

## SUCCESSFUL DEFENCE TO ESCAPE THE EFFECT OF A SIGNED DOCUMENT: SUPREME COURT ON THE PLEA OF NON-EST FACTUM

### INTRODUCTION

The underlying principle of all the contracts universally rests upon the concept known as ‘Consensus Ad Idem’ which means the meeting of minds or coming to a mutual consensus on a particular contract. Each party to the contract shall agree to all the terms and conditions stipulated therein in order to form a valid contract and make it binding upon the parties. In case, where any party fails to understand the essentials terms of the contract, there would not be any consensus ad idem.

To disregard the entire contract as not valid and thereby unenforceable only on the ground of error in understanding the essentials of contract between the parties would essentially create more road blocks rather than solving the problem perse.

Therefore, to prevent the abuse of this rule of law, the common law has evolved a plea of defence known as ‘Non-Est Factum’ for dealing with the mistake such as the kind of contract being signed by either of the parties occasioned on the grounds of misunderstanding on the essential terms of contract.

### PLEA OF NON-EST FACTUM

Literal meaning of Plea of ‘Non-est Factum’ means ‘this is not my deed’, which can be taken by an executor or signatory of the deed to plead that the said document was invalid because its executor/signatory was mistaken about its character at the time of execution/signing.

It is a special defence available under the Law of Contract which allows a person to escape the effect of a document which he/she may have executed/signed.

The doctrine is an outcome of a famous English case law i.e. ***Foster v. Mackinnon (1869) LR 4 CP 704*** which described the essential aspect of the doctrine:

*"It seems plain, on principle and on authority, that, if a blind man, or a man who cannot read, or who for some reason (not implying negligence) forbears to read, has a written contract falsely read over to him, the reader misreading to such a degree that the written contract is of a nature altogether different from the contract pretended to be read from the paper which the blind or illiterate man afterwards signs; then, at least if there be no negligence, the signature so obtained is of no force. And it is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which its name is appended".*

## ESSENTIAL REQUIREMENTS FOR A SUCCESSFUL NON-EST FACTUM PLEA:

The Hon'ble Supreme Court in the matter of *Ramathal & Ors. Vs. K.Rajamani(Dead) Through LRS & Anr.*(CIVIL APPEAL NO. 8830 OF 2012; AUGUST 17, 2023) has recently observed the underlined requirements for a successful 'Non-Est Factum' plea:

1. The person pleading non est factum must belong to "class of persons, who through no fault of their own, are unable to have any understanding of the purpose of the particular document because of blindness, illiteracy or some other disability". The disability must be one requiring the reliance on others for advice as to what they are signing.
2. The "signatory must have made a fundamental mistake as to the nature of the contents of the document being signed", including its practical effects.
3. The document must have been radically different from one intended to be signed.

However, while deciding upon the matter, the judiciary has to strike a balance between the two conflicting interests i.e. protecting the signor/executor of the document (whose consent has been missing/ lacking) and the third parties who may have acted upon the genuine and properly executed document.

## WHO CANNOT AVAIL THE DEFENCE

Several judgments from High Courts have clarified the instances where such defence cannot be availed. In *Mathu v. Cherchi* 1990 (1) KLT 416, the Kerala High Court held that '*the plea of non-est factum would not be available to an able bodied person too busy to read the contents and had not taken sufficient care, except where he had been a victim of fraud.*'

Also, the plea of non-est factum could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document. Nor could it be available to a person whose mistake was really a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing." However, the court demands a prudent man to adopt reasonable care to be exercised before executing or entering into any transaction.

## LIMITATION OF THE DOCTRINE

The doctrine has a very limited scope. It is applicable only where the element of consent to a contract is either missing or lacking i.e. majorly in those transactions in which the document purports to effect is essentially different in substance and in kind from the transaction intended.

Further, the courts have to apply the doctrine very cautiously and strictly so as not to shake the confidence of those who rely on the genuineness of the signatures, where there is no reason for the doubt.

## **BURDEN OF PROOF**

The burden of proof lies upon the person who pleads 'non est factum'. The person needs to prove that not only was there a lack of consent but also there was no lack of negligence.

## **CONCLUSION**

Therefore, the plea of non-est factum can be used only as a shield for protecting innocent signatories to a contract and cannot act as a sword to harm the interests of innocent third parties who acted on the properly executed documents .

***Disclaimer:-** This Article is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. Utkrishtha Law Offices do not intend to advertise its services through this Articles.*

## **CONTACT US**

### ***UTKRISHTHA LAW OFFICES***

***Advocates & Solicitors***



***Address:- 29, Kailash Hills, NewDelhi***

***Email:- [contact@utkrishthalaw.com](mailto:contact@utkrishthalaw.com)***

***Phone:-8750021607, 9999309222***

***[Website:www.utkrishthalaw.com](http://www.utkrishthalaw.com)***