that he must have authorised the other brothers to settle the dispute).

18 *Janki Bala Debya* v. *Maheshwar Das*, A 1942 Pat 460, 21 Pat 377; [Note : Old Sec. 23 (c) corresponds to Sec. 15 (c) Specific Relief Act 1963].

19 *Mitter Sain* v. *Data Ram*, 24 ALJ 185, 90 IC 1000.

20 *Kale* v. *D.D.C.*, supra.

1 *Budh Sagar* v. *Bishun Sahai*, 23 ALJ 141, A 1925 All 36, 86 IC 554.

2 *Surender Vikram* v. *Munia*, A 1944 Oudh 657.

of the family property by virtue of an independent title, which is to that extent admitted by the other parties.[3] A family settlement is not a transfer of family property.[4] A memorandum reciting that the parties had appointed 'X' as a *panch* and that they had decided to accept the decision by him, setting out the terms of that decision, and reaffirming their being bound by it is valid. No formal proceedings under the Arbitration Act are necessary in such a case, and as a memorandum of a past event it could be received in evidence though it was not registered.[5]

Vested and Contingent Rights

It is however expedient to bear in mind the distinction between creation of vested rights and of contingent rights. According to Black's Law Dictionary, 6th Edn. (1990), a contingent estate, interest or right is one "which depends for its effect upon an event which may or may not happen" (p.321), while a vested right is an "immediate or fixed right to present or future enjoyment and one that does not depend on an event that is uncertain". Thus where under a partition deed a father and his three sons got one-fourth share each with rights of alienation, etc., but a later clause added that on the father's death his share will be equally divided among the sons, it was held that the latter provision could not restrain the father from making a gift of his share in his lifetime in favour of one branch only. His right of alienation was a vested right while the sons' right to succeed to his estate was contingent on his leaving any property undisposed of. Creation of an absolute estate in favour of a person is in English Law called a grant in "fee simple".[6] This case also illustrates the principle that unnecessary provisions should not be made in any deed. The later clause was clearly redundant because even without it the sons would have had a right to intestate succession to their father's estate (subject of course to any gift or will by him).

Registration

A composition deed is exempt from compulsory registration [section 17(2) (i)]. But if it amounts to a trust deed, it requires registration under section 5, Indian Trusts Act, 1882.[7] A compromise in a pending suit with respect to subject- matter of the suit is exempt as it is embodied in the decree. If, however, the compromise embodies a transaction of gift or lease of extraneous property the decree embodying it would require registration.

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3 *Hiran Bibi* v. *Sohan Bibi*, A 1914 PC 44.

4 *Mahesh Chand* v. *Raj Kumari*, (1996) 8 SCC 128, A 1996 SC 869 (para 26); *S.K. Sattar* v. *Gurdappa*, (1996) 6 SCC 373.

5 *Munna Lal* v. *Suraj Bhan*, A 1975 SC 1119; (1975) 1 SCC 576; *Kale* v. *D.D.C.*, supra.

6 *Jaggavarapu Krishna Reddy* v. *Jaggavarapu Chittemma*, 1998 AIHC 3834 (AP).

7 *Govind Ram* v. *Madan Gopal*, A 1945 PC 74.

Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum[8] of what had been agreed upon. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties is to be founded. It is generally drawn as a record of what had been agreed upon in order that there are no hazy notions about it in future. It is only when the family arrangement is brought about by the document itself that the document requires registration.[9] In that case, it would amount to a document of title, as distinct from this, 'a mere memorandum of what had been agreed to earlier between the parties does not stand in need of compulsory registration under section 17 Registration Act.[10]

Stamp Duty

Stamp Duty is charged on Composition Deed and Family Settlement according to the provisions of Articles 22 and 58 respectively of the Schedule to the Stamp Act.

8 In *K.K. Modi* v. *K.N. Modi*, (1998) 3 SCC 573 (para 52), (document described as a "Memorandum of Understanding" was treated as having the effect of a family settlement).

9 *Jamunabai* v. *Sharadabai*, 1998 AIHC 4652 (AP), follg *Kale* v. *D.D.C.*, A 1976 SC 807.

10 *Tek Bahadur Bhujil* v. *Debi Singh Bhujil*, A 1966 SC 292; *Bakhtawar Singh* v. *Gurdev Singh*, (1996) 9 SCC 370.

