

A STUDY ON BREACH OF CONTRACT AND ITS REMEDIES

*By Chitra C
From Saveetha School of Law,
Saveetha University, Chennai*

ABSTRACT

This Research focuses on Breach of Contract and its types and also diverse kinds of remedies which are available under breach of contract for the aggrieved parties which embodied in Indian Contract Act of 1872 and Specific Relief Act of 1963. The term breach of contract is been rooted from discharge of contract. Breach is nothing but contravention of any contract. It might be anticipatory or actual Breach of Contract. Actual Breach may occur during the performance of contract or on due date of performance.

OBJECTIVES

- To examine about different kinds of Breach of Contract
- To study in brief about remedies which are present under breach of contract.

RESEARCH METHODOLOGY

The present research is, descriptive and based on non-empirical design. In order to collect data on the dimensions of the study, a research instrument was designed. The study was conducted on secondary source of data books, articles, journals, e-sources, theories and the relevant provision with decided case laws.

INTRODUCTION

Breach of contract means a contract ceases to operate. It also means the rights and obligations created by the contract come to an end. It further means termination of contractual relationship between the parties. If any party fails to perform the obligations mentioned in the contract than there will be a breach of contract over there. If any party to the contact makes it impossible to perform obligations under the contract. Thus, breach of contract is of two kinds, namely Anticipatory Breach of Contract and Actual Breach of Contract.

Anticipatory Breach of Contract

When one party to a contract refuses to perform his obligations mentioned in the contract before the due date of performance then this would be called as Anticipatory Breach of Contract

Frost vs. Knight the defendant promised to marry the plaintiff on his father's death. While the defendant's father was still alive, he marries another woman, breaking his promise. The plaintiff did not wait till the defendant's father death and she immediately sued him for the breach of contract. The verdict was given in favour of the plaintiff.

Effects of Anticipatory Breach of Contract

- By the anticipatory breach, the other party is excused from performance or from further performance.
- The injured party is entitled to sue the other party immediately or to wait till the time the act is to be done.
- An agreement is concluded between the promisor and promisee for a future date. One party repudiates the contract before the date. If any supervening impossibility or frustration occurs before the agreed date, the contract ends by frustration and not by breach.

Actual Breach of Contract

Actual Breach of Contract occurs when any one of the party fails to perform their obligations or refuses to do their work then there will be a violation of contract. If any one party refuses to do the obligations which are been prescribed in the contract then there will be a breach of contract. Where a party to a contract actually breaches any of the conditions of the contract, the other party ie.the aggrieved party can breach the contract. Illustration

A agrees to deliver goods on 1st January to B. But he fails to deliver the goods. Here the contract is breached by A

In the above example, if A tenders to deliver the goods on the particular day, but B for no valid reason refuses to accept delivery, then this is a breach of contract by B.

Remedies for Breach of Contract:

- Suit for rescission
- Suit for Damages
- Suit for Quantum Meruit
- Suit for Specific Performance
- Suit for Injunction

Suit for Rescission

The term Rescission refers to the revocation of contract. If one party has broken his contractual relations the other party may treat the breach as discharge and decline to execute his part of recital. Thus in the case of Rescission of the contract the aggrieved or injured party is disemboque from all his obligations of the contract.

Circumstances court may refuse for the Rescission of contract

- The parties cannot be restored to their original position due to changed circumstances.
- The parties has accused rights in good faith and value during substinance of contract

Suit for Damages

The term "Damages" means compensation in money for a loss or damage caused by another's act. The party who is injured by the breach of contract may bring an action for damages. Here the burden lies on the injured party to prove his loss. The main aim or the fundamental principle which underlines the Damages is not punishment but to compensate the aggrieved party for the loss suffered by him in the original position. The amount of damage suffered from the plaintiff is unliquidated, so court will fix the compensation based on the circumstances and consequences of the case.

Types of Damages:

Damages have been divided in to four types. They are,

- General Damages
- Special Damages
- Contemptuous Damages
- Exemplary Damages

- Nominal Damages
- Prospective Damages

General Damages

General Damages are those which arise naturally in the use course of things from the breach itself. When a contract has been broken, the injured party can recover from the other party such damages as naturally and directly arose in the usual course of things from the breach. Such damages are called as ordinary or general damages.

Special Damages

Special Damages are those which arise on the account of the unusual circumstances affecting the plaintiff. They are not recoverable unless the special circumstances were brought to the knowledge of the defendant so that the possibility of the special loss was in the contemplation of the parties

Contemptuous Damages

The term contemptuous means „to be rejected“. Contemptuous Damages are awarded by the court to the defendant. Here the plaintiff does not affect any excessive damages by the wrongful act of the defendant. Here the plaintiff has suffered only limited loss but here it does not needed to be fully compensated.

Exemplary Damages

Exemplary Damages are also known as punitive damages. When the plaintiff has suffered excessive damages which is done by the defendant intentionally which results in grievance. Defendant is liable to the plaintiff. Exemplary Damages are only applicable to the criminal case and Indian Penal Code provisions.

