

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 1307 OF 2022**

Smt. Kaumudi P. Kothari ]  
Age : 75, Occ. : Household ]  
An Adult, Hindu, Inhabitant of Mumbai ]  
Having address at 121, Mittal Tower, ]  
'C' Wing, 12<sup>th</sup> Floor, Nariman Point, ]  
Mumbai – 400 021. ] **...Appellant**

**Versus**

1. Central Warehousing Corporation ]  
A Government of India Undertaking ]  
Having Regional Office address at Baldota ]  
Bhavan, M. K. Marg, Churchgate, Mumbai – ]  
400 020. ]  
2. The Secretary ]  
Ministry of Food, Consumer Affairs ]  
& Civil Supplies, Krishi Bhavan, ]  
New Delhi. ] **...Respondents.**

**WITH**

**FIRST APPEAL NO. 1054 OF 2024**

Smt. Kaumudi P. Kothari ]  
Age : 75, Occ. : Household ]  
An Adult, Hindu, Inhabitant of Mumbai ]  
Having address at 121, Mittal Tower, ]  
'C' Wing, 12<sup>th</sup> Floor, Nariman Point, ]  
Mumbai – 400 021. ] **...Appellant**

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New Delhi. ] **...Respondents.**

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*Mr. Pradeep Thorat, Ms. Aditi Naikare for Appellant.  
Mr. Bharat Satra and Mr. Manoj Mishra for Respondent.*

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**Coram : Sharmila U. Deshmukh, J.**

**Reserved on : 30<sup>th</sup> January, 2025.**

**Pronounced on : 28<sup>th</sup> March, 2025.**

**Judgment :**

1. Both the First Appeals arise out of Judgment and Decree dated 30<sup>th</sup> August, 2022 passed by the City Civil Court dismissing the Summary Suits. As the Appeals arise out of identical suits in respect of two identical Lease Agreements in respect of two separate premises owned by the Plaintiff, with consent, both Appeals are taken up for hearing together and are being disposed of by this common judgment. For the sake of convenience, the parties are referred as per their status before the Trial Court. The facts of Summary Suit No. 8433 of 2002 are referred.

2. Summary Suit No. 8434 of 2002 came to be filed by the Plaintiff under Order XXXVII, Rule 2 of Code of Civil Procedure, 1908 [for short, "***CPC***"] seeking a decree for sum of Rs. 4,12,420/- towards the godown rent for the unexpired period of lease from 1<sup>st</sup> December, 1999 to 14<sup>th</sup> October, 2000 along with interest.

3. The case of the Plaintiff was that she was owner of godown premises situated in Manpada, Thane. On 15<sup>th</sup> October, 1987, an Agreement of Lease came to be executed between the Plaintiff and the Defendant No. 1, which is Government Undertaking working under the control and supervision of Defendant No. 2, i.e. the Secretary, Ministry of Food, Consumer Affairs and Civil Supplies, New Delhi, for initial period of three years for monthly compensation of Rs. 39,460/-. Clause 1 of the Agreement provided for termination of the lease at option of either parties only after three years by giving one month's written notice. In complete violation, the Defendant No. 1 unilaterally announced their decision to de-hire the subject premises w.e.f 1<sup>st</sup> December, 1999 and vacated the premises before expiry of lock-in period. The Plaintiff regularly sent the debit notes for the monthly rent for the period from 1<sup>st</sup> December, 1999 to 14<sup>th</sup> October, 2000 but they remained unpaid. After service of statutory notice under Section 80 of CPC, the suit came to be filed seeking decree for the unpaid rent for remainder of lock-in period.

4. The Defendant No. 1 filed its Written Statement and denied the liability to pay damages or rent as claimed. It was contended that the Lease Agreement was determinable at the option of the Defendant only. An objection to maintainability was raised on various grounds firstly in view of the arbitration clause contained in the Agreement,

secondly in view of Section 41 of Presidency Small Causes Court Act, 1882, thirdly for the reason that the summary suit is not maintainable for recovery of rent and lastly for the reason that the Lease Agreement is neither registered or stamped document.

