

## BALANCING PROVISIONS OF INDIAN CONTRACT ACT AND SUPREME COURT LAWS IN A CASE OF BREACH OF A CONTRACT

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### DISCHARGE BY BREACH

With regard to **the Breach of Contract**<sup>1</sup> in the Indian Contract Act, 1872, there are certain case laws of the Supreme Court of India and provisions of the Indian Contract Act which balances or are not extreme cases according to the circumstances and are a positive law.

Under section 39 the **anticipatory breach**<sup>2</sup> the rights affected have two elements, **firstly** that the innocent party is excused from the performance of a contract. In the anticipatory breach<sup>3</sup>, the other party is excused from performance, or from further performance.

**Balance the rights of both parties:** For example, the obligation to perform under the original contract ceases and is replaced with the operation of law by another obligation, which is to pay money in the form of damage. The only legal nexus that remains between the parties is to pay the damages which are assessed according to the old obligation but the old obligation no longer exists as an obligation, in the case of *Pusapati Krishna Murthy Raju v A.P. SEB*<sup>4</sup> in which the electricity got permanently disconnected within 2 years whereas the supply was agreed for a term of 10 years. As a damage compensation court allowed recovery of minimum charges only for a period of 5 years and not for the whole period of 10 years which is per se on the middle side or balanced and beneficial for both.

**Secondly**, it entitled the injured party to an option either to sue immediately or wait till the time act was to be done, and that gives the 'immediate right of action' as in the case of *Narsimha Mudali v Narayanaswami Chetty*<sup>5</sup>, in which the Chetty firm close the first portion of the contract, and reopened the new contract by their nth paragraph. But unless the Mudali firm showed its

<sup>1</sup> Breach means non-performance of your part of the contract without legal justification. There are two types: anticipatory and actual breach which is in section S.39 and S.73 (actual breach damages).

<sup>2</sup> Based on doctrine of anticipatory repudiation in which before the performance of promise, the promisor completely refuses the contract.

<sup>3</sup> Based on doctrine of anticipatory repudiation in which before the performance of promise, the promisor completely refuses the contract

<sup>4</sup> AIR (1996) 4 An LT 822.

<sup>5</sup> 1925 SCC OnLine Mad 157.

acceptance of this fresh tender, that firm repudiated the nth paragraph. Therefore, there was no fresh contract between the parties formed or 'if they only show their acceptance.'

**The other balance of the right of parties are:**

**Consequences of the aggrieved party for waiting for performance**<sup>6</sup>: If either party keeps the contract alive for the benefit of the other party as well as his own, he remains liable for all the obligation of the contract and another party not only to complete the contract if so advised but also to take advantage of any supervening circumstance which must be clear in the repudiating contract as like in the case of *Jhandoo Mal Jagan Nath v Phul Chand Fateh Chand*<sup>7</sup> where once the aggrieved party has exercised the option the party in default cannot say that contract still subsists.<sup>8</sup>

**Discharge by any other event intervention may benefit both parties**<sup>9</sup>: "Where no other event intervenes to discharge the contract otherwise, the innocent party who kept waiting up to the last day of the performance may sue the other party for breach." For this, the appropriate illustration is of *Ishwarappa v Arunkumar*<sup>10</sup> wherein the contract the agent was not authorized to spend anything from his pockets or raise loans, as a result, an ordinary power of attorney for construction of the house was held to be revocable.

**Aggrieved party's liability to offer restitution under section 65**<sup>11</sup>: As in the case held by the Privy Council in *Muralidhar Chatterjee v International Film Co Ltd*<sup>12</sup> in which the plaintiff wrote to the defendant on the account that all the business dealings (supply of the film) would be stopped. The defendant accepted the repudiation (he did not supply the film a second time) and the plaintiff sued them for a refund of their money. In those, the aggrieved party can put an end to the contract and bring an action for damages for breach of contract but bounded by Section 64 to restore to the other party of which the benefit he has received.

