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## REMEDIES AGAINST BREACH OF CONTRACT

**HEMANTH & ASSOCIATES**

ADVOCATES, LEGAL & CORPORATE CONSULTANTS

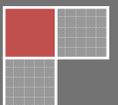
*We protect your interests*

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## **INTRODUCTION**

In the day-to-day affairs of today's world, not a single day passes without reference or discussions about some contracts, whether it is rendering service, employment, supply, distribution or purchase. We enter into contracts so many times in a day that 'contract' has become an indispensable part of our life. When we purchase milk or newspaper in the morning or go to movie in the evening, you are entering into a contract. Such being the scenario, discussions on the subject or consequences of any breach of contract or avoidance or non-compliance of obligations is of vital importance.

## **CONTRACT LAW**

Contract law is based on number of Latin legal principles, out of which 'consensus ad idem' is the most important, which means a meeting of the minds between the parties i.e. an agreement among them. It is said to be part of private law because it does not bind the state or person that are not parties to the contract. Consequently, the contracts are voluntarily and require an "exercise of the will of the parties".

A contract an agreement between two or more persons, creating an obligation upon them to fulfill or not to fulfill some duties laid down specifically in the agreement. The agreement creates a legal relationship of rights and duties on the parties and if these obligations in the agreement are not fulfilled, then action could be taken against the defaulting party in the court of law.

If parties to a contract follow the terms and conditions of it and if they honour all the covenants perfectly, there is no need for a discussion on the consequences of a breach. But, we all know that depending upon the various business circumstances and newly emerging situations in the corporate field, one of the parties entering into the contract may sometime withhold himself from complying with the obligations under a contract. In such an eventuality, the remedies available to the aggrieved party who had believed in the words of the party in default and acted

upon the same should be studied and understood. This will help an entrepreneur to transact with his counterparts in the business world more wisely and efficiently.

### **REMEDIES FOR BREACH**

A contract being a correlative set of rights and obligations for the parties would be of no value, if there were no remedies to enforce the rights arising there under. The Latin maxim 'Ubi jus, ibi remedium' denotes where there is a right, there is a remedy.

The remedies for breach of contract are:

1. Suit for damages or compensation
2. Suit for specific performance
3. Suit for injunction
4. Suit for rescission
5. Punitive damages

The law on this issue is dealt with in two statutes viz., The Specific Relief Act, 1963 and The Indian Contract Act, 1872.

### **SUIT FOR DAMAGES**

The word 'damages' means monetary compensation for the loss suffered. Whenever a breach of contract takes place, the remedy of 'damages' is the one that comes to mind immediately as the consequence of breach. The aggrieved party may seek compensation from the party who breaches the contract.

When the aggrieved party claims damages as a consequence of breach, the court takes into account the provisions of law in this regard and the circumstances attached to the contract. The amount of damages would depend upon the type of loss caused to the aggrieved party by the breach. The court would first identify the losses caused and then assess their monetary value.

Section 73 of the Indian Contract Act, 1872 lays down the basic guidelines for identifying the losses. Section 73 reads as follows:

*“Compensation for 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 of 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.”

Keeping in view the provisions of section 73 and the court judgments, the aggrieved party would be entitled to one of the following types of damages, depending upon the circumstances of the case:

**A. General or ordinary damages.**

Damages arising naturally and directly out of the breach in the usual course of the things.

**B. Special damages.**

Compensation for the special losses caused to the aggrieved party by the special circumstances attached to the contract.

**C. Exemplary damages.**

Damages for the mental or emotional suffering also caused by the breach.

In *Ghaziabad Development Authority V Union of India (AIR 2000 SC 2003)*, the Hon’ble court held that in case of breach of contract mental anguish not a head of damages in ordinary commercial contract.

