

# Adjudication of claim for damages under Sections 73, 74 and 75 of Indian Contract Act, 1872

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## Introduction

According to Oxford dictionary the term 'damages' are defined as 'financial compensation for loss or injury'. In law, damages are money claimed by, or ordered to be paid to, a person as compensation for loss or injury Black's Law Dictionary. In context of the Indian Contract Act, 1872 damages are referred in context to breach of contract i.e. a party's failure to perform some contracted-for or agreed-upon act, or his failure to comply with a duty imposed by law which is owed to another or to society. Breach of contract is a legal concept in which a binding agreement or negotiated for exchange is not respected by one or more of the parties to the contract by non-performance or interference with the other party's performance. On a breach of contract by a defendant, a court generally awards the sum that would restore the injured party to the economic position they expected from performance of the promise or promises. When it is either not possible or not desirable to award damages measured in that way, a court may award money / damages designed to restore the injured party to the economic position they occupied at the time the contract was entered, or designed to prevent the breaching party from being unjustly enriched. Parties may contract for liquidated damages to be paid upon a breach of the contract by one of the parties. Under common law, a liquidated damages clause will not be enforced if the purpose of the term is solely to punish a breach. The clause will be enforceable if it involves a genuine attempt to quantify a loss in advance and is a good faith estimate of economic loss. Courts have ruled as excessive and invalidated damages which the parties contracted as liquidated, but which the court nonetheless found to be penal. Damages are likely to be limited to those reasonably foreseeable by the defendant. If a defendant could not reasonably have foreseen that someone might be hurt by their actions, there may be no liability. This is known as remoteness. This rule does not usually apply to intentional torts, and also has diminutive applicability to the quantum in negligence where the maxim 'Intended consequences' are never too remote applies ± 'never' is inaccurate here but resorts to unforeseeable direct and natural consequences of an act.

## Damages for Breach

A contract is not a property. It is only a promise supported by some consideration upon which either the remedy of specific performance or that of damage is available.

The party who is injured by the breach of a contract may bring an action for the damages. The term 'Damages' means compensation in terms of money for the loss suffered by the injured party. Burden lies on the injured party to prove his loss.

Every action for damages raises two problems. The first is the problem for remoteness of damage 'and the second that of measure of damages'.

## Remoteness of Damage

Every Breach of contract upsets many a settled expectations of the injured party. He may feel the consequences for a long time and in variety of ways. A person contracts to supply to a shopkeeper pure mustard oil, but he sends impure stuff, which is a breach. The oil is seized by an inspector and destroyed. The shopkeeper is arrested, prosecuted and convicted. He suffers the loss of oil, the loss of profits to be gained on selling it, the loss of social prestige and of business reputation, not to speak of the time and money and energy wasted on defence and mental agony and torture of prosecution.

Thus theoretically the consequences of a breach may be endless, but there must be an end to liability. The defendant cannot be held liable for all that follows from his breach. There must be a limit to liability and beyond that limit the damage is said to be too remote and, therefore, irrecoverable.

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The term 'Damages' has been defined by McGregor 'as the pecuniary compensation, obtainable by success in an action, for a wrong which is either a tort or a breach of contract, the compensation being in the form of a lumpsum which is awarded unconditionally.' This definition was adopted by Lord Hailsham, L.C. in *Cassel & Co. Ltd. v. Broome*, (1972) 1 All ER 801 (HL) at 823e.

The definition in Halsbury's Laws of England (4th Edn.) Vol. 12, para 1102, is similar to the definition set out above.

The object of an award to damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a Court can do.

In *Mediana*, Re(1900 AC 113:82 LT 95) Lord Halsbury, L.C. observed as under:

"How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But nevertheless the law recognises that as a topic upon which damages may be given."

This principle was applied in *Fletcher v. Autocar and Transporters*, (1968) 2 QB 322 = (1968) 1 All ER 726 (CA) and *Parry v. Cleaver*, 1970 AC 1 = (1969) 1 All ER 555 (HL).

In a suit for damages under the law of tort, the Court awards pecuniary compensation after it is proved that the defendant committed a wrongful act.

In such cases, the Court usually has to decide three questions:

1. Was the damage allegedly caused by the defendant's wrongful act?
2. Was it remote?
3. What is the monetary compensation for the damage?

These elements imply that there has to be always a plaintiff who had suffered loss on account of wrongful act of the defendant. If the damage caused to the plaintiff is directly referable to the wrongful act of the defendant, the plaintiff becomes entitled to damages. How the damages would be calculated, what factors would be taken into consideration and what arithmetical process would be adopted would depend upon the facts and circumstances of each case.

Now, the damages which can be awarded in an action based on may be contemptuous, nominal, ordinary or, for that matter, exemplary. [*Common Cause, A Registered Society v. Union of India*, (1999) 6 SCC 667]

### **Damages under Indian Law**

Interestingly, the following different types of damages are available on breach of contract under the Indian Contract Act, 1872 (ICA).

#### **Let us consider the following clauses.**

1. "X shall perform its obligations hereunder in conformance with the terms of the Agreement and all other applicable Indian laws and statutes including all Indian employment and workmen's laws."
2. "X shall perform its obligations hereunder in conformance with the terms of the Agreement and all other applicable Indian laws and statutes including all Indian employment and workmen's laws. X

agrees that if at any time during the term of this Agreement, except on account of Force Majeure, the Plant is unable to supply electricity at the Discharge Capacity resulting in Y being unable to operate its cement unit, then in that event and in every such case X will pay Y a sum to be calculated as per the formula specified below as and by way of liquidated damages for failure of X to supply electricity at the Discharge Capacity resulting in delay in the operations of the cement unit.”

The difference between clauses 1 and 2 is that clause 2 provides for payment of liquidated damages should the Plant not be able to supply electricity to the cement unit. In contrast, under clause 1, Y will be entitled to seek only actual damages sustained on account of non-supply of electricity.

**The damages are divided into two categories. They are:**

**General Damages:** General damages are those which arise naturally in the usual course of things from the breach itself. Another mode of putting this is that the defendant is liable for all that which naturally follows in the usual course of things after the breach.

**Special Damages:** Special damages are those which arise on account of the unusual circumstances affecting the plaintiff. They are not recoverable unless the special circumstances were brought to the knowledge of the defendant; so that the possibility of the special loss was in contemplation of the parties

**Liquidated Damages**

When the terms of a contract are broken, if a sum is named in the contract as the amount to be paid in case of breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive compensation not exceeding the amount so named. If a stipulation to pay a certain amount by way of penalty has been provided in the contract, then reasonable compensation not exceeding that amount should be paid. (Section 74 of the ICA) In the example, in clause 2, except on account of Force Majeure, Y is entitled to claim liquidated damages. This will be more beneficial to Y because Y will be entitled to a predetermined sum of money. Under clause 1, Y will have to prove all damages suffered by him at the time of breach. However, once liquidated damages are awarded, no claim for damages by way of loss of profits or other incidental damages will lie. Thus, the events activating liquidated damages should be clearly stated, so that the parties are free to claim damages in cases of breach of contract. From a reading of section 74, it becomes clear that Indian law does not distinguish between liquidated damages and penalties, as is the case in the UK and the USA. In these countries, the question whether the sum stipulated in a contract is in the nature of a penalty or liquidated damages is a question of law.

The essence of a penalty is a payment of money stipulated to terrorise the offending party. The essence of liquidated damages is a pre-estimate of damage, which is compensatory in nature. The question whether a sum is a penalty or liquidated damages is to be determined or understood by the parties, at the time of entering into the contract, and not as at the time of the breach. If the sum stipulated is far excessive in relation with the greatest loss that can conceivably be proved, it will be held by the adjudicators to be a penalty.

Reference can be drawn to *Aswathnarayaniah v. Sanjeeviah* AIR 1965 AP 33, as cited in Pollock & Mulla, *Indian Contract and Specific Relief Acts* (11th Edn.) at pages 888-889. Since Indian law does not make such distinction between penalty and damages, the language of a liquidated damages clause need not specifically state that liquidated damages are not in the nature of a penalty.

**Actual Damages**

Section 73 of the ICA provides as follows: When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has committed breach, 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 they made the contract, to be likely to result from such breach.

Compensation is not paid for any remote or indirect loss or damage sustained by reason of the breach. Besides, an explanation to this section adds that: In estimating the loss or damage arising

from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

The avowed principles underlying the award of compensation are that the injured party should as far as possible be placed in the same position in terms of money as if the contract had been performed by the party in default. Where the contract is one of sale, this principle calls for assessment of damages as at the date of breach. Under a contract for the sale of goods, the measure of damages upon a breach by the buyer is the difference between the contract price and the market price at the date of breach. On a breach of contract to supply goods by the seller, the buyer is entitled to recover all the expenses of procuring same or similar goods. This was held by the Calcutta High Court in the case of *Tata Iron & Steel Co Ltd v. Ramanlal Kandoi* (1971) 2 Cal. Rep. 493, 528. In case of non-delivery of goods, the damages are fixed on the basis of the price prevailing on the date on which delivery is to be made, as was held by the Supreme Court in the case of *Union of India v. Jolly Steel Industries (Pvt) Ltd.* (AIR 1980 SC 1346). This tenet is also extended to instances of late delivery of goods.

### **Indirect Damages (Loss of Profits)**

The following is the best example for consideration.

“A delivers to B, a courier company, a machine to be delivered overnight to A’s factory. B does not deliver the machine on time, 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 factory during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.”

The leading case on this subject is that of *Hadley v. Baxendale*, 9, Ex. 341 = 96 R.R. 742.

Section 73 and various decided cases clearly provide that knowledge of circumstances leading to loss of profits to the plaintiff imposes liability on the defendant. In *Victoria Laundry (Windsor Ltd.) v. Newman Industries Ltd.* (1949) 2 K.B. 528, the plaintiffs agreed to buy a large boiler from the defendant by a fixed date but seller delayed the delivery. The plaintiffs sued for damages and for loss of profits on the grounds of (1) the large number of customers they could have taken had the boiler been installed and (2) the amount they could have earned under a special dyeing contract. The defendant knew that the plaintiffs were launderers who wanted the boiler for immediate use. The Court of Appeal held that under the circumstances the defendant as a reasonable man could have foreseen some loss of profit though not the loss under the special contract of dyeing of which he had no knowledge. In addition, it was also clarified that mere knowledge was not enough. It should have been brought to the knowledge of the defendant that he accepts the contract with that knowledge.

The House of Lords in England in *Koufos v. C. Czarnikow Ltd.* (1969) 1 A.C. 350, has enunciated the following principles:

“(2) In case of breach of contract, the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach....

(3) What was at that time reasonably so foreseeable depends on the knowledge then possessed by the parties or at all events, by the party who later commits the breach....

(4) For this purpose, knowledge ‘possessed’ is of two kinds: one imputed, the other actual. Everyone, as a reasonable person, is taken to know the ‘ordinary course of things and consequently what loss is liable to result from a breach of contract in that ordinary course.’ But to this knowledge which a contract breaker is assumed to possess whether he actually possesses it or not, there may have to be added in a particular case -knowledge which he actually possesses, of special circumstances outside the ‘ordinary course of things’ of such a kind that a breach in those special circumstances would be liable to cause more loss.”

In claims of damages for breach of contract, damages may be measured by the profits which the plaintiff would have made in the ordinary course if the contract had been implemented. However, in

insurance, it depends upon the types of insurance which provides cover against loss of trade and profits resulting from some disaster such as 'fire'. In the later case the policy would typically pay a business the equivalent of the expected net profits lost while repair work and restocking were carried out, plus salaries, rates and rent due in that period. Fire damage itself will probably be covered by separate fire insurance. A loss of profits policy is sometimes also called as a business interruption policy.

