

# Remedies For Breach Of Contract

*Prepared By:*  
*Mr. Alexander D. Samuel, Sr.*  
*Astt. Dir, BOS, ICAI*  
*Mercantile Law*

# REMEDIES FOR BREACH

The Latin maxim 'Ubi jus, ibi remedium' denotes 'where there is a right, there is a remedy'.

# REMEDIES FOR BREACH

A contract, being a fountainhead of 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 thereunder.

# REMEDIES FOR BREACH

The party committing breach of contract is called the 'guilt party' and the other party is called the 'injured' or 'aggrieved' party.

In case of breach of contract, the aggrieved party would have one or more, but not all, of the following remedies against the guilty party.

The remedies are:

1. Suit for rescission,
2. Suit for damages,
3. Suit for quantum meruit,
4. Suit for specific performance,
5. Suit for injunction.

# 1. 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 him to be free from his own obligations under the contract.

## 2. Suit for Damages

The word 'damages' means monetary compensation for 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.



A breach of contract may put the aggrieved party to some disadvantage or inconvenience or may cause a loss to him. The court would desire the guilty part to accept responsibility for any such loss of the aggrieved party and compensate him adequately.

The quantum of damages is determined by the magnitude of loss caused by breach

# Types of Damages (Sec.73)

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.

Sec.73 of the Act lays down the basic guidelines for identifying the losses.

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

- a. General or ordinary damages.
- b. Special damages.
- c. Exemplary or vindictive damages.
- d. Nominal damages.

**(a) General or ordinary damages:** Such losses would be called the general or ordinary losses which can be seen as arising naturally and directly out of the breach in the usual course of the things. They would be the unavoidable and logical consequence of the breach. The damages for such losses are called general or ordinary damages. An aggrieved party's right to damages applies most naturally for the direct or general losses. There can be no damages for indirect and remote losses.

**(b) Special damages:** Special damages would be the compensation for the special losses caused to the aggrieved party by the special circumstances attached to the contract.

At the time of making the contract, a part may place before the other party some information about the special circumstances affecting him and tell him that if the contract is not performed properly, he would suffer some particular types of losses because of those special circumstances. If the other party still proceeds to make the contract, it would imply that he has agreed to be responsible for the special losses that may be caused by an improper performance of his obligation. Compensation for such special losses is called special damages.

The two types of losses that have been put under two separate points above, the ordinary losses and the special losses, are in reality based on one common idea only. And that idea is that the level of knowledge of circumstances at the time of making the contract would determine what losses shall be compensated by the guilty party.

**(c) Exemplary or vindictive damages:** Sometimes, the courts award damages for mental or emotional suffering also caused by the breach. Such damages are called exemplary or vindictive damages. These may be taken as an exception to the general principle that damages are awarded only for the financial loss caused by breach of contract.



In a case *Addies vs Gramophone Co. Ltd.*<sup>2</sup>, the court stated that in three cases mental suffering and pain of the aggrieved party can also be taken into account:

- (i) Unjustified dishonour of a cheque,
- (ii) Breach of promise of marriage, and
- (iii) Failure of vendor of real estate to make title.

**(d) Nominal damages:** If the breach of contract causes no loss to the aggrieved party, no damages need be awarded to him. However, in order to record the fact of breach by guilty party, the courts may award nominal or token damages, e.g. a compensation of Rs.10. They would be called nominal damages.

# Rules Regarding Award of Damages

**(i) Compensation not penalty:** The fundamental purpose of awarding damages is to compensate the aggrieved party for any loss suffered and not to punish the guilty party for causing breach.

**(ii) Limited damages:** The aim of the courts, in awarding damages, would be to place the aggrieved party, as far as money can do it, in the same position in which he would have been, had the contract been properly performed.

**(iii) Damages for attributable losses:**  
Damages are awarded for the losses which can be attributed to the breach.

**(iv) Mitigation of losses:** The aggrieved party is expected to make sincere efforts to minimize the losses that are resulting out of breach of contract.

**(v) Damages in case of contracts of sale of goods:** The basic idea in this context is that in case a party breaks a contract for sale of goods, the aggrieved party must take a quick action to protect itself.

**(vi) Stipulation for liquidated damages or penalty:** Sometime, the parties to contract may themselves stipulate an amount in the contract to be payable by the guilty party to the aggrieved party as damages for breach of contract. This stipulation of the amount may be by way of liquidated damages or by way of penalty.



**(vii) Cost of suit:** The breach of contract by a party forces the other to initiate legal action against the guilty party. This necessarily entails expenditure. This cost of suit can be recovered from the guilty party only at the discretion of the court.

