

Indian Contract Act, 1872

Section 74 - Compensation for Breach of Contract Where Penalty Stipulated for

1[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 3[Central Government] or of any 4[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 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 practises as a surgeon within Calcutta, he will pay B Rs.5,000. A practises 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.

2[(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 percent. from the date of default. This is a 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, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rs.1,000 by five equal monthly instalments, with a stipulation that, in default, of payment of any instalment 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 instalments of Rs.40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.]

1. Substituted by Act 6 of 1899, section 4, for the first paragraph of section 74.

2. Added by Act 6 of 1899, section 4

3. Substituted by the A.O. 1937, for "Government of India".

4. Inserted by the A.O. 1950, for "Provincial Government".