

Remedies for Breach of Contract

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Abstract: *The topic of my research is 'Remedies for Breach of Contract'. The research starts with the introduction about the topic. Breach of Contract is actual failure or refusal to perform its obligation under the contract by its contracting parties. The Actual breach of contract leads to certain remedies which are provided to the party who suffers loss due to failure of performance of obligation. In court of jurisdiction, the main remedy is an award for damage. Thus, remedies for breach of contract are of several types. This is explained in a brief way in section 73 of The Indian Contract Act, 1872. The research also includes distinction between Indian law and English law regarding Remedies for Breach of Contract and lastly analysis and conclusion of the research topic.*

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1. Introduction

S.73 of The Indian Contract Act, 1872ⁱ states about the compensation for the loss or damage caused by the breach of contract as well as compensation for failure to discharge obligation resembling those created by contract. In Pannalal Jankidas v Mohanlalⁱⁱ Justice Patanjali Sastri of Supreme court observed that “the party in breach must make compensation in respect of the direct consequences flowing from the breach and not in respect of the loss or damages indirectly or remotely caused. This section states that compensation is not given for any remote or indirect loss or damage sustained due to breach. In Hadley v Baxendaleⁱⁱⁱ clearly laid down two rules that compensation is recoverable for any loss or damage-

1. Arising naturally in the usual course of things from the breach, or
2. Which the parties knew at the time of the contract as likely to result from the breach.”

There are two types of breach: 1. Breach occurring before the fixed time of performance has arrived i.e. Anticipatory breach. 2. Breach occurring when the party has failed to perform his obligation upon fixed time of performance mentioned in the contract i.e. Actual breach

But for claiming remedies for damage the burden of proof lies on the plaintiff i.e. to prove that he has suffered some kind of loss. It is necessary that some loss should be shown by evidence. In other words, in Chief secy, State of Gujarat v Kothari & Associates^{iv} it was held that

“The plaintiff has to assert that he has suffered some loss but for the purpose of claiming damages he has specially to plead and prove that he has sustained such special loss.”

2. Types of Remedies for Breach of the Contract

If there is an actual breach of contract the injured party ultimately becomes entitled to one or more of the remedies. There are in total six types of remedies for the injured party against the guilty party:

1. Rescission of the contract
2. Suit for damage
3. Suit upon quantum meruit
4. Suit for specific performance of the contract
5. Suit for an injunction
6. Restitution

1. Rescission of the Contract:

This is stated in sec 75^v of The Indian Contract Act. When there is breach of contract by one party, the other party officially states that the contract is no longer valid and hence there is no need to perform his part of obligation mentioned under the contract, this is called rescission of the contract. Then the court grants rescission, the aggrieved party is freed from all his obligation under the contract and becomes entitled to compensation for the damage which he sustained because of non performance of contract. Thus, Rescission is the remedy that terminates the contractual obligation of both parties. Rescission may be of two types: mutual rescission and rescission by agreement and both discharge the parties from its obligation by making new agreement after execution of original contract but prior its performance. However, they both are different from each other. A rescission by mutual agreement can be done any time by mutual assent but must include a promise by either or both of the parties to make restitution as part of rescission i.e. a meeting of mind is necessary by an offer to rescind and acceptance by other and moreover simply one party cannot rescind by simply giving a notice and right to rescind must be within a reasonable time. Right to rescind is only limited between the parties to the contract. This agreement can either be oral or written.

2. Suit for Damages:

Damages include monetary compensation given to the injured party for the loss or injury suffered by him due to the breach of contract. The purpose behind providing damage for breach is to put the injured party into the position in which he would have been if there had been performance instead of breach and would not further punish the defaulter and this is considered as the primary aim or principal of the law of damage. A claim for damage arising out of the breach of contract whether for general or liquidated damage remains a claim till it is adjudged by court and awarded by the court as debt. In *Victoria Laundry Ltd. v Newman Industries Ltd.*^{vi} Justice Asquith says, "It is well-settled that the governing purpose of damage is to put the party whose right have been violated in the same position, so far as money can do so, as if his right has been observed. In *Hadley v Baxendale*^{vii} Alderson B laid down that 'where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be as may fairly and reasonably be considered either arising naturally i.e. according to the usual course of thing, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contracts, as the probable result of the breach of it.'

