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BREACH OF CONTRACT AND REMEDIES: CRIMINAL LIABILITY IN INDIA

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Abstract: A party violates a contract if they release themselves from obligations under it, make it impossible for them to do so, or totally or partially fail to do so. Contract violations might be either anticipatory or actual.
When a contract is breached, the rights of the non-breaching party are violated. His rights must be reinstated as a result. The person that has been wronged in this scenario has a number of options for redress. Damages are an acceptable remedy under common law. Giving the innocent party financial reparation is the basic goal of damages. Damages should be awarded. They are calculated by considering the plaintiff's position if the Contract had been properly carried out. Money damages might be liquidated, consequential, nominal, or compensatory. The harmed party may also be eligible for another class of remedies known as equitable remedies. When damages are insufficient, they are the only arbitrary remedies permitted by equity. Remission, restitution, particular performance, injunctions, quantum meruit, Anton Piller orders, etc. are a few examples of equitable remedies. The court may issue a Writ of Attachment or Writ of Garnishment to execute the remedies if the judgement offender refuses to pay.Sections 73, 74, and 75 of the Indian Contract Act, 1872 address remedies and monetary fines for contract breaches.

Keywords- Breach, The Indian Contract Act, 1872, Remedies, Criminal, Damage, Legal, Cases

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1.0 Introduction

Payment of damages would only be necessary in the event of a contract violation. To establish a violation, it must be decided by an adjudicator rather than just the parties themselves. A breach of a contract occurs when a promise is broken or the terms of the agreement are disregarded. It's conceivable that the conditions are not implemented as intended by the contract. The harmed party is entitled to damages up to the cost of carrying out the repairs in line with the contract, for example, if the parties entered into a contract to repair the other party's property in a particular way but the repair was not carried out in that way. A claim for damages may also be based on an expected contract violation. An anticipatory breach is the declaration by a contracting party that he would no longer uphold a responsibility emanating from the agreement. In this instance, the other party may consent to the continuance of the contract or terminate it. If there is an anticipatory breach of the contract, the plaintiff may seek damages after demonstrating that the defendant failed to uphold their half of the deal prior to contract termination.

2.0 Proof of Damage for a Claim of Liquidated Damages

The burden of evidence for a claim for liquidated damages only becomes waived when the term "whether or whether actual harm or loss is demonstrated to have been caused thus" appears. It does not support the granting of compensation when the violation did not result in any legal injury. This is because compensation for loss or harm that naturally occurred in the course of events or that the parties were aware would probably occur when they joined the contract may be provided as damages for breach of contract. Therefore, for this kind of claim for liquidated losses to be admissible, a loss or injury must have occurred. The requirement to show a loss or harm may be waived if it is difficult or impossible to do so; in these cases, the true pre-estimate of damages may be provided in its place.
A person who has been damaged may only seek damages to the extent that his claim adequately compensates him for his losses, not to the full extent of the liquidated damages judgement. The largest financial figure above which a court cannot award adequate compensation is known as the liquidated amount.
In the absence of such an evidence or an honest estimate by the claimant, the court would take into consideration a reasonable judgement of the effects of the contract violation and award damages that are less than the specified liquidated damages. If the sum provided is a trustworthy pre-estimate of loss, it might not be necessary to produce proof of actual loss. To prove that there was no danger of loss, the infringing party has the burden of evidence. As a result, elements including the degree of loss mitigation and the pertinent facts and circumstances merit adequate attention.

2.1 In this Respect, the Hon'ble Supreme Court has Noted the Following:
Every time a contract is broken, the party that was damaged by it does not have to demonstrate their own loss or damage in order to get a verdict; the court has the authority to provide fair damages even in the absence of evidence of actual harm. Nevertheless, the phrase "whether or not actual damage or loss is demonstrated to have been caused there by" is meant to encompass a variety of contracts that are brought up in court. The court may be unable to determine the damages brought on by a contract violation, Damages can be calculated in some circumstances, nevertheless, following established guidelines. The parties' demand for compensation, if it is regarded to be a true pre-estimate, may be taken into account as a measure of reasonable compensation if the court is unable to decide the amount of compensation; however, if it takes the form of a penalty, it will not be taken into account. When a loss is quantifiable in monetary terms, the person requesting compensation must provide evidence of the loss he suffered.
In the event of a breach of a contract that contains a provision for liquidated damages, no automatic financial liability results. The mere existence of a clause for liquidated damages does not automatically entitle the plaintiff to compensation unless the court has concluded that the party alleging a violation has a right to damages.