5. The Defendant did not lead any evidence in the matter and the Application of Defendant to file evidence and documents was rejected by the Trial Court by order of 21<sup>st</sup> June, 2018. From the record, it appears that the said order came to be challenged before the High Court. The interim relief granted by the High Court on stay of further proceedings was not continued and therefore, the Trial Court proceeded with the matter. The Trial Court framed and answered the issues as under :-

| Sr. No. | ISSUES                                                                                                                               | FINDINGS              |
|---------|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 1.      | Whether defendant committed breach of clause (1) of Agreement dated 15.10.1997 by dehiring the premises with effect from 15.09.1999? | In the affirmative    |
| 2       | Whether defendant was liable to pay monthly compensation of Rs. 79,380/- from 15.09.1999?                                            | In the negative       |
| 3.      | Is plaintiff entitled to claim interest at the rate of 18% per annum?                                                                | In the negative       |
| 4.      | Whether this Court has jurisdiction to try the present suit?                                                                         | In the affirmative    |
| 5.      | Whether plaintiff is entitled for reliefs sought, if yes, what?                                                                      | In the negative       |
| 6.      | What order and decree?                                                                                                               | Suit dismissed as per |

|  |  |              |
|--|--|--------------|
|  |  | final order. |
|--|--|--------------|

6. The Trial Court considered Clause-1 of Lease Agreement and held that the Defendant No. 1 has terminated the Agreement within the lock-in period and committed breach of Clause-1. As far as the liability to pay monthly compensation from 15<sup>th</sup> September, 1999, the Trial Court noted the decision of this Court in the case of ***Indiabulls Properties Pvt. Ltd. vs. Treasure World Developers Private Limited***<sup>1</sup> and held that there is no clause in Agreement, which entitles the plaintiff to claim liquidated damages from the defendant and that plaintiff has not claimed ascertainment of damages suffered by her. It held that in absence of ascertainment of debt and as there is no liquidated damage or penalty stipulated in the Agreement, there is no question of granting damages. The Trial Court held that without an inquiry as to actual damages suffered by the party, no amount towards damages or loss can be awarded and answered the issue against the plaintiff.

7. On the aspect of jurisdiction, the Trial Court held that the suit was basically for damages towards unexpired period and therefore, the Court had the jurisdiction. The Trial Court noted that the other objections as regards arbitration clause and non-payment of stamp

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1 2014 (4) Bom.C.R.76

duty and non-registration were already dealt by the High Court and rejected the objections. The Trial Court held that though there is breach of Agreement by the Defendant, the Plaintiff is not entitled to Decree as the suit did not seek quantification of damages and dismissed the suit.

8. Mr. Thorat, learned counsel appearing for the Plaintiff has taken this Court through the averments in the plaint and would submit that it is a specific case of the plaintiff that there was prohibition on termination of lease during the lock-in period and relief was for recovery of rent for unexpired lock-in period. He submits that execution of Agreement to Lease is undisputed and also the handing over of possession. He submits that the suit being one filed under Order XXXVII, Rule 2(b) of CPC was for liquidated demand and not liquidated damages. He submits that liability is crystallised as an implied term under Clause 1 of the Agreement and therefore, it is not a case of damages and not covered by Section 73 of Indian Contract Act, 1872 [for short, "**Contract Act**"]. As an alternative argument, he submits that the suit can also be treated as one for recovery of money as reimbursement is sought due to premature de-hiring of the godown premises. He would further submit that there is no separate inquiry required as the amount was already mentioned in the contract as an implied term of the contract. In support, he relies upon the following

decisions :-

***Dena Bank vs. K. Motiram Vakil***<sup>2</sup>

***Jyotsna K. Valia vs. T. S. Parekh and Co.***<sup>3</sup>

9. *Per contra*, Mr. Satra, learned counsel appearing for Respondent would submit that before the Trial Court, the case of the Plaintiff was one for damages and accordingly arguments were advanced by the Plaintiff before the Trial Court. He submits that having come with a case for damages, it was necessary for the Plaintiff to lead evidence to prove the loss suffered and the efforts taken to mitigate the loss. He submits that the Agreement does not contain liquidated damages clause and merely provides for lock-in period. Pointing out to the arguments recorded in the impugned judgment, he submits that it was the specific case of the plaintiff that the amount is claimed as liquidated damages and can be recovered from the defendant by way of Summary Suit. In support, he relies upon the following decisions:-

