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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

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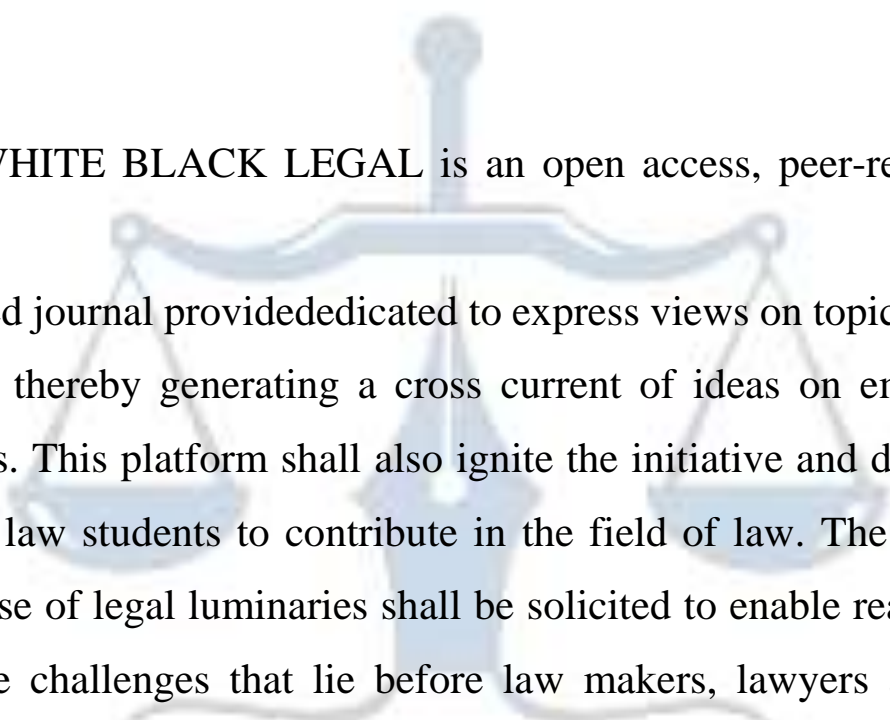


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CASE ANALYSIS AND COMMENTARY-
INFRASTRUCTURE LEASING AND FINANCIAL
SERVICES LTD. V. HDFC BANK LTD. & ANR.

AUTHORED BY: SUDHIKSHA SRIVATSAN
CHRIST (Deemed to be University)

INTRODUCTION

The Supreme Court of India rendered a landmark decision in the case of Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd., Civil Appeal No. 004708 of 2022, which makes clear the legal guidelines governing the transfer of receivables—especially actionable claims—under the Transfer of Property Act, 1882. This disagreement stemmed from a financial agreement in which IL&FS promised HDFC its future receivables in return for funding. The case raised important issues regarding whether a registered deed is necessary for a legitimate assignment of future receivables and whether HDFC, as a secured creditor, could exercise its rights over these receivables without registration.

The Supreme Court maintained the legality of HDFC's claim, highlighting that Section 130 of the Transfer of Property Act permits actionable claims—including future receivables—to be transferred by written instrument without the need for registration. Justices S. Ravindra Bhat and Dipankar Datta's ruling, which clarifies the enforceability of assignments and upholds lenders' rights in India, has significant ramifications for financial transactions.

Two justices, both of whom had substantial knowledge in business and financial law matters, made up the quorum of the bench that heard the case. *Justices Ravindra Bhat* and *Justice Dipankar Datta* presided over the bench. This background guaranteed that the judges' brains were prepared to handle the case's intricacies, especially when it came to applying the Indian Contract Act of 1872 and the Transfer of Property Act of 1882¹.

¹ Transfer of Property Act, No. 4 of 1882, India Code (1882).

PROCEDURAL HISTORY

- IL&FS and HDFC entered into a financial agreement known as the Assignment and Administration Agreement on June 25, 2018, which set up the dispute. In this agreement, IL&FS requested financial support and pledged future receivables from its Business Centre Services Agreements (BCSA) to HDFC in exchange for the loan.
- These receivables represented sums that outside parties owed IL&FS. HDFC asserted its right to obtain the receivables directly from IL&FS's third-party creditors after the latter defaulted on its obligations. IL&FS objected, claiming that the deal was more of an asset promise than an assignment. Moreover, IL&FS argued that a registered deed pursuant to the Transfer of Property Act, 1882 was necessary for the assignment of future receivables to be legitimate.
- The National Company Law Appellate Tribunal (NCLAT), among other lower courts, found that the agreement permitted HDFC to enforce its rights over the receivables and decided in favour of HDFC.
- IL&FS, offended by this result, challenged the legality of the assignment under Indian law in an appeal to the Supreme Court of India. Whether the receivables had been lawfully assigned in accordance with the agreements and applicable legal provisions was the central question on appeal.
- The Supreme Court upheld the lower courts' rulings on October 19, 2023. It came to the conclusion that the receivables were actionable claims that may be transferred without requiring registration under the Transfer of Property Act, 1882, and that the assignment of receivables to HDFC was lawful.²

