

## **PERFORMANCE OF CONTRACT**

### **Introduction**

A contract places a legal obligation upon the contracting parties to perform their mutual promises, and it carries on until the discharge or termination of the contract. The most natural and usual mode of discharging a contract is to perform it. A person who performs a contract in accordance with its terms is discharged from any further obligations. As a rule, such performance entitles him to receive the other party's performance.

Exact and complete performance by both the parties puts an end to the contract. In expecting exact performance, the courts mean that, **performance must match contractual obligations**. In requiring a contract to be complete, the law is merely saying that any work undertaken must be carried out to the end of the obligations.

A contract should be **performed at the time specified and at the place agreed upon**. When this has been accomplished, the parties are discharged automatically and the contract is discharged eventually. There are, however, many other ways in which a discharge may be brought about. For example, it may result from an excuse for non-performance. In certain cases attempted performance may also operate as a substitute for actual performance, and can result in complete discharge of the contract.

### **Meaning of Performance of Contract**

The term '**Performance of contract**' means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon them.

For Ex A visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and A pays the price. The contract is said to have been **discharged by mutual performance**.

**Section 27 of Indian contract Act** says that *The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or any other law.*

Promises bind the representatives of the promisor in case of the death of the latter before performance, unless a contrary intention appears in the contract.

Thus, it is the primary duty of each contracting party to **either perform or offer to perform its promise**. For performance to be effective, the courts expect it to be exact and complete, i.e., the same must match the contractual obligations. However, where under the provisions of the Contract Act or any other law, the performance can be dispensed with or excused, a party is absolved from such a responsibility.

**Example:-** A promises to deliver goods to **B** on a certain day on payment of Rs 1,000. A expires before the contracted date. A's representatives are bound to deliver the goods to **B**, and **B** is bound to pay Rs 1,000 to A's representatives.

## Types of Performance

Performance, as an action of the performing may be actual or attempted.

### ➤ Actual Performance

When a promisor to a contract has fulfilled his obligation in accordance with the terms of the contract, the promise is said to have been actually performed. Actual performance gives a discharge to the contract and the liability of the promisor ceases to exist.

For example, A agrees to deliver 10 bags of cement at B's factory and B promises to pay the price on delivery. A delivers the cement on the due date and B makes the payment. This is actual performance.

Actual performance can further be subdivided into substantial performance, and partial Performance

### ➤ Substantial Performance

This is where the work agreed upon is almost finished. The court then orders that the money must be paid, but deducts the amount needed to correct minor existing defect. Substantial performance is applicable only if the contract is not an entire contract and is severable. The rationale behind creating the doctrine of substantial performance is to avoid the possibility of one party evading his liabilities by claiming that the contract has not been completely performed. However, what is deemed to be substantial performance is a question of fact to be decided in both the case. It will largely depend on what remains undone and its value in comparison to the contract as a whole.

### ➤ Partial Performance

This is where one of the parties has performed the contract, but not completely, and the other side has shown willingness to accept the part performed. Partial performance may occur where there is shortfall on delivery of goods or where a service is not fully carried out.

There is a thin line of difference between substantial and partial performance. The two following points would help in distinguishing the two types of performance.

**Partial performance must be accepted by the other party.** In other words, the party who is at the receiving end of the partial performance has a genuine choice whether to accept or reject. Substantial performance, on the other hand, is legally enforceable against the other party.

**Payment is made on a different basis from that for substantial performance.** It is made on quantum *meruit*, which literally means as much as is deserved. So, for example, if half of the work has been completed, half of the negotiated money would be payable. In case of substantial

performance, the party that has performed can recover the amount appropriate to what has been done under the contract, provided that the contract is not an entire contract. The price is thus, often payable in such circumstances, and the sum deducted represents the cost of repairing defective workmanship.

➤ **Attempted Performance**

When the performance has become due, it is sometimes sufficient if the promisor offers to perform his obligation under the contract. This offer is known as attempted performance or more commonly as tender. Thus, tender is an offer of performance, which of course, complies with the terms of the contract. If goods are tendered by the seller but refused by the buyer, the seller is discharged from further liability, given that the goods are in accordance with the contract as to quantity and quality, and he may sue the buyer for breach of contract if he so desires. The rationale being that when a person offers to perform, he is ready, willing and capable to perform. Accordingly, a tender of performance may operate as a substitute for actual performance, and can effect a complete discharge.

In this regard, **Section 38 of Indian Contract Act** says:

‘Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, or does he thereby lose his rights under the contract. For example, **A** contracts to deliver to **B**, 100 tons of basmati rice at his warehouse, on 6 December 2015. **A** takes the goods to **B**’s place on the due date during business hours, but **B**, without assigning any good reason, refuses to take the delivery. Here, **A** has performed what he was required to perform under the contract. It is a case of attempted performance and **A** is not responsible for non-performance of **B**, nor does he thereby lose his rights under the contract.’