BLOGS

Actionable Claim and Transfer of Actionable Claim under Transfer of Property Act

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Introduction

The code of contract with respect to the law of property was completed with the enactment of the Transfer of Property Act in the year 1882 ('ToPA'). It codified the laws pertaining to the transfer of property. However, TOPA does not cover all kinds of properties and their transfer.

An actionable claim represents a legal right that can be the subject of a lawsuit, and the transfer of actionable claims involves the assignment of these rights from one party to another. This post deals with actionable claim and their transferability under the Transfer of Property Act.

Actionable Claim under Transfer of Property Act

The term **"Actionable Claim"** is a legal concept that is defined under **Section 3 of the Transfer of the Property Act**. According to said provision, an actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable 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 confidential or contingent.

Thus, as per the aforesaid provision, an actionable claim is a claim to:

i) any unsecured debt, or

ii) any beneficial interest in a movable property that is not in the claimant's possession, either actual or constructive.

Apart from aforesaid types of claims, there are other kinds of claims as well that are actionable in nature and can afford relief. However, several kinds of claims are not actionable claims as per the definition enumerated under the TOPA, and therefore, they cannot be transferred.

For instance, in ***Jugal Kishore Saraf v. Raw Cotton Limited***, the Apex Court found that since the action is necessary in case of a decree or a judgment debt, it cannot be termed as an actionable claim.

In the case of ***Moti Lal v. Radhey Law***, the Apex Court held that the right of claiming damages, whether it arises out of contract or un-liquidated damages arising out of tortuous liability, cannot be regarded as an actionable claim. This is undoubtedly an obligation but does not amount to unsecured debt. It is attributable to the uncertain sum of money involved.

Furthermore, it is also not a part of an original transaction, which is a must for a claim to become actionable. However, it includes the principal money and the interest charged thereupon for them being a specific nature of the debt. On the other hand, damages are of an uncertain nature and, therefore, not an actionable claim.

Similarly, in ***Jai Narayan v. Kishun Dutta***, the Court found that mesne profit cannot be regarded as an actionable claim as it is un-liquidated in nature. Further, it is neither a claim to a beneficial interest in movable property. Thus, it is a *"mere right to sue*".

Moreover, rights under trademark, patent and copyright are also not termed as actionable claims. This is due to the fact that they already vest in the individual who possesses them. They are the individual's intellectual property, and hence, another person cannot be permitted to claim under them. They are governable under their respective legislation and cannot be transferred as actionable claims.

Transfer of Actionable Claim

Since an actionable claim is not considered "property" under the TOPA, it cannot be transferred in the same way that property can be transferred. **Sections 130 to 137** of Chapter VIII of the TOPA deal with the transfer of actionable claims. This Chapter provides general principles that must be borne in mind while transferring actionable claims. The provisions are analysed hereinunder.

Section 130 of Transfer of Property Act

This section states that an actionable claim can be transferred:

i) with or without consideration

ii) by way of an instrument in writing duly signed by the transferor or his agent duly authorised in this respect.

Thus, oral transfer of actionable claims is not permitted. However, its registration is not necessary, and no separate instrument of transfer is to be effected.

Section 131 of Transfer of Property Act

The notice is not necessary to ensure perfection of the transferee's title of actionable claim. However, the dealings of the debtor with the creditor are protected until the former receives the notice of such an assignment in observance of the conditions enumerate under Section 131 of the TOPA. It states that:

i) The notice of transfer of the actionable claim has to be made in writing.

ii) It must be signed by the transferor or his agent authorised on his behalf.

iii) However, if the transferor refuses to sign it, then, in that case, it must be signed by the transferee of actionable claim or his duly authorised agent.

The Hon'ble Apex Court has clarified in ***Sadasook Ramprotap v. Hoar Miller & Co.*** that Section 131 of TOPA does not prescribe any time limit for the service of notice. It must be within a reasonable period of time and unconditional.

Section 132 of Transfer of Property Act

The principle behind this section is that the transferee gets no better title than the transferor. Thus, the transferee takes all the equities and also the liabilities of the transferor to which the latter was subject at the time of such assignment.

Section 133 of Transfer of Property Act

This provision deals with the warranty of solvency of debtor. In the case of assignment of a debt, the transferee runs the risk of losing the claim when the debtor becomes insolvent. Therefore, as a precaution, the transferor of the actionable claim warrants the solvency of the debtor at the date of assignment. But this is subject to contract to the contrary. Further, it is limited only to the amount or value of the consideration for which it is transferred.

Section 134 of Transfer of Property Act

Since an actionable claim is a property, its transfer by way of a mortgage is possible. When one debt is transferred to cover an other debt, whether existent debt or future debt, it is referred to as a transfer of actionable claim by way of a mortgage. This section provides the below-mentioned preposition under which the amount so realised could be appropriated:

i) the debt received by the transferor or recovered by the transferee is to be applied in payment of the cost of such recovery.

ii) it is to be applied towards satisfaction of the amount secured by the transfer.

iii) if any residue remains after the above-mentioned payments, the remainder is to be given to the transferor.

Section 135 of Transfer of Property Act

This provision was inserted by the Amendment Act of 1944. It states that the asignee of fire insurance policy in whom the property of the subject matter of policy is absolutely vested at the date of assignment, it would have the effect of transferring and vesting in him all the rights to sue just as if the insurance policy was entered into by him.

Section 136 of Transfer of Property Act

The persons mentioned under this section are not legally qualified to make transfers of actionable claims. The object behind this disqualification of *"Judges, legal practitioners and officers connected with Courts of Justice*" is to ensure that the judiciary remains impartial.

Section 137 of Transfer of Property Act

Furthermore, this Chapter is not applicable to negotiable instruments and other instruments mentioned thereunder. This is because they are governed by other laws and statutes.

Conclusion

After studying every relevant provision of the TOPA it can indeed be concluded that actionable claims as defined under Section 3 of the TOPA are transferable in nature. It is a movable property of intangible nature that could be assigned as per the provisions and rules mentioned in Chapter VIII of the TOPA. Thus, one must be evident as to the nature of the property, the process of transfer of the actionable claim and the law laid down under various judgements of the Indian courts to effectuate a valid transfer of actionable claim.

For more such notes on Transfer of Property Act, click here!