FACTS OF THE CASE

- Housing Development Finance Corporation Ltd. (HDFC) and Infrastructure Leasing and Financial Services Ltd. (IL&FS) entered into a financial arrangement to secure a loan under a Master Facility Agreement (MFA) dated June 25, 2018. In order to assign future receivables owed under its Business Centre Services Agreements (BCSA) with third parties, IL&FS and HDFC negotiated an Assignment and Administration Agreement as part of this agreement. These receivables were summing that lessees or renters who were using IL&FS-owned properties owed the

² Infrastructure Leasing & Fin. Servs. Ltd. v. HDFC Bank Ltd., Civil Appeal No. 4708 of 2022 (India Sept. 9, 2022).

organisation.

- Furthermore, IL&FS signed a Power of Attorney giving HDFC the right, in the case of default, to oversee and seize these receivables directly from third-party creditors.
- Based on its contractual rights under the Assignment and Administration Agreement, HDFC asserted the right to collect the receivables from IL&FS's third-party creditors after the company fell behind on its loan obligations.
- In support of its claim that the agreement allowed for an absolute assignment of the receivables, HDFC debited the appropriate sums from the escrow account created in accordance with the financial arrangements.
- IL&FS disputed HDFC's activities, bringing forth many points of contention:
 - First, IL&FS asserted that, in accordance with the Transfer of Property Act, 1882, the arrangement did not amount to an outright assignment of receivables. IL&FS claims that in order for an assignment of future receivables to be approved under the Act, a registered deed had to be present, which was not the case in this instance.
 - Second, IL&FS contended that HDFC was not the owner of the receivables but rather a secured creditor, with the arrangement creating only a pledge or security interest over the receivables.
 - Lastly, IL&FS argued that HDFC's claim to the receivables was void since there was no recorded deed of assignment.
- The Transfer of Property Act, 1882, and its provisions pertaining to the assignment of actionable rights were brought to light by the case.
- According to IL&FS, HDFC cannot rightfully claim ownership of the future receivables until it satisfies the Act's conditions for a registered deed. HDFC replied that no additional registration was necessary because the receivables had been lawfully distributed in accordance with the terms of the arrangement.
- According to the National Company Law Appellate Tribunal (NCLAT), HDFC was able to assert its rights over the receivables because of the agreements. The Supreme Court of India heard an appeal from IL&FS against this decision and confirmed the NCLAT order, finding that the receivables were actionable claims that may be pursued.³

³ Infrastructure Leasing & Fin. Servs. Ltd. v. HDFC Bank Ltd., NCLAT, Civil Appeal No. 004708 of 2022 (India Sept. 9, 2022).

ISSUES

- 1) Whether the Assignment and Administration Agreement between IL&FS and HDFC constituted a legitimate assignment of future receivables under the Transfer of Property Act, 1882, was the primary legal question in the case.
- 2) If future receivables might be assigned, would it need a registered deed?
- 3) Whether HDFC was legally permitted to pursue direct receivables collection from IL&FS's defaulting debtors.
- 4) Whether the parties' agreement consisted of an explicit assignment of rights or an assurance of security.
- 5) The extent and consequences of the Power of Attorney that IL&FS executed on HDFC's behalf.

ARGUMENTS

A. FOR INFRASTRUCTURE LEASING AND FINANCIAL SERVICES:

- IL&FS argued that the assignment of future receivables was an “actionable claim” which needed a registered assignment document in accordance with the Transfer of Property Act, 1882. IL&FS contended that there had been no lawful assignment in the lack of such a deed.
- IL&FS said that HDFC was not entitled to ownership of the receivables because the arrangement was only a pledge of security.
- The HDFC Power of Attorney was restricted and could not be utilised to uphold rights not expressly stipulated by law.

B. FOR HDFC BANK:

- HDFC retorted that, even in the lack of a registered deed, the arrangement constituted a legitimate assignment of receivable in response.
- It contended that the agreement's wording and the parties' intentions were adequate proof of an outright assignment under the law.
- HDFC said that it was granted complete authority to collect the receivables in question under the Power of Attorney, and that IL&FS's failures immediately activated this power.
- It claimed that any future receivables assignment should be subject to a registered deed, as this would put an excessive burden on financial transactions—especially

those involving secured loan agreements.

