PREFACE

Law of contracts is applied in our day to day life. Thus, many a time, certain complex and vexed questions arise out of the contracts entered into by the parties, individuals, firms, corporate bodies or governments. E-commerce and E-transactions are the examples of such complexities. Most complex area of law of contract is considered to be the “Principles related to damages for breach of contracts”, because the law related to damages has undergone radical changes. Moreover, the courts in India as well as the legislatures have been remained active and this necessitated the research on this topic. There have been a number of landmark judgments which have clarified the principles related to measurement of damages and certain other related concepts. The courts have on many occasions tried to explain the principles relating to-damages, choice of law, offer and acceptance, mental capacity, recovery of money paid under mistake etc. These and other relevant cases, have been analysed and discussed in this thesis. Till today, even the English law on the point of “Damages for Breach of Contracts” has also not remained static. The trend in England towards codification and Europeanization, unfortunately for us in India, has served to increase the difference between our legal systems. Although the law related to damages has undergone radical changes, yet still much shared tradition, history and jurisprudence which bind our system-the cohesiveness of the common law is surely strong enough to withstand these strains. This is the aim with which English authorities have been used wherever possible to illustrate common principles and their developments. A number of decisions of Supreme Court have been delivered since the enactment of Indian Contract Act, 1872, which explain the principles of the contract law, are also analysed a fresh in the light of constitutional provisions. The judgments given by various High Courts of India are also discussed at appropriate place in this thesis. The courts are now revising the earlier trend of decisions that even in the context of liquidated damages clauses, irrespective of the amount fixed, only so much would be allowed to be

recovered as representing the real loss caused. Merely, by putting a clause in the contract never means that the right to compensation for breach of contract is excluded. Moreover, there can be no forfeiture where wrong specification or alignments have been provided or where the contract is still not formulated. A show-cause notice is required for forfeiture. The assessment of damages can be made by actual proof of damage or loss suffered or it may be a reasonable sum which the court thinks fit but not exceeding the amount named in the contract where it is not possible to assess the same on the basis of material on record. The Indian Contract Act, 1872, is not professed to be a complete code relating to law of contract. It provides rules concerning general principles of the law of contracts and only some of the specific contracts, whereas the need of modern era is that contractual liabilities have crossed the boundaries of the country and there are conflicts of laws of different countries with each other. The proper role of contract which can be the governing law and in case any dispute arises between the parties belonging to two different countries, will be the law of which the parties intend their contract to be governed. Therefore, the expressed intension in the contract would determine the proper role of the contract. These and many other points of literature have been included in making the present research work ready and up-to-date. In this research work, a sincere attempt has been made to explain the provisions of the act related to damages for breach of contracts and other related concepts in an analytical and illustrative manner. An effort has been made to embody complete knowledge of the subject dealt herewith. In view of future perspective, certain suggestions are also given. Therefore, the present research work will be of immense significance for those who aspire to pursue the profession of law in various capacities because they need to have a clear understanding of the founding principles of law of contract with special reference to “Damages for Breach of Contracts”. Thus, this work will prove to be simply indispensable.

One cannot deny the fact that the people who are involved in commercial transaction have their own working style and limitations while dealing with the contractual matters like breach arising out of contract and the compromise to be made in the situation of breach of contract. In fact, it is true that damages can never be a precise science; it is more or less a compromise or an adjustment only. Moreover, the business people still

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6 Kamil v. Central Dairy Farm AIR 2008, ALL 33
have hesitation or rather one can say fear of a lengthy court proceeding and the deadly
technicalities of the proceedings. From the analytical research on judicial trend prevailing
in India and some other countries like England, Australia and Canada on the subject of
damages for breach of contract, the researcher found that in India, the concept of nominal
damages is yet to be developed to the extent in which it is developed in other countries.
Therefore, the researcher strongly submitted that there is a dire need to recognise nominal
damages in India also and in such situations the courts in India should also come up
seriously on the party responsible for committing breach after the contract is being made
and breach is being proved, even if the nature of damages (which is required to be
awarded) is nominal damages. The irony of law of damages in India is that on one hand
under Sec.73, it is provided that special circumstances must be within the contemplation
of both the parties at the time of making the contract, whereas on the other hand while
awarding damages, it is considered that the special circumstances attached to the contract
must be known to the promisor only, at the time of making the contract, and not later.
Thus, even after suffering with the heavy losses due to the breach committed by the other
party, it is only the plaintiff, who has to prove that he has suffered losses. This seems to
be one of the most agonizing and feeble situations for the litigant who is knocking the
doors of the courts of law with folded hands and with great faith in the system. If
adoption of suggested regime seems too radical to the Indian legal system, they should at
least follow emerging judicial trends not only of India but they should at least consider
the trends of other countries because commercial transactions are not only a matter of
interest of one country, but these are prevailing all over the world and there is nothing
wrong to learn from others if one can learn.

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Saroj Saini
Research Scholar
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