Further, rule of common law states that if the party has sustained a loss by reason of breach of contract, he is, to be placed in the same situation regarding damages in terms of money if the contract had been performed. However, motive and manner of breach are not to be taken into account but the ultimate purpose is to just punish the defendant for his default.

There are five kinds of damages:

1. General damage- These are those damages which arises naturally in the usual course of things i.e. from breach itself. In other words we can say that the defendant is liable for all that which naturally happens in usual course after the breach. Thus general damages occur when a contract has been broken the injured party can always recover general damages from the defaulter, as per the rule and are such kind of damages that arises or may arise fairly and reasonably from usual course of thing naturally from the breach of contract. general damage in contract includes difference between contract and market price and also difference between value of good as delivered and as warranted and interest on money that has been wrongfully withheld

2. Special damages- These are those damages which arises due to unusual circumstances affecting the plaintiff. They are not easily recoverable until and unless they are brought to the knowledge of the defendant. No recovery of special damages when special circumstances not known. Lack of knowledge of special circumstances also prevented recovery of special damages. Special damages include all kind of damages. Losses flowing out of the breach of contract could be compensated for as special damage. Special damages are sometimes described in statutes when legislature seeks to identify specific awards that are made available when the state or a private person violate other person's right. In short, special damages are those which arises due to special or unusual situation which had been affecting the plaintiff and such damages must be contemplated at the time when the contract is entered. Subsequent knowledge of special circumstances will not create any such special liability on the defaulted party.

3. Exemplary or Vindictive damages- These are such damages which are awarded as a punishment to the guilty party for the breach of contract but not by way of compensation. The cardinal principle of law states that if damage is occurred to the party due to the breach of contract it must be compensated to the injured party by the defaulter and there is no mention that the defaulter has to be punished. But there are two exceptions to this rule:

1. In breach of contract to marry, the amount of damage depends upon the extent to which injury is caused to the party's feeling.
2. Dishonour of cheque on part of banker even though there was sufficient funds available with the bank to credit to its customers. In this case amount of damage will differ on the basis of the position/status of the party.

4. Nominal damages- These are such damages which are awarded for name sake. They are neither to be considered as compensation to the injured party nor to be awarded as punishment to the defaulter party. The purpose of this award is to establish a right to decree for breach of contract when the party hasn't actually suffered any real damage. It consists of very small sum of money say a rupee or two as compensation. In other words, nominal damages refers to damage which is awarded and issued by the court when any legal wrong occurs to the plaintiff and there was no actual financial loss due to such legal wrong.

5. Liquidated damages- It means that sum is fixed in advance to the probable loss that would be the result of such breach. In other words, they have been agreed and fixed by the party or it is the sum which was agreed by the parties under a contract as payable on default of one of them. Section 74^{viii} of The Indian Contract Act, 1872 applies.

6. Substantial damage- It refers to damage which brings actual economic loss or for which compensation in a substantial amount is awarded.

3. Suit for Quantum Meruit

The word 'Quantum Meruit' means 'what one has earned' and in context of contract law it means 'reasonable value of services'. In this right to sue arises where after performance by one party and then there is breach of contract or the contract is discovered to be void or becomes void. However, this concepts applies in the following situation:

When a person hires other person for doing his work and the contract is either not completed or left unperformed then that person who is performing the work has the right to sue for the services which he has rendered to the person who has hired him. The law states that there is a promise by the employer to his workmen that he would be paid as much as he deserves for the services which he renders to him. As evidence the measure of value set forth in contract is to be provided to the court even though the court doesn't require to go through the terms while deciding such award.