#### **Loss of profit when contract illegally rescinded.**

In a works contract, where the employer (party) entrusting the work commits breach of the contract, the contractor would be entitled to claim damages for loss of profit which he expected to earn by undertaking the works contract. What must be the measure of profit and what proof should be tendered to sustain the claim are different matters. But the claim under this head is certainly admissible.

When there was a breach of contract in respect of works contract for construction of a portion of the road by the State, it could not be said that the contractor would not be entitled to 15% of the balance of the price of the works contract, as damages, when in respect of breach of works contract for another portion of the same road, in the vicinity of the portion in question, the High Court granted to the same contractor, damages at the aforesaid rate. In such a case, the plea that the cognate appeal could not be looked into would be too technical and not acceptable as the work site being in the vicinity of each other and for identical type of work between the same parties, the Division Bench of the same High Court has accepted 15% of the value of the balance of the works contract as damages, the same would not be an unreasonable measure of damages for loss of profit.

When the contract is illegally terminated before the completion of the work, certainly the contractor is entitled to claim damages on the basis of the expected profit in the unfinished work. When such a right is available to the contractor under law and the quantum fixed by the arbitrator is only 10% which according to the contract is reasonable compensation, the Court cannot, set aside this finding of the arbitrator as illegal or biased.

When the department caused an abnormal delay of 5½ years, over and above the stipulated date completion due to various breaches of contract, the Court upheld the award of the arbitrator based on price rise @10% per year on the balance unexecuted amount of work as on the date when the work was stipulated for completion. Likewise, the award of the arbitrator @5% on the unexecuted amount of work due to illegal rescission of contract by the employer, on the premise that no overhead expenditure would be required to be incurred by the contractor, was upheld by the Court.

In the case of breach of contract, the party guilty of breach of contract is liable only for reasonably foreseeable losses -- those that a normally prudent person, standing in his place possessing his information when contracting, would have had reason to foresee as probable consequences of future breach. In the case of breach of a works contract, the breach of contract prevents the gains of party wronged i.e. contractor, and thereby he sustains loss. In other words, gains prevented qualify as loss sustained. No special rules apply to loss of profits. Claims for such losses are governed by the same general principles that regularly control damages for breach of contract. Of course, the contractor is obliged to prove with reasonable certainty, not with philosophical sureness that defendant's breach prevented gains or otherwise resulted in loss for the contractor nor is he bound to prove with mathematical exactitude the amount of gain or loss in question. Thus, if plaintiff sues to recover profits lost, he needs to show convincingly that in the normal course of events, he would have realised a gain which he estimates, had the department performed its part of the contract. In the context, he has to produce the best estimate of the amount allowed by the circumstances. Fairly persuasive evidence, the most convincing and best available under the particular circumstances of the case will suffice. Thus, if the contractor states in the plaint that the Government accounted for a profit of 10% in its estimate and this fact was not denied by the State nor was it said that the percentage was excessive, arbitrary or unjustifiable, it was held that the measure of damages was reasonable and could not be interfered with.

When the department terminated the contract of the contractor without observing the procedure and on the plea that only 10% of the work has been done though the period prescribed under the contract has run out, it was held that the contractor was entitled to claim damages @10% of the unexecuted

amount of work which he expected to earn by way of profit since the department had illegally rescinded the contract. It was further held that when the breach of contract is held to have been proved being contrary to law and terms of the agreement, the erring party is legally bound to compensate the other party to the contract. If a party entrusting the work commits breaches of contract, the contractor would be entitled to claim damages for loss of profit which he expected to earn by undertaking the works contract.

Measure of damages in respect of finished bins would be the difference between contract price and market price of such goods at the time when contract is broken and in respect of unfinished bins would be the differences in contract price on one hand and material required for manufacture of component parts of unfinished bins on the other. In absence of market at the place of delivery, market price at nearest place or price prevailing in the controlling market is to be considered.

When the State Government committed breach of contract and rescinded the contract, the trial Court awarded 15% on the amount of contract as damages. The Supreme Court declined to interfere with the findings of fact. With regard to reduction of quantum of damages from 15% on the amount of contract as awarded by the trial Court to 10% as reduced by the High Court, the Supreme Court held: "We are not able to discern any tangible material on the strength of which the High Court reduced the damages from 15% of the contract price to 10% of the contract price. If the first was a guess, it was at least a better guess than the second one".

When a party was appointed as the Handling and Transport Contractors for loadings, unloading and transport of food grains for Food Corporation of India for 2 years, as per tender, no definite volume of work was guaranteed but the Corporation undertook to pay to the contractor during the subsistence of the contract a minimum per month the quantum of which was not specified. The Corporation also had a right to terminate the contract at any time without assigning any reason thereof on a 30 days' notice to the contractor for such termination. When, yet the period was to complete allotment of work was stopped but the contract was told that the minimum remuneration would be Rs. 7500/- per month. The contractor's average monthly income was Rs. 8,000/-. Held, that the Contractor was entitled to damages on the basis of such minimum remuneration of Rs. 7,500/- per month for the unexpired period of contract.

In 'total prevention' cases, where a contract has been discontinued as a result of owners breach, in the more usual case where work has been partially performed at the time of termination, entitled the contractor to the full contract value of any work done up to that time, less sums previously paid and possibly also, although subject to a number of important factual reservations, a sum for profit lost on the remaining work. It will also, of course, be possible for the contractor to recover damages for any increased cost of work already done caused by earlier breaches of the owner prior to termination. Disregarding the last factor, establishing a claim for loss of profit on uncompleted work following a contractor's rescission or termination may not be practical for a number of reasons, namely:--

(i) The contractor must be able to establish that his contract price for the remaining work would as a fact have been profitable. This will depend primarily on the adequacy of his original estimating and pricing of the cost of the contract, rather than any profit percentage used when pricing. Furthermore, in most sophisticated contracts, whether lump sum or measured, considerably ingenuity and differential weighting of prices of earlier work may have been deployed to secure a financing element known as front-loading. If so, the prices for the later remaining stages of the work may well be uneconomical even in a contract which is profitable overall;

(ii) Whether a claim can be made may also depend, critically on the state of the accounts at termination. If there is any degree of over-payment relative to the amount of work done up to that time, whether due to weighting of prices, or by mistake, or for any other reason, that may submerge any claim in respect of the remaining work, since it will require credit to be given for these overpayments if damages are claimed. In such a case, it may be tactically wise to limit the claim to sums due for work done. In fact, the calculations and evidence to establish a claim for loss of profit on a discontinued contract, in contrast to the simpler claim for the full contract value of work done up to the time of termination, plus any damages relating to that work, may be complicated and difficult. They will involve deducting from the notional contract value of the whole project, if completed (a) all sums previously paid, and (b) the estimated



cost to the contractor of completing the unfinished work, in order to determine if any further sum by way of profit can be recovered.

(iii) Very importantly, the duty to mitigate damage may mean that, in times when profitable work is plentiful in the market, the contractor will have to give credit for his ability to earn profits elsewhere on work which he has now become free to accept as a result of the termination. In recessionary times, however, this defence will clearly be more difficult for the owner to establish, as also if, even in profitable times, the contractor's resources were not fully committed in the project, so that he was in any case, free to take on any additional work on offer.

However, position will be entirely different if as a result of execution of contract, the contractor does not expect to earn profit and it is a proven fact, then in that case the contractor would not and cannot succeed by saying that the departmental estimates contain a profit element of 10% by way of contractor's profit.

Under a 'target-type cost-reimbursable' contract, the owner was to pay for labour, material and other charges, and the contractor was to receive a fixed sum by way of fee, subject to increase or decrease by 20% per cent, of any saving or excess respectively as between an agreed estimate of cost and final actual cost. The owner became short of funds and repudiated the contract, although he later completed the work using another builder. Held, by the Supreme Court of Canada, the measure of damage for the fixed sum payable to the builder, adjusted according to the probable difference between the hypothetical cost of completion and the agreed estimated cost, but less an allowance for the time, labour and expense saved by the builder's being relieved of his obligation to carry out of contract.

A guarantor of a building contractor who had defaulted was called upon by the owner, a local authority, to complete the works under his guarantee. He contracted with a second builder to do so, but left the supervision of the contract to the council who later obstructed the builder and then wrongfully seized the works. Through the council, whom he had constituted his agents, the guarantor had repudiated the contract, and the second builder was entitled to accept the repudiation and sue in quantum meruit for the actual value of the work, labour and materials, instead of bringing an action for damages for breach of contract.

Loss of contractor's profit as a head of damage in a terminated contract requires to be distinguished from a further quite different claim, more properly described, perhaps, as one for loss of business, which contractors may, depending on the state of the market, be able to establish in those cases where an owner's breach can be shown to have had the effect of delaying completion by the contractor. In a delayed contract, the basis of the contractor's loss is the postponement of the time when the contractors' organisation, viewed as a profit-earning entity, is free to move on and earn elsewhere in the market, the combined profit and necessary contribution to fixed overheads, commonly known in the industry as "Head Office" and "Home office" overheads, and to be distinguished from site overheads and job-related overheads of which it is reasonably capable. Such a claim does not depend in any way on the profitability or otherwise of the delayed contract itself, which will be wholly irrelevant.

In addition to this type of loss of profit, delay may, depending on the terms of a contract, have the effect of depriving the contractor or some additional payment or bonus for completion to time. This will clearly be a separate recoverable head of damage, depending on the interpretation of the provisions in question.

Damages can be claimed by a contractor where the Government is proved to have committed breach by improperly rescinding, the contractor would be entitled to claim damages for loss of profit, which he expected to earn by undertaking the works contract. Claim of expected profit expected to earn by undertaking the works contract. Claim of expected profit is legally admissible on proof of the breach of contract by the erring party.

In case a contract is abrogated or illegally terminated, the contractor would not only be entitled to the amount of work done but also to the refund of the security deposit in addition to loss of profit @15% on the unexecuted amount of work, since 15% is the reasonable amount of profit which a contractor

would have earned had he been allowed to complete the work. However, if the plaintiff fails to prove that the rescission of contract was illegal, he would not be entitled to claim any loss of profit.

### **Measure of Damages**

Once it is determined whether general or special damages have to be recovered they have to be evaluated in terms of money. This is the problem of measure of damages and is governed by some fundamental principles.

### **Claim for damages is not debt**

A claim for damages arising out of breach of contract, whether for general or liquidated damages, remains only a claim till its adjudication by the court and become a debt only after court awards it. Till then and on the basis of the claim alone, the claimant is not entitled to present a winding up petition of the defendant company on the ground of its inability to pay debts.

### **Damages are compensatory, not penal**

It is well settled that the governing purpose of damages is to put the party whose rights have been violated in the same position, so far as money can do so, as if his rights have been observed.'

### **Nominal damages (No loss situation)**

Where the plaintiff suffers no loss the court may still award him nominal damages in recognition of his right. But this is in the discretion of the court. The court may altogether refuse to award any damages or may award even substantial damages. 'The court is competent to award reasonable compensation in case of breach, even if no actual damage is proved or shown to have been suffered in consequences of breach of contract.'

