Lesson : 11

1.4.4 REMEDIES FOR BREACH OF CONTRACTS

When someone breaches a contract, the other party is no longer obligated to keep its end of the bargain. From there, that party may proceed in several ways: (i) the other party may urge the breaching party to reconsider the breach; (ii) if it is a contract with a merchant, the other party may get help from consumers' associations; (iii) the other party may bring the breaching party to an agency for alternative dispute resolution; (iv) the other party may sue for damages; or (v) the other party may sue for other remedies.

Remedies for Breach of Contracts

As soon as either party commits a breach of the contract, the other party becomes entitled to certain reliefs. These remedies are available under the Indian Contract Act, 1872, as also under the Specific Relief Act, 1963. There are three remedies under the Specific Relief Act, 1963: (i) a decree for specific performance (s.10); (ii) an injunction (s.38-41); (iii) a suit on quantum meruit (s.30), Remedies under the Indian Contract Act, 1872 are: (i) rescission of the contract (s.39) and, (ii) damages for the loss sustained or suffered.

Rescission of the contract: When a breach of contract is committed by one party, the other party may treat the contract as rescinded. In such a case the aggrieved party is freed from all his obligations under the contract. Thus, where A promises B to supply one bag of rice on a certain date and B promises to pay the price on receipt of the bag. A does not deliver the bag of rice on the appointed day, B need not pay the price. A person who rightfully rescinds the contract is entitled to compensation for any damage which he has sustained through the non-fulfillment of the contract.

Damages (s.75): Another relief or remedy available to the promisee in the event of a breach of promise by the promisor is to claim damages or loss arising to him therefrom. Damages under s.75 are awarded according to certain rules as laid down in Ss.73-74. Section 73 contains three important rules: (i) Compensation as general damages will be awarded only for those losses that directly and naturally result from the breach of the contract. (ii) Compensation for losses indirectly caused by breach may be paid as special damages if the party in breach had knowledge that such losses would also follow from such act of breach. (iii) The aggrieved party is required to take reasonable steps to keep his losses to the minimum. It is the duty of the injured party to minimise loss. If loss has been occurred due to the negligence of the aggrieved party, he cannot claim for the damages. (British Westinghouse & Co. v Underground Electric etc. Co. (1915) A.C.673). He cannot claim to be compensated by the party in default for loss which is really not due to the breach but due to his own neglect to minimise loss after the breach.

Thus, the loss or damages caused to the aggrieved party must be such that either (i) it arose naturally or (ii) the parties knew, when they made the contract, was likely to arise. In other words, such compensation cannot be claimed for any remote or indirect loss or damage sustained by reason of the breach of the contract.

Section 74 provides that if the parties agree in their contract that whoever commits a breach shall pay an agreed amount as compensation, the court has the power to award a reasonable amount only, subject to such agreed amount.

Different types of damages: There are four types of damages namely ordinary damages, special damages, vindictive damages and nominal damages. These could be explained as follows:

(1) ***Ordinary damages:*** These damages are those which naturally arise in the usual course of things from such breach. The measure of ordinary damages is the difference between the contract price and the market price at the date of the breach. If the seller retain the goods after the breach, he cannot recover from the buyer any further loss if the market falls, nor is he liable to have the damages reduced if the market rises.

Example (i) A contracts to deliver 10 bags of rice at Rs 500 a bag on a future date. On the due date he refuses to deliver. The price on that day is Rs 520 per bag. The measure of damages is the difference between the market price on the date of the breach and the contract price, i.e., Rs 200.

The ordinary damages cannot be claimed for any remote or indirect loss or damages by reason of the breach. The ordinary damages shall be available for any loss which arises naturally in the usual course of things Example: A railway passenger's wife caught cold and fell ill due to her being asked to get down at a place other than the railway station. In a suit by the plaintiff against the railway company, held that damages for the personal inconvenience of the plaintiff alone could be granted, but not for the sickness of the plaintiff's wife, because it was a very remote consequence.

