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CHEQUE, CONTRACT, OR STATUTE? RESOLVING THE CONFLICT BETWEEN SECTION 69(2) OF THE PARTNERSHIP ACT AND SECTIONS 30/37 OF THE NEGOTIABLE INSTRUMENTS ACT

~ Anshika Mishra

“NO SUIT TO ENFORCE A RIGHT ARISING FROM A CONTRACT” This is the wording that section 69 of the Partnership Act, 1932 uses to bar the institution of suit by an unregistered partnership firm. However, the phrase “arising from contract” is nowhere defined in the Act. Courts have taken different views and used different interpretative methods, depending on the facts of the cases before them, but no single method has been laid down to determine exactly when a right can be said to “arise” from a contract.

To resolve the controversy around the phrase “arising out of contract”, the Hon’ble Supreme Court in the case of *Raptakos Brett & Co. Ltd. v. Ganesh Property*¹, while considering the question whether the suit filed is hit by Section 69², laid down that the answer depends entirely on what the plaintiff claims as the cause of action. The Court held that merely because a contract is referred to somewhere in the plaint does not, by itself, bring the suit within the bar; if such a reference is made only to narrate a historical fact, and does not form the actual foundation of the claim, the suit cannot be said to enforce a right “arising from a contract.” The court further clarified that what matters is whether the right sought to be enforced is genuinely traceable to the contract, or whether it exists independently under the general law, notwithstanding the contract’s incidental mention. This “substance of the plaint” approach has then been followed and reaffirmed in several subsequent decisions, including *Haldiram Bhujiawala v. Anand Kumar Deepak Kumar*³ and *Purushottam v. Shivraj Fine Art Litho Works*,⁴

¹ *Raptakos Brett & Co. Ltd. v. Ganesh Property*, (1998) 7 SCC 184.

² Indian Partnership Act, 1932, § 69, No. 9, Acts of Parliament, 1932 (India).

³ *Haldiram Bhujiawala v. Anand Kumar Deepak Kumar*, (2000) 3 SCC 250.

⁴ *Purushottam v. Shivraj Fine Art Litho Works*, (2007) 15 SCC 58.

both of which examined the plaint as a whole to determine whether the right being enforced could stand independently of any contractual relationship between the parties.

This approach works reasonably well where the underlying right is unambiguously independent of contract, such as a claim for passing off, founded in tort, or a landlord's right to recover possession under the Transfer of Property Act, 1882, once a lease has expired. In such cases, the right plainly exists under the general law, contract or no contract, and mere incidental reference to an agreement in the plaint changes nothing. The complication arises when the instrument underlying the claim is such that it cannot be placed easily on either side of the line, and this is the scenario that comes into play in the case of a cheque.

A cheque holds a very ambiguous position in the eyes of law; as its origin, it is nothing more than an instrument of discharge of an obligation towards the party against whom he/she owes a debt or a promise. While the Negotiable Instruments Act, 1881, the primary legislation that governs and regulates cheques, simultaneously gives it an entirely different character independent of the debt or any promise, such as, Sections 118⁵ and 139⁶ attach presumptions of consideration and lawful issuance, and Sections 30⁷ and 37⁸ fixes a liability on the drawer of the Cheque framed in such a way that makes no reference or traces of it to the underlying debt or any promise. For example, where a suit for recovery of money on a dishonoured cheque under Order 37 of the Code of Civil Procedure, 1908⁹ is filed, the plaint will almost always mention the cheque, a statutorily regulated instrument, where the debt it was meant to discharge remains contractual in origin. This complex scenario sits exactly at the fault line that the judgments like *Raptakos Brett*¹⁰ were never designed to address.

It is this ambiguity that has produced two dissimilar and contrasting lines of reasoning in the case law. While on one side, Judgements such as *Afsal Baker v. Maya Printers*¹¹, and *Hindustan Infrastructure Construction Corpn. Ltd. v. R.S. Woods International Ltd.*¹², hold that a suit for the recovery of money on dishonoured cheque would not fall within the purview of the bar

⁵ Negotiable Instruments Act, 1881, § 118, No. 26, Acts of Parliament, 1881 (India).

⁶ *Id.*, § 139.

⁷ *Id.*, § 30.

⁸ *Id.*, § 37.

⁹ Code of Civil Procedure, 1908, Order XXXVII, No. 5, Acts of Parliament, 1908 (India).

¹⁰ *Raptakos Brett & Co. Ltd.*, *supra* note 1.