3.0 Causation
There must be a link between the breach and the loss or harm sustained in order to establish causation and support a claim for damages. If the defendant's breach of the contract is the only "real and effective" cause of the harm or damage for which damages are sought, the causal relationship is said to have been proved. If there are other causes, the "dominant and effective" cause should be taken into account. The "but for" test, which tries to determine whether the damage would have occurred but for the defendant's actions, is one of many methods the court may use to establish a causal relationship depending on the unique facts and circumstances.
In Reg Glass Pty Ltd v. Rivers Locking Systems Ltd, the defendant did not install the door in accordance with the contract's requirements, which called for a security door and locking system. Due to the defendant's inability to install the door and locking system, the plaintiff's property was broken into, leading to the filing of a lawsuit to recover damages. The court decided that the loss would not have occurred "but for" the defendant's breach because the burglary would not have occurred if the defendant had constructed the door and locking mechanism. In Alexander v. Cambridge Credit Corp. Ltd., McHugh JA acknowledged the "but for" test but stated that the pertinent standards should be determined by the facts and circumstances rather than being restricted by it. It is desirable to demonstrate a relationship between the loss or harm and the breach of the contract using a reasonable strategy. This was brought up in light of the possibility of multiple contributing reasons to the loss or damage, in which case the "but for" test may not be helpful.
The Honourable Supreme Court of India ruled that the defendant's failure to keep the goods insured resulted in a direct loss of claim from the government in one of the most significant cases involving the "but for" test (under a law covering fire risk, the government was required to pay for damage to property that was fully or partially insured against fire at the time of the explosion). The Supreme Court's ruling was as follows: "They (the respondents) could have collected the full worth of the items from government, but for the appellants' breach of duty to maintain the products insured according to the arrangement. Therefore, there was a direct causal link between the respondents' loss and the appellants' default."

However, if the injury was too "remote" or not foreseeable from the breach of contract, where the contractual conditions excluded the defendant's liability in the specific circumstances, or both, the proof of causation would not conclusively hold the defendant accountable.
There may also be situations in which the plaintiff's own actions, natural disasters, or other outside factors disrupt the chain of causation. If the plaintiff has contributed to the default or negligence, he may not be able to recover damages. This would depend on taking into account the relevant information. This might possibly have anything to do with the equity principle that "He who comes into equity must come with clean hands."

4.0 Remoteness of Damages
One of the requirements for an award of damages under the Contract Act is that the loss or damage "rose in the ordinary course of things from such breach; or parties knew that such a loss or damage could subsequently arise at the time of entering into the contract." According to the maxim cause proxima non remota, or spectator may be attracted, the defendant would not be liable for losses that are not directly attributable to the breach of contract or an incidental harm.
The theory controlling remoteness of damages was established in the famous case of Hadley v. Baxendale ("Hadley v. Baxendale"). Only those damages, which "reasonably be considered...as arising naturally, i.e., according to the

usual course of things" from the breach, or which "reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it," may be recovered by a party injured by a breach of contract. This serves as the conceptual framework for "particular damages." In this instance, the Court acknowledged that the defendant's inability to ship the crankshaft for repairs was the single factor contributing to the plaintiffs' mill's shutdown, which led to a loss of revenue. But it also stated that:
"...under regular circumstances, such results would not, in all likelihood, have occurred in the large majority of cases of millers sending off damaged shafts to third parties by a carrier; and these particular circumstances were here never disclosed by the plaintiffs to the defendants.
In situations where it is clear that the defendant has not assumed the risk as contemplated under the special circumstances under the terms of the contract or that any reasonable man would not have assumed such risk, the defendant would not be held liable for the corresponding loss or injury simply because they were aware of the special circumstances.
In Victoria Laundry (Windsor) Ltd v. Newman Industries Ltd (1949), which affirmed the result in Hadley v. Baxendale, the requirements of distance and foreseeability were laid out.

