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# Remedies and Case Laws for Breach of Contract

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## ABSTRACT

*When a party to a contract renounces his responsibilities under it, or by his own conduct makes it impossible for him to perform his obligations under it, or completely or partially fails to meet such obligations, a breach of contract occurs. A contract breach might be either anticipatory or present. Breach of contract results in the non-breaching party's rights being violated. As a result, his rights must be restored. For these reasons, the offended party has a variety of options. Damages are one of the common law remedies. The primary goal of Damages is to provide monetary compensation to the innocent person. They are determined by determining what the plaintiff's situation would have been if the Contract had been properly performed. Compensatory, consequential, nominal, or liquidated monetary damages are all possible. Equitable Remedies are another set of remedies open to the aggrieved party. Equitable Remedies include Rescission, Restitution, Specific Performance, Injunction, Quantum Meruit, Anton Piller Order, etc. If the breaching party refuses to pay the Court ordered judgement, the court may issue Writ of Attachment or Writ of Garnishment to enforce the remedies. Section 73, 74 and 75 of the Indian Contract Act, 1872 deals with remedies and damages for Breach of Contract.*

**Keywords:** Remedies, Breach, Anticipatory Breach, Restitution, Damages.

## I. INTRODUCTION

Contract is 'an agreement enforceable by law'. It is an agreement between two or more persons (individuals, businesses, organizations, or government agencies) to do, or to refrain from doing, a particular thing in exchange for something of value. Contracts can generally be written using formal or informal terms, or they can be entirely verbal. The terms of the contract, meaning, who, what, where, when, and how of the agreement, define the binding promises of each party to the contract. A contract can be valid, voidable or void. For a valid contract certain criterions are to be fulfilled such as there must be offer and acceptance, intention to create legal relations, lawful consideration, parties must be capable to enter into the contract, there must be free

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consent of parties, the object of the contract must be lawful, the terms of the contract should be certain, the contract must be possible to perform and it must not be expressly declared void. If any of the given criteria is not fulfilled the contract either becomes void or voidable at the part of aggrieved party. Valid Contracts need not be necessarily in writing and registered, it may be oral and even implied. A Breach of Contract occurs when a party thereto renounces his liability under it, or by his own act makes it impossible that he should perform his obligations under it or totally or partially fails to perform such obligations. A breach of contract can be Anticipatory or Present. Breach of Contract leads to the infringement of the rights of the non-breaching party and the breaching party suffers a loss. Hence, his rights are needed to be restored and he must be reimbursed and for these various remedies are available to the aggrieved party.

#### **(A) Objectives of the Study**

1. To understand the basics breach of contract and the different types of breach.
2. To analyse different remedies available for the breach of contract.
3. To analyse the whole research by substantiating with case laws.

#### **(B) Case Laws Cited**

1. **Pannalal Jankidas v. Mohanlal**, 21-12-1950
2. **BRITISH FUELS LTD. Appellant and BAXENDALE and Another Respondents**, [1998] 3 WLR 1070, 29-10-1998
3. **Chief Secretary, State of Gujarat v. Kothari & Associates**, (2003) 3 GLH 613, 30-07-2003
4. **Hochster v. De La Tour** (1853) 2 e&b 678
5. **Ramgopal v. Dhanji Jadhavji Bhatia**, (1928) 28 LW 55, 17-05-1928
6. **Kalkaji Mandir Vikreta Sangathan-II v. Piyush Joshi**, (2016) 16 SCC 504, 16-03-2016
7. **Haryana Telecom Ltd. v. Union of India** AIR 2006 DEL 399
8. **Ryan v. Mutual Tontine Westminster Chambers Assoc**, (1893) 1 Ch 116
9. **TITO AND OTHERS v. WADDELL AND OTHERS** (No. 2), [1977] 3 WLR 972, 29-07-1977
10. **Murlidhar Chiranjilal v. Harishchandra Dwarkadas**, 29-03-1961

11. **SIMPSON v. THE LONDON AND NORTH WESTERN RAILWAY COMPANY.**, [L.R.] 1 Q.B.D. 274, 18-01-1876

12. **Pavey & Matthews Pty. Ltd. v. Paul** (1987) 162 C.L.R. 221

## II. RESEARCH ANALYSIS

In simple words a contract is breached when any of the parties fails or refuses to perform its promise under the contract or makes it impossible to perform.

