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CRITICAL ANALYSIS OF BREACH OF CONTRACT AND ITS REMEDIES

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Abstract

The Contract has prevailed in society since the very beginning of time, it was earlier practiced in a simple form of a barter system in ancient times. It is defined as an agreement enforceable by law, which requires at least two parties and an intention to create a legal obligation. There is also a presence of consideration in a contract. A contract may be valid, void, or voidable. Not every contract that is made does not have to be fulfilled at times it is also subjected to breach, which can be done by one or both parties. A breach is a failure, without a legal excuse to perform part of a promise or whole made under the contract. To avoid the breach of contract both parties must fulfill the obligations given under the contract. Thus, when a party fails to fulfill the conditions given under the contract it can be called the breach of contract. The party that breaches the contract is referred to as the breaching party, and the other party that suffered some loss or had fulfilled their part of the contract has the right to claim the damages/compensation from the breaching party. The breach may be of two types that are, the actual breach (initial or subsequent) and the anticipatory breach (implied or express). A breach occurs when damage is done, and various types of damages include general damage, special damage, nominal damage, exemplary/vindictive damage, or liquidated damages/penalty. Hence, when the breach occurs there is always a remedy available, like the legal maxim "Ubi jus, ibi remedium" states, where there is a right, there is a remedy. There are various remedies available for the breach of contract which include the following, damages, injuntion, specific performance, and quantum meruit.

The study will focus on the concept of the breach of contract and the remedies available to the party that faces the loss, according to the Indian Contract Act, of 1872. The thesis will also discuss the introduction and evolution of the Indian Contract Act and its significance in Indian society.

KEYWORDS - legal obligations, damages, injunction, nominal, breach, doctrine, conditions, quantum meruit.

INTRODUCTION

The Indian Contract Act, of 1872 is a comprehensive guide and a legal framework that controls all commercial relationships in India. It is referred to as an agreement enforceable by law. For a contract to become valid, it needs to fulfill certain conditions that are given under Section 10 of the Contract Act[1]. The conditions are as follows: Offer and Acceptance, Intention to create legal obligations, There must be some consideration, The parties are competent to contract, The consent of both parties is free, The object must be lawful, Agreement must not be expressly declared to be void, The terms of the agreement must not be vague or uncertain, The agreement must be capable of performance and not impossible, Other formalities (example- signature). Not

[1] Report available at http://www.law.cam.ac.uk/ssrn/ (visited on 3 January 2024).

every contract one enters into does not have to be fulfilled, at times one party may not fulfill its obligations according to the contract. In such a case it is referred to as the breach of contract. Breach of contract is not fulfilling the duties or wrongly performing the obligations that are assigned to the parties according to the contract entered[2]. In such a case of breach, the other party may face a loss if one party refuses to perform or not perform a part of it. The damage faced by the other party may be of the following types[3]:

i. General Damage- It is the basic and visible damage faced by the party due to the breach of contract. The nature of such loss is such that it is natural and direct. These damages can be easily accessed.
ii. Special Damage- It is the additional loss suffered by the party along with the general damage. Its conditions are as follows: Some special loss must be there, Both parties should know about the special circumstances, it should be mentioned in the contract and specified that if any such thing didn't happen the other party will be liable for the special loss.
iii. Nominal Damage- Not a major damage, it is a minor loss.
iv. Exemplary/Vindicative Damage- It is when the loss is such that it affects- Reputation, Goodwill, and credibility. It is non-tangible damage.
v. Liquidated Damages/Penalty- These are damages that are certain and pre-defined. Here the interference of the court is absent as the amount is fixed. The basic difference between liquidated damage and a penalty is that the liquidated damages are not very high, they are basic whereas, the penalties are usually very heavy and high sum of money, so that the party is bound to perform the contract.

A breach is referred to as "a cause of action", with an unlawful act by a party. It is when a promisor fails to perform a contract according to the terms of the contract. A Breach is an unexcusable default, due to which the other party may have suffered a loss, and as per the law of contract, every damage or loss has a remedy. Different types of breaches have different types of remedies.