***Express Netweb Solutions Private Ltd. vs. IVK Mobile Pvt. Ltd.***<sup>4</sup>

***Manju Bagai vs. M/s. Magpie Retail Ltd.***<sup>5</sup>

10. The following points would arise for determination :

(i) Whether the claim in the suit is an ascertained debt and constitutes liquidated demand or whether the same is in nature of damages?

2 1988 SCC OnLine Bom 241.

3 2007 SCC OnLine Bom 413.

4 2018 SCC OnLine Del 10576.

5 2010 SCC OnLine Del 3842.

(ii) Whether the entitlement of the Plaintiff stands proved and the suit is liable to be decreed against the Defendant?

**As to Point Nos. (i) and (ii):**

**11.** The suit was filed as Summary Suit under Order XXXVII, Rule 2 of Civil Procedure Code, 1908 claiming godown rent for the unexpired period of lease from 1<sup>st</sup> December, 1999 to 14<sup>th</sup> October, 2000 as per the terms of the Agreement of Lease along with interest. The relevant clause in the Agreement of Lease pressed in service by the Plaintiff reads as under:

**"1. THE LESSORS HEREBY AGREE to let and the lessees hereby agrees to take on lease for an initial period of three years from the 15<sup>th</sup> October, 1997, and thereafter subject to as hereinafter, mentioned on a monthly tenancy, the godown premises described in the schedule hereto. It is agreed specifically that the tenancy hereby created shall be determinable only at the option of the Lessees and Lessors only after three years by giving one months notice in advance."**

**12.** The above clause provided that the term of the Lease Agreement was for three years and that the entire term of three years will constitute what is commonly known as "lock-in period" i.e. the period during which the parties agree not to terminate the Agreement. Despite the existence of the lock-in period of three years, the Defendants terminated the Agreement prior to the expiry of lock-in period and handed over possession of the leased premises to the Plaintiff. The finding of the Trial Court is that Defendants have

breached Clause 1 of the Agreement by terminating the Agreement during lock-in period, which finding is not assailed by the Defendants.

**13.** Admittedly, there is no express term in the Agreement imposing any obligation for termination of the Agreement during the lock-in period. According to Mr. Thorat, implied in Clause 1 of the Lease Agreement is the acceptance of liability of payment of lease rent for the unexpired lock-in period in event of termination and this implied term constitutes an ascertained debt for which summary suit can be filed. The question is whether in the facts of the present case, it is possible to imply the term that the violation of Clause 1 of Lease Agreement would impose an obligation of payment of compensation for the unexpired lock-in period. It is settled that the general presumption is against implying terms into a written contract. In Full Bench decision of this Court in ***Jyotsna K. Valia vs T.S. Parekh and Company*** (supra), the expression “implied term of a contract” was considered. The Full Bench took stock of various authorities and treatise on interpretation of contract and culled out the tests which are to be applied whilst considering whether from the written contract it can be held that there is an implied term to pay. It observed that the necessity to imply the terms arise because the parties have not expressly stated them for several reasons, the most significant being that the obligation was so “obvious” that it “went without saying”. In

such case, it may become necessary to find out whether terms can be implied to provide for the contingency. The Full Bench referred to the treatise of “The Interpretation of Contract” by Kim Lewison, Q.C. containing extensive discussion on “implied terms” which set out the following conditions to be fulfilled:

- (1) It must be reasonable and equitable.
- (2) It must be necessary to give business efficacy to the contract so that no term can be implied if the contract is effective without it.
- (3) It must be so obvious that it goes without saying.
- (4) It must be capable of clear expression.
- (5) It must not contradict any express term of the contract.