5.0 Damages for Direct, Consequential and Incidental Losses and Damage
When a contract is broken, the offender may also be held liable for losses that were "consequential to such loss or damage" in addition to the "loss or damage caused." For instance, if a builder promises in a contract for building construction that the building and erection will be completed on time so that it can be rented out, if the construction is so poor that it collapses and must be immediately rebuilt, after which it could not be rented out to earn house rent, the defendant builder would be liable to pay for the costs associated with rebuilding the house, for any rent that was lost, and for the compensation paid to the tenant. When consequential losses are deemed to have been reasonably anticipated by both parties at the time of the contract's creation as the likely outcome of a breach, they may be covered by special damages.
Direct losses include overhead expenses that reduce profits, while incidental losses include expenses incurred after learning of the contract's violation. These expenses may include the transportation costs necessary to move the goods if the buyer fails to pay for them or expenses related to finding a replacement customer. Future losses that have not yet occurred at the time of the trial may also be claimed as damages; these damages must, whenever possible, be estimated separately. Similarly, if they were within the reasonable understanding of the parties at the time the contract was made, expenses incurred before the contract and in anticipation of it may likewise be claimed as damages. A claim for damages may also include costs incurred by the innocent party prior to performing the contract, costs incurred during the breach, or even pre-contract costs, subject to remoteness.

6.0 Limitation of Liability
In accordance with Indian law, parties to a contract may limit their liability for damages by including clear clauses in the agreement that state that no compensation will be paid in particular circumstances or that the obligation would be restricted to only a specified category of damages. Damage liability may also be subject to the occurrence of specific circumstances. Contracting parties frequently expressly disclaim liability for indirect and consequential losses. Despite the fact that such damages are typically not permitted by law, parties opt to make an express exclusion in order to avoid uncertainty. Additionally, such provisions shouldn't be against public policy or obtained through pressure, undue influence, deception, or fraud. For instance, stipulations that completely deny a party that has been wronged the rights granted by Sections 55 and 73 of the Contract Act, i.e., a claim for damages, have been ruled to be against public policy and invalid. The mere mention of other remedies for breach in the contract, however, does not automatically rule out the use of damages as a remedy for breach.
In addition, courts cannot award damages that exceed the liability assumed in a contract that contains a limitation of liability or exclusion of liability clause. However, damages for circumstances outside the purview of such clauses may be given provided the limitation of responsibility clause is narrowly worded.
Additionally, parties are permitted to expressly agree to forgo Section 73 of the Contract Act's prescribed way of calculating damages in favor of another technique or formula.
In the case of Sarabjit Kaur v. State of Punjab and Others, a two-judge bench of the Hon'ble Supreme Court of India decided that cheating is not a crime unless there is evidence of fraud or dishonesty from the very beginning of the transaction. The Supreme Court ruled that using criminal courts to settle scores or put pressure on parties to resolve civil problems is against their intent.

7.0 Breach of Contract Latest Cases

On May 27, 2013, Sarabjit Kaur and Malkir Kaur entered into a contract for Sarabjit Kaur to buy the subject land. On the basis of this, Sarabjit Kaur signed a sale contract with Darshan Singh's wife on November 18, 2013. The agreement to sale made it clear that Sarabjit Kaur was not the current owner of the subject land. As a deposit, Sarabjit Kaur received INR 5,00,000 (five lakh only) in Indian Rupees. For an additional payment of INR 75,000 (Indian Rupees 75,000 only), the date of registration of the sale deed, originally set for June 25, 2014, was moved to December 24, 2014.

On September 30, 2015, Darshan Singh filed a complaint over the sale agreement against Manmohan Singh and Ranjit Singh, the property dealers ("First Complaint"). The First Complaint's prayer referred to other transactions made by Darshan Singh and demanded money be recouped from the real estate agents. After looking into the First Complaint, the police declared on May 18, 2016, that as the issue was purely civil, no further action was required on their end.

After that, on October 5, 2016, Darshan Singh filed a second complaint (the Second Complaint) with nearly similar claims made in the first complaint. However, Darshan Singh omitted mentioning the resolution of the First Complaint in the Second Complaint. After the Second Complaint was investigated, it was determined that no criminal wrongdoing had been established, and Darshan Singh was free to pursue civil remedies.