TYPES OF BREACH

A valid contract is one where both parties have the right to sue each other, and the parties are bound by the legal obligations to fulfill their duties as per the contract they enter into. Thus, if a party fails to perform their part of the obligation the contract is said to be breached and the party that does that is called "the breaching party". A contractual breach mainly falls under two categories and they are as follows[4]:

i. Actual Breach- It is when a party has actually and presently breached a contract. It is a failure to perform an obligation and the due time is over. This type of breach has already taken place and is known to both parties. Example- A promised B that by a certain date he would deliver the ordered goods to B's house, but he failed to do so by the due date, thus the breach has taken place presently.
ii. Anticipatory Breach- This is also known as Breach of Contradiction. As the word "anticipatory", suggests that the breach is predicted before the due date of its performance. It is when one party before the date of performance, decides that the contract won't be fulfilled. Example- A promises B to deliver a bag of cotton before a certain date, and before the date comes the cotton A had gets destroyed due to which he anticipates before the due date that he won't be able to fulfill the contract. Thus, it is the prediction before the due time that the contract wont be fulfilled by one party.

[2] Will Kenton, "Breach of Contract explained: types and consequences", on Investopedia..com (published on March 31, 2023)
[3] Khushi Agarwal, "Types of damages under section 73 of the Indian Contract Act, 1872", article on ipleaders.in (visited on 4 January 2024).
[4] Clive Rich, "The types of breach of contract and how to resolve them", article posted in commercial law legal (visited on 5 January).

DOCTRINE OF FRUSTRATION

This is a doctrine that is usually studied along with the breach of contract, it is also called Doctrine of impossibility. It is given under section 56 of the Contract Act. It is where the contract becomes impossible to perform due to any unenforceable event that occurred after the contract was made, where the parties will be discharged from the obligations and liabilities[5]. Here are usually two cases; 1. Where the object of the agreement is impossible to perform, and 2. Due to some act due, an agreement can't be fulfilled. Its essentials include; the existence of a valid contract, some portion of the contract yet to be executed, and there must be some kind of impossibility. It may be applied to cases of death, destruction of the subject matter, changes in law, or outbreak of war.

The impossibility may be of two types and they are as follows:

i. Subsequent- This is when the impossibility comes after the contract is made due to some kind of change or shift. This impossibility may occur due to death, destruction of subject matter, an outbreak of war, or changes in law. This kind of impossibility was not known to both parties during the making of the contract.
ii. Initial- This is when the impossibility was present from the very beginning and during the contract was being made. It may be due to when both the parties knew, when both the parties didn't know (Mistake), or when one party knew (Fraud).

REMEDIES

1. Damages- It is the compensation, monetary relief, or recovery. It is to provide relief to the party at loss. It is defined under sections 73,74 and 75[6]. Section 73 talks about the party that is entitled to receive compensation from the party that breached the contract. Section 74 is about the liquidated damages and the predecided conditions for a breach. Section 75 states that a person who has rightfully done his part of the duties has the right to receive compensation. The types of damages are as follows; general damage, special damage, nominal damage, exemplary/vindicate damage, and liquidate damage/penalty.
2. Injunction – It is a prohibitive writ. It is when a party has promised not to do a certain act according to the contract but then later on negates these terms, the other party can visit the court and the court may issue an injunction order, that restraints the party from doing the certain act he has promised in the contract not to do. It is a stay order. The main purpose of the injunction is to preserve the status quo in situations in which further acts of a specified type, or the failure to perform such acts, would cause one of the parties irreparable harm. The injunction is governed by two acts the Specified Relief Act,1963, and the Code of Civil Procedure, 1908. There are certain defenses and grounds for injunction that are; The court to multiplicity of proceedings can avoid granting injuntion, If there is an injunction order available from a subordinate court, or if any person wants to file a suit against criminal proceedings[7]. The injunction is of four basic types and they are as follows;
   - Temporary injunction- which is imposed till the final judgment has arrived. This is given at the time of trial. It has a limited duration. It is usually to prevent someone from doing an act until a final verdict is reached. Its essentials are, Whether the plaintiff has a prima facia case, whether the balance of convenience is in favor of the plaintiff, Mischief level, and whether the plaintiff would suffer irreparable injury if the injunction is not imposed.
   - Permanent Injuntion- It is also called perpetual injuntion. It is imposed by the court after the hearing of the case is done. It is based on the merits of the case. It is a court order to prevent a person from doing a specific act and is issued on the final judgment.