**14.** If the clauses in the present Lease Agreement are seen, Clause 1 provided for minimum guarantee period of three years during which the parties had agreed not to terminate the Agreement. The Agreement contains a clause for mutual renewal of lease at the end of the term of three years. The other clauses pertain to the maintenance of the leased premises and payment of the outgoings. Whether or not a term is implied is usually said to depend upon the intention of the parties as collected from the words of the Agreement and the surrounding circumstances. The Agreement is silent as regards the consequence of pre-mature termination. In the absence of any express term in the Agreement as regards the consequence, the breach of the

Agreement would give rise to a claim for damages under the statutory provisions of Section 73 of the Contract Act. As the statutory provision provide the relief which the party suffering from breach of a contract is entitled, it cannot be said that by not setting out an express term, the contract has failed to provide for the contingency of violation of Agreement, enjoining upon the Court to imply a term for completeness of the contract. Thus, there is no requirement of implying any term in the contract as Section 73 of the Contract Act applies to such eventuality.

**15.** Apart from the above, for purpose of implying a term, the obligation on the defaulting party must be so obvious that it was not necessary to state the same in express terms in the contract. When the various clauses in the Agreement are considered, the other terms do not provide any guidance as to what the parties intended to be consequence of the breach. The parties could have stipulated that upon breach of Clause 1, the defaulting party to pay liquidated or unliquidated damages or payment of compensation for remainder of lock-in period, or for forfeiture of security deposit, etc. For a term to be implied, it must be the “only” obvious term. Where it is not possible to say that the only consequence of breach would be payment of rent for the unexpired lock-in period, such a term cannot be implied unless expressly stated in the contract.

**16.** The pleadings in the plaint militates against the claim being a claim for liquidated demand. If the averments in the plaint are seen, after pleading about the execution of the Agreement of Lease, it is pleaded in paragraph 4 that in complete violation of the clear and unambiguous condition of minimum guarantee of three years, the Defendant No. 1 de-hired the subject premises. In paragraph 10, it is pleaded that the Defendant No. 1 has wrongfully denied to honor their contractual obligations and are therefore, legally bound to reimburse to the Plaintiff the rent of the subject godown premises for the unexpired lock-in period. The plaint essentially claims breach of contract and to be compensated for the breach.

**17.** If the contention of Mr. Thorat is accepted and the claim is considered to be simplicitor for recovery of the monthly compensation under the Lease Agreement for the unexpired lock-in period, the character of the suit will be one for recovery of license fees governed by Section 41 contained in Chapter VII of Presidency Small Causes Court Act, 1882 which reads as under:

**“41.(1)** Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of any licence fee or charges or rent therefor, irrespective of the value of the subject-matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or

proceedings for the recovery of possession of any immovable property, or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force apply.”

**18.** Where the subject-matter of the suit relates to recovery of immovable property, license fees or rent between landlord and tenant or licensor and licensee, it is only the Small Causes Court which would have jurisdiction irrespective of valuation. The Plaintiff has chosen his forum and has filed the suit. When the pleadings in the plaint are perused, it is evident that the Plaintiff considered the claim as one for liquidated damages for breach of the contract by the Defendant No 1 and invoked the jurisdiction of the Civil Court. The submissions of the Advocate for Plaintiff before the Trial Court also supports this conclusion. The finding on Issue No. 4 on jurisdiction in paragraph 38 by the Trial Court records the submission of Advocate for Plaintiff that the suit is for claim of rent of unexpired period in the form of damages and not simplicitor for arrears of rent. Before the Trial Court, the learned counsel for Plaintiff had relied upon Sections 73 and 74 of Contract Act, 1872. Paragraph 28 of the impugned judgment records the argument that the amount claimed is liquidated damages and can be recovered by way of summary suit. The argument before the Trial Court was that for claiming liquidated damages, the party is not

required to prove actual loss or damage suffered by him and not that the suit is for liquidated demand. The specific case put up before the Trial Court was a claim for damages and at the Appellate stage, it is not permissible to do a volte-face and canvas a submission about the suit being for liquidated demand and not damages.