In order to claim damages, party has to plead specifically the manner in which he suffered the loss. [*State V Pratibha Prakash Bhawan AIR 2005 Ori 58*]. The Plaintiff to the suit must prove damage and the amount of the damage. [*AIR 1962 SC 366*]

### **LIQUIDATED DAMAGES AND PENALTY**

Where the contract itself addresses the issue of consequences of a breach and stipulated a penalty, section 74 of the Indian Contract Act will come into play. When such a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, to receive from the party who has broken the contract a reasonable compensation not exceeding the amount so named.

The Hon'ble Supreme court in *Fateh Chand V Balkishan Das [AIR 1963 SC 1405]*, had held that the jurisdiction of the court to award compensation under section 73 in case of breach of contract is unqualified except as to the maximum stipulated, and compensation has to be reasonable. This section has to be read in conjunction with section 74, section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not the actual loss is proved.

There is no impediment or any obstacle for the parties to a contract to make provisions of liquidated damages for specific breaches only, leaving other types of breaches to be dealt with as unliquidated damages. There is no principle which requires that once the provision of liquidated damages has been made in the contract, in the event of breach of one of the parties, such clause has to be read covering all types of breaches although parties may not have intended and provided for compensation in express terms of all types of breaches. [*Steel Authority of India V Gupta Brothers Steel Tubes Ltd. (2009) 10 SCC 63.*]

In *Oil and Natural Gas Corporation Ltd V Saw Pipes Ltd [AIR 2003 SC 2629]*, the Supreme court laid down the following guidelines:

1. Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming is entitled to the same;

2. If the terms are clear and unambiguous stipulating liquidated damages in case of the breach of the contract, unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, the party who has committed the breach is required to pay such compensation and that is what is provided in section 73 of the Contract Act.
3. Section 74 to be read along with section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequences of the breach of the contract.
4. In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is a genuine pre-estimate by the parties as the measure of reasonable compensation.

### **SUIT FOR SPECIFIC PERFORMANCE**

In certain cases of breach of a contract, damages may not be an adequate remedy. Then the court may direct the party in breach to carry out his promise according to the terms of the contract. This is an order of the court requiring performance of a positive contractual obligation. But in general, courts do not wish to compel a party to do that which he has already refused to do. Part II of the Specific Relief Act, 1963 lays down detailed rules on the specific performance of contracts.

Specific performance is not available in the following circumstances:

- Damages provide an adequate remedy.
- Where the order could cause undue hardship.
- Where the contract is of such a nature that constant supervision by the court would be required.
- Where the party seeking the order has acted unfairly.

Cases where specific performance may be ordered:

- Where there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non-performance.
- Where monetary compensation will not be adequate relief.
- Where the act to be done is in the performance of trust.
- In general the court will only grant specific performance where it would be just and equitable to do so.

### **SUIT FOR INJUNCTION**

An injunction is an order of the court requiring a person to perform a negative obligation. But for performance of the positive terms of the contract, the aggrieved party may seek other remedies.

The right to relief by way of injunction is contained in part III of the Specific Relief Act, 1963. Section 36 provides that preventive relief may be granted at the discretion of the court by injunction, temporary or perpetual. Section 38 indicates when perpetual injunctions are granted and section 39 indicates when mandatory injunctions are granted. Section 40 provides that damages may be awarded either in addition to or in substitution of injunctions. Section 41 provides for contingencies when an injunction cannot be granted. Clause (e) of section 41 specifically provides that no injunction can be granted to prevent the breach of contract the performance of which would not be specifically enforced. Section 42 provides for injunction to perform negative agreement. Section 42 states; if the court is unable to compel the specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement, provided Plaintiff has not failed to perform the contract.

### **SUIT FOR RESCISSION**

The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e., cancellation, of the contract. This will enable the Plaintiff to be free from his own obligations under the contract.

**PUNITIVE DAMAGES**

Punitive damages are damages intended to reform or deter the defendant. Although the purpose of punitive damages is not to compensate the plaintiff, the plaintiff will in fact receive all or some portion of the punitive damage award. Punitive damage are often awarded where compensatory damages are deemed an inadequate remedy. The court may impose them to prevent under-compensation of plaintiffs, to allow redress of undetectable torts and taking some strain away from the criminal justice system.



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