



ISSN 2582 - 211X

# LEX RESEARCH HUB JOURNAL

On Law & Multidisciplinary Issues

Email - [journal@lexresearchhub.com](mailto:journal@lexresearchhub.com)

**VOLUME I, ISSUE III**  
**JUNE, 2020**

<https://journal.lexresearchhub.com>

**Lex Research Hub  
Publications**

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**PREMA KARGAOKAR V. MUSTAK AHMED:  
A CASE COMMENT**

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## **ABSTRACT**

The Indian society has a long past of suppression and exploitation of women at the hands of men. While the law has come a long way to deal with the issues it is a long way to go. The system needs to evolve as and when the needs of society change and when new circumstances occur. This evolution usually happens in the court and this case comment on Prema Kargaonkar v. Mustak Ahmed is an attempt to highlight one such unaddressed method of exploitation which is a breach of promise to marry. This case comment deals with one of the first cases in this regard decided by the Gujarat High Court. This case comment not only provides for the decision and rationale given by the court but at the same time also aims to critically analyse the decisions along with highlighting the consequences of such breach on the Indian Society and the need for such strict actions to ensure justice.

## **CASE DETAILS**

1.	Citation	AIR 1987 Guj 106.
2.	Court	Gujarat High Court
3.	Decided on	October 3, 1986
4.	Petitioner	Prema Kargaokar
5.	Respondent	Mustak Ahmed
6.	Coram	Before R.C. Mankad and R.A. Mehta , JJ.

## **INTRODUCTION**

The case in consideration is one of the first cases concerning breach of promise to marry and has been often referred to by the Supreme Court. In Indian history, women have always been vulnerable to exploitation especially in situations related to marriage. While there is legislation to protect them from crimes such as dowry, rape and so on, the lesser-known evils are at the hands of the judiciary to ascertain. One of such lesser-known evils is the breach of promise to marry. There can be observed a pattern of instances where men promise women to marry, convince them to leave their homes, relatives and manufacture consent for sexual intercourse, but never end up marrying them and further abandon them at their convenience. These women not only go through emotional pain and heartache but often find themselves in a situation with no means to sustain themselves as they are unable to return to their relatives who may refuse to accept them due to the social stigma around it in the Indian society. Even though most promises in a fiduciary relationship are not considered to be legally binding, the breach of promise to marry is an exception. The consequences of the breach were at a magnitude that the court needed to address the issue in order to protect women from continuous exploitation faced at the hands of men. This case has not only established that damages for breach of promise to marry can be claimed under Section 74 of the Indian Contract Act, 1872<sup>1</sup> but also establishes a method to determine the quantum of damages to be awarded.

## **SUMMARY OF THE FACTS:**

The appellant-plaintiff is a Goanese Brahmin who worked along with the respondent- defendant in a company in Bombay. The respondent defendant developed friendly relations with the appellant plaintiff. In 1980, the defendant was transferred to Rajkot. After relying on the defendant's promise to find her a job in Rajkot, she moved to Rajkot and lived with the defendant as husband and wife in a hotel. The defendant-respondent, although married, being a Muslim could have another wife under his personal law. The defendant-respondent proposed and promised to marry the appellant as he was desirous to have his own child which his first wife couldn't bear. On the pretext of such promise to marry and in the expectation of married life the appellant plaintiff

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<sup>1</sup> Section 74, Indian Contract Act, 1872.

surrendered herself to the respondent defendant. The respondent- defendant continued to live together in a building. When the appellant-plaintiff insisted on marrying the respondent-defendant started to harass her. The petitioner then sought help from the Social Security Board of Rajkot. It was at this point that the respondent defendant decided to desert her. The appellant-plaintiff submitted that her life was ruined by the breach of promise to marry and claimed compensation of Rupees One lac with an interest of 18% from the date of suit. Before the trial court, the respondent defendant denied any illicit relations with the plaintiff and cohabitation. It was submitted that the appellant plaintiff was living with the family of the respondent defendant in the capacity of a friend and during this time and didn't seem to be of good moral conduct and was asked and pleaded “novatio”. It was also submitted that the suit was filed in order to extort money. The learned judge of the trial court dismissed the case on the grounds that neither party could prove their claims. This appeal has been filed by the original plaintiff challenging the order passed by the trial court before the High Court of Gujarat.

### **ISSUES:**

1. Whether there existed a promise to marry and if the act of the respondent amounts to a breach of such promise?
2. Whether the appellant-plaintiff is entitled to any damages or compensation and if yes, then the quantum of such damages?

