

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

COMMERCIAL FIRST APPEAL NO.27 OF 2026

Wockhardt Hospitals Ltd.

...Appellant

Versus

Dr Nitish Vyas

...Respondent

Mr Mohit Khanna a/w Svadha Shankar, Rucha Prabhu and Radhika Sarurkar i/by
Homurabi & Solomon, partners, for Appellant.

None for the Respondent.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

DATE: 03rd SEPTEMBER 2026

ORAL JUDGMENT: (Per Dr Neela Gokhale, J.)

1. Admit.
2. By this appeal, the Appellant assails the *ex-parte* Judgment, Order and Decree dated 16th March 2026 (**'impugned Judgment'**), passed by the learned Judge, City Court, Mazgaon, Mumbai in the Commercial Summary Suit No. 663 of 2024, by which the Appellant's claim for damages against the Respondent, was rejected on the ground that the Appellant failed to produce any material or document on record to prove its claim.
3. Briefly the facts of the case are: The Appellant is stated to be a registered company engaged in the business of setting up, developing, running and operating super and multi-speciality hospitals, hospital management and healthcare services. In 2009, the Appellant engaged the services of the Respondent, a doctor, as a full-

time Senior Consultant, Internal Medicine and Critical Care, at its Rajkot unit. The Respondent's appointment was renewed *vide* appointment letter/agreement dated 14th August 2015, which set out certain terms and conditions, for a period of two years, i.e., from 15th August 2015 to 14th August 2017. The Respondent, by letter dated 23rd September 2023, resigned from the Appellant-Company and stopped attending work from 30th September 2023, thereby giving 7 days' notice. The Appellant claims this was in breach of the terms and conditions of the appointment letter dated 14th August 2015, more particularly Clause 11(a) of the said letter, which provides for a notice period of 3 months before resigning.

4. The Appellant thereafter sent a letter dated 26th November 2016 to the Respondent claiming Rs. 1,23,79,637/- for loss of business to the Appellant due to the Respondent's resignation. On 16th December 2016, the Respondent replied to the said letter, refuting any breach of the terms and conditions as well as any dues payable to the Appellant. The Appellant instituted a Commercial Suit on 20th July 2017, bearing Commercial Summary Suit No. 735 of 2017, before this Court for recovery of Rs.1,44,67,432/- against the Respondent. Subsequently, on 18th July 2024, the Suit was transferred to the City Civil & Sessions Court, Mazgaon, Mumbai, and renumbered.

5. The suit summons was served upon the Respondent; however, the Respondent failed to appear. Hence, the Trial Court proceeded against the Respondent *ex-parte*. On 16th March 2026, the Trial Court passed the impugned *ex-parte* Judgment, dismissing the Appellant's Suit.

6. Mr Mohit Khanna, learned Counsel, appeared for the Appellant. Despite

notice of the present Appeal being served upon the Respondent, none appeared for the Respondent. We have proceeded to hear Mr Khanna, learned Counsel for the Appellant.

7. Mr Khanna submitted that the impugned Judgment is arbitrary, unjust and contrary to law since the Trial Court failed to consider that the Respondent had violated Clause 11(a) of the agreement and had failed to give 3 months' notice to the Appellant. He further submitted that, due to the Respondent's breach of contract, the Appellant suffered loss because the hospital was unable to provide a special consultant to patients coming to the hospital. The loss of business was calculated on a reasonable estimate of potential loss, and no exact figure could be expected in a case where a senior doctor suddenly departs from the hospital with insufficient notice, thereby completely violating his contract. Hence, according to Mr Khanna, the Trial Court could not have expected the production of any material or documents on record in support of the Appellant's claim. He submitted that the loss claimed by the Appellant arose naturally, in the usual course of business, and was foreseeable by both parties, and as such the Appellant is entitled to compensation as provided under Section 73 of the Indian Contract Act, 1872 ('ICA') for the Respondent's breach of contract. He relied on the decision of the Supreme Court in the matter of *Construction and Design Services vs. Delhi Development Authority*¹ and the decision of the Delhi High Court in the matter of *Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solution Pvt. Ltd. vs. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL)*.²

¹ (2015) 14 SCC 263

² 2024 SCC OnLine Del 2755

8. We have heard the learned Counsel for the Appellant. We have also gone through the record of the proceedings with his assistance.