# **Liquidated Damages and Penalty (Sec. 74)**

The concepts relate to the manner of arriving at the amount stipulated in the contract as damages for the aggrieved party. The stipulated amount as damages may have been determined by the parties in one of the following two ways:

- (i) The parties, while forming the contract, may have made an assessment of the likely loss that the aggrieved party would actually suffer in the event of breach. The pre-estimate of damages would be called a stipulation by way of 'liquidated damages'.
- (ii) The parties may have imagined some random amount and mentioned it as the damages to the aggrieved party, the purpose being to burden the guilty party with a punishment to discourage him from committing the breach. Such a mention is called a stipulation by way of '*penalty*'.

**Indian Law:** Under Indian law, the position is somewhat different. In India, in every case of a stipulation of amount of damages in the contract, the court will work out the amount of loss suffered by the aggrieved party and award that as damages subject to the maximum of the stipulated amount.

**Difference between Liquidated Damages and Special Damages:** It also needs to be understood that liquidated damages are different from special damages. Special damages are a compensation determined by court for the types of losses stipulated by the parties. In other words, the types of losses likely to result out of breach are pre-determined without their quantification. Under liquidated damages, the amount of damages itself is pre-estimated.

# Exception to Sec. 74

Sec. 74 has also provided an exception to the main rule. The exception implies that the rule of Sec. 74 will not apply in some cases and the total amount stipulated in the contract as damages from guilty party shall be payable to the aggrieved party without any assessment of the loss suffered.

The exception to Sec. 74 applies in the following situations:

- a. Where a person has executed a bail bond, recognizance etc. before court.
- b. Where a person has made a contract with any government authority to perform a public duty by executing a bond. Public duty will imply any act that adds to public welfare, like provision of drinking water in an area or construction of road in a remote area.

**In the application of this exception, the following points need to be noted:**

(i) It applies one way only i.e. on the promisor only and not on the government authority

(ii) Ordinary commercial contracts with government don't involve performance of public duty.



# Enhanced rate of interest

- A stipulation for increased interest from the date of default may be stipulation by way of penalty in some cases.
- A stipulation to pay compound interest from the date of default at same rate is not penalty but a stipulation to pay compound interest at a higher rate amounts to penalty.
- Simple interest at exorbitant rate from the date of default is also a penalty

# Suit for *quantum meruit*

The term quantum meruit means 'as much as earned'. It implies 'a payment deserved by a person for the reason of actual work done'.

# Suit for *quantum meruit*

When a party has done some work under a contract, and the other party repudiates the contract or somehow the full performance of the contract becomes impossible, then the party who has done the work can claim remuneration for the work under a suit for quantum meruit.

Likewise, where one party has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstances of the request imply that the service is to be paid for, there is implied a promise to pay quantum meruit.

Even in the case of where the person who has done the work is the one who is guilty of breach of contract, he too is entitled to be paid quantum meruit. But there is an exception – such a contract must have involved work that was indivisible and it must not have been a contract for lumpsum remuneration.

# 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 a direction by the Court for specific performance of the contract at the suit of the party not in breach. But in general, Courts do not wish to compel a party to do that which he has already refused to do.

# **Suit for specific performance**

Chapter 2 of the Specific Relief Act, 1963 lays down detailed rules on the specific performance of Contracts.

# Suit for specific performance

Cases where specific performance may be ordered:

- (i) Where there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non-performance
- (ii) Where monetary compensation will not be adequate relief. Example a contract for sale of a rare antique



# Suit for specific performance

(iii) Where plaintiff's property is held by the defendant in the capacity of his agent or trustee

(iv) Where the act to be done is in performance of trust

# Suit for specific performance

Cases where specific performance will not be ordered:

- (i) Where monetary compensation is adequate relief
- (ii) Where contract is made by the agent or trustee in violation of his powers
- (iii) Where the contract is of a personal nature, such as a contract to marry or a contract of service

# Suit for specific performance

- (iv) Where the court cannot supervise the performance of promise as it involves performance of a continuous duty
- (v) Where the contract is in its nature revocable
- (vi) Where the contract is made by a company in excess of its powers as laid down in its Memorandum of Association

# Suit for injunction

‘Injunction’ is a court order or decree to a person asking him to refrain from doing a contemplated act or from continuing an ongoing act. Such an order of injunction becomes a remedy for the aggrieved party when the court orders the guilty party to refrain from doing precisely that which is causing the breach of contract.

