

Indian Contract Act, 1872

Unit-5 = Breach of contract and its Remedies.

* Breach of Contract :-

meaning:- Failure of a party to perform his or her obligation under a contract.

Ways:- Breach of contract may arise in two ways:-

- > Actual breach of contract.
- > Anticipatory breach of contract.

* Actual breach of contract:- Actual breach of contract may be committed:-

- (a) At the time when the performance of the contract is due:-

Example 1:- A agrees to deliver 100 bags of sugar to B on 1st Feb, 2012. On the said date, he failed to supply 100 bags of sugar to B. This is actually actual breach of contract. The breach has been committed by A at the time when the performance becomes due.

(b) During the performance of the contract:-

=> Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under it by express or implied act.

* Anticipatory Breach of Contract:-

=> When a party repudiates it before the time fixed for performance.

Example 2:- Where A enters into a contract with B on 15th July, 2020 to supply 10 bales of cotton for a specified sum on 14th August, 2020 and on 30th July informs B, that he will not be able to supply the said cotton on 14th August, 2020, there is an express rejection of the contract.

* Consequences of Anticipatory Breach:-

The promisee may either:-

(a) rescind the contract and treat Contract as at an end, and at once sue for damages, or.

(b) he may elect not to rescind but to local contract operative and wait for the time of performance and then hold the party liable for the consequences for non-performance.

Example 3: X agrees to sell to Y a certain quantity of wheat at Rs. 100/- per quintal to be delivered on the 3rd March. On the 2nd February, X gives notice expressing his unwillingness to sell wheat and the price of wheat on the date is Rs. 110/- per quintal. If Y repudiates the contract forthwith (which he is entitled to do at his option), he would be able to recover damages @ Rs. 10/- per quintal. If instead of taking taking the action forthwith, he keeps the contract alive till the 3rd March and in the mean time, the price increases to Rs. 125/- per quintal on the date. Y would be able to recover damages @ Rs. 25/- per quintal.

If on the other hand, during the intervening period between 2nd February and 3rd March, private sale of wheat is

prohibited by the government, the contract would become void, and you would not be able to recover any damages whatever.

* Remedies for Breach of Contract :-

Suit for Damages.

Rescission of Contract.

Suit upon quantum meruit

Suit for specific performance

Suit for injunction.

(1) Suit for Damages :-

Meaning:- Monetary compensation awarded to a person.

@ Ordinary Damages:- Ordinary damages are those which naturally arise in the usual course of things from such breach. The measure of ordinary damages is the difference between the contracted

price and the market price at the date of the breach.

Example 4:- A contract to deliver 100 tons of oil at Rs. 1000 per ton on a future date. On the due date he refused to deliver. The price on that day is Rs. 1100 per ton. The measure of damages is the difference between the market price on the date of the breach and the contract price, i.e. Rs. 10,000.

NOTE:- Compensation can not be claimed for any remote or indirect loss or damage by reason of the breach.

Example 5:- A railway passenger's wife caught cold and fell ill due to her being asked to get down at a place other than the railway station and she had to walk a long distance in cold night to reach home. In a suit by the plaintiff against the railway company, it was held that damages for the personal inconvenience of

the plaintiff alone would be granted, but not for sickness of the plaintiff's wife.

(d) Special Damages: Damages other than those arising from the breach of a contract may be recovered if such damages were decided at the time of making the contract. These can be claimed only if the special circumstances which would result in a special loss in case of breach of a contract are brought to the notice of the other party.

Example 6:- A, a builder, contract to erect a house for B by the 1st of January, in order that B may give possession of it at that time to C to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that before the 1st January, it falls down and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to

make compensation to C for breach of the contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost and for the compensation made to C.

(c) liability to pay vindictive or exemplary damages:-

These damages may be awarded only in two cases, viz:-

- (i) for breach of promise to marry.
- (ii) wrongful dishonour by a banker of his customer's cheque.

(d) liability to pay nominal damages:-

Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. It is awarded just to establish the right to decree for the breach of contract. The amount may be rupee or even 10 paise.

Example 7:- A firm consisting of four

partner employed B for a period of two years. After 6 months two partners left, the business being carried on by the other two. B declined to be employed under the continuing partnership. Held, he was only entitled to nominal damages as he had suffered no loss.

