

“Compromise of Disputed Claim as Consideration”

Suyash Gupta

Dr. Ram Manohar Lohiya National Law University

Abstract

This article deals in Contract Law especially in the field of consideration and it focuses if compromise of a disputed claim can act as a consideration and what limits the abandonment or compromise of a disputed claim is good consideration and attempts to clear the conceptual fog relating to that area with respect to Indian and English law.

Keywords: compromise, consideration, compromise decree, forbearance.

Introduction

Originally consideration was closely related to the *causa* of the civil law - it provided a motive for contracting and a motive for why the arrangement should be enforced. With the shift away from motive to the notion of a *quid pro quo*, consideration assumed an appearance more recognisable to the law of today. Nevertheless, it would be a mistake to imagine that the consideration of the common law was a replacement for the intention which was the basis of promissory liability in the civil law.”

Compromise of disputed claim fall under Section 2(d) of Contract Act 1827.”*It is an established principle of law that a promise by a claimant to abandon a disputed and doubtful claim to legal or equitable rights constitutes a consideration for a compromise*”¹ because the promise to abandon may be a detriment to the claimant and is a benefit to the other party who in turn promises to pay a certain sum of money.

The most usual and important kind of forbearance occurring in practice is that which is exercised or undertaken by way of compromise of a doubtful claim. It is a question of some importance within what limits the abandonment or compromise of a disputed claim is a good consideration and this manuscript aims to shed some light over this question.

Material and Method

The methodology is doctrinal in nature. The research procedure involves compilation of relevant information from case laws, editorials, books and statutes and information from other internet sources. This research involves an analysis of the information collected based on which analysis is made. Information from 1990 to 2020 is taken for consideration in making of the manuscript.

¹ *Mangal Singh v. Ghastia*, AIR 1929 Lah 485.

Consideration

Definition:

In simplest terms, consideration is what a promisor demands as the price for his promise. Sir Frederick Pollock² defines consideration as “*an act or forbearance of one party or the promise thereof is the price for which the promise of the other is bought and the promise thus given for value is enforceable.*”

Section 2(d) of Contract Act 1827,

“When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.”

Consideration was termed as “A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detrimental loss or responsibility given, suffered or undertaken by the other.”³

Rules for a valid Consideration

- (1) Consideration must move at the desire of the promisor Accordingly, an act done at the desire of a third party is not a consideration.
- (2) Consideration may move from the promisee or any other person
- (3) Consideration need not be adequate
- (4) Consideration must be real and competent.
- (5) Consideration must be legal.

Compromise qualifying as Valid Consideration

Compromise of a pending suit is a good consideration for the agreement of compromise. But here also it is essential that the dispute should be bona fide. However, a compromise is a good consideration “*irrespective of merits of the claim of either side*”, and even “*where there is some doubt in the minds of the parties as to their respective rights*”. “*An agreement to avoid further litigation is not an agreement devoid of consideration.*”⁴ Similarly, it has been held that “*where an agreement is arrived at between members of a family that is designed to promote grace and goodwill, this by itself is a good consideration to support the transaction.*”⁵

² Contracts, R.K. Bangia

³ *Currie v. Misa* (1875) L.R. 10 Ex 162.

⁴ *Bhima v. Nigappa* (1868) 5 BHC 75 (Appeal Civil).

⁵ *Latif Jahan Begam v. Mohd. Nabi Khan*, AIR 1932 All 174.

Compromise Decree

Where a dispute is settled by compromise or conciliation, the Court shall pass a decree or give decision in the suit in terms of the compromise or conciliation agreed to between the parties

No separate suit can be filed to ascertain the validity of a compromise memo, it was held by SC “*Order XXIII Rule 3A Civil Procedure Code clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. It further held, the High Court fell in palpable error in directing the plaintiff to take recourse to the remedy by way of separate suit. A plain reading of the proviso to Order XXIII Rule 3 lays down that where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the Court concerned.*”⁶

Validity of a Disputed Claim

It is a question of some importance within what limits the abandonment or compromise of a disputed claim is a good consideration. The difference between forbearance and compromise is that in the latter, the claim is not admitted, and the claimant promises to abandon the claim. “*a compromise is effected on the ground that the party making it has a fair chance of succeeding in it, and if he bona fide believes that he has a fair chance of success, he has a reasonable ground for suing and his forbearance to sue will constitute a good consideration. When such a person forbears to sue, he gives up what he believes to be right of action, and the other party gets an advantage, and, instead of being annoyed with an action, he escapes from the vexations incident to it.....It would be another matter if a person made a claim which he knew to be unfounded, and by a compromise, derived an advantage under it: in that case his conduct would be fraudulent.*”⁷

“*The abandonment of a doubtful or disputed claim is good and valuable consideration even of the claim is ultimately found to be unsustainable. The test to be applied is not to find out whether the party had a good case, but only to see if he thought in good faith that he had a case which he was abandoning.*”⁸

Compromise of disputes⁹ and doubtful rights¹⁰ is sufficient consideration for agreements. The abandonment of groundless claim will not make a good consideration.¹¹ The consideration in a compromise or abandonment of a disputed or doubtful claim is “ the surrender not of a legal

⁶ *R. Rajanna v. S.R. Venkataswamy*, AIR 2014 All 235.