### **Mitigation of Damages**

Section 73 imposes a duty on the party seeking damages to mitigate its loss. In *Murlidhar Chiranjilal v. Harish Chandra Dwarkadas* (1962) 1 SCR 653, the Supreme Court of India has set out two principles on which damages are calculated in case of breach of contract of sale of goods. The first is that the injured party has to be placed in as good a situation as if the contract has been performed. He who has proved a breach of a bargain to supply what he has contracted to get, is to be placed so far as money can do it in as good a situation as if the contract has been performed. This is qualified by a second principle - the injured party is debarred from claiming any part of damages arising out of his neglect. The onus is on him to mitigate losses consequent to the breach of contract.

The Supreme Court of India has decided that the principle of mitigation does not give any right to a party in breach of contract but it is a circumstance to be borne in mind in assessing damages. (*M. Lachia Setty & Sons Ltd v. Coffee Board Bangalore* (AIR 1981 SC 162) It must be added that in the latter case, the Supreme Court has not taken into consideration its previous judgment and the explanation to section 73. However, Supreme Court judgments are binding unless set aside or modified by other Supreme Court Benches.

In the circumstances, parties to the contract are required to mitigate their losses in case of breach.

For ready reference, the three Sections - 73, 74 and 75 of Indian Contract Act 1872, are reproduced below.

#### **Section 73**

#### **73. Compensation of loss or damage caused by breach of contract**

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 they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract: When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation: In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account.

### Illustrations

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there takes on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities for procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60, 000 rupees, but breaks the promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some unavoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conforming to the contract.

(g) A contracts to let his ship to B for a year, from first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) 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 not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1, 000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1, 000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20, 000 rupees, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery, at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a hired person at the time of his contract with A (but which had not been communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the price of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l) 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 first of January, it falls down and has 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 of the house, for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B, afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by closing of the mill.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) A, a ship owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence,

arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

#### **Section 74**

74. Compensation for breach of contract where penalty stipulated for

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation: A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception: When any person enters into any bail bond, recognizance or other instrument of the same nature or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation: A person who enters into a contract with the government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

#### **Illustrations**

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

(b) 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.

(c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d) A gives B a bond for the repayment of Rs. 1, 000 with interest at 12 per cent 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 stipulation by way of penalty, and B is only entitled to recover from A such compensation as the court considers reasonable.

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable consideration in case of breach.

(f) A undertakes to repay B a loan of Rs. 1, 000 by five equal monthly installments, with a stipulation that, in default, of payment of any installment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly installments of Rs. 40, with stipulation that, in default of payment of any installment, the whole shall become due. This is a stipulation by way of penalty.]

#### **Section 75**

## 75. Party rightfully rescinding contract, entitled to compensation

A person who rightfully rescinds a contract is entitled to consideration for any damage which he has sustained through the non-fulfillment of the contract.

### **Illustration**

A, a singer, contracts with B, a 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 her 100 rupees for each night's performance. On the sixth night, A willfully absents herself from the theatre, and B, in consequence, rescinds the contracts. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

### **Interest Act of 1839 and Interest Act of 1978**

Interest Act, 1839 was enacted prior to the independence, when India was under the British Rule.

This is an Act concerning the allowance of interest in certain cases. Where it is expedient to extend to the territories under the Government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd and 4th William IV, Chapter 42, section 28, concerning the allowance of interest in certain cases. It is, therefore, enacted that upon all debts or sums certain, payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law.

By repealing the 1839 Act, Interest Act of 1978 was enacted by the Government of India in the Twenty-ninth Year of the Republic of India with the short title as 'The Interest Act, 1978' which extends to the whole of India except the State of Jammu and Kashmir. It contains provisions relating to definitions (Section 2), Power of court to allow interest (Section 3), Interest payable under certain enactments (Section 4), Section 34 of the Code of Civil Procedure, 1908 to apply (Section 5).

### **Scope of Interest Act 1978**

The Interest Act permits the Court to allow interest in certain circumstances, first, if a certain sum is payable by virtue of some written instrument at a certain time, from that time, or, secondly, if payable otherwise, from the time of a written demand with notice of the claim of interest. Hence it is clear that no interest can be claimed under the Act for mere wrongful detention of money if neither of the above conditions is fulfilled. But the Act adds a proviso to the above conditions that "interest shall be payable in all cases in which it is now payable by law." At the time when the Interest Act was passed, the English Common Law was administered in this country, and at Common Law interest was not payable on ordinary debts unless by agreement or by mercantile usage, nor could Damages be given for non-payment of such debts. No interest, therefore, being payable under the Interest Act for wrongful detention of money when neither of the aforesaid conditions is fulfilled, the question then arises whether after the passing of the Contract Act interest could be claimed by way of Damages in all cases, since under the Interest Act interest can be claimed only in certain circumstances as stated above.

The Indian Contract Act enacted that even if a sum is named in the contract as payable for breach of contract, a party in default is liable to pay reasonable compensation not exceeding the amount named in the contract. The measure of Damages in the case of breach of a stipulation by way of penalty is by section 74, reasonable compensation not exceeding the penalty stipulated for. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of "actual loss or damage," it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted because compensation for breach of contract can be awarded to make good loss or damage which naturally

arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach. So also in a promise of marriage and breach thereof, the case if proved is actionable wrong for which claim for Damages or compensation is maintainable.

### **Decisions of Supreme Court under Section 73 of Act 1872**

1. Damages-remoteness of damage. Agent neglecting insurance of goods against fire. Explosion destroyed goods. Agent's liability. Granting of compensation by Ordinance for damage by explosion. Policy not covering loss by explosion. Compensation loss under Ordinance by failure to insure. Damage whether direct or remote. Whether claim by principal barred by Ordinance - Discussed. [Pannalal Jankidas v. Mohanlal and Anr. AIR 1951 SC 144 = 1951 (53) BOM LR 472 = 1951-64-LW 557 = 1951 (I) MLJ 314 (SC) = 1950 (1) SCR 979 = 1950 Suppl SCR 979 (SC)]

2. The case debated on whether the arbitrator had the jurisdiction over the contract which was entered into between the Dominion of India and the contractor and whether the legality of the award by the arbitrator could be challenged. It was held that the arbitrator could exercise its jurisdiction over the contract, if both the parties had specifically agreed to refer the matter to the arbitrator, in absence of the same they could be compelled by the Court to do so under the arbitration clause, if the dispute was covered by it. Further, the legality of the award could not be challenged on the basis of facts, but the same could be challenged on the question of Law. Further, if both the parties had referred a question of Law to the arbitrator, they were bound by the decision of the arbitrator. [Seth Thawardas Pherumal v. The Union of India ( UOI ) AIR 1955 SC 468 = 1955 (2) SCR 48(SC)]

3. The case debated on whether the award made by arbitrators under Section 33 of the Arbitration Act, 1940, could be held invalid under provisions of Section 35 of the Act, where it was made during the pendency of legal proceedings against the existence and validity of the contract. It was further questioned whether the award had violated the provisions of Section 74 of the Indian Contract Act, 1872. The contract had the provisions for penalty as liquidated damages. It was held that arbitrators were competent to hear the matter related to existence and validity of the contract, therefore provisions of Section 35 could not be applied to the award. Further, the award had not violated Section 74 of the Act of 1872, as the arbitrators had awarded the maximum amount mentioned in the contract. [Shiva Jute Baling Limited v. Hindley and Company Limited AIR 1959 SC 1357 = 1960 (1) SCR 569(SC)]

4. The case debated on measure of the damages on breach of the contract in sale of goods - There was foreseeable consequence of breach in the knowledge of the parties - It was held that two principles in relevance to the compensation for loss of damage caused by the breach of the contract as per Section 73 of the Indian Contract Act, 1872 read with the Explanation would be that the person who has proved a breach of a bargain to supply what he contracted to get was to be placed, as far as the money could do it as if the contract had been performed - The reasonable steps should be taken to mitigate the loss consequent to the breach and debars him from claiming any part of the damage which was due to the person's neglect to take such steps. [Murlidhar Chiranjilal v. Harishchandra Dwarkadas and Anr. AIR 1962 SC 366 = 1962 (1) SCR 653(SC)]

5. Issue regarding payment of damages for breach of contract. High Court awarded compensation at rate of Rs. 6000 per month for unexpired period. Appellant contended that as per agreement liability to pay damages amounts to large sum than payable under clause 14. Clause 14 of agreement did not expressly or by necessary implication keep alive right to claim damages under general law. Under general law right to claim damages excluded by providing compensation in express terms. Decree of High Court affirmed. Whether in appeal before Supreme Court a substantial question of law involved. Proper test for determining question of law is to see whether it is of general public importance or it directly affects rights of parties and if so whether it is either an open question not finally decided by Court. Applying said test Court held that question of law was involved in appeal therefore appeal maintainable. [Sir Chunilal V. Mehta and Sons, Ltd. v. The Century Spinning and Manufacturing Co., Ltd. AIR 1962 SC 1314 = 1963 (65) BOM LR 267 = 1963 Mh LJ 457 (SC) = 1962 Suppl (3) SCR 549 = MANU/SC/0056/1962(SC)]

6. Suit filed for recovery of amount for damages for breach of contract. Suit dismissed by High Court. Hence, appeal filed. Held, High Court was right in holding that Appellant suffered no such damage which he could recover from the Respondent. It was not necessary to discuss whether the



correspondence between the parties made out a completed contract or not and whether the Appellant committed breach of contract or not. Hence, appeal dismissed. Appeal dismissed. [Karsandas H. Thacker v. The Saran Engineering Co. Ltd. AIR 1965 SC 1981 = 1965 BLJR 780 (SC)]

7. The case debated on the decision of the arbitrator in awarding damages for wrongful termination of the contract obtained by the party to get supply of steel bins where the award was made without giving any reason. The contract was terminated after part supply of the bins. It was held that the arbitrator had ignored the provisions of Section 73 of the Indian Contract Act and had awarded the damages on wrong application of Law. Thus the award was vitiated by an error of Law. [Bungo Steel Furniture Pvt. Ltd. v. Union of India ( UOI ) AIR 1967 SC 378 = 1967 (1) SCR 633(SC)]

8. Appellant demanded earnest money and advance paid by him to respondent for purchasing building. Contract for same entered between parties before partition. Appellant demanded money under Section 10. Respondent contended same as time barred under Article 97. Supreme Court observed that appellants claim regarding earnest money not covered by any Article 97. It is governed by Article 120 and well within time. However amount paid as advance declared time barred in accordance with Article 97. Appeal partly allowed and appellant held entitled to recover earnest money only. [Ram Lal Puri v. Gokalnagar Sugar Mills Co. Ltd. MANU/SC/0302/1966(SC)]

9. Appellants entered in contract for sale of area-scrap with respondent. Earnest money deposited. Contract repudiated by appellants. Respondent forfeited earnest money deposited by appellants. Appellants for recovery of said money filed suit in High Court. Suit dismissed. High Court held that said amount was deposited as earnest money. Appellants entitled to same only on specific performance of contract. Certificate granted by High court and appeal filed in Supreme Court. Supreme Court observed that there was misrepresentation regarding quantity of material. Appellants entitled to recover earnest money by on that ground. Appellants abandoned that ground by accepting that they committed breach of contract. Appeal dismissed as appellants committed breach of contract. They were not entitled to recover earnest money. [Shri Hanuman Cotton Mills and Ors. v. Tata Air Craft Limited AIR 1970 SC 1986 = 1970 Mh LJ 28 (SC) = 1970 MP LJ 74 (SC) = 1969 (3) SCC 522 = 1970 (3) SCR 127(SC)]