What is the most common remedy for breach of contracts. The usual remedy for breach of contracts is to file a suit for getting the damages. The main kind of damages awarded in a contract suit are ordinary damages. This is the amount of money it would take to put the aggrieved party in a position as good as if there had not been a breach of contract. The idea is to compensate the aggrieved party for the loss he has suffered as a result of the breach of the contract.

(2) ***Special damages:*** These damages are claimed in case of loss of profit, etc. When there are certain special or extraordinary circumstances present and their existence is communicated to the promisor, the non-performance of the promise entitles the promisor to not only the ordinary damages but also damages that may result therefrom. The communication of the special circumstances is a prerequisite to the claim for special damages. If the aggrieved party failed to communicate about the special cases which would result into special losses to him, he cannot claim for the special damages.

Examples: (i) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that before the 1st of January it falls down and had to be rebuilt by B, who in consequence loses the rent which he was to have received from C, and is obliged to make

compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost and for the compensation made to C.

(ii) A delivers to B, a common carrier, a machine to be conveyed without delay to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine and A, in consequence, loses a profitable contract with the government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed. But, however, the loss sustained through the loss of the government contract cannot be claimed.

(iii) X's mill was stopped due to the breakdown of a shaft. He delivered the shaft to Y, a common carrier, to be taken to a manufacturer to copy it and make a new one. X did not make known to Y that delay would result in a loss of profits. By some neglect on the part of Y the delivery of the shaft was delayed in transit beyond a reasonable time. As a result, the mill remained idle for a longer time than otherwise would have been, had the shaft been delivered in time. Held, Y was not liable for loss of profits during the period of delay as the circumstances communicated to Y did not show that a delay in the delivery of the shaft would entail loss of profits to the mill. **[Hadley v. Baxendale]**.

Liquidated Damages and Penalty

Sometimes parties themselves at the time of entering into a contract agree that a particular sum will be payable by a party in case of breach of the contract by him. Such a sum may either be by way of 'liquidated damages' or it may be way of 'penalty'. The essence of liquidated damages is a genuine covenanted pre-estimate of the damages. Thus, the stipulated sum payable in case of breach is to be regarded as liquidated damages if it be found that parties to the contract conscientiously tried to make a pre-estimate of the loss which might happen to them in case the contract was broken by any of them. On the other hand, the essence of a penalty is a payment of money stipulated as "in terrorem" of the offending party. It is put just as to secure the performance of the contract. Thus, if it is found that the parties made no attempt to estimate the loss that might happen to them on breach of the contract but still stipulated a sum to be paid in case of a breach of it, with the object of coercing the offending party to perform the contract it is a case of penalty.

It is obvious that a term in a contract amounts to a penalty where a sum of money, which is out of all proportion to the loss, is stipulated as payable in case of its breach. Where the amount payable, in case of its breach, is fixed in advance whether by way of liquidated damages or penalty, the party may claim only a reasonable compensation for the breach, not exceeding the amount so named or, as the case may be, the penalty stipulated for. (s.74).

Examples. (i) A contracts with B to pay B Rs 1,000 if he fails to pay B Rs 500 on that day. A fails to pay Rs 500 on that day. B is entitled to recover from A such compensation not exceeding Rs 1,000, as the court considers reasonable.

(ii) A contracts with B that if A practices as a surgeon within Calcutta, he will pay B Rs 5,000. A practices as a surgeon in Calcutta. B is entitled to such compensation not exceeding Rs 5,000 as the court considers reasonable.

Whether payment of interest at a higher rate amounts to penalty?: Whether an agreement to pay interest at a higher rate in the case of breach of a contract amounts to penalty shall depend upon the circumstances of each case. However, following rules may be helpful in understanding the legal position in this regard. (i) A stipulation for increased interest from the date of default shall be a stipulation by way of penalty if the rate of interest is abnormally high. A gives B a bond for the repayment of Rs 1,000 with interest at 12% p.a. at the end of six months with a stipulation that in case of default interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the court considers reasonable. (ii) Where there is a stipulation to pay increased interest from the date of the bond and not merely from the date of default; it is always to be considered as penalty. (iii) As regards compound interest, it is not itself a penalty. But it is allowed only in cases where the parties expressly agree to it. However a stipulation to pay compound interest at a higher rate on default is considered as a penalty. (iv) An agreement to pay a particular rate of interest with stipulation that a reduced rate will be acceptable if paid punctually is not a stipulation by way of penalty. Thus, where a bond provided for payment of interest at 12% p.a. with a provision that if the debtor pays interest punctually at the end of every year the creditor would accept interest at the rate of 9% p.a. Such a clause is not in the nature of penalty and hence interest @ 12% shall be payable.