However, on October 16, 2017, Darshan Singh filed a third complaint (Third Complaint) against the real estate agents, this time also adding Sarabjit Kaur. Sarabjit Kaur was charged with cheating in the third complaint. The Third Complaint served as the foundation for the filing of F.I.R. No. 430, dated October 16, 2017, which charged Sarabjit Kaur with violating Sections 420, 120-B, and 506 of the Indian Penal Code, 1860 (FIR).

Sarabjit Kaur was compelled to file a plea with the P&H High Court (the P&H High Court) asking for the FIR to be thrown out (the Quashing plea). In its Order from December 17, 2020 (the Impugned Order), the Hon. P&H High Court dismissed the Quashing Petition. Sarabjit Kaur chose to challenge the Impugned Order to the Honourable Supreme Court because she felt aggrieved by it.

8.0 Observations and Decisions of the Supreme Court

It was up to the Honourable Supreme Court to determine whether Sarabjit Kaur was subject to any criminal penalties for breaching a contract.

The Hon'ble Supreme Court made the following ruling after carefully considering the arguments put forth by the parties: Nothing in the record even faintly suggested that Darshan Singh had started any civil procedures for the sale deed's execution or, alternatively, for the return of the earnest money. If there had been any civil actions, the civil court would have likewise looked into the issue of preparedness and willingness.

Sarabjit Kaur was the subject of criminal charges because Darshan Singh wanted to pressure her into returning the earnest money. Darshan Singh's intent to turn a civil disagreement into a criminal conflict was therefore clear.

If there is no evidence of fraud or deceit from the very beginning of the transaction, a breach of contract does not warrant criminal prosecution for cheating. The mere allegation of a broken promise is insufficient to begin criminal proceedings.

Determining the elements of a criminal offence enables criminal courts to only consider a case.

The FIR and all following procedures were quashed as a result of the Impugned Order being overturned.

9.0 JSA Remark

In order to pressure, coerce, or compel the counterparty to comply with their demands, litigants frequently turn to filing criminal accusations. Even when the parties are well aware that the conflicts or differences are simply civil in nature, this is a growing trend in family disputes. This approach is wise because law enforcement officials would be wary of investigating fictitious criminal allegations.

10.0 Conclusion

This study discovered that there are several remedies accessible to the victim of contract infringement. In a certain sense, these solutions demonstrate the state's readiness to support the adoption of private agreements: A contracting party is entitled to the backing of the entire state's enforcement machinery when he brings a case and prevails in judgement against his non-compliant partner. A private person may, as a last option, ask bailiffs, sheriff's deputies, the police, or even the armed forces to carry out the contract. The legal remedies that are available for contract violation are, however, quite limited. It's not usually a felony to violate a contract, even when it's done knowingly. Even if the debtor is fully competent to pay the obligation, failing to do so is criminal; nevertheless, deceiving or lying to someone is not. In addition, it frequently appears that the court is hesitant to consider a claimant's request

that it consider contract violations seriously. Damages for contract violations are thought to be preferable to other remedies that may be available to parties who have suffered losses as a result of contract violations. Since the amount of damages is defined by including a clause on "liquidated damages" in the contract itself, liquidated damages are essential in situations where it is difficult to predict the amount of losses. Such liquidated damages agreements seek to the greatest extent feasible to avoid litigation. This would lessen the burden on those seeking damages to demonstrate actual harm resulting from a breach. Damages, however, might not always be enough to make up for the losses or harm a party has endured. This could lead to a situation where the other party is required to fulfil a specific obligation instead of paying damages to allow the party to resume its pre-contractual position. Such situations can arise if the aggrieved party needs the contract's subject matter specifically or urgently. In light of what is required by a specific situation, courts may choose to award damages instead of or in addition to specific performance. Additionally, the requirement for liquidated damages would not prevent specific performance. Similar to this, plaintiffs may also request damages in place of or in addition to requesting injunctions from the court. Damages have proven useful in enforcing contractual obligations conceptually and practically. The courts' evolving perspectives on liquidated damages may lend credence to this. Additionally, courts have made an effort to prevent parties from benefiting unfairly from the provision of a clause for liquidated damages by determining an appropriate amount of damages.

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