⁷ *Callisher v. Bischoffshiem* (1870) LR 5 QB 449, 452.

⁸ *Firm Gopal Co. Ltd v Firm Hazari Lol & Co.* AIR 1963 MP 37.

⁹ *Kastoori Devi v. Chiranji Lal* AIR 1960 All 446.

¹⁰ *Harihar Prasad Singh v. Maharaja Kesho Prasad Singh* AIR 1925 Pat 68.

¹¹ *Jagaveera Rama Enappa v. Arumuggam* 45 IA 195.

right which may or may not exist and whose existence remains untested at the time of compromise, but of the claim to such a right.”¹²

So Validity can be summarised as:

Claims known to be invalid. [There is no consideration] if the sole consideration provided by A is his forbearance to enforce a claim which is clearly invalid and which he either knows to be invalid or does not believe to be valid. Thus a promise by a bookmaker not to sue his client for the amount of lost bets was no consideration for a promise made in return by the client....

- *Doubtful claims*: Where the claim is doubtful in law, a promise to abandon it involves the possibility of detriment to the potential claimant and of benefit to the other party. Such a promise is therefore good consideration for a counter promise given by the latter party: e.g. for one to pay a sum of money to the party promising to abandon the claim.
- *Claims wrongly believed to be valid*: A promise by A to abandon a claim is also good consideration for a counter-promise made by B, even though A’s claim is clearly bad in law, if it is believed by A to be a valid one [citing Callisher]. One reason which has been given for this rule is that otherwise “in no case of a doubtful claim could a compromise be enforced” [citing Callisher] but this does not explain why the rule applies where A’s claim is not merely ‘doubtful’ but clearly bad. Another suggested reason for the rule is that A suffers detriment because “he gives up what he believes to be a right of action” but, in general, consideration must be something of value, not something believed to be of value.

English Law’s take on Validity of Disputed Claim

Section 612

The general rule that the legal right which is acquired by the promisor or which is forborne by the promisee, must be a genuine right in order to amount to a valuable consideration, must be qualified in the case of contracts which are entered into in order to compromise a disputed claim¹³. The dispute between the parties may go to the existence of the claim, or it may be a dispute as to the amount due upon the claim, the existence of which is admitted. This dispute may be a dispute as to fact or a dispute as to law. In all cases in which the existence of the claim is in dispute, and in most of the cases in which the amount of the claim is in dispute, one of the parties to the dispute is in the wrong and the other is in the right. If, therefore, the law is to demand a forbearance of a genuine legal right as a consideration for the contract of compromise, no contract of compromise could be upheld, since one of the parties is giving more than he is legally bound to give, or the other party is receiving less than he is legally entitled to receive. The dispute may be as to the existence of a liquidated claim, where there

¹² T.S. VenkatesaIyer, *The Law of Contracts and Tenders*(S Gogia & Company, Hyderabad) 163.

¹³ "The Law Of Contracts", by William Herbert

is no dispute as to the amount which is due if anything is due, but only as to whether or not anything is due. It may be as to the amount which is due upon an unliquidated claim where there is no dispute as to the existence of the claim, but only as to the amount due thereon.¹⁴ In many cases, there is a dispute as to the existence of an unliquidated claim, where both the very existence of the claim and the amount, if any, due thereon, are in dispute.¹⁵

Data Analysis

Yes, we can consider compromise of disputed claim as consideration and even if the claim is doubtful but the party claiming forbearance bona fide believes it to be valid the compromise is a good consideration

Conclusion

Compromise is a kind of forbearance. For this purpose, claim should be reasonable and the party claiming should prudently believe that it is a valid claim. The compromise of a disputed claim is a good consideration for the fresh agreement of compromise. The claimant should also act bona fide. If the claim is useless and the claimant was not acting bona fide, the other party can claim compensation. For example, A sues to recover a debt of \$2000 from B. B denies the whole debt and promises to pay \$500 to A as a sort of compromise. This compromise of B is supported by consideration and is valid. The difference between forbearance and compromise is that in the latter, the claim is not admitted, and the claimant promises to abandon the claim.

¹⁴ *Wood v. Whitehead Bros. Co.*, 165 N. Y. 545, 59 N. E. 357

¹⁵ *Resseter v. Waterman*, 151 111. 169, 37 N. E. 875