¹¹ *Afsal Baker v. Maya Printers*, 2016 SCC OnLine Ker 29914.

¹² *Hindustan Infrastructure Construction Corpn. Ltd. v. R.S. Woods International Ltd.*, 2018 SCC OnLine Del 12960.

under section 69(2)¹³, as the cause of action in case of dishonoured cheque is based upon the cheque not the contract and also, Sections 30¹⁴ and 37¹⁵ of the Negotiable Instruments Act create a statutory liability on the drawer independent of any contract, hence the suit for recovery would be to enforce the statutory right not right “arising out of contract”. The other line, developed through *Raptakos Brett*¹⁶, *Haldiram Bhujiawala*¹⁷, and most recently *Shiv Developers v. Aksharay Developers*, 2022 SCC OnLine SC 114¹⁸, would ask a narrower and more searching question: what kind of right the suit vindicates, that is, whether the right sought to be enforced would exist at all in the absence of the underlying contractual relationship between the same parties or not.

These two approaches are not simply alternative applications of a single settled rule. They rest on different footing, largely unstated theories regarding what “independence” from a contract actually requires. The first treats statutory regulation of the instrument’s *form* as sufficient in itself to sever the claim from its contractual origin. The second looks past the form of the instrument to the *substance* of the underlying right, asking whether that right has any existence independent of the contract at all. No court appears to have paused to notice that these are two different inquiries, still less to explain why one should prevail over the other when a case, such as a suit for recovery on a dishonoured cheque issued to discharge an invoice, sits squarely within the reach of both.

This piece argues that resolving this conflict requires more than just a preference for one precedent over another. What is actually required is confronting a threshold interpretative question that Indian courts have so far assumed rather than examined, such as: does the statutory regulation of an instrument’s form ever suffice, on its own, to detach a right from the contractual liability that the instrument was created to discharge? This can be broken down into five parts. It first analyses the different interpretative approaches set out in the existing case law on Section 69(2)¹⁹ before examining the dual legal character of the negotiable instrument, and the doctrinal purpose served by treating instruments as detachable from their origin. It then contrasts the two competing models identified above in fuller doctrinal detail and tests both

¹³ Indian Partnership Act, *supra* note 2, § 69(2).

¹⁴ Negotiable Instruments Act, *supra* note 5, § 30.

¹⁵ *Id.*, § 37.

¹⁶ *Raptakos Brett & Co. Ltd.*, *supra* note 1.

¹⁷ *Haldiram Bhujiawala*, *supra* note 3.

¹⁸ *Shiv Developers v. Aksharay Developers*, 2022 SCC OnLine SC 114.

¹⁹ Indian Partnership Act, *supra* note 2, § 69(2).

models against the legislative purpose underlying Section 69(2)²⁰ to finally propose a reformulated test capable of reconciling the two lines of authority.

I. WHAT DOES “ARISING FROM A CONTRACT” REALLY MEAN?

The difficulty traced above ultimately finds its roots in the fact that Section 69(2)²¹ uses a phrase “a right arising from a contract” that admits of more than one plausible reading. At least three distinct interpretative approaches can be discerned in how courts have gone about answering this question, even where the courts themselves have not named or distinguished between them.

The first may be called the “**source test**”. Since it asks a historical question: where did the obligation in dispute originate? If the obligation can be traced back to an agreement between the parties, the right is treated as contractual in nature, regardless of the form the claim eventually takes or the instrument through which it is later pursued.

The second is the “**pleading test**”, and it is this approach that Indian courts have overwhelmingly adopted in practice. Rather than asking where the obligation historically began, this test looks to the plaint itself, what the plaintiff has actually alleged as the foundation/Cause of Action of the suit. As the judgment in *Raptakos Brett*²² makes it clear that a contract mentioned only as an incidental background in the plaint, and not relied upon as the basis of the claim, does not attract the bar, but when a right sought to be enforced depends on establishing the contract’s existence and terms does.

The third is the “**remedy test**”, which looks past both origin and the actual relief sought in the pleadings. This approach asks whether the relief claimed depends on proving the contract’s existence and terms, or whether it could be granted on an entirely independent legal basis, as, for example, a claim for injunction founded on a registered trademark can be granted without any reference to a contract at all, as affirmed and stated in the case of *Haldiram Bhujiawala*²³.