9. The limited grievance of the Appellant is the refusal of the Trial Court in awarding damages of Rs.1,23,79,637/-, to the Appellant for breach of contract by the Respondent. We have examined the Affidavit in lieu of Examination-in-Chief filed by the Appellant before the Trial Court and the averments made in the plaint. There is nothing in either of the two documents to demonstrate that the Appellant would succeed and become entitled to the damages as claimed by it.

10. Clause 11 of the agreement dated 14.08.2015, deals with the termination of the professional engagement of the Respondent. The relevant sub-clauses of Clause 11 reads thus:

“11. Termination of the professional engagement

a. Either party will retain the right to terminate this engagement after giving notice of three months to the other. During the notice period no minimum guarantee shall be paid or contract shall be treated under Fee for Service work. Doctor's right to terminate this engagement would be subject to clauses here below.

b. In case you wish to exit with the arrangements with Wockhardt Hospitals Limited prior to the period of our engagement of two years and during the period of engagement if the minimum guarantee amount paid to you cumulatively exceeds the actual fee, for service computed for the said period then the difference between the minimum guaranteed amount and the actual fee for service payable to you will be recovered from you at the time of exit within a period of 30 days. Any delay beyond the stipulated period will attract an interest at the rate of 12% per annum, payable on the recoverable amount.

c.

d.

e.”

11. Thus, Clause (a) provides that either party may terminate by giving three months' notice to the other party. It also provides that during the notice period no minimum guarantee shall be paid or that the contract shall be treated under fees for service work. It further provides that Doctor's right to terminate the engagement to

be subject to *inter alia* clauses (b) etc. Clause (b) sets out the consequences if the consultant, i.e., the Respondent herein, seeks to exit with the arrangements prior to the period two-years specified in the arrangement and during the period of engagement in such eventuality if the minimum guarantee amount paid to the respondent/defendant cumulatively exceeds the actual fee, for service computed for the said period, then the difference between the minimum guarantee amount paid to the Doctor (defendant/respondent) and the actual fee for service computed for the said period, then the difference between the “minimum guaranteed amount” and the actual fee for service payable to the Doctor (defendant/respondent), would be recovered from him, at the time of exist, within the period of 30 days.

12. The appellant/plaintiff, on the premise that the respondent/defendant had breached the agreement dated 14 August 2015 and more particularly of having not terminated the agreement as agreed between the parties in terms of clause 11(a) (supra) and which has caused damages to the appellant/plaintiff, approached the Civil Court by the suit in question *inter alia* praying for damages. The only prayer as made in the plaint is required to be noted which reads thus:

“(a) The Defendant be Ordered and Decreed by this Hon’ble Court to pay to the Plaintiff the sum of Rs.1,44,67,432/- as per Particulars of Claim being Exhibit E hereto along with further interest at the rate of 18% per annum on the Principal amount of Rs.1,30,39,838/- from the date of filing of this suit till the date of actual payment and/or realization and the costs of this Suit as more particularly set out in the particulars of Claim being Exhibit E.”

13. It is thus clear that the amount as prayed for in the suit was for damages in considering the breach of the terms and conditions of the agreement/ contract in question by the respondents/defendants and in the manner as averred in the plaint. The relevant averments as made in the plaint are required to be noted which read

thus:

“7. Plaintiff submits that in view of breach of terms of Exhibit A and more particularly Clause 11 (a), the Plaintiff has become entitled to recover from the Defendant a sum of Rs. 6,60,201/- Plaintiff being served with (7) seven days of notice. Plaintiff submits that with the sudden withdrawal and absence from work by the Defendant, the Plaintiff has suffered losses in business amounting to Rs. 1,23,79,637/-.