**Mental pain and suffering**<sup>13</sup>: In ordinary cases breach the damages for mental pain and suffering are not allowed but they are allowed on the special cases as in the case of *Bangalore*

<sup>6</sup> Avatar Singh, in CONTRACT AND SPECIFIC RELIEF (2020).

<sup>7</sup> AIR 1925 Lah 217.

<sup>8</sup> Id. at 453.

<sup>9</sup> supra note 11, at 455.

<sup>10</sup> 2004 AIR Kant HCR 2273.

<sup>11</sup> supra note 11, at 463.

<sup>12</sup> AIR 1943 PC 34.

<sup>13</sup> supra note 11, at 502.

*Development Authority v Syndicate Bank*<sup>14</sup> the compensatory damages under section 73 for mental agony and suffering was awarded by applying the principle of *administrative law*, where the sellers (houses) as a statutory authority acts negligently and arbitrarily.

**Delay in payment**<sup>15</sup>: In the case of *Adaramani Devi v LIC*<sup>16</sup>, the claimant was allowed to recover the money with interest under section 73 as the insurer made a payment of the policy one and half a year of issuing the policy and there was no justification for his delay.

**Termination of contract and writ remedy**<sup>17</sup>: As in the case of *OJSC Corpn Transstroy v Govt of Karnataka*<sup>18</sup>, the foreign company whom the project was given for the construction of a public road could not complete within the stipulated time, in spite of the fact that sufficient time and opportunity has been provided for the same. The government terminated the contract and this was questioned in the writ petition. The court found that the termination had become necessary in the public interest. And, there was no violation of Article 14, and therefore there was no scope for interference.

**Withdrawal of letter of intent and writ remedy provided to restore it**: In the case of *Alok Prasad Verma v Union of India*<sup>19</sup> firstly a letter of intent was issued in favor of the petitioner for granting a retail outlet of petroleum products. But the letter was afterward withdrawn without any reason. This was against Article 14 of the Constitution. The court said that in appropriate cases it could intervene in the contract matters in order to exercise the writ jurisdiction. The respondent was directed to restore the letter of intent and can take further steps according to the law and prescribed procedure.

**Duty to mitigate under section 73** for the claim for compensation of direct and central to lose or damage due to the breach in the usual course of things. The seller does not resell the goods and the loss is aggravated by falling market prices then he cannot recover the enhanced loss. In the case of *A.K.A.S Jamal v Molla Dawood Sons & Co*<sup>20</sup> the seller (plaintiff) contracted to sell to the defendant “23,500 shares to be delivered and paid for on December 30, 1911”. The share was offered that day, but the defendant refused to take delivery or pay them. On that day the market

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<sup>14</sup> (2007) 6 SCC 711.

<sup>15</sup> supra note 11, at 513.

<sup>16</sup> 1988 AIHC 3006 (Ori).

<sup>17</sup> supra note 11, at 518.

<sup>18</sup> AIR 2005 Kant 351.

<sup>19</sup> (2000) 3 BLJR 1913 (Pat).

<sup>20</sup> (1915-16) 43 IA 6.



price for sales “would have realized Rs. 1,09,218 less than their price under the contract. But the plaintiff sold the share only after February when the market was again rising and then he realized only Rs. 79,862 was less than price under the contract.” The defendant contended that they should be liable to pay only Rs. 79,862. But in actuality, he was liable for Rs. 1,09,218. So, it is the right of the plaintiff to sue for damages of taking all the reasonable steps to mitigate the loss after the breach of contract. But cannot claim as damages of any sum which is caused by his own negligence.’

**CONCLUSION:** As observed through certain Supreme Court of India case decisions in accordance with the provision of the Indian Contract Act which ensures the balancing of rights of parties as assessed in the different circumstances. In short that both sides of the parties should face equitable consequences and either should not be at a loss or undue benefit. Ensure the just and fairness in each circumstance and for that the Indian Contract Act, 1872 has the provisions and if mandatorily need then amend according to certain situations or court cases.



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