In principle, these three tests are analytically distinct and could point toward different outcomes on identical facts. In practice, however, Indian courts have collapsed all three into a single inquiry centred on the pleading test, with source and remedy considerations folded in only as evidence of what the plaint truly discloses. This convergence has gone largely unremarked

²⁰ *Id.*, § 69(2).

²¹ *Id.*, § 69(2).

²² *Raptakos Brett & Co. Ltd.*, *supra* note 1.

²³ *Haldiram Bhujiawala*, *supra* note 3.

upon and, as the discussion below will show, it is precisely this unexamined convergence that has allowed the statutory-attribute reasoning in the cheque-dishonour cases to develop without being tested against the Supreme Court's own "**substance-based**" framework.

II. THE CHEQUE'S SPLIT PERSONALITY: CONTRACT AT ORIGIN, STATUTE IN FORM.

A negotiable instrument is a unique statute of law, deliberately designed to serve two purposes at once, that exist in two opposite doctrinal directions. On one hand, it acts like a letter to the bank telling them to pay money that the person owes to someone, tracing its connection to the underlying debt or a promise. On the other hand, the Negotiable Instruments Act, 1881, treats the instruments as cash that is wholly independent of the contract to safeguard the holder of the cheque so that he/she could easily enforce without needing to investigate, or even be aware of, the underlying transaction between the original parties.

This detachment is not incidental; it is the main basis of negotiability. Sections 118²⁴ and 139²⁵ of the Negotiable Instruments Act, 1882, create presumptions in favour of the holder of the instruments precisely so that the validity of the instruments need not depend on proving the underlying contract each time it changes hands. Sections 30 and 37 fix the liability of the drawer on the instrument itself, again so that liability travels with the instruments rather than requiring fresh proof of the original transaction at every stage.

The critical question this raises is whether this same detachment was incorporated specifically to protect *third parties*, that is the holder(s), and enable free transferability, or it also operates to sever the instruments from their origin when the dispute is between the *original parties themselves*. There is a good reason to think it does not. The rationale for treating an instrument as independent of its underlying transaction exists to protect a subsequent holder who has no knowledge of, and no interest in, the transaction that produced the instruments. Where the plaintiff and defendant are the very same parties to the original contract, that rationale simply does not apply; there is no innocent third party, whose reliance on the instrument's face value needs protection, and no negotiability concern to safeguard. To transplant this third-party-protecting doctrine into a dispute between the original contracting parties conflates two conceptually distinct forms of "independence": independence for the purpose of transferability,

²⁴ Negotiable Instruments Act, *supra* note 5, § 118.

²⁵ *Id.*, § 139.

and independence for the purpose of characterising the underlying right. The statutory-attribute reasoning examined below rests, at bottom, on precisely this conflation.

III. TWO TESTS, ONE PROVISION: THE DOCTRINAL DIVIDE

A. THE STATUTORY ATTRIBUTE MODEL

The first model, evident in decisions such as *Afsal Baker*²⁶ and *Hindustan Infrastructure*²⁷, proceeds on a straightforward premise: if a statute independently fixes liability on an instrument, then a suit to enforce that liability is a suit to enforce a statutory right, regardless of what gave rise to the underlying debt. On this reasoning, because Sections 30²⁸ and 37²⁹ of the Negotiable Instruments Act create drawer liability without reference to any contract, a suit for recovery on a dishonoured cheque falls outside Section 69(2)³⁰ as a matter of course.

The difficulty with this model is that it proves considerably more than its proponents likely intend. Virtually every commercial debt in modern practice is eventually discharged, or attempted to be discharged, through some legally regulated instrument like a cheque, a promissory note or a bill of exchange. If statutory regulation of the instrument alone were sufficient to convert the underlying claim into a “statutory” one, then Section 69(2)³¹ could be circumvented in almost any case simply by pointing to the mode of payment rather than the transaction it was meant to settle. A provision enacted as a sanction to compel registration would then depend, for its very applicability, on the happenstance of how the defendant chose to attempt payment.

B. THE CONTINUITY OF OBLIGATION MODEL

The second model, traceable through *Raptakos Brett*, *Haldiram Bhujawala*, *Purushottam*, and more fully articulated in *Shiv Developers*, asks a different and narrower question. Rather than asking whether any statute touches the instrument, it asks whether the right mentioned in dispute would exist at all in the absence of the underlying contract between the parties or not. This is, in essence, a “**but-for**” inquiry: remove the contract, and check whether the claimed right still survives? For example, a trademark right survives because it exists by virtue of registration, which is unconnected to any agreement between the parties, or a right to recover

²⁶ *Afsal Baker*, *supra* note 11.