8. Plaintiff vide their letter dated 26th November, 2016 addressed to Defendant stating inter alia the aforesaid facts called upon the Defendant to pay the said sum of Rs. 56,60,201/ as the same became liable to be paid by the Defendant as the Defendant was required to give notice of three months which the Defendant deliberately failed to do and also a further sum of Rs. 1,23,79,637/- for the loss of business suffered by the Plaintiff at the Rajkot unit due to sudden absence / withdrawal from work by the Defendant. By the said letter, Rajkot Unit of Plaintiff called upon the Defendant to pay the said sum within the (7) seven days of receipt thereof, failing which the Plaintiff would initiate legal proceedings against the Defendant. Hereto annexed and marked Exhibit "C" is the photocopy of the said letter dated 26th November, 2016 addressed by Plaintiff to the Defendant.

9. Plaintiff received letter dated 16th December, 2016 from the Defendant addressed to the Rajkot Unit of the Plaintiff inter alia stating therein a denial of commission of any breaches by him of any terms and asserting that no amount is due and payable by him to the Plaintiffs. Hereto annexed and marked Exhibit "D" is the photocopy of the said letter dated 16th December, 2016 addressed by Defendant to the Plaintiffs.

10. Plaintiff submits that the Defendant quit the services at the Rajkot Unit of Plaintiff along with one Dr. Bhavin Patel, full time Associate Consultant in the Internal Medicine and Critical Case at the Rajkot Unit of Plaintiff assisting the Defendant. The resignation tendered by the Defendant being a common one for Dr. Bhavin Patel as well duly signed by Mr. Bhavin Patel.

11. Plaintiff submits that in the said backdrop, Defendant is liable to pay to the Plaintiff and the Plaintiff is entitled to recover from the Defendant a sum of Rs. 1,44,67,432/-comprising of the Principal amount of Rs. 1,30,39,838/-along with interest @ 18% per annum from the 10th December, 2015 i.e. 7 days after receipt of the letter dated 26th November, 2016 Exhibit C hereto as set out hereunder: -

TABLE I

Sr.No.	Period	Fees paid to Defendant	Work Done towards fees	Recovery (Deficit)
1	August 2015	Rs.3,00,000/-	Rs.2,58,734/-	(Rs.41,266/-)

2	September 2015	Rs.3,50,000/-	Rs.2,78,859/-	(Rs.71,141/-)
3	October 2015	Rs.3,50,000/-	Rs.4,25,542/-	(Rs.75,542/-)
4	November 2015	Rs.3,75,000/-	Rs.3,65,649/-	(Rs.9,351/-)
5	December 2015	Rs.3,50,000/-	Rs.3,72,232/-	(Rs.22,232/-)
6	January 2016	Rs.3,50,000/-	Rs.3,57,689/-	(Rs.7,689/-)
7	February 2016	Rs.3,50,000/-	Rs.3,87,909/-	(Rs.37,909/-)
8	March 2016	Rs.3,50,000/-	Rs.3,85,194/-	(Rs.35,194/-)
9	April 2016	Rs.3,50,000/-	Rs.2,84,512/-	(Rs.65,488/-)
10	May 2016	Rs.3,50,000/-	Rs.3,23,716/-	(Rs.26,284/-)
11	June 2016	Rs.3,50,000/-	Rs.3,10,448/-	(Rs.39,552/-)
12	July 2016	Rs.3,50,000/-	Rs.3,19,988/-	(Rs.30,012/-)
13	August 2016	Rs.3,50,000/-	Rs.3,02,933/-	(Rs.47,067/-)
14	September 2016	-----	Rs.4,59,727/-	Rs.4,59,727/-

Total Amount	Rs.45,25,000/-	Rs.48,33,132/-	Rs.3,08,132/-
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(i) **Work Done** Column mentioned in the aforesaid Table I is calculated as the amount of fees collected from the patients on behalf of the Defendant.