PRECEDENTS

1—Deed of Composition with Creditors

THIS DEED is made on the day of BETWEEN AB, etc., (hereinafter called "the Debtor") of the first part AND CD, etc., (hereinafter called "the Trustee") of the second part, AND all the several persons, firms and companies, being the Creditors of the Debtor, whose names are set out in column 1 and whose signatures are given in column 3 of the schedule hereto (hereinafter called "the Creditors") of the third part:

Recital of Debts

WHEREAS the Debtor is indebted to the Creditors in the sums set opposite their respective names in the second column of the schedule hereto and being unable to pay the Creditors their debts in full has proposed to pay or procure to be paid to the trustee the sum of Rs. to be distributed among the Creditors *pro rata* in proportion to the debts due to them respectively and that such sum may be received by the Creditors in full discharge of their respective debts and claims against the Debtor;

Recital of Composition

AND WHEREAS the Creditors have agreed to accept the offer of the Debtor and to take the said composition in full discharge of their respective debts and in consideration thereof and of the premises to grant to the Debtor the release hereinafter contained

NOW THIS DEED WITNESSES AS FOLLOWS:

(1) Covenant to Pay to Trustees

The Debtor hereby covenants with the Trustee and the Creditors that he, the Debtor, will on or before the expiration of three months after the execution of this deed pay or cause to be paid to the Trustee the sum of Rs.------to be held by the Trustee upon and in trust for the purpose hereinafter declared concerning the same.

(2) Trust

The Trustee shall stand possessed of the said sum of Rs. upon trust to distribute the same among the Creditors whose names are

set out in the schedule hereto *pro rata* in proportion to the amounts due to them respectively.

(3) Creditors' Release of Debtor

In further pursuance of the said agreement and in consideration of the premises the Creditors do and each of them does hereby release and discharge the Debtor from all the said debts and from all actions, claims or demands or any of them against the Debtor in respect thereof.

(4) Default of Debtor

If the Debtor shall fail within the specified time to pay or cause to be paid to the Trustee the said sum of Rs. ..... or the debtor is adjudicated insolvent before payment of the whole of the said sum then the release of the said debts hereinbefore contained shall be void and of no effect and the Creditors and each of them shall be free to exercise in respect thereof all such rights and remedies and they and each of them would have been entitled if this deed had never been executed.

(5) Release not to Affect Others

The release hereinbefore contained shall in no respect prejudice the rights of the Creditors or any of them against parties other than the Debtor, and the Creditors hereby expressly reserve all the rights and remedies against any such party or parties.

(6) Arbitration

If any dispute shall arise with regard to any matter or things done under the foregoing provisions or otherwise in relation to this deed the same shall, if the parties fail to agree, be referred to the arbitration of XY.

The Schedule herein referred to

Names and Addresses of Creditors	Amounts of Debt	Signatures

Note. For a precedent of composition by a debtor assigning his property to the trustees for the benefit of his creditors, see precedent No. 5 under [illegible]

2—Deed of a Family Settlement between the Widow and a Son of a Deceased Muslim

THIS DEED OF FAMILY SETTLEMENT is made on the day of——— BETWEEN AB, etc., of the one part AND CD, etc., of the other part.

WHEREAS

Recitals

(1) The said CD claims the residential house of her late husband XY and the movable property stocked therein on the basis of an alleged oral gift by the said XY confirmed by a deed dated the and has filed a suit being suit No.——— of ——— in the Court of the ——— against the said AB and two other persons for (*a*) an order directing the defendants to remove the guard posted by them at the said house and certain locks and seals put up by them on the said house, (*b*) a perpetual injunction restraining the defendants from interfering with the plaintiff's use and enjoyment of the said house and the said movable property, and (*c*) the recovery of Rs.——— on account of damages for the alleged tortious acts of the defendants;

(2) The said CD threatens to file a suit for recovery of Rs. on account of her dower debt;

(3) As the prosecution of the aforesaid suit now pending in court and the institution of the contemplated suit for dower by the said CD require considerable drain on her purse, and the defence of the two suits is likely to cause unnecessary loss to the said AB, the parties hereto on the advice of mutual relations and friends and after taking competent legal advice have agreed to settle the matters amicably by a family settlement on the terms and conditions hereinafter stated; and

(4) All the conditions of the proposed family settlement have been fully explained to the said CD and the said CD has in consultation with her legal advisers, EF and GH carefully examined and considered the same and has given her free consent to them.[1]

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1 Such a clause is expedient in all cases of contracts by *purdanashin* ladies.