LAWS APPLIED

A. TRANSFER OF PROPERTY ACT, 1882:

- Under the Transfer of Property Act, 1882, the assignment of future receivables is the central question in this case. Actionable claims may be transferred by a written document signed by the transferor or an authorised representative, according to *Section 130(1)* of the Act.⁴
- Crucially, with rare exceptions, the provision does not expressly mandate registration for such transfers. Future receivables, according to IL&FS, are actionable claims, and a registered deed is necessary for their assignment in order for the transfer to be deemed lawful.
- HDFC, however, argued that the assignment was legitimate through the written instrument under *Section 130(1)* and therefore registration was not required.⁵

B. FUTURE RECEIVABLES AND ACTIONABLE CLAIMS:

- According to *Section 3* of the Transfer of Property Act, actionable claims consist of future payments claims as well as unsecured debts. Such claims, including receivables in the future, must normally be assigned formally using an instrument of assignment.⁶
- IL&FS said that HDFC's claim to the future receivables could not be enforced against third-party creditors in the absence of the necessary formalities, such as registration. On the other hand, HDFC argued that the receivables assignment was carried out legally and that no additional registration was required for the assignment to be legitimate.

C. INDIAN CONTRACT ACT, 1872:

- Standard contract law concepts were used to understand the financial agreement between IL&FS and HDFC and to carry out IL&FS's execution of the Power of Attorney. The enforceability of contracts is governed by the Indian Contract Act, 1872, which makes sure that the parties' intentions were evident from the contract

⁴ Transfer of Property Act, 1882, § 130(1).

⁵ Id. at 4.

⁶ Transfer of Property Act, 1882, § 3.

instruments.⁷

- In this instance, the court looked at whether the Power of Attorney and Assignment and Administration Agreement indicated a desire to transfer the receivables to HDFC, granting it the authority to collect any future receivables. Whether HDFC was a secured creditor or the owner of the receivables depended on the wording of the Power of Attorney and the arrangement.

D. POWER OF ATTORNEY:

- HDFC was granted the right to collect receivables from third-party debtors by IL&FS, who had executed a Power of Attorney in its favour. In light of the Transfer of Property Act of 1882 and the Indian Contract Act of 1872, the extent and validity of this Power of Attorney were examined. Despite IL&FS's protestations that the deal just established a security interest and not a transfer of rights, the Power of Attorney granted HDFC the operational authority to enforce its claim over the receivables.

RELEVANT CASE LAWS

- A. **SYNDICATE BANK V. R. VEERANNA**⁸ - This case addressed whether future receivables might be assigned without a recorded deed and what constitutes an actionable claim under the Transfer of Property Act.
- B. **GAJANAN MORESHWAR PARELKAR V. MORESHWAR MADAN MANTRI**⁹
– addressed the legal distinction between pledge and assignment as well as security over future property.
- C. **LALIT KUMAR JAIN V. UNION OF INDIA**¹⁰ - Offered clarification on how financial agreements are regarded by Indian law and whether they can be enforced.

JUDGEMENT

The Assignment and Administration Agreement was deemed by the court to be a legitimate assignment of future receivables, ruling in HDFC's favour. The following major conclusions formed the basis of the decision:

⁷ Indian Contract Act, 1872.

⁸ Syndicate Bank v. R. Veeranna, AIR 2000 SC 2032 (India).

⁹ Gajanan Moreshwar Parekar v. Moreshwar Madan Mantri, AIR 1956 SC 731 (India).

¹⁰ Lalit Kumar Jain v. Union of India, (2000) 3 SCC 118 (India).

1. **VALID ASSIGNMENT OF FUTURE RECEIVABLES:** The court determined that an actionable claim, such as a receivable, may be lawfully transferred by a written instrument in accordance with the Transfer of Property Act, 1882. In this instance, the Power of Attorney and the Assignment and Administration Agreement together constituted a legally binding document. The court observed that although certain property assignments could necessitate registration, actionable claim assignments did not always need it provided the parties' intentions were evident.
2. **INTENTION OF THE PARTIES:** Based on the contract's terms, the court gave the parties' intentions a lot of weight. It concluded that the written agreement and the Power of Attorney adequately proved IL&FS's intention to assign its receivables to HDFC as collateral for the financial arrangement.
3. **FUNCTION OF THE POWER OF ATTORNEY:** According to the court's interpretation, the Power of Attorney gives HDFC the right and ability to pursue direct collection of the receivables from third-party debtors. HDFC's claim to the receivables was supported by the Power of Attorney, which was sufficiently broad to cover the collection of future receivables in the case of default.
4. **ENFORCEABILITY:** The court denied IL&FS's claim that the assignment was void because a registered deed was missing. It concluded that the Assignment and Administration Agreement met the formal criteria of the Transfer of Property Act since it was a signed written agreement between the parties.