(c) Damages for deterioration caused by delay:-

⇒ In this case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

Example 8:- A purchased a velvet for making caps for sale during Spring season. Due to delay in transit, he was unable to utilize it to benefit during season. Held that the fall in value of

Cloth arrived after season amounted to deterioration for which A was entitled to recover damages.

* Liquidated Damages and Penalty:-

- Liquidated Damages :- liquidated damages represent a sum, fixed or ascertained by the parties in the contract, which is a fair and genuine pre-estimate of the probable loss that might ensue as a result of the breach, if it takes place.
- Penalty :- A penalty is a sum named in the contract at that time of its formation, which is disproportionate to damage likely to accrue accrue as a result of the breach. Court may relief against penalty.

Under 'English law' liquidated damages are enforceable but penalties cannot be claimed.

* Payment of Interest :-

<u>01.01.2024</u>	→	<u>01.04.2023</u>	→	<u>01.07.2023</u>
Date of Contract		Due date of Payment		Actual date of Payment
or		or		
Date of Bond		Date of Default		

- (1) A condition for payment of interest in case of default is not in the nature of penalty, if the interest is reasonable.
- (2) A condition for increased interest from the date of the bond, and not from the date of default, is always in the nature of penalty, and relief is granted against it.
- (3) A condition in a bond for payment of Compound Interest on failure to pay simple interest at the same date as was payable upon the principal is not a penalty.

(4) A condition in a bond for the payment of compound interest at a rate higher than that of simple interest is a penalty and would be relieved against.

② Rescission of contract :-

→ When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case he become free from all his obligations under the contract and is entitled to compensation for any damage that he might have suffered.

Example :- A promised B to deliver 50 bags of cement on a certain day. B agreed to pay the amount on receipt of the goods. A failed to deliver the cement on the appointed day. B is discharged from his liability to pay the price.

③ Suit upon Quantum Meruit:-

⇒ The phrase 'quantum' quantum meruit' literally means "as much as is earned" or "according to quantity of work done". The claim of quantum meruit must be brought by a party who is not at default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible.

Following are the cases in which a claim of quantum meruit may arise:-

(a) When an agreement is discovered to be void:-

⇒ If an agreement is discovered to be void or becomes void, any person who has received any advantage under such agreement or contract, is bound to restore it, or to make compensation for it to the person from whom he received it.

Example 10:- A agrees to deliver 100 kgs of rice to B at a price of Rs. 40 per kg. The rice were to be delivered in two installments of 50 kgs each. A delivered the first installment but failed to supply the second due to some unavoidable reasons. B ~~not~~ must pay for 50 kgs.

(b) Where something is done or delivered without intention to do gratuitously:-

Ex. Where a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit.

Example 11:- A, a trader leaves his goods at B's place by mistake. B treats it as his own and Mr. B is bound to compensate A for it.

(c) Where the contract is divisible:-

→ Where the contract is divisible and one party has enjoyed the benefit of part performance, the other party may sue on quantum mesuit.

Example 12:- X wrongfully revoked Y's (his agent's) authority before Y could complete his duties. Held, Y could recover as a quantum mesuit, for the work he had done and the expenses he had incurred in the course of his duties as an agent.

(4) Suit for Specific Performance:-

→ Where the damages are not an adequate remedy in the case of breach of contract, the court may in its discretion grant a suit for specific performance direct party in breach, to carry out his promises according to the terms of the contract.

Specific performance not granted where:-

- ⇒ Monetary compensation is an adequate relief,
- ⇒ Contract is of personal nature, e.g. contract of marriage.
- ⇒ It is not possible for the court to supervise performance of contract, e.g. construction of work.
- ⇒ Contract is ultra vires i.e. beyond the objects of company.

⑤ Suit for Injunction :-

- ⇒ Where a party to a contract is negating the terms of contract, the court may be issuing an 'injunction' or 'order', restrain him from doing what he promised not to do.

Example 13:- N, a film star, agreed to act exclusively for a particular producer, for one year. During the year he contracted

to act for some other produces. Here he could be restrained by an injunction.

Example 14:- A, a singer, agreed with B to perform at his theatre for two months, on a condition that during that period, she would not perform anywhere. In this case, B could move to the court for grant of injunction restraining A from performing in other places.