Breach of Contract is possible when -

- A party fails to perform or rejects his contractual liability; or
- Makes it impossible to perform.

Section - 73 of The Indian Contract Act, 1872 states about the compensation for the loss or damage caused by the breach of contract as well as compensation for failure to discharge obligation resembling those created by contract. In *Pannalal Jankidas v Mohanlal*<sup>2</sup>, Justice **Patanjali Sastri** of Supreme court observed that “The party in breach must make compensation in respect of the direct consequences flowing from the breach and not in respect of the loss or damages indirectly or remotely caused. This section states that compensation is not given for any remote or indirect loss or damage sustained due to breach. In *Hadley v Baxendale*<sup>3</sup> clearly laid down two rules that compensation is recoverable for any loss or damage-

- Arising naturally in the usual course of things from the breach, or
- Which the parties knew at the time of the contract as likely to result from the breach.”

### (A) Types of breach

1. Breach occurring before the fixed time of performance has arrived i.e., Anticipatory breach.
2. Breach occurring when the party has failed to perform his obligation upon fixed time of performance mentioned in the contract i.e., Actual breach.

But for claiming remedies for damage the burden of proof lies on the plaintiff i.e., to proof that he has suffered some kind of loss. It is necessary that some loss should be shown by evidence. In other words, in *Chief Secretary, State of Gujarat v Kothari & Associates*<sup>4</sup> it was held that

<sup>2</sup> Pannalal Jankidas v. Mohanlal, 21-12-1950, SCC Online | Login For DocumentLink, <http://www.sconline.com/DocumentLink/A3eYYEow> (last visited Jun 30, 2021).

<sup>3</sup> BRITISH FUELS LTD. Appellant and BAXENDALE and Another Respondents, [1998] 3 WLR 1070, 29-10-1998, SCC Online | Login For DocumentLink, <http://www.sconline.com/DocumentLink/Y31NzgJx> (last visited Jun 30, 2021).

<sup>4</sup> Chief Secretary, State of Gujarat v. Kothari & Associates, (2003) 3 GLH 613, 30-07-2003, SCC Online | Login

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“The plaintiff has to assert that he has suffered some loss but for the purpose of claiming damages he has specially to plead and prove that he has sustained such special loss.”

**1. Anticipatory Breach** – In simple words, “An Anticipatory repudiation occurs when, prior to the promised date of performance, the promisor absolutely repudiates the contract.” Anticipatory Breach is an announcement by the contracting party that he/she doesn’t possess the intention to fulfil the contract and he/she will no longer be bound by it.

In the *Hochster v. De La Tour (1853)*<sup>5</sup>, it was decided that if there is a rejection of the contract before the performance, then claim for the damages can be made.

In the *Ramgopal v. Dhanji Jadhavji Bhatia*<sup>6</sup>, the court held that in case the anticipatory repudiation is accepted, damages for breach would be assessed at the time when repudiation takes place.

**2. Actual breach of Contract** – If one of the parties withdraws to perform on the due date or if he performs on the due date incompletely, then he commits an actual breach. In other words, “An actual breach of contract refers to a failure to meet the obligations stated in a contract. This means the failure has already occurred and is not something that is merely anticipated. A party can breach a contract in a number of ways, from failing to meet contractual deadlines to complete non-performance. Fortunately, there are remedies available to help the innocent party get fair compensation for his or her injury or loss.”<sup>7</sup>

In the case of *Bishamber Nath Agarwal v. Kishan Chand*<sup>8</sup>, It has been held that when an arrangement specifies that a particular act relating to the contracts is to be completed within a given period or manner, it should be performed in that manner or period and the parties don’t have the ‘right to of performing it in their own way or time.

In the case of *Haryana Telecom Ltd. V. Union of India*<sup>9</sup>, it was held that one of the provisions of the contracts stipulated those exchanges made beyond the duration of delivery stipulated did not disenfranchise the party of the right to recover liquidated damages, the analysis of all the

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For DocumentLink, <http://www.sconline.com/DocumentLink/vOhPhuK7> (last visited Jun 30, 2021).

