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DOCTRINE OF WAIVER



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Evolution:

The doctrine of waiver can be traced back from the year 1945, where the Bombay High Court recognized and states that doctrine of waiver in India is different from English law. It is invoked on the premise that the person is his best judge and he has the liberty to waive his right conferred by the State.

Meaning:

The waiver means the voluntary relinquishment or abandonment of a legal right or advantage. The waiver of right requires the person shall know about the existing right before waiving of such right. There cannot be waiver off right when the person has not known or has no full knowledge of the right and abandons the same.

Waiver Of Rights Under Contract:

Section 65 of the Indian Contract Act, 1872 deals about the Doctrine of waiver. It states "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

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The rights and relinquishment of waiver includes the obligations and claims previously agreed between the parties. If there is no consensus about the obligation, rights or claim there cannot be waiver of the same.



Waiver Of Statutory Rights:

When the right of the party is conferred upon the legislation, the parties shall waive off their rights. The waiver of statutory right cannot be permitted if it violates the statutory right of the people. This right enhances public police and morality where one cannot infringe the right of the other by violating the public policy and morality.

Conditions To Waive Of The Statutory Rights:

1. When there is direct relationship between the parties.
2. The right should not affect the matter involving public right and it is ensured by the intention of the legislation.

Exception:

The doctrine of waiver cannot be done in the fundamental rights enshrined under Part III of the Constitution. The fundamental rights guarantees the public policy cannot be subjected to doctrine of waiver and therefore, waiver cannot have any applicability to the provision which have been enacted as a constitutional policy.

CASE LAWS

Case 1

Kotak Mahindra Bank Pvt Limited V. Ambuj A. Kasliwal, 2021 SCC Online SC 95.

Held - The entire waiver of pre-deposit for filing appeal before Debt Recovery Appellate Tribunal under Section 21 of the Recovery of Debts and Bankruptcy Act, is



impermissible. In all cases fifty per cent of the decretal amount i.e. the debt due is to be deposited before the DRAT as a mandatory requirement, but in appropriate cases for reasons to be recorded the deposit of at least twenty-five per cent of the debit due would be permissible, but not entire waiver.

Case 2

Quippo construction Ltd V. Janardan Nirman Pvt Ltd., 2020 SCC Online SC 419.

Held - Non-participation in Arbitral proceedings by a party and failure to raise objections before the Arbitrator would preclude the party from doing so after the passing of an Arbitral Award i.e., waiver of right to raise objections on jurisdiction after award.

Case 3

M/s.Sonell Clocks and Gifts Ltd V. The New India Assurance Co. Ltd., 2018 AIR SC 4146.

Held - The insurer is not estopped from raising a plea of violation of the condition relating to delay in intimation warranting a repudiation of the claim, merely because it appointed a surveyor to assess the loss and subsequently upheld a National Consumer Commission order that appointment of a surveyor does not amount to waiver by the insurer as regards the condition relating to delay in intimation.

Case 4

M/s. McDowell & Company Ltd V. Commissioner of Income Tax, Karnataka Central, Bangalore, Civil Appeal No. 3893 of 2006.

Held - The actual accumulated losses to be set off in the hands of the assessee first



adjust the income that is accruing to it on account of waiver of interest by financial institutions. Since the assessee has taken over HPL and HPL has ceased to exist as a legal entity, the income tax will be payable in the hands of the assessee.

When the assessee is allowed the benefit of the accumulated losses, while computing those losses, the income which accrued to it had to be adjusted to be set off by the assessee company. Assessee cannot take the advantage of the accumulated losses and refuse to account for income accrued under Section 41(1) of the Act.

DISCLAIMER

This write up has been sent to you for information purposes only and is intended merely to highlight legal maxim. The information and/or observations contained in this issue do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this issue do not necessarily constitute the final opinion of M/s.Wallcliffs Law Firm and should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us on mail@wallcliffs.com.



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