**Breach of Contract and its Remedies**

Breach of contract-A breach of contract occurs if any party refuses and fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. In case of breach of contract, the aggrieved party is relieved from performing his obligation and gets a right to proceed against the party at fault. A contract terminates by breach of contract. Breach of contract may arise in two ways –

**a. anticipatory Breach, and b—actual** **Breach.**

Anticipatory Breach of Contract- Anticipatory Breach of contract occurs , when a party repudiates it before the time fixed for performance has arrived or when a party by his own act disables himself from performing the contract—section 39,contract Act,1872

**Examples-**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 Taka for each night performance. On the sixth night A willfully absents herself from the theatre. B is at liberty to put an end to the contract.

**Actual Breach of Contract**

The actual breach may take place—a. at the time when performance is due, or b.—during the performance of the contract.

Actual breach of contract, at the time when performance is due.

If a person does not perform his part of the contract at the stipulated time, he will be liable for its breach.

**Example-** A seller offers to execute a deed of sale only on payment by the buyer of a sum higher than is payable under the contract for sale, the vendor shall be liable for the breach **[Jaggo Bai v. Hari Har Prasad Singh]**

**Remedies for Breach of Contract**

A remedy is the course of action available to an aggrieved party for the enforcement of a right under a contract. Whenever there is breach of contract, the injured party becomes entitled to any one or more of the following remedies against the guilty party-

1. Rescission of the contract

2. Restitution

3. Suit for specified performance of the contract

4. Suit for an injunction

5. Suit for damages

6. Suit upon quantum meruit

1. **Rescission of the Contract**

According to section 75 of the Act when there is a breach of contract by one party, the other party may rescind the contract and need not perform his party of obligations under the contract. But in case the aggrieved party intends to sue the guilty party for damages for breach of contract, he has to file a suit for rescission of the contract. When the court grants rescission, the aggrieved party is freed from all his obligations under the contract; and becomes entitled to compensation for any damage which he has sustained through the non-fulfillment of the court.

**Example-** A singer, contract with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay 100 Tk for each nights performance. On the sixth night, A willfully absents herself from the theatre, and B, in consequences, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfillment of the contract.

1. **Restitution**

No one can be allowed to retain unjust benefit from the other party. Restitution means return of the benefit received by one party to the contract from the other under a void contract. When a contract becomes void it need not be performed by either party. Section 65 provides that when an agreement is discovered to be void or when a contract becomes void any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom who received it.

**Example**-A pays B Tk. 1000 in consideration of B,s promising to marry C, A,s daughter. C is dead at the time of promise. The agreement is void but B must repay A Tk. 1000.

1. **Specific Performance**

Under certain circumstances a person aggrieved by the breach of contract can file a suit for specific performance i.e. for an order by the court upon the party guilty of breach of contract directing him to perform what he promised to do. Specific performance is a discretionary remedy which is allowed only in a limited number of cases. Rules regarding the granting of this relief are contained in the Specific Relief Act.

**Example**-A agrees to sell two rare China vase to B. B may compel A to perform the contract specifically, because there is no standard for ascertaining the actual damage which would be caused by the non-performance of the promise.

In the following cases however specific performance shall not be granted-

i. Where the contract is of a personal nature.

ii. Where damages are an adequate remedy.

iii. Where the court cannot supervise the execution of contract.

iv. Where the contract is made by the trustee in breach of their trust.

v. Where the contract is inequitable to either party.

It is discretionary remedy which is allowed only in a limited number of cases.

1. **Injunction**

Injunction is a judicial process whereby a party is directed to do or not to do something. An aggrieved party can sue for an injunction i.e. an order, of the court restraining the wrong does from doing or continuing the wrongful act complained of. Injunction are usually granted to enforce negative stipulations in cases where damages are not adequate relief. An injunction is a preventive relief. It is particularly appropriate in case of anticipatory breach of contract.

1. **Suit for Damage**

According to section 73 of the Contract Act, When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when the made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote or indirect loss or damaged sustained by reason of the breach.

The foundation of the claim for damages rests in the celebrated case of Hadley v. Baxendale.

1. **Suit upon Quantum Meruit (Section 65 and 70**)

Another remedy for a breach of contract available to an injured party against the guilty party is to file a suit upon quantum meruit. The phrase quantum meruit literally means “as much as is earned” or “in proportion to the work done”. A right to sue upon quantum meruit arises where a contract partly, partly performed by one party, has been discharged by breach of contract by the other party or, is discovered void or becomes void.