<sup>5</sup> *Hochster v. De La Tour (1853)* 2 e&b 678, SCC Online | Login For DocumentLink, <http://www.sconline.com/DocumentLink/vOhPhuK7> (last visited Jun 30, 2021).

<sup>6</sup> *Ramgopal v. Dhanji Jadhavji Bhatia*, (1928) 28 LW 55, 17-05-1928, SCC Online | Login For DocumentLink, <http://www.sconline.com/DocumentLink/V1B3946y> (last visited Jun 30, 2021).

<sup>7</sup> Actual Breach Of Contract: Everything You Need to Know, UpCounsel (2020), <https://www.upcounsel.com/actual-breach-of-contract> (last visited Jun 30, 2021).

<sup>8</sup> *Kalkaji Mandir Vikreta Sangathan-II v. Piyush Joshi*, (2016) 16 SCC 504, 16-03-2016, SCC Online | Login For DocumentLink, <http://www.sconline.com/DocumentLink/Glh9R951> (last visited Jun 30, 2021).

<sup>9</sup> *Haryana Telecom Ltd. v. Union of India* AIR 2006 DEL 399, SCC Online | Login For DocumentLink, <http://www.sconline.com/DocumentLink/Glh9R951> (last visited Jun 30, 2021).

clauses unveiled that time was the essence of the contract.<sup>10</sup>

## **(B) Types of Remedies**

**1. Specific performance** - It means fulfilling a promise made under a contract as agreed. It is a remedy compelling performance. It is only granted at the court's discretion where the court can supervise the implementation of the contract. The Courts direct the defendant to perform the contract, and in accordance with its terms. By contrast to civil law systems that generally regard the innocent party's primary resource as, in principle, to have the contract performed, the jurisdiction to order specific performance is supplementary to the common law remedy of damages. Notwithstanding this difference of principle in 'practice, even in civil law systems, specific performance is only granted if the innocent party has a specific interest in performance which is not satisfied by damages.

In the case of *Ryan v. Mutual Tontine Westminster Chambers Associates*<sup>11</sup>, it was held that "This remedy is not available in contracts involving personal services because the court is unable to adequately supervise the task."

It has traditionally been said that specific performance will not normally be granted where damages provide adequate relief. In the case of *Tito and Others V. Waddell and Others*<sup>12</sup>, it was held that "there is no absolute rule to this effect, and the scope of specific performance is wider: it may now be ordered if that remedy will do more perfect and complete justice than an award of damages."

**2. Award of damages** - The purpose of an award of damages for breach of contract is to compensate the injured party. The fundamental principle underlying damages is 'not punishment but compensation'. The main purpose of damage is to provide Monetary Compensation to the non-breaching party. These are calculated on the basis of looking at what the position of the plaintiff would have been if the Contract had been properly performed. The object of damages is usually to put the injured party into the same financial position he would have been in had the contract been properly performed. Damages are of 4 types:

- Ordinary/Compensatory Damages,
- Consequential/Special Damages,

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<sup>10</sup> ANTICIPATORY AND ACTUAL BREACH OF CONTRACT, Lexpeeps (2020), <https://lexpeeps.in/an-overview-of-anticipatory-and-actual-breach-of-contract/> (last visited Jun 30, 2021).

<sup>11</sup> *Ryan v. Mutual Tontine Westminster Chambers Assoc*, (1893) 1 Ch 116, <https://www.upcounsel.com/actual-breach-of-contract> (last visited Jun 30, 2021).

<sup>12</sup> *TITO AND OTHERS v. WADDELL AND OTHERS* (No. 2), [1977] 3 WLR 972, 29-07-1977, SCC Online | Login For DocumentLink, <http://www.scconline.com/DocumentLink/2FiReJ4U> (last visited Jun 30, 2021).

- Liquidated Damage,
- Nominal Damages,

In *Murlidhar Chiranjilal v. Harishchandra Dwarkadas*<sup>13</sup> the court held that, “Damages should be assessed according to the difference between contract and market prices.”