**19.** The clauses in the Agreement, the frame of the suit, the forum chosen by the Plaintiff and the arguments canvassed before the Trial Court establishes that the Plaintiff came with a case of damages for breach of the contract. The filing of the suit as summary suit cannot change the nature of the suit from one for damages to one for liquidated demand. As the relief claimed arises out of breach of contract, the provisions of Section 73 of Contract Act are clearly applicable to the facts of the case. It was thus necessary for the Plaintiff to plead and prove the loss or damage suffered by the Plaintiff by reason the breach. It is well-settled that damages is money claimed as compensation for injury and remains a claim till adjudication and only after the Court awards the same, it becomes a debt.

**20.** Section 73 of Indian Contract Act, 1872 reads 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.”

**21.** As per Section 73 of the Contract Act, the party who suffers by the breach of contract is entitled to receive from the defaulting party, compensation for any loss or damage caused to him by such breach, which naturally arose in usual course of things from such breach, or which the two parties knew when they make the contract to be likely the result of the breach of contract. The provision makes it clear that mere breach of the contract would not entitle the party suffering from the breach to claim damages unless the party has suffered damages by reason of the breach, which has to be proved and the plaintiff will be entitled to a decree to the extent of the damage suffered. There has to be relief claimed for ascertainment of the damages and the Plaintiff was required to lead necessary evidence to prove damages, which the Plaintiff has failed to establish.

**22.** The Supreme Court in the case of ***Union of India vs. Raman Iron***

**Foundry<sup>6</sup>** expounded this very principle in the following words:

“11. Having discussed the proper interpretation of Clause 18, we may now turn to consider what is the real nature of the claim for recovery of which the appellant is seeking to appropriate the sums due to the respondent under other contracts. The claim is admittedly one for damages for breach of the contract between the parties. Now, it is true that the damages which are claimed are liquidated damages under Clause 14, but so far as the law in India is concerned, there is no qualitative difference in the nature of the claim whether it be for liquidated damages or for unliquidated damages. Section 74 of the Indian Contract Act eliminates the somewhat elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties : a stipulation in a contract *in terrorem* is a penalty and the Court refuses to enforce it, awarding to aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty, and according to this principle, even if there is a stipulation by way of liquidated damages, a party complaining of breach of contract can recover only reasonable compensation for the injury sustained by him, the stipulated amount being merely the outside limit. It, therefore makes no difference in the present case that the claim of the appellant is for liquidated damages. It stands on the same footing as a claim for unliquidated damages. Now the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a Court or other adjudicatory authority. When there is a breach of contract, the party who commits the breach does not *eo instanti* incur any pecuniary obligation, nor does the party complaining of the breach becomes entitled to a debt due from the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages. (Emphasis supplied) That is not an actionable claim and this position is made amply clear by the amendment in Section 6(e) of the Transfer of Property Act, which provides that a mere right to sue for damages cannot be transferred. This has always been the law in England and as far back as 1858 we find it stated by Wightman, J., in *Jones v. Thompson*,

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6 (1974) 2 SCC 231.

[(1858) 27 L.J.Q.B. 234] “Exparte Charles and several other cases decide that the amount of a verdict in an action for unliquidated damages is not a debt till judgment has been signed”. It was held in this case that a claim for damages does not become a debt even after the jury has returned a verdict in favor of the plaintiff till the judgment is actually delivered. So also in *O'Driscoll v. Manchester Insurance Committee*, [(1915) 3 K.B. 499], Swinfen Eady, L.J., said in reference to cases where the claim was for unliquidated damages: “... in such cases there is no debt at all until the verdict of the jury is pronounced assessing the damages and judgment is given”. The same view has also been taken consistently by different High Courts in India. We may mention only a few of the decisions, namely, *Jabed Sheikh v. Taher Mallik* [45 Cal. Weekly Notes, 519], *S. Malkha Singh v. N.K. Gopala Krishna Mudaliar*, [AIR 1956 Punj 174] and *Iron & Hardware (India) Co. v. Firm Shamlal & Bros.*, [AIR 1954 Bom 423]. Chagla, C.J. in the last mentioned case, stated the law in these terms:

“In my opinion it would not be true to say that a person who commits a breach of the contract incurs any pecuniary liability, nor would it be true to say that the other party to the contract who complains of the breach has any amount due to him from the other party.