10. Appellant filed suit for compensation against respondents for delayed delivery of consignment of goods by railways. Trial Court decreed suit. High Court affirmed decision of Trial Court. Appeal filed. Goods of respondent were first delivered on station which did not fall on route of train at all. There was inordinate delay in right delivery of goods. Appellant guilty of gross mismanagement and default. No explanation for omission of duty and delay provided by appellants. Appeal failed on merits. [Union of India (UOI) v. The Steel Stock Holders Syndicate Poona AIR 1976 SC 879 = 1976 (3) SCC 108 = 1976 (3) SCR 504(SC)]

11. Respondent entered into agreement with appellant for supply of onions under agreement security deposit liable to forfeiture only in event of any breach or non-performance of contract by respondent. After sometime respondent stopped supply of onions. Appellant by letter informed respondent that contract stood rescinded. Appellant informed respondent's banker that certain sum debited against respondent towards damages for breach of contract. In appeal High Court held that rescission of contract void and security deposit could not be forfeited and respondent not liable to pay damages. Appeal in Supreme Court. Under contract respondent bound to supply onions. Utilisation and disposition by appellants after receipt of delivery was matter which was no concern of respondent. It was not shown that onions supplied were more than stipulated amount. There is nothing in agreement which prohibits diversion of onions from one place to another by appellants but diversion of huge quantity resulted in unexpected escalation of damages. Supreme Court scale down damages to extent of security deposit and directed whole of security deposit be refunded to respondent. Appeal partly allowed. [The Union of India v. K. H. Rao AIR 1976 SC 626 = 1977 (1) SCC 583 = 1976 (8) UJ 203(SC)]

12. Whether plaintiff entitled to amount which he claimed to have advanced to respondent for prosecuting their litigation. Contract on basis of which relief was claimed was found to be against public policy by nature. What amounts to public injury to be decided on basis of facts and circumstances of each case. Held, no entitlement to relief claimed for. [Rattan Chand Hira Chand v. Askar Nawaz Jung (Dead) by Lrs and Ors. 1991 Civil CC 432 = JT 1991 (1) SC 433 = 1991(1) LW



614 = 1991 (2) MLJ 14 (SC) = 1991 (1) OLR 504 = 1991 (1) SCALE 200 = 1991 (3) SCC 67 = 1991 (1) SCR 327 = 1991 (2) UJ 36(SC)]

13. Matter related to compensation under Section 21. Section 21 enables plaintiff in suit for specific performance to claim compensation for its breach either in addition to or in substitution of performance. Compensation awarded may be taken to be measure of damages subject to deduction of money value of services, time and energy expended in pursuing claims of compensation and expenditure incurred by him in litigation culminating in award. [Jagdish Singh v. Natthu Singh AIR 1992 SC 1604 = JT 1991 (5) SC 400 = 1991 (2) SCALE 1363 = 1992 (1) SCC 647 = 1991 Suppl (2) SCR 567 = 1992 (1) UJ 483(SC)]

14. Parties entered into contract for sale of certain land and certain amount was paid to petitioner as earnest money. Suit for specific performance filed when petitioner did not execute sale deed and decreed by Trial Court. In appeal Additional District Judge observed that both parties suffered from mistake of fact as to area of land and sale-consideration. Decree for specific performance not passed but decree for refund of earnest money passed which was confirmed by High Court. Appeal by special leave. Petitioner contended according to forfeiture clause in contract respondent not entitled to refund of earnest money. Observed that contract was void from its inception as observed by Additional District Judge. Forfeiture clause in contract also void. Petitioner could not legally forfeit amount and seek enforcement of forfeiture clause. Decree for refund of earnest money confirmed. [Sri Tarsem Singh v. Sri Sukhminder Singh AIR 1998 SC 1400 = 1998 (2) ALL MR (SC) 528 = 1998 (2) ALR (1) (SC) = 1998 (2) AWC 125 (SC) = 1998 (46)(2) BL JR 819 = 1998 (1) CTC 443 = JT 1998 (2) SC 149 = 1998 (2) LW 303 = 1998 (III) MLJ 54 (SC) = 1998 (120) PLR 802 = RLW 1998 (2) SC 183 = 1998 (2) SCALE 58 = 1998 (3) SCC 471 = 1998 (1) SCR 456(SC)]

15. Appeal against Order of High Court setting aside Order of Lower Appellate Court and Trial Court and granting decree without framing and deciding substantial question of law. As per Section 100 of Code of Civil Procedure second appeal should be decided after framing and deciding substantial question of law. Decree by High Court is set aside and appeal remanded to High Court to decide as per law. [K. N. N. Achar v. Karnataka Power Corpn. Ltd. JT 1999 (10) SC 300 = 2000 (91) RD 142 = 1999 (7) SCALE 150(SC)]

16. Matter related to liability of carriers to whom goods entrusted for carriage is that of insurer and absolute in terms. Carriers has to deliver goods safely, undamaged and without loss at destination indicated by consignor. Section 6 enables carriers to limit his liability by special contract, but carriers would still be liable if any loss or damage caused to goods on account of his own negligence or criminal act or that of his agents and servants. [Nath Bros. Exim International Ltd. v. Best Roadways Ltd. (I) 2000 ACC 434 = JT 2000 (3) SC 433 = 2001 (1) LW 756 = 2000 (125) PLR 461 = 2000 (2) SCALE 537 = 2000 (4) SCC 553 = 2000 (2) SCR 538 = 2000 (2) UJ 865(SC)]

17. Award of arbitrator cannot be opposed to law. What is not permissible in law cannot be granted or approved by Court merely because it was arbitrator award. Errors could be in form of obvious and conspicuous mistake of facts and misapplication of law. Errors found so extensively and deeply that entire adjudicatory process undertaken by arbitrators rendered it impossible to save award. [M/s. Sikkim Subba Associates v. State of Sikkim AIR 2001 SC 2062 = JT 2001 (5) SC 186 = 2001 (3) SCALE 721 = 2001 (5) SCC 629 = 2001 (3) SCR 261(SC)]

18. High Court is of the view that where loss in terms of money can be determined. Party claiming compensation must prove loss suffered by it. In order to attract Section 73 petitioners had failed to prove that they had suffered any loss. Therefore, are not entitled to claim. View taken by High Court is correct and calls for no interference. Petitions dismissed. [Maharashtra State Electricity Board v. Sterilite Industries ( India ) and anr. AIR 2001 SC 2933 = 2002 (1) ALL MR (SC) 258 = 2001 (3) ALR 532 (SC) = JT 2001 (8) SC 435 = 2002 (1) MLJ 62 (SC) = 2001 (2) OLR 677 = 2001 (7) SCALE 82 = 2001 (8) SCC 482 = 2001 (2) UC 720 = 2001 (2) UJ 1558(SC)]

19. Appellant agreed to purchase and deliver certain units of Unit Trust of India for appellant. Advance in respect of same received but units were not delivered. Compensation for non-delivery of units along with advance money paid was claimed. Compensation granted by Special Court and same was challenged by appellant. Appellant agreed that units were not delivered by him. As per provisions of Act of 1872 respondent entitled to get compensation. [State Bank of Saurashtra v. Punjab National

Bank with (Vice Versa) AIR 2001 SC 2412 = 2001 (3) ALR 2 (SC) = 2001 (106) Comp Cas 852 (SC) = 2001 (3) Comp LJ 1 (SC) = JT 2001 Suppl (1) SC 603 = 2001 (4) SCALE 102 = 2001 (5) SCC 751 = 2001 (3) SCR 236 = 2001 (2) UJ 1315(SC)]

20. Parties entered into a contract for construction of temporary hutments. Contract contained an arbitration agreement. The job was not completed by the respondent within the stipulated period. Disputes arose between the parties and the arbitration agreement was invoked. Arbitrator cannot act arbitrarily, irrationally, capriciously or independent of the contract. Role of the arbitrator is to arbitrate within the terms of the contract. No power given to him apart from what the parties have agreed to under the contract. In case he goes beyond the contract, he would be acting without jurisdiction and in case he remains inside the parameter of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the record. Arbitrator while passing the contract failed to take into consideration the relevant clauses of the contract nor did he take into consideration the relevant materials for the purpose of arriving at a correct fact. Such an order is misdirection in law - Appeal partly allowed. [Bharat Coking Coal Ltd. v. Annapurna Construction AIR 2003 SC 3660 = 2003 (6) ALD 85 (SC) = 2004 (5) ALL MR (SC) 56 = 2003 (3) ALR 119 (SC) = 2003 (4) JCR 87 (SC) = JT 2003 Suppl (1) SC 280 = 2004 (1) Mh LJ 433 (SC) = 2003 (3) MLJ 185 (SC) = 2004 (1) PLJR 19 = 2003 (7) SCALE 20 = 2003 (8) SCC 154 = 2003 (47) SCL 259 (SC) = 2003 Suppl (3) SCR 122(SC)]

21. The case debates the jurisdiction of the court for setting aside the award of an Arbitral Tribunal under section 34 of the Arbitration and Conciliation Act, 1996. The Supreme Court listed certain cases when the court could set aside the award. Firstly, the award could be set aside when the applying party provided proof that it was under some incapacity; or the arbitration agreement was not valid; or the award dealt with a dispute contemplated by the terms of the arbitration clause; or the applying party was not properly notified of the appointment of the arbitrator. Secondly, the composition of the Tribunal has to be in accordance with the agreement of the parties for a court to set aside the award. In addition, the award could be set aside if it went against the public policy of India. In such cases, the aggrieved party could challenge the award under section 13(5) and section 16(6). Appeal allowed [Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd. AIR 2003 SC 2629 = 2003 (3) ALD 82 (SC) = 2003 (2) ALR 5 (SC) = 2003 (3) Comp LJ 1 (SC) = 2003 (4) JCR 148 (SC) = JT 2003 (4) SC 171 = 2003 (4) LW 482 = 2003 (4) SCALE 92 = 2003 (5) SCC 705 = 2003 (44) SCL 89 (SC) = 2003 (3) SCR 691 = 2003 (2) UJ 1035(SC)]