²⁷ *Hindustan Infrastructure Construction Corpn. Ltd.*, *supra* note 12.

²⁸ Negotiable Instruments Act, *supra* note 5, § 30.

²⁹ *Id.*, § 37.

³⁰ Indian Partnership Act, *supra* note 2, § 69(2).

³¹ *Id.*, § 69(2).

possession on the expiry of a lease, as it exists under the general law of property even after the terms of the lease between the parties expire. But a claim to recover a sum reflected in a cheque issued solely to discharge liability for an invoice does not survive this test, because, after detaching the invoice, there would be no debt and, subsequently, no cheque, leading to no claim at all.

This model treats the statutory regulation of an instrument's form as doctrinally irrelevant to the question that Section 69(2) actually asks. What matters is not whether some statute happens to govern the mechanics of the instrument, but whether the underlying right has an independent legal existence when detached from the contract that produced it or not.

IV. TESTING BOTH MODELS AGAINST THE PURPOSE OF SECTION 69(2)

Section 69³² was not enacted as a technical procedural trap; it was enacted as a practical sanction to compel firms to register, by denying unregistered firms the ordinary right to approach courts for the enforcement of contractual claims. Any interpretive test applied to the phrase “arising from a contract” ought, at minimum, to be tested against whether it serves or subverts this underlying purpose.

Measured against this purpose, the statutory attribute model fails on its own terms. If the mere presence of a regulated instrument in the chain of payment is enough to escape the bar, then the sanction becomes trivially easy to avoid; an unregistered firm need only ensure that its debtor pays, or attempts to pay, by cheque, and any dishonour instantly converts a garden-variety contractual claim into a “statutory” one. This does not merely create a narrow exception; it risks swallowing the rule in the overwhelming majority of commercial disputes, since cheques remain the dominant mode of settling invoiced debts.

The continuity of obligation model, by contrast, preserves the sanction's force precisely where it is meant to bite claims that are, in substance, disputes about a commercial contract, while leaving untouched the narrow category of rights that Raptakos Brett and its progeny correctly identified as genuinely independent: rights created by registration under a special statute, rights sounding in tort, and rights arising under the general law of property once a contractual relationship has run its course. It does not disturb the settled position that criminal prosecution under Section 138 of the Negotiable Instruments Act remains wholly unaffected by Section 69, since a criminal complaint is not a “suit” within the meaning of the provision at all, a distinct

³² *Id.*, § 69.

and independently sufficient reason that the statutory attribute model does not need, and should not rely upon, to reach that same result.

V. TOWARDS A COHERENT TEST

The foregoing discussion suggests a reformulated test capable of reconciling the two lines of authority: a right should be treated as “statutory,” for Section 69(2), only where it would exist independently of any antecedent contractual relationship between the same parties, not merely because a regulatory statute happens to govern the form of the instrument through which the right is asserted.

This reformulation does not disturb the doctrinal foundations of negotiability. A holder in due course, who stands outside the original transaction and relies on the instrument’s face value, remains fully protected by Sections 118, 139, 30, and 37 of the Negotiable Instruments Act; the detachment those provisions create continues to serve its intended purpose of enabling free transferability between third parties. What the reformulated test denies is the extension of that same detachment to a dispute between the original contracting parties, where the rationale for treating the instrument as independent of its origin simply has no application. In doing so, the test also restores coherence to Section 69(2)’s own jurisprudence, by making explicit what *Raptakos Brett* and its progeny have applied implicitly all along: that independence from contract is a question of substance, not of form.

CONCLUSION: THE UNANSWERED QUESTION

The conflict between the statutory attribute model and the continuity of obligation model is not, at its root, a disagreement about precedent. It is a disagreement about what independence from a contract actually means, a question Indian courts have applied inconsistently while rarely pausing to ask it directly. Until the Supreme Court squarely addresses whether the *Shiv Developers*³³ test extends to suits founded on dishonoured cheques, litigants will remain able to choose between two doctrinal frameworks capable of producing opposite results on materially identical facts. A provision enacted to give real teeth to the registration requirement under the Partnership Act deserves a settled answer to this question, one that looks, as the Supreme Court has insisted in every other context under Section 69(2), to the substance of the right rather than the form of the instrument through which it happens to be asserted.

³³ *Shiv Developers*, *supra* note 18.