As already stated, the only right which he has is the right to go to a Court of law and recover damages. Now, damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The Court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination there is no liability at all upon the defendant.”

This statement in our view represents the correct legal position and has our full concurrence. A claim for damages for breach of contract is, therefore, not a claim for a sum presently due and payable and the purchaser is not entitled, in exercise of the right conferred upon it under Clause 18, to recover the amount of such claim by appropriating other sums due to the contractor.”

23. It follows that where the contract does not stipulate the quantum of damages, the Court is required to assess the compensation

as per Section 73 of Contract Act. Even if the loss is ascertainable, the claim being for damages cannot be considered as a claim for ascertained sum. This Court in ***Continental Transport Organisation Pvt. Ltd. vs. Oil and Natural Gas Corporation Ltd.***<sup>7</sup> has held that unless loss is pleaded and proved, it cannot be recovered. The burden was upon the Plaintiff to prove damages which she has failed to prove as there is no pleading or evidence in respect of the loss sustained. Further, the Hon'ble Apex Court has held in ***Murlidhar Chiranjilal vs. Harishchandra Dwarkadas***<sup>8</sup> as under:

"9. The two principles on which damages in such cases are calculated are well-settled. The first is that, as far as possible, he who has proved a breach of a bargain to supply what he contracted to get is to be placed, as far as money can do it, in as good a situation as if the contract had been performed; but this principle is qualified by a second, which imposes on a plaintiff the duty of taking all reasonable step" to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps: (British Westinghouse Electric and Manufacturing Company Limited v. Underground Electric Railways Company of London). These two principles also follow from the law as laid down in S. 73 read with the Explanation thereof. If therefore the contract was to be performed at Kanpur it was the respondent's duty to buy the goods in Kanpur and rail them to Calcutta on the date of the breach and if it suffered any damage thereby because of the rise in price on the date of the breach as -compared to the contract price, it would be entitled to be reimbursed for the loss. Even if the respondent did not actually buy them in the market at Kanpur on the date of breach it would be entitled to damages on proof of the rate for similar canvas prevalent in Kanpur on the date of breach, if that rate was above the contracted rate resulting in loss to it. But the respondent did not make any attempt to prove the rate for similar canvas prevalent in Kanpur on the date of breach, if that rate was above the contracted rate resulting in loss of it. Therefore, it would obviously be not entitled to any

7 2015 SCC OnLine Bom 4918.

8 1961 SCC OnLine SC 100.

damages at all, for on this state of the evidence it could not be said that any damage naturally arose in the usual course of things.”

**24.** As the Agreement did not provide for liquidated damages, Section 74 of Contract Act had no applicability. For sustaining a claim for unliquidated damages, the damages have to be ascertained by leading cogent evidence. The Plaintiff has failed to plead the loss suffered by reason of the breach of the contract and the steps taken by the Plaintiff to mitigate the losses. There is no relief sought of ascertainment of damages and consequently, no evidence is brought on record. The claim for compensation for remainder of the lock-in period had no basis and only damages could have been granted for the breach of the Agreement. The Trial Court has rightly held that the Plaintiff has not claimed ascertainment of damages suffered by her and in the absence of any inquiry as to actual damages suffered by the Plaintiff, no amount can be awarded towards damages/loss. The Trial Court has rightly dismissed the suits filed by the Plaintiff. Point Nos. (i) and (ii) are accordingly answered against the Plaintiff.

**25.** Resultantly, both the First Appeals fail and stand dismissed.

**26.** In view of dismissal of the First Appeals, Interim Applications, if any, do not survive for consideration and stands disposed of.

**[Sharmila U. Deshmukh, J.]**

**27.** At this stage, request is made for continuation of the ad-interim relief of keeping the amount deposited which was directed by order dated 23<sup>rd</sup> November, 2022 for further period of eight weeks. The interim order is extended for a period of eight weeks from today.

**[Sharmila U. Deshmukh, J.]**