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BREACH OF CONTRACT AND ITS CONSEQUENCES

This article is written by Anukriti Sharma, a student of University of Petroleum And Energy Studies, Dehradun. This article provides thorough knowledge of ‘Breach of Contract and its consequences’ under Indian Contract Act, 1872. "Breach of contract" means violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement. It is a type of civil wrong. Chapter VI, Section 73 to 75 of the Indian Contract Act, 1872 deals with consequences of breach of the contract.

1). BREACH OF CONTRACT AND ITS TYPES

A breach of contract occurs when a party thereto renounces his liability under it, or by his own act make it in totally or partially fails to perform such obligations¹. There must be a valid contract in order to determine its breach² and where there is no valid contract, no action will be taken against breach of contract³. Section 37 of the ICA, 1872 provides that the parties to the contract are under obligation to perform or offer to perform, their respective promises under the contract, unless such performance is dispensed with or excused under the provisions of the ICA or of any other law and Section 39 says, When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance⁴. If the other party chooses to put an end to the contract, the contract is said to be

¹ (1937) 201 Minn 94.

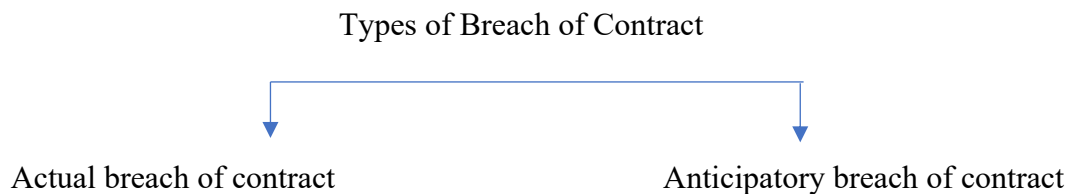
² A.I.R. 1946 Pat 404 (India).

³ A.I.R. 1963 SC 1405 (India).

⁴ Section 39 of Indian Contract Act.

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broken and amounts to breach of contract by the party not performing or refusing to perform its promise under the contract. The failure to perform contract may take place during or before the performance of contract. Thus, Breach of Contract is of two types: a). Actual Breach of Contract and b). Anticipatory Breach of Contract.



a). ACTUAL BREACH OF CONTRACT

An actual breach of contract is failure to perform a contract either during the performance of contract or at the time when performance is due.

For example, situation 1 : A enters into a contract with B, to deliver 10 boxes of chocolates on 30/09/20. On the scheduled day, he fails to deliver chocolates. This is an actual breach of contract and this breach is done at the time the performance of the contract is due.

Situation 2: A has delivered 5 boxes to B on 30/09/20 and refuses to deliver rest of the boxes. This is actual breach of contract during the performance of contract.

b). ANTICIPATORY BREACH OF CONTRACT

Section 39 of ICA talks about Anticipatory breach of contract. It is breach in which a party refuse to perform their obligations before the performance of time. This can be done either by expressly or impliedly.

In *Dhanraj Mills Ltd Liability Co Vs Narsingh Parasad Boobna*⁵, court held that it is necessary that the refusal should have been communicated to other party and should make intention not to perform quite explicit. For example, X enters into a contract with Y on 20/09/202, in which X agrees to sell her car to Y on 24/09/2020. However, on 22/09/2020, Y informs X that he will not be able to purchase her car, thereby expressing rejection of the contract.

⁵ A.I.R. (1949) Pat 270 (India).

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Thus, a breach of contract may take place before the time fixed for performance of the contract if the promisor has repudiated the contract,⁶ or where the promisor has disabled himself from performing the contract ⁷but a party is not entitled to claim damages for breach of contract where, upon repudiation by the other party before the date of performance, it has chosen not to put an end ⁸ to the contract, but has kept the contract open.⁹

Following are certain effects on rights of parties arising out of anticipatory breach of contract:

1). Innocent party excused from further performance

In case of breach, the innocent party is excused from performance of their obligations. Therefore, the obligation made under the contract comes to an end and the party who has refused to perform their obligations has to pay damages to innocent party.

2). Immediate right of action

The innocent or injured party has option either to sue or to wait the time the was to be done. Where one party has terminated the contract under the provisions of the express terms of the contract, the other party can claim damages for breaches upto the date of termination, but not for the benefit of the defendant's future performance lost because of termination¹⁰

The measure of damages for 'anticipatory breach' is not necessarily the same as it would be for refusal occurring at the time when performance was due,¹¹ the difference between contract and market price is an application of the principle as to the disappointed party's right to fulfill the contract himself at the defaulting party's cost, so far as it can reasonably be done¹².

