

**(2003) 01 KL CK 0100**  
**In the High Court Of Kerala**  
**Case No : A.S. No. 701 of 1992**

Uma Minerals

APPELLANT

Vs

Malabar Cements Limited

RESPONDENT

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**Date of Decision :** 23-01-2003

**Acts Referred:**

Contract Act, 1872 — Section 73

**Citation :** AIR 2003 Ker 146

**Hon'ble Judges :** K.S. Radhakrishnan, J;K. Padmanabhan Nair, J

**Bench :** Division Bench

**Advocate :** V. Chitambaresh, for the Appellant; B.S. Krishnan, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. Plaintiff is the appellant. Suit was instituted for realisation of money. Plaintiff is a partnership firm, wholesale dealer in industrial minerals. Plaintiff had entered into an agreement with defendant for supply of sweetener lime stones at the rate of 100 to 150 MT per day to be increased to 300 MT necessary for manufacture of cement, as per order dated 28-4-1988. On the request made by the defendant, plaintiff identified good lime stones from Cuddappa and Dronachalam and a report was sent to the defendant quoting the ex mine rates given by Andhra Pradesh Government. Plaintiff later informed the defendant by letter dated 16-7-1988 that the materials could be moved out from Andhra Pradesh only on payment of mineral rights tax. Defendant later amended the purchase order and agreed to pay extra the mineral rights tax and surcharge in addition to the cost of materials, transportation charges and other expenses already agreed upon. Purchase order was accepted by the plaintiff by letter dated 8-8-1988. Defendant however declined to take delivery of 480.120 MT of materials stating that the same was below the standard prescribed. Plaintiff informed the defendant its inability to supply the variety and supplied certain other variety and requested the defendant to allow the plaintiff to take back the unaccepted

quantity. Defendant did not give any reply. The cost of unaccepted material would come to Rs. 1,13,000/-. Later plaintiff sent notice claiming the said amount. Defendant replied and raised counter claim for damages, contending that plaintiff had committed breach of contract. For disposal of the case we need not elaborately deal with the facts. Suffice it to say, suit, was instituted by the plaintiff and that was decreed allowing the plaintiff to realise a sum of Rs. 1,13,000/- as value of rejected quantity of 480.120 Mt.s. of lime stones less the amount actually received by the plaintiff on that account. Counter claim raised by the defendant was treated as issue No. 4 and answered by the trial court as follows ;

"In this case the defendant has actually offered to accept the balance quantity even after the expiry of the period stipulated if supply was made at enhanced rate. But even if the time is not the essence of the contract in this case that aspect is immaterial as the plaintiff never fulfilled the terms of the contract. After performing contract in part, the plaintiff informed the defendant that it was not going to supply materials any longer. Thus there is absolute breach of contract without any reason. If that be so the defendant is entitled to recover damages as stipulated in Clause 13 referred to above. The defendant has claimed Rs. 8,62,753/- as damages for delayed supply of materials in terms of Clause 13 of Ext. A 4. The defendant has further claimed Rs. 7,16,533.73 towards the loss incurred by arranging alternative supply of materials. The plaintiff has produced Exts. B9, B10 and B11 to prove that alternative supply was arranged. Exts. B12 and B13 are also relevant. Ext. 1314 is the consolidated statement showing the damages on account of arranging alternative supply. The quantum of damages incurred by the defendant is really not disputed in this case. As the plaintiff has committed breach of contract and as there is no frustration of contract as alleged by the plaintiff, the defendant is entitled to recover the damages claimed which is limited to Rs. 10,00,000/-. The issues are found accordingly."

2. Counsel appearing for the appellant submitted that the Court below has committed an error in blindly following Clause 13 and awarding damages to the tune of Rs. 10,000/- without any adjudication as such. Counsel submitted, assuming that Clause 13 applies, it is the duty of the court to adjudicate the claim, if any. This legal position has been well settled. Counsel referred to various decisions such as Fateh Chand Vs. Balkishan Das, , Union of India (UOI) Vs. Raman Iron Foundry, and Dredgers 1982 KLT 738 ( AIR 1982 Kerala 281), and FACT Engineering works v. Kerala Industries 2001 (3) KLT 250 (AIR 2001 Kerala 326)."We are of the view appellant is justified in contending that the court is bound to assess the damages caused rather than blindly following Clause 13. We are of the view the approach made by the Court below is illegal and contrary to the principles laid down in the aforementioned decisions. In such circumstances, we are inclined to set aside the decree as far as the award of Rs. 10 lakhs is concerned towards damages. That part of the judgment and decree would stand set aside. Matter is remitted to the court below for examining the claim of the defendant in accordance with law. It is open to the parties to adduce evidence.

Court below would determine what would be the damages caused to the defendant, if any. It is for the defendant to establish on the basis of evidence as to the damages caused to him on the basis of the transaction entered into between the parties. The appeal is allowed to the extent indicated above. Matter is remanded back to the court below. Appellant would be entitled to get one half of the court fee paid on the appeal.