4. Suit for Specific Performance

Specific performance is one by which the court directs the defendant to perform the contract in accordance with the terms mentioned in the contract. In other words specific performance means actually carrying out of the terms mentioned in the contract. Under specific conditions the party can file a suit for specific performance. A decree for specific performance is granted only where the legal remedy is inadequate or defective i.e. in situations where it is just and equitable to do so. In other words it can be said that specific performance will not be granted where provide adequate relief. It is a discretionary remedy as it does not follow that specific performance will definitely be granted because damages are not to be considered as adequate compensation. Moreover, in identifying whether or not to entertain the claim of specific performance the court will have to take into account whether mutuality exists between the parties, this means if one party performed its obligation and other party's obligation remains unperformed it would be unfair that former party be left to remedy if the latter party failed to perform any of its unperformed obligation.^{ix} The courts have been taking a very flexible and liberal approach towards availability of specific performance, but there are two factors that indicate that it should remain a secondary remedy to damages. First, it does not take into account the desirability of claimant taking reasonable steps to mitigate its loss and granting it avoids the policy of mitigating rule. Second, there has been many improvements in techniques for identifying loss recoverable by damages.^x

5. Injunction

'Injunction' is said to be an order given by the court to restrain a person for doing a particular act. It is one way of attaining specific performance of the negative terms of the contract. It is preventive relief. It is applicable in cases of anticipatory breach of contract in which damages would not be an adequate relief. Injunction may be either prohibitory or mandatory. A prohibitory injunction is granted to restrain the breach of negative contract or stipulation^{xi} (a contract where a promisor covenants not to do something, for example, not to carry on certain trade, or to build on land, etc). A mandatory injunction includes positive performance of an act or used to restore the situation as it was prior to the breach of contract, for example, to put back the tenant wrongfully evicted by the landlord.

6. Restitution

It literally means restoration. It is based on the principle that a person should not be allowed to unjustly enrich himself in expense of other. It is for the purpose of returning the benefit received by one party of the contract from other party under a void contract. It is said whenever the contract becomes void the person if he has received any advantage from such contract is bound to return or restore or to make compensation to the person from whom he received it. This particular doctrine is mentioned in section 65^{xii} Alfred McAlpine Construction Ltd. v Panatown Ltd. (2001) AII ER (D)41 (Apr) of the Indian Contract Act, 1872.

Can Damage or Loss Suffered by Third Party be Claimed?

When it is mentioned in that breach by any party to contract is likely to cause loss to an identified stranger rather than the two contracting parties, the party not in default can claim for damage. Thus, this substantial damage can be recovered even though he does not personally bear the cost of correcting the defects^{xiii}.

Can Interest be Claimed as Damage?

If the party fails to show that such interest has been claimed under the contract or on account of usage then interest is refused. The Supreme court in Mahavir Prasad Rungta V Durga Dutta^{xiv} ruled that interest can be claimed only if it is payable or there is expressed or implied provision in the agreement regarding payment of interest or that plaintiff is entitled to recover the interest.

Difference between English Law and Indian Law Regarding Remedies for Breach of Contract

The Indian law of contracts is based primarily on common law. However, there are variations between Indian law and English law on certain matters under the law of damages.

1. Regarding liquidated damages and penalty clause

English law

- The parties to a contract may determine beforehand the amount of compensation payable in the event of breach. A sum so fixed may fall in any of the following two categories:

Liquidated damages (pre-estimated probable loss due to breach of contract). A well known illustration is given in *Dunlop Pneumatic Tyre Co. Ltd v New Garage & Motor Co. Ltd*^{xv},

Penalty (sum fixed up in advance which is greater than the sum which is ought to be paid). A well known illustration in *Clydebank case*^{xvi}.

- The court must either accept the whole amount or reject it in whole.