Terms of Settlement

NOW THIS DEED WITNESSES that in pursuance of the aforesaid agreement and in consideration of the settlement arrived at between the parties as hereinbefore recited, the parties hereto hereby agree with each other that they will observe and perform the covenants and conditions hereinafter follows:

(1) The said CD will withdraw her claim for damages preferred in the aforesaid suit No and the said AB will admit her title to the said house and all the movable property claimed by her in para 6 of the plaint in that suit. The claim with respect of reliefs (*a*) and (*b*) claimed in the said suit shall be decreed and that in respect of relief (*c*) dismissed and each party shall bear its own costs. The parties hereto shall file a petition of compromise in the court to this effect and a decree in terms of reliefs (*a*) and (*b*) claimed in the said suit shall be obtained in favour of the plaintiff and against the said AB by consent;

(2) The said CD will be entitled to Rs. only in full settlement of her claim for dower debt and hereby foregoes the balance of her said claim. The said sum of Rs. shall not be payable in cash but the said CD will be entitled to purchase property of that value with money paid by the said AB in the manner hereinafter provided, and her rights in such property and the devolution of such property after her death will be regulated by the conditions hereinafter provided;

(Here state all the terms and conditions.)

(3) If the said AB shall commit a breach of any of the covenants in clauses , the said CD will be entitled to claim her entire dower debt, *i.e.* Rs. with interest at per cent per annum less any sums already received by her on account of dower debt under the terms of this deed.

IN WITNESS WHEREOF, etc.

3—Deed of a Family Settlement Between Rival Claimants of an Estate

THIS DEED OF FAMILY SETTLEMENT is made on the —— day of BETWEEN AB, CD, EF AND GH.

WHEREAS

Recitals

(1) XY, owner of the property mentioned in Schedules J, K, L, M, and N died on the

(2) AB claims the whole of the said property as the adopted son of XY and the other parties deny the alleged adoption;

(3) CD claims the whole property as the widow of XY and the other parties deny that she is his widow and assert that she was XY's mistress;

(4) EF claims the whole property as the son of Z, a sister of XY but the other parties deny his claim, alleging that EF is not the son of Z but is the son of Z's husband by another wife;

(5) GH claims the whole property as a collateral of XY;

(6) Each of the four parties has obtained possession of a small portion of the estate of XY and has put in an application for mutation of his name on the whole of the estate;

(7) As the prosecution of the mutation cases and of the civil suits which will necessarily follow, the final decision in the mutation cases will entail heavy expenditure and is likely to ruin the parties, besides further accentuating the existing disharmony among them, the parties on the advice of mutual friends and relations and after taking competent legal advice to ensure amity and goodwill have agreed to settle the dispute amicably by a family settlement in the following manner;

(8) All the conditions of the proposed family settlement have been fully explained to CD by her counsel Shri and CD has in consultation with Shri fully examined and considered the same and has given her free consent to them.

Terms of Settlement

NOW THIS DEED WITNESSES and the parties agree as follows:

(1) AB, EF and GH shall be absolute owners of the properties mentioned in Schedules J, K and L respectively;

(2) CD shall be owner of the property mentioned in Schedule M for life and shall have no right to alienate except with the consent of AB, EF and GH or in the case of death of either of them with the consent of the survivor or survivors and of the heirs of the deceased and on the death of

CD, the property shall devolve upon AB, EF and GH or their respective heirs in equal shares;

(3) The property mentioned in Schedule N shall be set apart for the upkeep and other expenses of the temple of at which was built by XY deceased and shall remain in possession of GH in trust for this purpose. GH will apply the whole of the income of the property after deducting Government revenue, cesses, taxes and expenses of collection, on the upkeep of the temple and other necessary expenses in connection with the temple. After the death of GH, his eldest male heir and after him his eldest male heir and so on shall be the trustee provided he is able and willing to act as such trustee.

IN WITNESS WHEREOF, etc.

4 Compromise in a Suit

THIS AGREEMENT made on day of between AB, etc., and CD, etc.,

WHEREAS

(1) AB has filed a suit against CD in the court of the Civil Judge Junior Division, Allahabad (suit No. of 1999) for recovery of Rs. claiming the amount due to him from CD on account of purchases and sales of wheat made by CD in the *arhat* of AB;

(2) CD has filed a suit No. of 1999 in the Court of the Civil Judge Senior Division, Aligarh, against AB for accounts in respect of the purchase and sale of wheat made by CD in the *arhat* of AB and for recovery of the amount that may be found due to him on settlement of account; and

(3) The parties are desirous of settling their disputes to avoid trouble, inconvenience and expense.

NOW THIS COMPROMISE WITNESSES :

1. The parties agree that suit No. of 1999 filed in the Court of Civil Judge Senior Division Aligarh be dismissed leaving the parties to bear their own costs.

2. That suit No. of 1999 in the Court of the Civil Judge Junior Division, Allahabad, be decreed for Rs. without costs

with future and *pendente lite* interest at 6% per annum and the defendant of the suit should bear his own costs.

3. The parties will file compromise in the Allahabad suit so that a decree may be passed in that suit on its basis.

4. The parties will file copy of this agreement in the Aligarh suit, so that the suit may be dismissed as agreed.

IN WITNESS, etc.