[5] Rishabh Soni and Monesh Mehndiratta, "Doctrine of frustration", on ipleaders.in (visited on 5 January 2024).
[6] Sameena Sayyed, "A brief overview of section 73 and 74 of the contract act", on lawwire.in (visited on 5 January 2024).
[7] Mohd Aqib Aslam, "What is an injunction? What are the various kinds of it? When it can be granted?", on Legal Service India E-journal (visited on 5 January 2024).

-Mandatory Injunction- It is when the court finds it necessary to compel the performance of a person. – Injunction to perform a negative agreement- It is not doing an act forbidden by law or contract.

3. Specific Performace- It is discretionary. The nature of loss in such a case is such that it cannot be compensated in a monetary value. The party wants absolute performance where terms of the contract need to be fulfilled. If the court grants the specific performance then the other party is bound to perform the contract which has been breached. The remedy of specific performance is at the discretion of the court. Section 10 of the Specific Relief Act has a Specific Performance. The grounds for the rejection of specific performance are, when the monetary compensation is an adequate relief, the nature of the contract is personal then the court wouldn't interfere, when the court cannot supervise the performance of the contract when it's beyond the powers of the court as laid down in the memorandum of the association, or when the party is not competent to contract[8].
4. Quantum-Meriut – It refers to "the amount one deserves" or "as much as one has earned"[9]. It means a claim for a reasonable sum in a reasonable sum in respect of services supplied to the defendant. It is also described as a method used to determine the exact amount owed to a person. The principle of quantum meruit is applied where one party gets benefit at the cost of the other party, thus, it is where one party gets unjust enrichment.

HOW TO AVOID THE BREACH

There are three things one can do to avoid the breach of a contract and they are as follows:

- Clarity- The terms and conditions of the contract must be clear to both parties. The language used must not be vague or uncertain. Everything in the contract should be well-defined and clear to both parties. Do's and don'ts should be defined well in the contract.
- Expectations- Both parties should be able to fulfill the terms and expectations expected by the other party. The terms should not rely on something that one may be able to do in the future but not presently.
- Legality- The contract must be such that it is recognized and enforced by law, it is also one of the essentials of having a valid contract. Without legality, one cannot reach out to the court in case of breach.

You can also avoid the breach by selecting the people and companies you contract with carefully, and by doing good research about the people[10].

CONCLUSION AND SUGGESTION

The breach of contract refers to not fulfilling any part or whole of the contract according to the conditions mentioned in the contract. It can vary from a minor breach to a much more serious one. For such a breach one can sue the party that breached the contract in the court to recover the damage faced by the other party. However, it should be noted that breaching the contract is not a crime unless it involves any criminal offense like fraud. It is more of a private thing between two contracting parties and doesn't affect society as a whole. The consequences of the breach vary from situation to situation and party to party, the remedies for it include damages, injunction, specific performance, and quantum meruit. Each type of breach requires a different solution or approach to fulfill the loss caused to the other party by the breaching party. The reason for the breach may be different as well in some cases it may be subsequent, because of the death of a party or someone related to the contract, it may also occur due to a change in law, destruction of subject matter, or war. It may also be initially where one party knew about the impossibility of fulfillment of the contract, this is called fraud, or where both the parties didn't know, this is misrepresentation. Thus, the study above has discussed every aspect related to breach of contract and the remedies available to it in great detail.

[8] Karl Shroff, "Specific Performace – Principles Revisited", on SCC Blog (visited on 6 January 2024).
[9] Kashish Kundlani, "Principle of Quantum Meruit under Indian Contract Act", on ipleaders.in (visited on 6 January 2024).
[10] "How to avoid a breach of contract and protect your position?", article on Carlsons Solicitors (visited on 6 January 2024).

By the study carried out above, about the breach of contract and its remedies, the researcher would like to put forward the following suggestions-

1. To resolve the matters of breach, people and companies should go for Alternative Dispute Resolution that involves arbitration, mediation, lok adalat, and much more. This will make the process very efficient and less time-consuming.
2. Both contracting parties should gather important information about each other before contracting with each other, which increases trust and decreases the risk of breach.
3. The terms and conditions in the contract must be clear and not vague.