22. No compensation for breach of agreement can be awarded either in addition or substitution of the performance of agreement unless relief for compensation has been claimed either in the plaint or included later on by amendment of the plaint. Cost awarded in the suit cannot form part of compensation. The Defendant/appellants entered into an agreement of sale with the Plaintiff/Respondents, on 20th October 1994 for sale of 15125 cents of land owned by her at the rate of Rs. 3, 15, 000 per cent for a total consideration of Rs. 44, 66, 385. A sum of Rs. 10 lakhs was paid as advance. The sale deed was agreed to be executed within three months. As the appellants failed to execute the sale deed the Respondents filed a suit in the sub court for specific performance of the agreement. The suit was decreed on 24th July 1997. Respondents in terms of the decree deposited a sum of Rs. 34, 66, 385 as balance of consideration on 23rd October 1997. On 17th February 1998 the Respondents moved I.A. No. 951/98 under Section 28 (3) of the Specific Relief Act, 1963, claiming an interest at the rate of 12 per cent on Rs. 44, 86, 385 from the date of deposit of the amount till the registration of the sale deed and delivery of possession of the property. The sale deed was executed on 17th August 1999 and Respondents were put in possession of the property. On measurement of the property it was found that the property was only 14177 instead of 15-125 mentioned in the agreement for sale. The Respondents were entitled to recover Rs. 12, 77, 870 by way of compensation which included the costs in the suit, excess amount deposited and interest by way of compensation on the sale consideration. The Appellant challenged the order in C.R.P. No. 2267/99 in the High Court. The learned Single Judge held that Section 28 of the Act has no application but invoking Section 21 of the Act held that the Respondents would be entitled to get compensation. Order of the Trial Court was modified as to the rate of interest payable and disposed of the revision petition. The Judgment of the High Court is challenged in appeal. It was contended in appeal that the High Court has misunderstood the scope of Section 21, that compensation for breach or agreement of sale either in addition to or in substitution of the performance of the agreement cannot be granted unless the Plaintiff claimed such compensation in the plaint and since the Respondents failed to claim the compensation either in original plaint or by amending the plaint, the Respondents were not entitled to any compensation. Counsel for the Respondents controverted the contention. Accepting

the contention of the appellants; It is admitted position before us that in the original plaint the Respondents did not claim compensation for the breach of agreement of sale either in addition to or in substitution of the performance of the agreement. Further the Respondents did not amend their plaint and ask for compensation either in addition to or in substitution of the performance of the agreement of sale. Sub-section (5) of Section 21 emphatically provides that no compensation shall be awarded under Section 21(5) unless the relief for compensation has been claimed either in the plaint or included later on by amending the plaint at any stage of the proceedings. In our view, the High Court has clearly erred in granting the compensation under Section 21 in addition to the relief of specific performance in the absence of prayer made to that effect either in the plaint or amending the same at any later stage of the proceedings to include the relief of compensation in addition to the relief of specific performance. Grant of such a relief in the teeth of express provisions of the statute to the contrary is not permissible. On equitable consideration court cannot ignore or overlook the provisions of the statute. Equity must yield to law. The learned Single Judge has also erred in including the amount of cost which has been awarded in the main suit towards the amount of compensation. Of course, the Plaintiff/Respondents are entitled to recover the amount of cost which has been decreed in the main suit but the same cannot form part of compensation by way of additional relief to the specific performance of the agreement of sale. Appeal allowed. [Shamsu Suhara Beevi v. G. Alex and Anr. 2004 (4) AWC (Suppl ) 3022 SC = 2004 (3) BLJR 1789 = (SC - Suppl) 2005 (1) CHN 99 = ILR 2004 (3) Kerala 392 = JT 2004 (8) SC 457 = 2004 (3) KLT 754 (SC) = 2005 (1) LW 653 = 2005 (1) PLJR 64 = 2004 (7) SCALE 265 = 2004 (8) SCC 569 = 2004 Suppl (3) SCR 653 = 2004 (2) UC 1313(SC)]

23. Appellant and respondent entered into contract. Dispute arose between appellant and respondent. Arbitration clause invoked. Two arbitrators appointed for determination and disputes between parties. Arbitrators made partial award. Respondent contended that arbitrators had no jurisdiction to make partial award. Partial award is subject matter of challenge under Section 34. Whether additional award valid. Section 33 (4) empowers Arbitral Tribunal to make additional awards in respect of claims already presented to Tribunal. Held, additional award not vitiated in law. [McDermott International Inc. v. Burn Standard Co. Ltd. and Ors. 2006 (5) ALD 84 (SC) = 2006 (5) ALT 1 (SC) = 2006 (2) ALR 498 (SC) = 2007 (1)CALLT 36 (SC) = 2007 (3) Comp LJ 213 (SC) = JT 2006 (11) SC 376 = 2006 (4) MLJ 456 (SC) = 2006 (6) SCALE 220 = 2006 (11) SCC 181 = 2006 Suppl (2) SCR 409(SC)]

24. Damages claimed from respondents for shortage of wheat which was lost due to lack of their supervision. Issue to be determined. Whether suit for damages was maintainable in a departmental proceedings. Held, a suit for damages would be maintainable only on the ground of breach of terms and conditions of the contract. Suit for damages by way of tortious claim maintainable only when someone has duty towards other under a statute. Tortuous act cannot be subjected to the departmental proceedings. It cannot give rise to civil liability by way of monetary compensation. [Punjab State Civil Supplies Corp. Ltd v. Sikander Singh AIR 2006 SC 1438 = 2006 (4) ALT 21 (SC) = 102 (2006) CLT 3 (SC) = JT 2006 (3) SC 457 = (2006) II LLJ 14 SC = (2006) 143 PLR 206 = 2006 (2) SCALE 670 = (2006) 3 SCC 736 = (2007) 1 SCC (LS) 1073 = (2006) 2 UPLBEC 1231(SC)]

25. Acceptance of Contract by performing conditions, or receiving consideration. Modification of contract entered into between parties. Effect of the application of internal circulars issued by the Department of Telecommunications (DOT) in the contracts entered into by and between the parties in respect of inter-connection links provided by it. Held, circular letters cannot ipso facto be given effect to unless they become part of the contract. Once a concluded contract was arrived at, the parties were bound thereby. If they were to alter or modify the terms thereof, it was required to be done either by express agreement or by necessary implication which would negate the application of the doctrine of 'acceptance sub silentio'. Appeal dismissed. [Bharat Sanchar Nigam Ltd. and Anr. v. BPL Mobile Cellular Ltd. and Ors. 2008 (8) SCALE 106 = (2008) 13 SCC 597(SC)]

26. Appellants and the Respondents formed a consortium to provide broadband network connectivity to Government. Respondent No. 5 held majority shares in Consortium awarded Engineering, Procurement and Construction (EPC) contract to Respondent No.5's company. Appellant approached Company Law Board (CLB) alleging mismanagement of the affairs of the Consortium. CLB dismissed the petition. Appeal against CLBs order was dismissed by the High Court. Hence the Appeal. Held, at the relevant point of time Petitioner was at the helm of affairs of the Consortium and had also chaired 8 of its meetings including the meeting in which the decision was taken to award the EPC Contract to the Respondent No. 5's company. Furthermore, Petitioner had signed most of the cheques by which

payments were made to the Respondent No. 5s Company for supply of materials under the EPC contract Facts did not disclose any mismanagement and oppression by the majority shareholders. Appeal dismissed. [Incable Net (Andhra) Limited and Ors. v. AP Aksh Broadband Ltd. and Ors. (2010) 3 Comp LJ 1 (SC) = JT 2010 (5) SC 628 = 2010 (4) LW 21 = 2010 (5) SCALE 427 = (2010) 6 SCC 719 = [2010] 100 SCL 402 (SC) = 2010 (5) UJ 2664(SC)]

27. Appeals against judgment upholding decision setting aside the arbitral award. Held, special Tribunals like Arbitral Tribunals and Labour Courts get jurisdiction to proceed with the case only from the reference made to them. Thus, it was not permissible for such Tribunals/authorities to travel beyond the terms of reference. If the award goes beyond the reference or there was an error apparent on the face of the award it would certainly be open to the court to interfere with such an award. In exceptional circumstances where a party pleads that the demand of another party was beyond the terms of contract and statutory provisions, the tribunal may examine the terms of contract as well as the statutory provisions. District Judge as well as the High Court erred in considering the issue which was not taken by the State before the Tribunal during the arbitration proceedings. Arbitrator was competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever was earlier. Court has a power to vary the rate of interest agreed by the parties. Issue that Bharatpur-Deeg section of the road was out of the project and Private Appellant was not entitled to collect the toll fee on that part of the road, settled in favour of the private Appellant. Toll fee was compensatory in nature and could be collected by the State to reimburse itself the amount it had spent on construction of the road/bridge etc. State was competent to levy/collect the toll fee only for the period stipulated under the Statute or till the actual cost of the project with interest etc. was recovered. There was no specific denial of the allegations/averments taken by the State. Private Appellant could not be permitted to claim damages/compensation in respect of the amount of Rs. 13.25 crores, as he did not spend the said amount stipulated in the terms of agreement. Question for non-execution of the work of the second phase of the contract was not referred for arbitration. Hence, question of considering the non-execution of work of second phase of the work was not permissible. Private Appellant shall be entitled only for sum awarded by the tribunal for delay in issuing the notification with interest, if not paid already or it could be adjusted in the final accounts bills. Other matters remanded to Tribunal for disposal. Arbitrator could not proceed beyond the terms of reference. Appeals disposed of. [MSK Projects (I) (JV) Ltd. v. State of Rajasthan and Anr. AIR 2011 SC 2979 = 2011 (3) ALR 119 (SC) = 2011 (5) AWC 5076 SC = (SC Suppl) 2011 (5) CHN 313 = (2011) 3 Comp LJ 481 (SC) = JT 2011 (8) SC 37 = (2011) 6 MLJ 985 = 2011 (7) SCALE 694 = (2011) 10 SCC 573 = [2011] 9 SCR 402(SC)]

#### **Decisions under Section 74**

1. Power of Father to alienate sons' interest for antecedent debts. Whether property and passes to Receiver on father's insolvency. Sale by Receiver vests sons' interest in purchaser. Provincial Insolvency Act, 1920 as amended S.28A has retrospective operation. Purchaser of equity of redemption and Right to claim relief. Cheruvu Nageswaraswami v. Rajah Vadrevu Viswasundara Rao and Ors. MANU/SC/0007/1953 = AIR 1953 SC 370 = (1953) II MLJ 252 (SC) = [1953] 4 SCR 894(SC)]

2. The case debated on whether the award made by arbitrators under Section 33 of the Arbitration Act, 1940, could be held invalid under provisions of Section 35 of the Act, where it was made during the pendency of legal proceedings against the existence and validity of the contract. It was further questioned whether the award had violated the provisions of Section 74 of the Indian Contract Act, 1872. The contract had the provisions for penalty as liquidated damages. It was held that arbitrators were competent to hear the matter related to existence and validity of the contract, therefore provisions of Section 35 could not be applied to the award. Further, the award had not violated Section 74 of the Act of 1872, as the arbitrators had awarded the maximum amount mentioned in the contract. [Shiva Jute Baling Limited v. Hindley and Company Limited MANU/SC/0179/1959 = AIR 1959 SC 1357 = [1960] 1 SCR 569(SC)]

3. Issue regarding payment of damages for breach of contract. High Court awarded compensation at rate of Rs. 6000 per month for unexpired period. Appellant contended that as per agreement liability to pay damages amounts to large sum than payable under clause 14. Clause 14 of agreement did not expressly or by necessary implication keep alive right to claim damages under general law. Under general law right to claim damages excluded by providing compensation in express terms. Decree of



High Court affirmed. Whether in appeal before Supreme Court a substantial question of law involved. Proper test for determining question of law is to see whether it is of general public importance or it directly affect rights of parties and if so whether it is either an open question not finally decided by Court. Applying said test Court held that question of law was involved in appeal therefore appeal maintainable. [Sir Chunilal V. Mehta and Sons, Ltd. v. The Century Spinning and Manufacturing Co. Ltd. MANU/SC/0056/1962 = AIR 1962 SC 1314 = 1963 (65) BOM LR 267 = 1963 Mh LJ 457 (SC) = [1962] Suppl 3 SCR 549(SC)]

4. Appeal filed by certificate against Order that respondent was entitled to retain out of Rs. 25000 paid by appellant under sale agreement a sum of Rs. 1150 being compensation for loss suffered him and directed respondent to get from defendant compensation for use and occupation at rate of Rs. 265 per mensem. Respondent had not committed breach of contract. Appellant failed pay balance of price. Respondent was entitled to mesne profits at monthly rates with interest. Held, respondent was entitled to retain out of Rs. 25000 only Rs. 1000 received by him as earnest money and he was entitled to compensation at rate of Rs.140 per mensem and interest on that same at rate of six percent as it accrued due month after month from 01.06.1949 till date of delivery of possession subject to restriction prescribed by Order 20 Rule 12 (i) (c) of Code. [Fateh Chand v. Balkishan Das MANU/SC/0258/1963 = AIR 1963 SC 1405 = 1964 (1) AnWR 60 = [1964] 1 SCR 515(SC)]