2). CONSEQUENCES OF BREACH OF CONTRACT

The party who is innocent or suffers from breach can claim compensation or damages from other part but it is essential that a person who claims damages for breach of a contract should have performed or was ready to perform his part of the obligations arising under the

⁶ A.I.R. 1933 All 252 (India).

⁷ A.I.R. 1970 SC 1955 (India).

⁸ A.I.R. 1918 PC 249 (India).

⁹ A.I.R. 1972 All 466 (India).

¹⁰ 1917 AC 227

¹¹ (1936) 2 All ER 1686

¹² (1961) 3 All ER 626

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contract.¹³ Sections 73 and 74 are for the benefit of a party willing to perform contract, and not for the defaulting party.¹⁴

➤ Section 73 of ICA talks about compensation to innocent party in following cases:-

- 1) Compensation for loss caused by breach of contract and no compensation shall be given for indirect loss.
- 2) Compensation in regard to failure to discharge obligation which resembles those created by the contract.
- 3) Compensation for loss or damage which naturally arose in the usual course of things from such breach.
- 4) Compensation in case of remote and indirect loss or damage:

Section 73 states that no compensation is payable in case of remote and indirect loss or damage arising out of breach of contract. The innocent party can claim compensation for indirect loss or loss of profit, only where it is expressly made known to the other party by contract that breach of non-performance of the contract would result in some indirect loss.

- 5) Mitigation of losses:

In *M.Lachia Setty & Sons Ltd v. Coffee Board Bangalore*¹⁵ court held that remedy should be provided for inconvenience caused by the non-performance and it must be considered while calculating the damage or loss for breach of the contract.

➤ Section 74 of ICA talks about liquidated damages. It says, if at time of entering into a contract parties decide the amount of compensation in case of breach by one either party shall be forfeited. If this sum is genuine pre-estimate of damage likely to flow from the breach is called 'liquidated damages'. If it is not genuine pre-estimate of the loss, but an amount intended to secure performance of the contract, it may be called as 'penalty'. Thus, the affected party is entitled to claim damages which was pre-decided in the contract from the defendant. In *State of Gujarat v MK Patel & Co*¹⁶ it was observed

¹³ (1907) ILR 34 Cal 150

¹⁴ A.I.R. 1963 SC 1405 (India).

¹⁵ A.I.R 1981 SC 162 (India).

¹⁶ A.I.R. 1985 Guj 179 (India).

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that court can award compensation less than the stipulated amount if it appears be reasonable, but it should not exceed the stipulated amount¹⁷.

- Section 75 of ICA states that in case if one of the parties cancels the contract, in that case the innocent party have right to claim damages incurred due to cancellation of contract and the party cancelling the contract have duty to compensate other party and the other party even if there is no completion of the contract.

- Unliquidated damages:

Unliquidated damages are the damages in which compensation is not pre-decided in the contract. In such case, court shall decide compensation based on the following types of damages:-

- Nominal Damages: When the defendant is found liable for breach of contract, the plaintiff would be entitled to nominal damages even if no actual damage is proved. Nominal damages are awarded when there is an infraction of a legal right, and though it gives no right to any real damages, yet gives the right to a verdict because of the infringement. These are the small amount of money give to the plaintiff when he has suffered no significant losses or injury caused to the plaintiff.
- General Damages: damages which arise out of the normal course of action. It's the damage which arises in the normal course of events. Once the damage is proven general damage can be claimed by the innocent party.
- Substantial Damages: In this compensation is given to the extent of damages caused due to breach of contract proved as there are uncertainties regarding the calculation of amount of compensation.
- Exemplary Damages: – these are the damages which are awarded to set an example in society to prevent crimes in future.
- General Damages: –These are the damage which arises in the normal course of events. Once the damage is proven general damage can be claimed by the affected party.

¹⁷ Pushpendra Motilal Singh v Commercial Automobiles (1992) 2 MPLJ 319.

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3). CONCLUSION

A breach of contract occurs when a party thereto renounces his liability under it, or by his own act make it or totally or partially fails to perform such obligations¹⁸. It is a type of civil wrong. It is of two types: a). Actual Breach of Contract- and b). Anticipatory Breach of Contract. The innocent or injured party has option either to sue or to wait the time the was to be done. The burden of proof is on plaintiff to prove the loss or damages incurred due to breach of contract. Chapter VI of the Indian Contract Act ,1872 (section 73 to 75) deals with consequences of breach of contract and provides for the remedy to the non-defaulting party to contract by way of compensation for damage caused due to breach of contract by the other party. Thus, the innocent party have right to claim compensation and defendant have the duty to give compensation for loss incurred due to breach to contract.

¹⁸ (1937) 201 Minn 94.