(ii) **Recovery** column mentioned in the aforesaid II is the recovery from the Defendant of the amount of deficit of fees incurred on behalf of Defendant.

TABLE II

F.F.S. Working (Fees for Service)		Rs.3,08,132/-
M. G. Recovery (Minimum Guarantee)	July, 2016	Rs.3,50,000/-
	August, 2016	Rs.3,50,000/-
	September, 2016	Rs.2,68,333/-

Total Recovery	Rs.6,60,201/-
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TABLE III

Loss Of business suffered by the Plaintiff at the Rajkot Unit due to sudden absence/withdrawal from work by the Defendant	Rs.1,23,79,637/-
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Loss of business mentioned in the aforesaid Table III is the loss suffered by the Plaintiff at the Rajkot Unit due to sudden absence / withdrawal from

work by the Defendant and is calculated by averaging last 3 months fees fetched by the Defendant which is amounting to Rs.11,79,013/-, this average fees per month calculated upto 15th August,2017 totalling to Rs.1,23,79,637/-. The said is due and payable and as more particularly set out in the Particulars of Claim being Exhibit “E” hereto.”

14. It is thus clear from the aforesaid averments that the suit claim is primarily in the nature of losses in the business, suffered by the appellant/plaintiff as clearly stated in paragraphs 7 and 8. It is an admitted position that if a party to a contract suffers losses due to breach of the contract by the other party, as to whether such amounts claimed are appropriate measure of damages, is required to be proved by the plaintiff, by applying the well settled principles of law as laid down under Section 73 of the Indian Contract Act, 1872. Admittedly, the present case is not a case where the parties had agreed for any liquidated damages. This is hence, a case which purely falls within the purview of the provisions of Section 73 of the Indian Contract Act, 1872 providing for compensation for loss or damages caused by breach of the contract. We note the relevant provisions of the Contract Act which read thus:

73.Compensation for 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 the non-performance of the contract must be taken into account.”

15. The principles in regard to compensation for loss or damages caused by breach of contract to be awarded by the Court, are well settled. Breach of contract entitles the suffering party to claim compensation for any loss or damage caused to him by such breach and 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 would not take into account any remote or any indirect loss or damage, and a party who suffers a breach cannot sit with folded hands in the good expectation of recovering compensation. It must take steps to remedy the inconvenience caused by the non-performance of the contract. Such obligation on the party not in breach, is recognized as its duty to mitigate damages. The damages contemplated under Section 73 can be awarded only for any loss actually suffered and not for any remote or indirect loss or damage. The loss must be a real loss or actual damage and not merely a probable or possible one. Also the damages arising out of a breach of contract are required to be treated separately from damages resulting from obligations resembling those created by contract. Considering that the theory of damages is that it is a compensation and satisfaction for the injury sustained, in that the sum of money to be given for reparation of the damages suffered should as nearly as possible, be the sum which will put the injured party in the same position as he would have been if he had not sustained the wrong for which he is getting damages.

16. Thus, applying these principles of law revolving around the said provision, we consider as to whether the appellant/plaintiff was entitled to award of damages. At the outset, we may observe that the averments as made in the plaint and which