5. Appellant demanded earnest money and advance paid by him to respondent for purchasing building. Contract for same entered between parties before partition. Appellant demanded money under Section 10. Respondent contended same as time barred under Article 97. Supreme Court observed that appellants claim regarding earnest money not covered by any Article 97. It is governed by Article 120 and well within time. However amount paid as advance declared time barred in accordance with Article 97. Appeal partly allowed and appellant held entitled to recover earnest money only. [Ram Lal Puri v. Gokalnagar Sugar Mills Co. Ltd. MANU/SC/0302/1966(SC)]

6. Whether State can be penalised for not taking licence under Act of 1956 to carry out trade. State bound by statute unless it expressly exempts State from purview of Act. Held, State can be penalised for not taking trade licence as State not exempted from purview of Act. [Superintendent and Legal Remembrancer, State of West Bengal v. Corporation of Calcutta MANU/SC/0020/1966 = AIR 1967 SC 997 = 1967 Cri LJ 950 = [1967] 2 SCR 170(SC)]

7. Plaintiff entered in contract of supplying potatoes with respondent. Earnest money deposited by plaintiff. Default made by him in supplying potatoes and so contract rescinded by respondent. Earnest money deposit forfeited. Petition filed by plaintiff in Court of Civil Judge for recovery of earnest money. Court held that respondent justified in rescinding contract but amount cannot be forfeited. On appeal decree modified by Trial Court and amount of money returned to plaintiff reduced. Against decision appeal made to High Court. High Court observed that amount deposited was a guarantee for specific performance of contract can be taken as earnest money. Held that respondent entitled to forfeit the same. Against decision appeal filed in Supreme Court. Supreme Court observed that amount of earnest money was reasonable. Provisions of Section 74 not applicable. No loss suffered by respondent due to non-performance of contract by plaintiff. Appeal allowed by Supreme Court. Plaintiff guilty of breach of contract. Contract liable to be rescinded but amount deposited cannot be forfeited. [Maula Bux v. Union of India (UOI) MANU/SC/0081/1969 = AIR 1970 SC 1955 = 1970 (2) AnWR 61 = 1970 (18) BLJR 885 = (1969) 2 SCC 554 = [1970] 1 SCR 928(SC)]

8. Appellants entered in contract for sale of area-scrap with respondent. Earnest money deposited. Contract repudiated by appellants. Respondent forfeited earnest money deposited by appellants. Appellants for recovery of said money filed suit in High Court. Suit dismissed. High Court held that said amount was deposited as earnest money. Appellants entitled to same only on specific performance of contract. Certificate granted by High court and appeal filed in Supreme Court. Supreme Court observed that there was misrepresentation regarding quantity of material. Appellants entitled to recover earnest money by on that ground. Appellants abandoned that ground by accepting that they committed breach of contract. Appeal dismissed as appellants committed breach of contract. Held, they were not entitled to recover earnest money. [Shri Hanuman Cotton Mills and Ors. v. Tata Air Craft Limited MANU/SC/0086/1969 = AIR 1970 SC 1986 = 1970 Mh LJ 28 (SC) = 1970 MPLJ 74 (SC) = (1969) 3 SCC 522 = [1970] 3 SCR 127(SC)]

9. Respondent sold forfeited shares (on account of default of appellant) and retained surplus. Appeal before High Court claiming surplus arising from sale of forfeited shares of appellant. High Court dismissed appeal on ground that respondent has right to retain surplus. Appeal against decision of High Court. Company has right to forfeit shares to recover loss suffered by reason of breach of contract by shareholder. It is illegal to retain surplus after satisfying debts of shareholder. Retaining surplus means purchasing shares for value equal to amount of appellant's obligation. High Court's judgment set aside and matter remanded back to ascertain extent of liability towards appellant. Appellant is entitled to surplus after satisfying liability and interest on it. [Naresh Chandra Sanyal v. Calcutta Stock Exchange Association Ltd. MANU/SC/0040/1970 = AIR 1971 SC 422 = [1971] 41 Comp Cas 51 (SC) = (1971) 1 SCC 50 = [1971] 2 SCR 483(SC)]

10. Dispute referred to an arbitrator who held that the Appellants were entitled under Section 74 of the Indian Contract Act, 1872 to the award of reasonable compensation only. Respondents filed a petition under the Arbitration Act, 1940 for making the award a rule of the Court. There was an error of law apparent on the face of the award as they were entitled to forfeit the entire amount of the security deposit. High Court dismissed the appeal. Order challenged under appeal. Held, it was held that the amount deposited by way of security for guaranteeing the due performance of the contract cannot be regarded as earnest money. It was important that the breach of contract caused no loss to the Appellants. Stipulated quantity of sum was subsequently supplied to the Appellants by the Respondents themselves at the same rate. Appellants made no attempt to establish that they had suffered any loss or damage on account of the breach committed by the Respondents. High Court was right in rejecting the Appellants claim that they were entitled to forfeit the security deposit. Appeal dismissed. [Union of India (UOI) v. Rampur Distillery and Chemical Co., Ltd. MANU/SC/0035/1973 = AIR 1973 SC 1098 = (1973) 1 SCC 649 = 1973 (5) UJ 560(SC)]

11. Contract made between respondent and appellant. Respondent tendered to supply foam. Respondent contended that appellant had committed breach of contract, therefore, liable to pay certain amount as damage suffered by him due to breach of contract. Apex Court observed that neither it would be true to say that person who commits breach of contract incurs any pecuniary liability nor would be true to say that other party to contract who complains of breach has any amount due to him from other party. Only right which he has is right to go to Court of Law and recover damages. Damages are compensation which Court of Law gives to party against injury sustained. A claim for damages for breach of contract is therefore not a claim for sum presently due and payable in exercise of right conferred upon it under Clause 18 to recover such amount from contractor. Held, appellant had no right or authority under Clause 18 to appropriate amounts of other pending bills of respondent in or towards satisfaction of its claim for damages against respondent. [Union of India (UOI) v. Raman Iron Foundry MANU/SC/0005/1974 = AIR 1974 SC 1265 = (1974) 2 SCC 231 = [1974] 3 SCR 556(SC)]

12. Respondent entered into agreement with appellant for supply of onions under agreement security deposit liable to forfeiture only in event of any breach or non-performance of contract by respondent. After sometime respondent stopped supply of onions. Appellant by letter informed respondent that contract stood rescinded. Appellant informed respondent's banker that certain sum debited against respondent towards damages for breach of contract. In appeal High Court held that rescission of contract void and security deposit could not be forfeited and respondent not liable to pay damages. Appeal in Supreme Court. Under contract respondent bound to supply onions. Utilisation and disposition by appellants after receipt of delivery was matter which was no concern of respondent. It was not shown that onions supplied were more than stipulated amount. There is nothing in agreement which prohibits diversion of onions from one place to another by appellants but diversion of huge quantity resulted in unexpected escalation of damages. Supreme Court scale down damages to extent of security deposit and directed whole of security deposit be refunded to respondent - appeal partly allowed. [The Union of India v. K. H. Rao MANU/SC/0055/1976 = AIR 1976 SC 626 = (1977) 1 SCC 583 = 1976 (8) UJ 203(SC)]

13. Suit for recovery against respondent without impleading Union of India as party to suit. Section 80 contemplates institution of suit against Central Government even though it relates to railway. When liability sought to be fastened on railway administration and suit was brought against it on that account. Suit would have to be brought against Union of India because it is authority which owes railways and which would have funds to satisfy claim. Demarcation of different State owned railways as distinct units for administrative and fiscal purposes and cannot have effect conferring status of



juridical person upon respective railways for purpose of civil suits. [The State of Kerala v. The General Manager, Southern Railway, Madras MANU/SC/0032/1976 = AIR 1976 SC 2538 = 1977 (1) AnWR 65 = (1976) 4 SCC 265 = [1977] 1 SCR 419 = 1976 (8) UJ 750(SC)]

14. High Court confirmed decree passed by Trial Court in favour of Plaintiff for partition of suit property as per term of compromise. However, Defendant No. 9, filed Application before High Court for extension of period for payment of second installment was allowed. Hence, this Appeal. Whether, High Court acted rightly in extending period for payment of second installment. Held, after default in payment of second installment occurred, Appellants placed circumstances before Court and prayed for permission to refund first installment, received by them so that they could take full advantage of compromise decree. However, Defendant No. 9 had not suggested that entire compromise should be ignored on account of impugned Clause 6. They had been relying upon compromise except default clause which alone was sought to be ignored. They insist that under compromise shares allotted to different branches should be treated as final and further half of share of Plaintiffs in suit properties should have gone to Defendant No. 9. Thus, High Court was not justified in allowing prayer of Defendant No. 9 permitting him to make a grossly belated payment. Thus, order of High Court was set aside and application for extension of time was rejected. If settlement is done by way of compromise, then it is binding on parties to follow terms of compromise. Appeal allowed. [Sova Ray and Anr. v. Gostha Gopal Dey and Ors MANU/SC/0458/1988 = AIR 1988 SC 981 = 65 (1988) CLT 91 (SC) = JT 1988 (1) SC 583 = 1988 (1) SCALE 534 = (1988) 2 SCC 134 = [1988] 3 SCR 287 = 1988 (1) UJ 628(SC)]

15. Parties entered into contract for sale of certain land and certain amount was paid to petitioner as earnest money. Suit for specific performance filed when petitioner did not execute sale deed and decreed by Trial Court. In appeal Additional District Judge observed that both parties suffered from mistake of fact as to area of land and sale-consideration. Decree for specific performance not passed but decree for refund of earnest money passed which was confirmed by High Court. Appeal by special leave. Petitioner contended according to forfeiture clause in contract respondent not entitled to refund of earnest money. Observed that contract was void from its inception as observed by Additional District Judge. Forfeiture clause in contract also void. Petitioner could not legally forfeit amount and seek enforcement of forfeiture clause. Decree for refund of earnest money confirmed. [Sri Tarsem Singh v. Sri Sukhminder Singh MANU/SC/0158/1998 = AIR 1998 SC 1400 = 1998 (2) ALL MR (SC) 528 = 1998 (2) ALR 1 (SC) = 1998 (2) AWC 125 (SC) = 1998 (46) (2) BLJR 819 = 1998 (1) CTC 443 = JT 1998 (2) SC 149 = 1998 (2) LW 303 = (1998) III MLJ 54 (SC) = (1998) 120 PLR 802 = RLW 1998 (2) SC 183 = 1998 (2) SCALE 58 = (1998) 3 SCC 471 = [1998] 1 SCR 456(SC)]

16. Whether Tribunal was right in law in holding that earnest money deposit of Rs. 75000 received by assessee in respect of agreements for sale of old and uneconomic rubber trees is revenue income assessable to income-tax when forfeited consequent to termination of agreements for breach thereof by purchasers. Amounts received by assessee/appellant in respect of an abortive sale transaction of rubber trees were capital or revenue receipts. Assessee's right to recover compensation was to place assessee in same position as if breach had not taken place. If agreed sums of money under agreements received by assessee they would have been credited in its account as capital receipt. Forfeited amounts treated as capital receipts. Agreements were of sale where both payment of price and delivery deferred. Purchasers paid purchase price in agreed installments right to take delivery of trees under agreement complete. Question referred by assessee answered in negative. Appeal in favour of Assessee. [The Travancore Rubber & Tea Co. Ltd. v. Commissioner of Income Tax, Trivandrum MANU/SC/0194/2000 = AIR 2000 SC 1980 = (2000) 160 CTR (SC) 1 = [2000] 243 ITR 158 (SC) = JT 2000 (3) SC 458 = 2000 (2) SCALE 409 = (2000) 3 SCC 715 = [2000] 2 SCR 290 = [2000] 109 TAXMAN 250 (SC)]