(3) ***Vindictive or punitive damages:*** These damages are awarded with a view to punish the defendant and not solely with the idea of awarding compensation to the plaintiff. These have been awarded (a) for breach of a promise to marry; (b) for wrongful dishonour of a cheque by a banker possessing adequate funds of the customer. The measure of damages in case (a) is dependent upon the severity of the shock to the sentiments of the promisee. In case (b), the rule is smaller the amount of the cheque dishonoured larger will be the amount of damages awarded.

(4) ***Nominal damages:*** These are awarded in cases of breach of contract where there is only technical violation of the legal right but no substantial loss is caused thereby. The damages granted in such cases are called nominal because they are very small, for example, a rupee. This small amount is awarded as a matter of course.

Meaning of Specific Performance

There are other remedies in a contract suit besides damages. The main one is specific performance. Where damages are not an adequate remedy, the court may direct the party in breach to carry out his promise according to the term of the contract. This is called specific performance of the contract. Some of the instance where court may direct specific performance are: a contract for the sale of particular house or some rare article (antique) or any other thing for which monetary compensation is not enough

because the injured party will not be able to get an exact substitute in the market. However, specific performance may not be granted where (i) monetary compensation is an adequate relief; (ii) the contract is of personal nature, e.g., a contract to paint a picture; (iii) where it is not possible for the court to supervise the performance of the contract, e.g., a building contract; (iv) the contract is made by an incorporated company beyond its object clause as laid down in its memorandum of association.

Remedy of Injunction

Injunction means an order of the court prohibiting a person to do something where a party is in breach of a negative term of contract when a person promised not to do something, he may further be restrained to do that thing as per the provisions of injunction. The court may by, issuing an order, prohibit him from doing so. *Example:* N, a film star, agreed to act exclusively for a particular producer for one year but she contracted to act for some other producer, she could be restrained by an injunction to do so.

Remedy by Way of a Suit on Quantum Meruit

The phrase 'quantum meruit' means as much as is merited (earned). The normal rule of law is that unless a party has performed his promise in its entirety, it cannot claim performance from the other. It is based on the principle that no one could be allowed to take undue advantage of the other. Its provisions are in accordance to the 'quasi contract.' To this rule, however, there are certain exceptions on the basis of 'quantum meruit'. A right to sue on a 'quantum meruit' arises where a contract partly performed by one party has become discharged by the breach of other party.

1.4.5 LET US SUM UP

The 'performance of contract' means the carrying out of obligations under it by the parties responsible to do so.

The law provides a number of rules regarding performance of contracts. First of all, it provides as to who must perform to promise under a contract. Then it lays down rules to regards performance of joint promises. Further, it provides rules regarding, the time, place and manner of performance of contracts. Also, it deals with reciprocal promises.

A contract may be assigned by a party by transferring his right, title and interest in the contract to another person.

The law provides different modes of discharge of contracts. These are: (i) by performance, (ii) by tender, (iii) by mutual consent, (iv) by subsequent impossibility, (v) by operation of law, and (vi) by breach.

When someone breaches a contract, the other party is no longer under an obligation to keep its end of the bargain. On the other hand, he is given a number of remedies to proceed against the defaulting party. These are two most important remedies. Firstly, he can treat the contract as rescinded. Secondly, he can claim compensation for any damage which he has sustained through the non-fulfillment of the contract by the other party.

There are four types of damages: (i) ordinary, (ii) special, (iii) indictive or punitive, and (iv) nominal.

There are three other remedies in a contract suit besides damages. These are (i) specific performance, (ii) injunction and (iii) quantum mervit.

1.4.6 KEYWORDS

Reciprocal Promise

Assignment of Contract

Ordinary Damages

Injunction

Quantum Mervit