

BUSINESS LAW

UNIT 2: UNIT 2: Discharge of Contract and Remedies for Breach

TOPIC- REMEDIES FOR BREACH OF CONTRACT

REMEDIES FOR BREACH OF CONTRACT

Whenever there is breach of a contract, the injured party has the following remedies against the guilty party:

1) Rescission of the contract – There are two options with the aggrieved party-

- ✓ the aggrieved party may rescind the contract, need not perform his part of obligations and sit quietly at home or
- ✓ the aggrieved party may file a suit for rescission, gets freed from all obligations under the contract and file a suit for damages from guilty party

2) Suit for damages

Damages are monetary compensation allowed to the injured party for the loss suffered by him as a result of breach of contract. **The underlying principle for damages is compensation to the injured and not punishment to the guilty. Compensation must commensurate with the injury\loss arising from the breach.** However, it is the duty of the injured party to mitigate damages suffered as a result of breach . He cannot recover any part of the damage which is traceable to his own neglect. Different kinds of damages(**Sec.73**) are

Suit for damages

- **Ordinary\General\Compensatory damages**

- ✓ these can be claimed as a matter of right
- ✓ these are considered as arising naturally and directly in the usual course from breach
- ✓ In the contract for 'sale and purchase' the damages are generally assessed as the difference between the **contract price** and the **market price** on the date of breach

- **Special damages**

- ✓ these cannot be claimed as a matter of right and can be claimed only if special circumstances resulting in special loss are brought to the notice of other party beforehand
- ✓ these arise on account of special\unusual circumstances affecting the plaintiff

CASE- **Hadley vs Baxendale**

H's mill was stopped due to breakdown of a crankshaft. He delivered that shaft to B, a common carrier, to be taken to the manufacturer as a pattern for a new shaft. H did not tell B that the shaft was very important for the mill and that the delay would result in loss of profits. By some neglect on part of B, the delivery of shaft was delayed in transit beyond a reasonable time and mill could not work. H filed a suit against B claiming damages for loss of profits because of stoppage of mill due to non-availability of crankshaft. Held, B was not liable for loss of profits during the period of delay as the circumstances communicated to B didn't show that a delay in delivery of shaft would entail loss of profits to the mill.

Suit for damages

- **Exemplary\ Punitive\ Vindictive damages –**

Here the purpose is to punish the guilty and not to compensate the injured. Thus, they have generally no place in the law of contract. However, there are two exceptions-

- ✓ ***Breach of contract to marry***-amount of damages depend on the **extent of injury to one's feelings**
- ✓ ***Wrongful dishonour of cheque*** by a banker- rule is **smaller the cheque, greater the damage**

- **Nominal damages**

- ✓ These damages are awarded only for name sake and consist of very small amount say a rupee or two
- ✓ These are awarded neither by way of compensation nor as punishment
- ✓ They are awarded simply to establish the right to decree (the right of the party to claim damages) for breach when the aggrieved party has not actually suffered any real loss.

CONCEPT OF LIQUIDATED DAMAGES AND PENALTY

Sometimes parties fix up in advance, the sum payable as damages, in the event of breach of contract. **If this stipulated amount is fair and genuine preestimate of probable loss, then it is called *liquidated damages* but if this amount is extravagant and unconscionable meant to terrorise the offender, then it is called *penalty*. Sec. 74 of Indian Contract Act, 1872, however, does away with the distinction between liquidated damages and penalty. The courts are required to allow reasonable compensation so as to cover actual loss, not exceeding the amount fixed in contract. Thus the prefixed sum whether it is in the nature of liquidated damages or penalty only acts as upper limit of damages in case of breach of contract.**

COST OF SUIT

The aggrieved party is entitled, in addition to damages, to get the **cost of getting the decree** for damages from the defaulter party. The **cost of suit** for damages is in the discretion of the court. Costs of suit generally includes court costs such as filing costs, service costs, court reporter costs, charges for serving summons, charges for court transcripts and copying papers, deposition costs and other litigation costs.