In *Simpson v. London and North Western Railway Company*<sup>14</sup>, “The plaintiff consigned a parcel along with a consignment note which read as follows ‘Must reach New Castle Monday certain’. The train developed some technical problems and the consignment reached much later. Held that the plaintiff could recover, special damages from the Railway company, as he had brought the special circumstances, to the notice of the other party in the beginning itself.”

**Restitution** - The party which has paid any consideration in advance, then that party is entitled to recover the same from the other party and other party is not entitled to receive an unfair advantage over it. Restitution means to return goods or property received from other party to rescind the contract. It is based on the concept of unjust enrichment and sometimes referred to as quasi-contracts. Under this the plaintiff must establish that the benefit to the defendant was at the plaintiff's expense and it would be unjust to allow the defendant to keep that benefit or enrichment. The defendant must have a benefit or enrichment and should not have a defence to rely upon.

In *Pavey & Matthews Pty Ltd v Paul*<sup>15</sup>, “Pavey was a licenced builder and made an oral building contract with Paul; this was paid for in part. However, Paul refused to pay the balance and when Pavey demanded it, Paul claimed the contract was unenforceable, relying on failure to comply with formalities (s 45 of the Builders Licensing Act required that, to be enforceable, a building contract must be in writing and signed).”

The judges held that, “on the issue of debt: an action for debt could not arise where the contract was not enforceable because of lack of compliance with formalities; this, they said, would constitute an action to enforce the contract.”

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<sup>13</sup> Murlidhar Chiranjilal v. Harishchandra Dwarkadas, 29-03-1961, SCC Online | Login For DocumentLink, <http://www.sconline.com/DocumentLink/OE7k3zD4> (last visited Jun 30, 2021).

<sup>14</sup> SIMPSON v. THE LONDON AND NORTH WESTERN RAILWAY COMPANY., [L.R.] 1 Q.B.D. 274, 18-01-1876, SCC Online | Login For DocumentLink, <http://www.sconline.com/DocumentLink/6oz6C8I9> (last visited Jun 30, 2021).

<sup>15</sup> Pavey & Matthews Pty. Ltd. v. Paul (1987) 162 C.L.R. 221, SCC Online | Login For DocumentLink, <http://www.sconline.com/DocumentLink/OE7k3zD4> (last visited Jun 30, 2021).

### III. CONCLUSIONS

In this research it has been found that a variety of remedies are made available to the victim of breach of contract. In one sense these remedies are remarkable examples of the willingness of the state to lend its assistance to the enforcement of private arrangements: when a contracting party goes to law, and obtains a judgment against his against his defaulting partner, he obtains right to the support of all the forces of the state to enforce that judgment. In the last resort, bailiffs, sheriff's officers, the police, and even the armed forces can be called to enforce that contract and all this at the behest of private citizen. But in other sense the legal remedies available for breach of contract are very mild. It is (in general) no crime to break a contract, even this is done deliberately. It is a crime to cheat or defraud someone, but it is not a crime to fail to pay a debt, even if the debtor is perfectly capable of paying it. Moreover, when a claimant comes to the court for assistance in enforcing his contract, it often seems that the court is not disposed to take a very serious view of breaches of contract. Courts have the power to make a decree of specific performance to compel the performance of a contract, but they rarely do so. Nor do the courts in contract cases award punitive damages, such as is occasionally done in tort, to express the community's sense of outrage at the injuries inflicted on the victim or at the way has been treated. Further, the courts almost never contract breakers to give up profits that they have made through breaking their contracts, even when the breach is deliberate; if the defendant has broken one contract in order to make another, he will usually be allowed to keep whatever profits he made in the second contract.<sup>16</sup> Anyhow whatever remedies are available, it has always uplifted the rights of the aggrieved party in a breach of contract and there is always a scope of evolution of a new remedy depending upon the peculiarity of the case.

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<sup>16</sup> Atiyah's Introduction to the Law of Contract; 6th edn., by Stephen A. Smith, p. 371



#### **IV. BIBLIOGRAPHY OR REFERENCES**

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