17. The case debates the jurisdiction of the court for setting aside the award of an Arbitral Tribunal under section 34 of the Arbitration and Conciliation Act, 1996. The Supreme Court listed certain cases when the court could set aside the award.- Firstly the award could be set aside when the applying party provided proof that it was under some incapacity; or the arbitration agreement was not valid; or the award dealt with a dispute contemplated by the terms of the arbitration clause; or the applying party was not properly notified of the appointment of the arbitrator. Secondly, the composition of the Tribunal has to be in accordance with the agreement of the parties for a court to set aside the award. In addition, the award could be set aside if it went against the public policy of India. In such cases, the aggrieved party could challenge the award under section 13(5) and section 16(6). Appeal allowed. [Oil

& Natural Gas Corporation Ltd. v. SAW Pipes Ltd. MANU/SC/0314/2003 = AIR 2003 SC 2629 = 2003 (3) ALD 82 (SC) = 2003 (2) ALR 5 (SC) = (2003) 3 Comp LJ 1 (SC) = 2003 (4) JCR 148 (SC) = JT 2003 (4) SC 171 = 2003(4) LW 482 = 2003 (4) SCALE 92 = (2003) 5 SCC 705 = [2003] 44 SCL 89 (SC) = [2003] 3 SCR 691 = 2003 (2) UJ 1035(SC)]

18. Respondent entered into an agreement with Respondent No. 1 (DLF) for purchasing a flat and paid earnest money. Respondent also paid some installments. Respondent showed his inability to make further payments. Respondent sent a legal notice to Appellant to refund the entire amount along with interest. As Appellant did not accede to his request, he filed an application before the Monopolies and Restrictive Trade Practices Commission (Commission) purported to be under Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (Act). Application was allowed and Appellant was directed to refund the entire amount together with the interest. Hence, present appeal. Held, power of the Commission to award compensation was restricted to a case where loss or damage had been caused as a result of monopolistic or restrictive or unfair trade practice. It had no jurisdiction where damage was claimed for mere breach of contract. Appeal disposed of accordingly. [Saurabh Prakash v. DLF Universal Ltd. MANU/SC/5198/2006 = 2007 (5) ALT 24 (SC) = (2007) 1 Comp LJ 215 (SC) = 1 (2007) CPJ 4 (SC) = 2007 (1) CTLJ 71 (SC) = 2006 (12) SCALE 531 = (2007) 1 SCC 228 = [2006] 72 SCL 443 (SC) = [2006] Suppl (9) SCR 625(SC)]

19. Forfeiture on termination of license to carry business of toddy. Jurisdiction of Commissioner of Excise to initiate suo motu proceeding. Criminal cases registered against Appellants who was a successful bidder for carrying business in toddy for using adulterated material "Diazepam" in toddy. Appellants acquitted of charges leveled against them in criminal proceedings. Respondent-commissioner ordered for cancellation of licenses under Rule 6(28) or Rule 6(30) of Rules of 1974. Matters referred to Commissioner of Excise for confirmation of sale. Board concluded automatic attraction of Rule 6(28) in cases where licenses cancelled under Rule 6(30) of Rules of 1974. Respondent-commissioner issued order forfeiting amount of security deposit under Rule 6(28) of Rules of 1974. Whether termination of license attracted forfeiture of deposit or not. Held, proceedings for cancellation of licence maintainable on ground of contravention of provisions of Rules of 1974 or conditions of licence. Mixing of "diazepam" with toddy constitutes offence under provisions of Act and Rule 6(30) of Rules of 1974 attracted. Consequences emanating from Rule 6(28) of Rules of 1974 cannot ensue in cases of termination of licence under Rule 6(30) of Rules of 1974 as rules not stated explicitly. Step taken by Respondent-state for forfeiture of amount of deposit as also recovery of amount of loss could be taken under Rule 6(34) if Appellants convicted. Recourse to be taken only by appropriate authority and does not automatically follow only due to cancellation of licence under Rule 6(30) of Rules of 1974. Board not correct to hold consequences under Rule 6(28) of Rules of 1974 automatically attracted. Appellants failed to pay kist and liable for action under Rule 6(28) of Rules of 1974 but notice not issued to Appellants and lack of inherent jurisdiction of Commissioner of Excise to initiate suo motu proceeding. Impermissible for Commissioner of Excise to pass order opining consequences of forfeiture under Rule 6(28) automatic upon cancellation of licence under Rule 6(30) of Rules of 1974. Proceeding to be initiated by Respondent-commissioner and not by Commissioner of Excise. Licence granted for one year only and advertisement also made for one year and confirmation of sale accorded for one year only. Contentions as to contract being for entire period of three years not correct. Grant of licence for carrying out business under Section 18A of Act imperative and valid contract for three years impermissible. Demand made towards loss suffered for three years not correct. No statement made to show how and in what manner Respondent-state suffered loss. Not a case to resort to Rule 6(28) of Rules of 1974. Decision of High Court set aside. "If a licence was cancelled in terms of Rule 6(30) of the Rules then the consequences laid down in Rule 6(28) would not be automatically attracted." Appeal allowed. [V. K. Ashokan v. Asstt. Excise Commnr. and Ors. MANU/SC/0352/2009 = 2009 (164) ECR 1 (SC) = JT 2009 (5) SC 104 = 2009 (4) SCALE 225 = (2009) 14 SCC 85 = [2009] 4 SCR 331 = 2009 (3) UJ 1329(SC)]

20. Arbitration award not open to challenge on ground that Arbitrator reached wrong conclusion. Courts do not interfere with conclusion of Arbitrator even with regard to construction of contract if it is possible view of matter. In absence of agreement specifying damages for breaches alleged by respondent, Section 74 not at all attracted. Appeal by special leave. Arbitration award, plea not raised before High Court cannot be raised. Appeal dismissed. [Steel Authority of India Ltd. v. Gupta Brother Steel Tubes Ltd. MANU/SC/1624/2009 = 2010 (6) ALT 1 (SC) = 2009 (4) AWC (Suppl) 4100 SC = (2009) 4 Comp LJ 12 (SC) = JT 2009 (12) SC 135 = 2009 (12) SCALE 393 = (2009) 10 SCC 63 = [2009] 15 SCR 253(SC)]

21. Terms of consent decree cannot be varied by executing court. Rate of interest stipulated in such decree cannot be varied either by executing court or High Court. Rate of interest at 18% stipulated in consent decree cannot be said to be unreasonable. Impugned judgment of High Court set aside. The executing Court shall pass an order in accordance with law and shall not act beyond scope of decree. Appeal allowed. [Deepa Bhargava and Anr. v. Mahesh Bhargava and Ors. MANU/SC/8468/2008 = 2009 (2) ALD 61 (SC) = 2009 (2) AWC (Suppl) 1409 SC = 2009 (2) CTC 364 = 2009 (2) JLJ 141 (SC) = JT 2009 (1) SC 151 = 2009(-2) LW 198 = (2009) 3 MLJ 1363 (SC) = 2009 (IV) MPJR (SC) 14 = (2009) 153 PLR 521 = RLW 2009 (1) SC 688 = 2008 (16) SCALE 305, (2009) 2 SCC 294 (SC)]

22. When dispute not constituting excepted matter under arbitration clause, appointment of arbitrator by High Court cannot be faulted with by raising contention of being excepted matter. No infirmity in impugned judgment. Clauses in arbitration agreement in restraint of legal proceedings are contrary to Section 28 of Indian Contract Act, 1872 and are bad in law." "If the Appointing Authority, did not respond to the notice requiring the appointment of Arbitrator and failed to act within the time prescribed under Section 4 of the Arbitration and Conciliation Act, 1996 then appointing authority loses the right to object and such right is deemed to have been waived." Appeal dismissed. [Bharat Sanchar Nigam Ltd. and Anr. v. Motorola India Pvt. Ltd. MANU/SC/4021/2008 = AIR 2009 SC 357 = 2009 (1) ALD 92 (SC) = 2010 (1) ALT 1 (SC) = 2008 (3) ALR 531 (SC) = 2008 (4) AWC (Suppl) 4082 SC = 2008 Bus LR 885 (SC) = (2009) 4 Comp LJ 313 (SC) = 2008 (12) SCALE 720 = (2009) 2 SCC 337(SC)]

23. Execution of decree. Objection that only declaratory relief granted and decree holders not entitled to arrears of pay. Objection overruled. Revision there against dismissed by High Court, not liable to be interfered. Though respondents legally not entitled to reliefs prayed by them, however, as decree passed Court would not go behind decree. Executing court to execute decree strictly in terms thereof. Appeal dismissed. [Haryana Vidyut, Parsaran Nigam Limited and Anr. v. Gulshan Lal and Ors. MANU/SC/0936/2009 = 2009 (5) ALD 52 (SC) = 2009 (4) AWC (Suppl) 3416 SC = JT 2009 (13) SC 567 = 2009 (7) SCALE 573 = (2009) 13 SCC 354 = (2010) 1 SCC (LS) 245 = [2009] 8 SCR 937 = 2009 (3) SLJ 216 (SC)]

#### Decisions under Section 75

1. The case debated on meaning of expression 'sale of goods' with respect to the State's power of taxation on the materials in construction works, the legislative practice. The nature of the agreement in the building contract with respect to the Indian Sale of Goods Act, 1930. It was held that the expression meant that there must be an agreement between the parties for the sale of the very goods in which eventually property passed. [The State of Madras v. Gannon Dunkerley & Co., (Madras ) Ltd. MANU/SC/0152/1958 = AIR 1958 SC 560 = 1958 (2) AnWR 66 = (1958) II MLJ 66 (SC) = [1959] 1 SCR 379 = [1958] 9 STC 353 (SC)]

2. Appellant dispatched sugar to authorized agents of State of Madras in compliance with directions issued by Controller. Appellant requested not to include such amount in total taxable turnover as supply was made in accordance with directions issued by Controller. Court opined sales tax levied on goods sold. If sale either expressed or implied found then tax must follow. Evidence on record proved that there was sale of sugar for a price and therefore tax was payable. [New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar MANU/SC/0353/1962 = AIR 1963 SC 1207 = [1963] Suppl 2 SCR 459 = [1963] 14 STC 316 (SC)]

#### Decisions on Loss of profit

##### Supreme Court

1. While the aforementioned proceedings for setting aside the arbitral award were pending the petitioner invoked the arbitration clause for a second time and the same arbitrator was appointed again to arbitrate on the dispute. The Statement of Claim for Rs. 5, 85, 456.71 in the said reference related to refund of the security deposit of Rs. 60, 943/-, The claim for Rupees 2, 92, 526.40 for loss of profit in business on account of withholding of the sum of Rs. 60, 943/- as well as claim for Rupees 1, 94, 132.31 by way of compound interest @ 18% per annum on the said amount of Rs. 60, 943/- from 1978 to October 1986 and certain other incidental claims. The second reference to the arbitration was challenged by the respondent by filing an application under Sections 5, 11 and 33 of

the Act which has been allowed by the learned single Judge of the High Court. Petition dismissed. [Damodar Engineering and Construction And Company v. Board of Trustees for Port of Calcutta [1993] 4 Scale 414 = [1994] AIR(SC) 1141 = [1994] 1 SCC 370 = [1994] 1 ALR 133 = [1994] 1 UJ 165 = [1993] 6 JT 335(SC-3J)