# Suit for injunction

In a way, injunction is a mode of securing the specific performance of the negative terms of a contract. But for the performance of the positive terms of the contract, the aggrieved party may seek other remedies like damages.

# Multiple Choice Questions

Specific performance may be ordered by the Court when

- (a) The contract is voidable
- (b) Damages are an adequate remedy
- (c) Damages are not an adequate remedy
- (d) The contract is uncertain

# Multiple Choice Questions

The measure of damages in case of breach of a contract is the difference between the –

- a. Contract price and the market price at the date of breach
- b. Contract price and the maximum market price during the term of the contract
- c. Contract price and the price at which the plaintiff might have sold the goods
- d. Contract price and the price fixed by the Court

# Multiple Choice Questions

A party entitled to claim compensation in proportion to the work done by him can file a suit for

- a. damages
- b. injunction
- c. quantum meruit**
- d. none of these.



# Multiple Choice Questions

While determining the damages which of the following are taken into account-

- a. motive of breach
- b. manner of breach
- c. inconvenience caused by non performance**
- d. all the above

# Multiple Choice Questions

Which damages is awarded with a view to punish the defended—

a. special damages

**b. vindictive damages**

c. ordinary damages

d. nominal damages

# Multiple Choice Questions

The remedy available in case of the breach of a negative term of contract-

a. suit for specific performance

**b. suit for injunction**

c. suit for quantum meruit

d. suit for rescission

# Multiple Choice Questions

Which of the following statements is correct?

- a. Loss of profit is an ordinary damages
- b. In case of breach of a contract for marriage ,no damages can be claimed
- c. Anticipatory breach means partial performance by the promisor
- d. Special loss can be claimed by the promisee only when the same was in the contemplation of the parties.**

# Multiple Choice Questions

In case of breach of contract, which of the following remedies is not available to the aggrieved party?

- a. suit for rescission
- b. suit for damages
- c. suit for specific performance
- d. suit under Indian Penal Code

# Multiple Choice Questions

The cost of suit is

- a. Always awarded to plaintiff
- b. Always awarded to defendant
- c. Never awarded to plaintiff
- d. Awarded at the discretion of the Court

# Multiple Choice Questions

Which of the following statements is incorrect?

- a. Ordinary damages are recoverable,
- b. Special damage are recoverable only if the parties knew about them,
- c. Remote or indirect damages are recoverable.
- d. Exemplary damages are always allowed.

# Multiple Choice Questions

In case of wrongful dishonour of a cheque by a banker having sufficient funds to the credit of the customer, the court may award

- a. Ordinary damages
- b. Nominal damages
- c. Exemplary damages
- d. Contemptuous damages



# Multiple Choice Questions

Ordinary damages are damages which

- a. Arise in the usual course of things from the breach
- b. Which are in the contemplation of the parties
- c. Are agreed in advance
- d. Are given by way of punishment for breach

# Multiple Choice Questions

‘A’ agreed to sell 100 shares to ‘B’ at Rs. 75 per share, delivery to be given on 1<sup>st</sup> March. ‘B’ refused to accept delivery on 1<sup>st</sup> March as price had gone down to Rs. 60 per share. Subsequently, ‘A’ sold these shares at Rs. 100 per share. As a result:

- a. ‘A’ cannot recover any damages from ‘B’
- b. ‘A’ will have to restore Rs. 2500 to ‘B’
- c. ‘A’ can recover Rs. 1500
- d. ‘A’ can recover damages at the discretion of the Court

# Multiple Choice Questions

Exemplary damages are

- a. The difference between the contract price and the market price
- b. Allowed when the plaintiff has suffered no loss
- c. Allowed in case of breach of a promise to marry**
- d. None of these

# Multiple Choice Questions

In case of breach of contract, the remedy available to the aggrieved party-

- a. Suit for rescission
- b. Suit for damages
- c. Suit for specific performance
- d. All of these**

# Multiple Choice Questions

**If a promisee is notified of anticipatory breach committed by the promisor, then-**

- a. the promisee need not perform his part of the contract but he cannot claim damages from the promisor
- b. The promisee need not perform his part of the contract but he claim damages only after the date of performance
- c. The promisee need not perform his part of the contract and can claim damages with out waiting till the date of performance**
- d. The promisee must perform his part of the contract before claiming damages from the promisor

# Multiple Choice Questions

The damages under Sec.73 of Indian Contract Act are

- a. nominal
- b. compensatory**
- c. penal
- d. none of the above

**THE END**

*Remedies For Breach Of Contract*