RATIONALE- REASONING BY THE JUDGE

- The judge used a number of legal precepts as the foundation for his reasoning.
- With respect to the Intention of the Parties and Contractual Autonomy, the court stressed that a key factor in interpreting financial agreements is the parties' intention. In this case, it was evident from the contract's wording and the external environment that HDFC would be receiving receivables. The court reasoned that, even though it would be best, the evident intention to form an assignment is nonetheless acceptable even in the absence of a registered deed.
- Additionally, with respect to the Assignment and Pledge, the court distinguished between a "pledge" and a "assignment." While a pledge creates a security interest, an assignment conveys legal ownership of the claim. Since HDFC was granted the authority to collect receivables rather than only keep them as collateral in this

instance, the deal more closely resembled an assignment.

- Furthermore, the court found that Section 130 of the Transfer of Property Act¹¹ applied to this case. The agreement between IL&FS and HDFC satisfied the condition for the section's allowance of the assignment of actionable claims through a written instrument. The judgement further emphasised that for future receivables, there is no required requirement of registration provided the parties' purpose to assign is obvious.
- In financial transactions involving future receivables, this ruling upheld the legal precept that, so long as the parties' intentions are clear, a written document, such as an Assignment and Administration Agreement, is sufficient to establish a valid assignment under the Transfer of Property Act, 1882, without the need for registration.

CONCURRING AND DISSENTING OPINIONS

A. CONCURRING OPINIONS:

- The judges' reading of the provisions of the contract between HDFC and IL&FS was accepted. They affirmed the need for financial agreements to safeguard lenders' interests, particularly where those agreements are backed by future receivables.
- The judges determined that the receivables had been legitimately assigned to HDFC by emphasising the enforceability of the Power of Attorney and the validity of the Assignment and Administration Agreement. By concentrating on the parties' intentions, they determined that the arrangement qualified as an assignment of actionable claims and did not need to be registered in accordance with the Transfer of Property Act of 1882.

B. DISSENTING OPINIONS:

- No dissenting opinions were expressed in this decision since both judges agreed on the pertinent legal issues. Should disagreements have existed, they may have focused on how the assignment was interpreted and questioned if HDFC's extensive control over the receivables exceeded the parameters stipulated in the agreement or the law.
- A disagreement of this kind might have prompted questions concerning the rights of the borrower and the requirement that assignments involving future receivables be

¹¹ Transfer of Property Act, 1882, § 130.

registered.

CRITICISMS

- This ruling is essential in establishing the rules governing the assignment of receivables under the law, especially in financial agreements. It reaffirms that registration under the Transfer of Property Act, 1882¹², is not always necessary for assignments of actionable claims, including future receivables. In the future, financial transactions involving comparable agreements will be more predictable as a result of the verdict, which clarifies when assignments are legitimate and enforceable.
- The court's use of this principle emphasises that judicial interpretation of financial agreements should be based on the parties' actual intentions. The overall intent and conditions of the agreement were sufficient to support HDFC's claim, even in the absence of explicit use of phrases such as "assignment".
- The ruling firmly upholds the rights of lenders to be safeguarded in financial contracts. It emphasises how legitimate it is for lenders to use allocated receivables as collateral so they can collect debts in the event that borrower's default. By giving lenders, a legal means to use future receivables to secure their loans, this ruling improves their position.
- The extensive authority afforded to lenders by the Power of Attorney and the Assignment and Administration Agreement is a matter of worry that results from this decision. The ruling may cause lenders to have substantial control over a borrower's future receivables, which could tip the scales in their favour in comparable financial arrangements.
- Furthermore, this ruling implies that future financial agreements should include more precise definitions and restrictions on the assignment of receivables, given the possibility of lender overreach. In order to guarantee that their rights are sufficiently safeguarded, borrowers may request more precise contractual provisions, such as restrictions on the range of authority provided by any related Power of Attorney. In order to avoid future disagreements and balance the interests of both parties, clearer provisions may be helpful.
- Although the ruling upholds the rights of lenders, it might also make borrowers more cautious when entering into financial arrangements pertaining to future receivables.

¹² Transfer of Property Act, 1882.

- The decision suggests that borrowers ought to exercise greater caution when it comes to the terms of the contracts they sign, especially those pertaining to the transfer of assets and the authority they provide lenders. This could have an impact on further discussions and result in more specific terms to protect the interests of the borrower.