Nominal Damages

We have read “**Injuria Sine Damno**”. This maxim means, even though there is no harm occurred to the plaintiff, but only his rights are violated. In that case, he is entitled for compensation. Where the injured party has not, in fact, suffered any loss, the damages are awarded for the breach of contract is nominal. Nominal Damages are awarded by the court only for the name sake. The compensation is only a small amount. In **Ashby vs. White** case,

the plaintiff was awarded damages of 5 pounds. It is a small amount. However by granting this nominal amount, the court recognised the plaintiff.¹

Prospective Damages

Prospective Damages means compensation for damages which is quite likely result of the defendant's wrongful act, but which has not actually resulted at the time of decision of the cases. For an example A boys leg were cut down by an accident. The damages are awarded for medical expenses, future expenses for livelihood and the expenses for maintenance for every year, cost of creches and loss calculated the disability of the job opportunities, etc (case law: Bhagawandas vs Mobd.Arif (1987) 2 ALT 137)

Jackson vs waltson & sons

The wife of the plaintiff has died because she had a tin of poisoned fish from the defendant's shop. In this case the plaintiff filed a complaint against the defendant. In England Law the house of Lord given judgement in favour of plaintiff. The Plaintiff entitled to get real or ordinary damages because it proved that she had died because of the negligence of the defendant. At last the court awarded three types of compensation which is incurred by the defendant. They are medical expenses, monetary loss and appointed extra servant by the reason of the wife's illness. In Indian case law under sec 73 of the Indian Contract Act, 1972. Any loss or damage suffered by plaintiff to defendant in the form of direct action. If it is made to indirect action, the plaintiff could not claim compensation.

Suit for Injunction

Injunction means an order passed by the court to the defendant to do or not to do a specific act. An injunction is a judicial process, by which one who has invaded or is threatening to invade the rights, legal or equitable, of another is restrained from continuing or commencing such wrongful acts. An Injunction is an order framed according to the circumstances of the case, commanding an act which the court regards as an essential to justice, or restraining an act which it esteems contrary to equity and conscience. Injunction is a form of specific relief which the court grant when the pecuniary compensation would be inadequate or all together futile. It is a preventive relief.

¹Contract Law by Avtar Singh, Eleventh Edition, published by Eastern Book Company

Mr. Justice Story observed, “Injunction may be described to be a judicial process whereby a party is required to do a particular thing or to refrain from doing a particular thing, according to the exigency of the writ”

Essential Ingredients of Injunction

- It is a judicial process
- The object attained thereby is to restraint or prevention
- The thing restrained or prevented is a wrongful act

Kinds of Injunction

Section 37 of Specific Relief Act, 1963 lays down that there are two kinds of Injunction.

They are,

- Temporary Injunction
- Perpetual Injunction

Temporary Injunction

Temporary Injunction is an injunction granted on interlocutory application, after the commencement of an action. The granting of a temporary injunction is a matter of discretion which means judicial discretion of the court. The court may grant a temporary injunction where any property in dispute in a suit is in danger of being wasted or alienated by an part to the suit whips are where the defendant threatens or intends to remove or dispose of his property with a view to defrauding is creditors. The Plaintiff must satisfy the court to obtain a temporary injunction.

Perpetual Injunction

A perpetual Injunction can online granted by the decree made at the hearing upon the merits of the suit. Section 38(3) defines the perpetual Injunction. When the defendant invades or threatens to invade the plaintiff right to or enjoyment of property, the court may grant a perpetual injunction. Perpetual injunction may also be called as permanent injunction or granting injunction.

Suit for Quantum Meruit

The term Quantum Meruit means as much as one has earned or as much as merited. When a person has done some work under a contract, and other party repudiates the contract, or some event happens which makes the further performance of the contract impossible, when the party who has performed the work can claim remuneration for the work he has already done.

Circumstances under which Quantum Meruit arises

Section 65 of the Indian contract Act lays down that when an agreement is discovered to be void or when a contract becomes void, and he can get compensated from the person they have receive it

Illustration

A pays B Rs 1000 in consideration of B's promising to marry C. A's daughter. C is dead at the time of promise the agreement is void, but B must repay A the sum of Rs.1000.

Section 70 provides that where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such another person to enjoy the benefit. Then the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered.

When there is an expired or implied contract to render services but there is no agreement as to remuneration. In such circumstances, reasonable remuneration is payable. This reasonable remuneration is Quantum Meruit. When the completion of the contract has been prevented by the act of the other party to the contract.

Craven-Ellis Vs. Canon Limited (1936) 2 KB 403:2All ER 1066 CA

Craven- Ellis was the plaintiff and Canon's Ltd. was the defendant. The plaintiff was appointed as the managing director of the defendant company director. The plaintiff performed his services for some months. Later it was found that the directors and plaintiff had not taken their qualification shares, and therefore, the appointment of a plaintiff would become void. He was dismissed from the post of the managing director on that ground the plaintiff sued the company for his aggrieved remuneration or for a reasonable remuneration on the basis of Quantum Meruit. The court of appeal rejected the claim for the aggrieved

remuneration, because the contract was void ab initio. However, the court of appeal allowed the plaintiff to be paid the reasonable remuneration for the services rendered for the period of his service on the basis of Quantum Meruit.

Suit for specific performance

In some cases of breach of contract, damages will alone cannot be a apposite remedy. Then the court will be directing the party in breach to follow the obligations which is been laid on the contract. This is an order which is been passed by the court for a positive contractual obligations. But in general court doesn't compel the parties which they are not already willing to do. Part II of the specific relief Act, 1963 had laid down a brief rules on specific performance of contract.

The circumstances in which specific performances are not available,

- When damages provide an apposite remedy
- When there is a constant supervision by the court for the work which is been pursued by them.
- Any unlawful activities done by the party who seeks an order.
- In some cases undue hardship may arise because of the order.

CONCLUSION

This research has elaborated in brief about breach of contract and various kinds of remedies which are available for the aggrieved party in the light of Indian Contract Act of 1872 and Specific Relief Act of 1963. Breach of contract is nothing but a way for breach of contract. There are divergent kinds of breach of contract and the laws which has a guaranteed reassurance to the injured party by providing them different kinds of remedies in the form of equitable, monetary or legal remedies. The term breach of contract is been rooted from discharge of contract. Breach is nothing but contravention of any contract. It might be anticipatory or actual Breach of Contract. Actual Breach may occur during the performance of contract or on due date of performance.