2. The claim for loss of profits on item 11 and for damages on item 12 is distinct and separate concepts. The umpire, therefore, was justified to grant separate amounts on each of the claims which would show active consideration and application of the mind. Hence it is not misconduct. Even otherwise they are severable from the rest of the award, which could be sustained. Claim 11 is founded upon the allegations of delay, laches, negligence and default on the part of the appellant, said to have resulted in loss of profits to the contractor in a sum of Rs. 4, 93, 696.00 and the umpire awarded Rs. 4, 11, 400.00. A perusal of the claims would show that claim 11 is founded on loss of profits and claim 12 is founded for damages, based upon delay, laches and negligence alleged against the appellant, resulting in breach of the contract. In other words the contractor claimed compensation for breach of contract arising under Section 73 of the Contract Act. The respondent, it is held by the division bench, is given same type of damages twice over and that holding is not challenged by respondent. It is seen that claims 11 and 12 for damages and loss of profit are founded on the breach of contract and Section 73 encompasses both the claims as damages. The umpire, it is held by the High court, awarded mechanically, different amounts on each claim. It is clear from the above facts and legal position that the arbitrator committed misconduct in non-application of his mind in deciding claims 11 and 12. It being a non-speaking award, it is difficult to find whether he had applied his judicious mind in deciding which of the two claims the respondent would be entitled to, in particular, on the finding of the High court in this behalf. Therefore, the award in respect of claims 11 and 12 is set aside. The appeals are accordingly allowed to the above extent and the judgment of the division bench of the High court stands modified and the award of the severable part stands confirmed accordingly. In the circumstances parties are directed to bear their own costs.[Union of India v. Jain Associates 1994 (2) Scale 604 = [1994] 3 JT 303 = [1994] 1 ALR 494 = [1994] 4 SCC 665(SC)

3. When claim for escalation of wages bills and price for materials compensation has been paid and compensation for delay in the payment of the amount payable under the contract or for other extra works is to be paid with interest thereon, it is rather difficult for the Court to accept the proposition that in addition 15% of the total profit should be computed under the heading 'loss of profit'. It is not unusual for the contractors to claim loss of profit arising out of diminution in turn over on account of delay in the matter of completion of work. What he should establish in such a situation is that he had received the amount due under the contract, he could have utilised the same for some other business in which he could have earned profit. Unless such a plea is raised and established, claim for loss of profits could not have been granted. In this case, no such material is available on record. In the absence of any evidence, the arbitrator could not have awarded the same. This aspect was very well established in 1940(1)KB 740 by the Court of Appeal in England. [Bharat Coking Coal v. L.K.Ahuja [2004] 3 RCR(Civ) 126/ [2004] 3 CivCC 444/ [2004] 1 ALR 652/ [2004] 2 RAJ 1/ [2004] 5 JT 209/ [2004] 6 Supreme 12/ [2004] 4 Scale 514/ [2004] 5 SCC 109(SC)]

4. Only when a purchase order was placed, a contract would be entered; and only when a contract was entered, the GCC including the arbitration clause would become a part of the contract. If a purchase order was not placed, and consequently the GCC did not become a part of the contract, the conditions in Section III which included the arbitration agreement, would not at all come in to existence or operation. In other words, the arbitration clause in Section III was not an arbitration agreement in praesenti, during the bidding process, but a provision that was to come into existence in future, if a purchase order was placed. In this case, the dispute raised is in regard to claim for Rs. 10, 61, 28, 000/- damages of account of BSNL not placing a purchase order, that is loss of profit @ Rs. 200/- per CKM for a quantity of 5.306 LCKM. Obviously the respondent cannot invoke the arbitration clause in regard to that dispute as the arbitration agreement was non-existent in the absence of a purchase order. [Bharat Sanchar Nigam Ltd. v. Telephone Cables Ltd. [2010] AIR (SC) 2671(SC)]

5. Extra expense / cost due to breach/loss of profits need to establish. Contractor's claim for loss of profit due to delay in handing over of site causing idling of labour and machinery need to establish that loss was caused by breach of the other party. Arbitrator awarded claim in favour of claimant towards loss of profits at 10% of contract value for delay in handing over of the site, while at the same time allowing claim for damages by respondent for delay in completing work by contractor. Contractor

did not claim 10% of loss of profits under specific claims. High Court was right in holding that award of any sum towards loss of profits could not be made. [P. Radhakrishna Murthy v. N.B.C.C. LTD. [2013] 2 RCR (Civ) 355/ [2013] 3 SCC 747/ [2013] AIR (SC) 1904(SC)]

### **Loss of opportunity**

1. 'Eichleay Formula' is used where it is not possible to prove loss of opportunity and claim is based on actual cost. In said formula the total; head office overheads during contract period is first determined by comparing value of work carried out in contract period for project with the value of work carried out by contractor as a whole for contract period. [Mcdermott International Inc. v. Burn Standard Co. LTD. [2006] 6 Scale 220/ [2006] 11 JT 376/ [2006] 5 Supreme 662/ [2006] 2 ALR 498/ [2006] 8 SBR 60/ [2006] 4 SCJ 660/ [2006] AIR(SCW) 3276/ [2006] 11 SCC 181(SC)]

### **Conclusion:**

While adjudicating claims relating to damages, as per the decisions referred to above, the following are required to be kept in mind or examined.

1. The legality of the award could not be challenged on the basis of facts, but the same could be challenged on the question of Law.
2. The reasonable steps should be taken to mitigate the loss consequent o the breach and debars him from claiming any part of the damage which was due to the person's neglect to take such steps.
3. Under general law, right to claim damages excluded by providing compensation in express terms.
4. Whether the arbitrator had ignored the provisions of Section 73 of the Indian Contract Act and had awarded the damages on wrong application of Law is required to be seen.
5. Whether there was misrepresentation regarding quantity of material.
6. Whether there was inordinate delay in right delivery of goods.
7. Court to scale down damages to extent of security deposit.
8. What amounts to public injury, to be decided on basis of facts and circumstances of each case.
9. Compensation awarded may be taken to be measure of damages subject to deduction of money value of services, time and energy expended in pursuing claims of compensation and expenditure incurred by him in litigation culminating in award.
10. Forfeiture clause in contract also void. Petitioner could not legally forfeit amount and seek enforcement of forfeiture clause.
11. Carriers would still be liable if any loss or damage caused to goods on account of his own negligence or criminal act or that of his agents and servants.
12. Errors found so extensively and deeply that entire adjudicatory process undertaken by arbitrators rendered it impossible to save award.
13. Party claiming compensation must prove loss suffered by it. In order to attract Section 73 petitioners had failed to prove that they had suffered any loss.
14. Arbitrator cannot act arbitrarily, irrationally, capriciously or independent of the contract. Role of the arbitrator is to arbitrate within the terms of the contract.
15. Section 33 (4) empowers Arbitral Tribunal to make additional awards in respect of claims already presented to Tribunal.



16. A suit for damages would be maintainable only on the ground of breach of terms and conditions of the contract.
17. Circular letters cannot ipso facto be given effect to unless they become part of the contract.
18. Purchaser of equity of redemption and Right to claim relief.
19. Arbitrators were competent to hear the matter related to existence and validity of the contract.
20. Under general law, right to claim damages excluded by providing compensation in express terms.
21. Respondent was entitled to mesne profits at monthly rates with interest.
22. State bound by statute unless it expressly exempts State from purview of Act.
23. Amount of earnest money was reasonable. No loss suffered by respondent due to non-performance of contract by plaintiff. Plaintiff is guilty of breach of contract. Contract liable to be rescinded but amount deposited cannot be forfeited.
24. There was misrepresentation regarding quantity of material. --- Appellants abandoned that ground by accepting that they committed breach of contract.
25. The amount deposited by way of security for guaranteeing the due performance of the contract cannot be regarded as earnest money.
26. Damages are compensation which Court of Law gives to party against injury sustained.
27. Under contract, respondent bound to supply onions. Utilisation and disposition by appellants, after receipt of delivery, was matter which was no concern of respondent.
28. Demarcation of different State owned railways as distinct units for administrative and fiscal purposes and cannot have effect conferring status of juridical person upon respective railways for purpose of civil suits.
29. When forfeiture clause in contract is void, petitioner could not legally forfeit amount and seek enforcement of forfeiture clause.
30. In absence of agreement specifying damages for breaches alleged by respondent, Section 74 not at all attracted. Plea not rose before High Court cannot be raised.
32. The executing Court shall pass an order in accordance with law and shall not act beyond scope of decree.
32. Executing court to execute decree strictly in terms thereof.
33. The claim for Rupees 2, 92, 526.40 for loss of profit in business on account of withholding of the sum of Rs. 60, 943/-
34. The claim for loss of profits on item 11 and for damages on item 12 is distinct and separate concepts. The arbitrator committed misconduct in non-application of his mind in deciding claims 11 and 12. Therefore, the award in respect of claims 11 and 12 is set aside.
35. If party entrusting the work commits breach of the contract, the contractor would be entitled to claim damages for loss of profit which he expected to earn by undertaking the works contract.
36. Award of loss of profit only in respect of unexecuted portion being compensated for idle labour and material as well as for hire charges, no justification to award loss of profit unsustainable.



37. Grant of loss of profit 10% is reasonable which would be the legitimate expectation of a contractor undertaking the work
38. Damages on account of loss of profit and profitability arising out of prolongation of construction period due to increase in prices, lower turnover, additional establishment expenses, extension of electric connection etc.
39. The arbitrator has dealt with the said claim and concluded that no such loss as such is established and once no such loss is established there is little scope for re-appreciating the evidence for recording a finding of fact.
40. The work to be performed was reduced arbitrarily, the respondent lost the opportunity to earn such profit, as it could have otherwise earned.
41. Compensation for loss of profit not to be granted, after contractor been paid for value of work done.
42. Work was not completed within the stipulated period. Rescission of the contract was illegal and wrongful on the part of appellant. As such claimant respondent has been deprived of the expected profit for no fault of his. Respondent is entitled to be compensated for such loss of profit.
43. Award towards anticipated profit. Since the question regarding rescission of contract is an 'excepted matter', the same cannot be gone into by arbitrator being outside scope of arbitration. Award passed by arbitrator, therefore, in said respect is a nullity.
44. If the termination of contract is illegal, the erring party has to compensate the other party and the contractor in such cases will be entitled to claim damage for the loss of profit with interest thereon.
45. Margin of profitability in such kind of contracts varies from 10% to 15% and accordingly arbitrator concluded that the element of profit deemed to have been earned by claimant at the rate of 7.5% of unexecuted portion of the contract work.
46. Award of 15% for loss of profit justified and to be confirmed.
47. A reasonable award of profit of Rs. 35, 000/- in respect of unexecuted work of about Rs. 3 lakhs is not unreasonable and therefore award in said respect cannot be said imaginary.
48. Loss of profit on account of closure of contract and claim for expenditures on the ground that they were incurred on account of the contractor being kept in waiting.
49. Non-speaking award on account of loss of profit and escalation of price. Award therefore, justified and need no interference.
50. 15% loss of profit is a reasonable recompense to a contractor whose work is either abrogated or terminated.
51. Awarded a sum of Rs. 10, 74, 598/- as damages towards 10% profit margin, which is clearly reasonable and there is no scope of interference to said award.