are not different in the affidavit of evidence which was filed on behalf of the appellant/plaintiff, quantify the amount as set out in paragraphs 7, 8 and 11 on the basis that such loss was suffered by the appellant/plaintiff due to sudden absence / withdrawal from the work by the defendant. However, as to how such amount has been arrived at, is set out in paragraph 11(supra) wherein the appellant has quantified loss of business including as set out in Table III. It is calculated by averaging last three months fees fetched by the defendant which was amounting to Rs.11,79,013/-, and average fees per months calculated upto 15 August 2017 totaling to Rs.1,23,79,637/-, which has been quantified as damages so calculated. However, it appears that the basic obligation of the appellant/plaintiff was to establish that the appellant/plaintiff actually had suffered such losses. We do not find that there is any material on record either in the evidence or in the plaint demonstrating how such losses are incurred. The plaint is also silent on this aspect. Section 73 casts obligation on the appellant/plaintiff to prove such losses. The incurring of losses in the present facts could have been established only after the appellant/plaintiff had placed substantive evidence on record demonstrating that, after the respondent committed breach of the terms and conditions of the agreement, and had ceased to discharge his obligations under the agreement with effect from 30 September 2016, the actual work which was being performed by the respondent, could not be performed by any other person, as also the appellant/plaintiff could not secure the services of any alternate doctor to undertake such obligations which were being discharged by the respondent. Further by virtue of this situation all such patients who otherwise would have been

treated by the respondent, in the normal course (in the absence of the breach of the agreement by the respondent), could not be treated and thereby the corresponding income which could have been earned, was lost. This was the basic premise which was required to be established when the claim of the appellant/plaintiff was purely on alleged loss of business. No evidence that no other Doctors were employed to substitute the respondent, was brought on record, neither was any evidence of any patient with all such elements, who would otherwise be treated by the respondent, is placed on record, showing that in the absence of the respondent, any doctor who would have otherwise treating the patients.

17. Thus, it cannot be a situation that on one hand the appellant/plaintiff claims loss and on the other hand there was no material brought on record of the actual loss as suffered by the appellant. The presumption would be that, there was thus no loss. Thus, arguing only paper loss is of no consequence.

18. We test this proposition on a converse situation that in the event the substitute doctor was appointed by entering into a separate contract and the appellant/plaintiff has earned better than what it was otherwise earning, than the respondent discharging his obligations under the contract in question, then such situation, certainly no losses could be said to be caused, and in fact, it would be a situation of an unjust enrichment, inasmuch as it would be required to be inferred that the suit claim is made for earning an unjust amount and when it is not in reality any losses suffered by the appellant. These are important considerations to be taken into consideration, when the plaintiff approaches the Court praying for compensation for loss of business. Thus, in our opinion, the appellant/plaintiff has

miserably failed to discharge its basic burden of proving loss of business. Once such burden is not discharged, there is no question of compensation being awarded for loss of business.

19. We find that the learned Trial Judge has recorded appropriate reasons in rejecting the claim when it observed thus in paragraph 8 which read thus:

“8. Plaintiff has claimed damages of Rs.1,23,79,637/- from the defendant towards the loss suffered by it due to sudden withdrawal and absence of defendant. However, plaintiff has not provided any details as to how that loss of Rs.1,23,79,637/- is caused to the plaintiff hospital due to the absence of defendant. Plaintiff has not produced any material or document to show that due the absence of defendant any other doctor was in fact appointed by the plaintiff hospital and such doctor was paid more remuneration than the defendant. As per Sec.73 of Indian Contract Act, 1872 the plaintiff is entitled only for such compensation for which naturally arose in usual course of things from such breach of contract or which, the party knew at the time of contract. In present case plaintiff has not produced any cogent evidence to prove that it has suffered actual loss or damage to the extent of Rs.1,23,79,637/- due to the absence of defendant. The appointment letter/ engagement agreement at Exhibit-05 does not specify any liquidated damages or penalty. In such circumstances in my view plaintiff is not entitled for damages as claimed. Hence, while answering point No.1 in negative, I pass the following order:

ORDER

1. Commercial Summary Suit No.663 of 2024 is dismissed with costs.
2. Decree be drawn-up accordingly.”

20. We do not find any infirmity much less any illegality in the findings as recorded by the learned Single Judge.

21. The appeal is devoid of merit. It is accordingly rejected. No costs.

(DR. NEELA GOKHALE, J)

(G. S. KULKARNI, J.)