

BREACH OF CONTRACT

Breach of contract means a breaking of the obligation, which a contract imposes. When a party having a duty to perform a contract fails to do that, or does an act whereby the performance of the contract by him becomes impossible, or he refuses to perform the contract, there is said to be a breach of contract on his part. On the breach of contract by one party, the other party is discharged from his obligation to perform his part of the obligation, and he also gets a right to sue the party making the breach of contract for damages for the loss occasioned to him due to the breach of contract.

It occurs when a party to the contract without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It confers a right of action for damages on the injured party.

Breach of contract may be:

- 1) Actual breach of contract, or
- 2) Anticipatory or constructive breach of contract.

(1) **Actual Breach of Contract:** Actual, i.e. non performance of the contract on the due date of performance.

For example : A is to supply certain goods to B on 1st January. On 1st January, A doesn't supply the goods. He has made actual breach of contract.

It may take place: (i) **At the time when the performance is due :** breach of contract occurs when at the time when the performance is due one party fails or refuses to perform his obligation under the contract.

(ii) **During the performance of the contract :** Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under the contract. This refusal to perform may be by:

a) **Express repudiation (by word or act)** : Where there has been some performance of the contract and one party by his word or act refused to continue to perform his obligation in some essential respect, the other party can treat the contract as no longer binding on him and sue for breach of contract.

Example : C contracted with a railway company to supply it 3,000 tons of railway chairs at a certain price to be delivered in installments. After 1,787 tons had been supplied, the railway company asked C to deliver no more. Held C could bring an action for breach of contract.

b) **Implied repudiation (Impossibility created by the act of a party to the contract)** : If a party, during the performance makes by his own act the complete performance of the contract



impossible the effect is as if he has breached the contract, and the other party is discharged from the further performance of the contract.

(2) **Anticipatory breach of contract** : Anticipatory i.e., before the date of performance has come.

For example : If A informs B on 1st December that he will not perform the contract on 1st January next, A has made anticipatory breach of contract.

It means the repudiation of a contract by one party to it before the due date of its performance has arrived. It occurs when a party to an executory contract declares his intention of not performing the contract before the performance is due.

Section 39, which contains law relating to anticipatory breach of contract, reads as under:

" When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract unless he has signified, by words or conduct, his acquiescence in its continuance."

He may do so:

i) By expressly renouncing his obligation under the contract.

Example : A undertakes to supply certain goods to B on 1st January. Before this date, he informs B that he is not going to supply the goods. This is anticipatory breach of contract by express repudiation.

ii) By doing some act so that the performance of his promise becomes impossible.

Example : A promised to assign to B, within seven years from the date of his promise, all his interest in a lease for the sum of Rs 1500. Before the end of seven years he assigned his interest to another person. Held, this was anticipatory breach of contract by implied repudiation.

The position is further explained by illustration to sec 39, which is as under:-

A, a singer, enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

Effect of anticipatory breach of contract :

When the promisor had made anticipatory breach of contract,

"The promisee may put an end to the contract, unless he has signified by words or conduct his acquiescence in its continuance. It means that on the anticipatory breach of contract by one



party, the other party has two alternatives open to him,viz..

- (i) He may rescind the contract immediately,i e,he may treat the contract at an end, and may bring an action for the breach of contract without waiting for the appointed date of the performance of the contract.
- (ii) He may not put an end to the contract but treat it as still subsisting and alive and wait for the performance of the contract on appointed date.

Both the points are elaborated here under:

1) Election to rescind the contract :

On anticipatory breach of contract by the promisor, the promisee has a right to treat the contract as an end, even though the due date of performance has not yet arrived.

In Frost Vs Knight(1872)L.R.7Ex11:

The defendant promised to marry the plaintiff on his (defendants) father's death. While defendants father was still alive, he broke off the engagement. The plaintiff did not wait till the defendants father's death and she immediately sued him for the breach of contract. She was successful in her action.

(ii) Election to keep the contract alive :

Anticipatory breach of contract by one party does not automatically put an end to contract. It has already been noted above that on the anticipatory breach by one party the other party can exercise the option either to treat the contract at an end, or to treat it as still alive and subsisting until the due date of performance comes as pointed out by the supreme court.

" Breach of contract by one party does not automatically terminate the obligation under the contract, the injured party has the option either to treat the contract as still in existence, or to regard himself as discharged. If he accepts the discharge of the contract by the other party, the contract is at an end. If he does not accept the discharge, he may insist on performance."

Illustration : A,a singer,enters into a contract with B, the manager of a theatre,to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 Rs for each night. On the sixth night a wilfully absents herself. With the assent if B,A sings in the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him throughs A's failure to sing on the sixth night

References:

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2. Contract and Specific Relief Act, by Dr. Avtar Singh.

3. Business law by N.D. Kapoor, Sultan Chand and Sons.



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