3) Suit upon quantum meruit

- Another remedy available to a party in case of breach is to sue upon **quantum meruit** which means *as much as is earned* or *in proportion to the work done*. This remedy may be availed either without claiming damages or in addition to claiming damages. This remedy is generally available in the following cases-
 - ✓ Where work is partly done in pursuance of a contract, which has been discharged by default of defendant/contract is wrongfully terminated by the defendant, then generally both quantum meruit (for work done) as well as damages (for remaining part left because of breach) are allowed. **Planche vs Colburn.** P agreed to write a volume on ancient armour to be published in a magazine owned by C. For this P was to receive \$ 100 on completion. When he had completed part, but not the whole of his volume, C abandoned the magazine. P was held entitled to get damages for breach of contract and payment quantum meruit for the part already completed.
 - ✓ Where work is done in pursuance of a contract, which is 'discovered void' or 'becomes void' provided the contract is divisible

A contracts with B to repair his house at a piece rate. After a part of repairs were carried out, the house is destroyed by lightning. Although the contract becomes void and stands discharged because of destruction of the house, A can claim payment for the work done on quantum meruit. But he can't claim damages.
 - ✓ Where a person enjoys benefit of non- gratuitous act (sec.70) - The person enjoying benefit must compensate the other for service rendered.
 - ✓ **A guilty party may also sue on quantum meruit** provided the contract is divisible and the other party must have enjoyed the benefit of the part which has been performed though he had the option of declining it. CA **Sumpter vs Hedges-** X ,a building contractor, agreed to construct a house for Y for a lumpsum amount of 20 lakhs. X left the work in between .Y got the work completed from some other contractor. Held, X could not recover anything because he was entitled to the payment only after completion of the work(contract was not divisible).

4) Suit for specific performance

Sometimes, when there is a breach of contract, the aggrieved party insists on actual carrying out of the contract as agreed because compensation as a remedy is either inadequate or unascertainable. So it files a suit for specific performance i.e. obtaining a decree by court directing the other party to perform as per the contract. It is usually granted in contracts connected with land, buildings, rare articles and unique goods having some special value to the party suing and whose exact substitute will not be available. After the Specific Relief (Amendment) Act, 2018, the current position is that, the specific performance **shall** be enforced by courts except in the following cases

- ✓ where party to the contract has obtained **substituted performance** of contract- Before opting for substituted performance it is necessary to serve a notice (of not less than 30 days) to the party in breach, calling upon him to perform the contract. The aggrieved party may get the contract performed by a third party or its own agencies on failure \refusal of the other party to perform. The aggrieved party will be entitled to recover from the party in breach, all the costs and expenses incurred for substituted performance.
- ✓ where court cannot supervise the actual carrying out of the contract .e.g. building construction contracts
- ✓ where contract is for personal services e.g. a contract to paint a picture
- ✓ a contract which is in its nature determinable-determinable means that which can be put to an end to. ...thereby meaning that all revocable deeds and voidable contracts fall within determinable contracts as they are revocable at the will of the executant

5) Suit for injunction

Injunction is an order of the court restraining a person from doing something. It is nothing but securing specific performance of negative terms of the contract. If a party is doing something which it promised not to do under the contract, then it can be restrained or stopped from doing that act through an injunction order. Thus injunction is a preventive relief and is generally appropriate in cases of anticipatory breach of contract where damages would not be adequate remedy.

Lumley vs Wagner- A agreed to sing at B's theatre for 3 months and not to sing for anyone else during that period. Subsequently, A contracted to sing at C's theatre and refused to sing at B's theatre. On a suit by B, the court refused to order specific performance of B's singing at A's theatre but granted an injunction restraining A from singing elsewhere and awarded damages to B to compensate him for the loss caused by A's refusal.