Indian law

- The liquidated damages will not be enforced if its purpose is to punish the wrongdoer in case of breach rather than compensating the injured party. Liquidated damage clause is said to be upheld in conditions if the amount of damage identified must approximate the damage likely to fall on party seeking the benefit and that damage must be sufficiently uncertain at the time the contract is made. For example, Neal Townsend agrees to lease a store to richars, for which Richard intends to sell jewellery. If Townsend breaches the contract by refusing to lease at appointed time, it will be difficult to determine what profit Smith will have lost.
- The court need not reject the amount; it may accept the amount or reduce the amount.

2. In Indian law, no compensation can be awarded for any remote or indirect loss. The supreme court laid down that once breach is established damages must be proved but in English law Plaintiff does not need to prove his actual loss, it is very well clear from the act itself.

7. Analysis

After going through the topic there are various points which are missing in the Indian Contract Act, 1872 regarding remedies for any of the breach of contract. Some of the points are mentioned in the following lines in comparison with other countries with the intention that if the same is followed in our country, it would become more comprehensive even though it is to some extend comprehensive and relevant to our environment:

- The Indian Contract Act in section 73 states about the compensation for the loss caused due to breach of contract arising naturally in the usual course of things but remote or indirect loss or damage sustained due to breach is not provided under the contract law
- In Indian Contract Act there is provision regarding liquidated damages and penalty to the parties who suffers from breach and it aims to not reject the entire amount rather to accept same amount or reduce the amount but in other countries total compensation of amount of liquidated damage is restricted.
- Any Contract which restrains a person from exercising his lawful profession, trade or business of any kind, is termed void as per Indian Contract Law but it does not provide for recovery of losses in contract which are void. In other countries the case is different.

8. Conclusion

A contract is an agreement made between the two parties that are enforced by the court. In case any of the promise is not fulfilled by the party, this results in the breach of contract. Hence, when breach of contract happens the party look for its remedies and consequences of breaching. There are in total six kinds of breach: **Rescission of the contract, Suit for damage, Suit upon quantum meruit, Suit for specific performance of the contract, Suit for an injunction.** All these are important in dealing with the breach of contract. it is also stated that a third party can claim for the suffered loss and further that interest can be claimed as damage if only it is mentioned under the terms of contract. Then is difference between Indian law and English law regarding liquidated damages and penalty and whether actual loss is to be proved or not. Lastly highlighting the points missing in our contract law as compared to other countries. Overall The Indian Contract Act is a relevant and comprehensive piece of legislation.

Reference notes:

ⁱ **Compensation for the loss or damage caused by breach of contract-** when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract- When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the compensation from the party in default, as if such person had contracted to discharge it and has broken his contract .

ⁱⁱ AIR 1951 SC 144

ⁱⁱⁱ (1854) 9 Ex. 341

^{iv} (2003) 1 GCD 372(Guj)

^v **S.75- Party rightfully rescinding contract entitled to compensation-** A person who rightfully rescinds a contract is entitled to compensation for any damages which he has sustained through the non-fulfilment of the contract

^{vi} (1949) 2 KB 528

^{vii} (1854) 9 Ex. 341

^{viii} S.74 Compensation for breach of contract where penalty stipulated for- When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of breach is entitled whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

^{ix} Price v Strange (1978) Ch.337

^x Burrows, Remedies for Torts and Breach of Contract, 2nd ed.(1994)

^{xi} Attorney General v Barker (1990) 3 All ER 257(CA) states about prohibitory injunction in which the court held that: The Attorney General's claim was not based on a breach of confidentiality but on breach of contract the consideration for the covenant by the first defendant not to publish matters concerning his experience in royal household being the agreement to take him on the staff of royal household and to pay him wages or a salary.....injunction be granted against both defendants.

^{xii} **S.65 Obligation of person who has received advantage under void agreement, or contract that becomes void-** When an agreement is discovered to be void, or when a contract 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.

^{xiii} Alfred McAlpine Construction Ltd. v Panatown Ltd. (2001) All ER (D)41 (Apr)

^{xiv} 1961 AIR 990

^{xv} 1915 AC 79(HL)

^{xvi} 1905 AC 6