### **SUMMARY OF ARGUMENTS-**

#### **Plaintiff/Appellant**

Whether there was a promise or not is personal knowledge and there exists word against word. But the plaintiff has submitted proof of several instances which lend credence to corroborate her statement whereas the respondent has utterly failed to do so. He hasn't presented any witnesses or examined his close family or friends. The plaintiff submitted a letter, a prescription by the gynaecologist in the name of Mrs Parvin Ahmed which further adds to the issue. There was no reason to represent herself other than the fact that they were living as husband and wife and that

the appellant plaintiff lived under that name. She also produced witnesses such as the landlord and their neighbour who have corroborated her statement, Considering that the respondent has agreed in his evidence that the appellant and the respondent have resided together and the existence of illicit relations with her and has only denied the existence of a promise for such relations it cannot be held that the plaintiff was living with the family in the capacity of a friend and then subsequently made shelterless due to bad moral conduct. countering the averment of the respondent in his written statement that the plaintiff was found of bad moral conduct and unfit for to reside with the cultured family of the counsel of the plaintiff submits that no further explanation of the said statement has been provided nor any evidence has been produced by the respondent except surrendering herself to him. If that was the bad character, it equally applied on the respondent as well and in fact more as the plaintiff only submitted on the promise of marriage. The respondent seems to be concerned that he exploited the plaintiff and the counter allegation of bad character only seem like a way to get away with his promise to marry. Lastly, the defendant it is stated that she wanted the respondent to divorce his first wife in order to marry her, although such claims are clearly denied by the appellant, it must be noted that this indicates the intentions and existence of promise to marry the plaintiff without divorcing her first wife.

### **Respondent**

The counsel of the Respondent submits that close intimacy between two people does not necessarily exist only on the promise of marriage and that the intercourse was voluntary. The counsel also states that no evidence has been presented to support the existence of the promise except the word of the plaintiff. Thirdly, the counsel also states that even if there is a breach of promise awarding compensation, in this case, would be against the morality and public policy as it promotes illicit cohabitation. For this, the counsel relied on the judgement given in *Gherulal Parakh v. Mahadeodas Maiya*<sup>2</sup> which states that the court may refuse to compensate if it provokes any harmful tendencies and thus, the counsel of the respondent states that the court of law and justice should refuse the claim for damages. Fourthly, relying on the judgement of *Istak Kamu Musalman v. Ranchod Zipru Bhate*<sup>3</sup> which states that “if the consideration is immoral, the

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<sup>2</sup>Gherulal Parakh v. Mahadeodas Maiya, AIR 1959 SC 781.

<sup>3</sup> Istak Kamu Musalman v. Ranchod Zipru Bhate, AIR1947Bom198.

contract is void” contends that this promise of marriage is void and hence, its breach shall not be allowed to enforce in the court and hence the claim for damages must be disallowed. Lastly, the counsel argued that even when consideration is not an offence but is immoral and arises out of illicit cohabitation, the court must impliedly or explicitly promote matrimony even if it does not infringe the penal law as stated in the judgement of *Manicka Gounder v. Muniammal*<sup>4</sup>.

### **HOLDING:**

The court held that there is no escape from the fact that the respondent had promised to marry and that there is no question whether a breach has been committed as it clearly shows that he is unwilling to keep that promise by his actions and words. The court also held that merely because the appellant and respondent were living together the claims for damages cannot be denied because a breach promise to marry is a well-settled offence. The court quashed the judgement and order passed by the lower court and directed the respondent to pay INR 60,000 per annum with an interest rate of 6% from the date of suit and the costs of both courts.

### **REASONING:**

The court gave three-step reasoning for the judgement-

#### **1. Promise to marry –**

The court reversed the decision of the lower court as it found it contrary to the evidence. The lower court had merely dismissed the matter on the grounds that there wasn't enough evidence and held that the two were in love from a long time and resided as husband and wife as soon as they got a chance, hence it cannot be said that she submitted herself only because of a promise to marry.

The high court was of the view that the decision was arbitrary and there is no escape from the fact that there existed a promise to marry and there has been a breach of the same.

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<sup>4</sup> Manicka Gounder v. Muniammal, AIR1968Mad392.

## 2. The reasoning behind awarding damages-

- a) The court stated that even though there is illicit cohabitation, it is not the cause of action for the case and rather a by-product of the situation. Merely because of illicit cohabitation the appellant cannot be denied damages for which the cause of action arises from any other offence. The cause of action here is a breach of promise to marry which is a well-settled law and for which compensation can be claimed.
- b) The judges referred to the judgement of *Maung Sein Kyi v. Maung Sein Kyi*<sup>5</sup> where it was held that compensation for breach of promise to marry can be claimed under section 74 of the Indian Contract Act, 1872<sup>6</sup>.
- c) The court also referred to the Chapter 17 of *Anson's Law of Contract* which states that even though the concept of “exemplary damages” has no place in the law of contracts but the breach of promise to marry is an exception where mental distress are to be taken into consideration while awarding damages.
- d) The court also referred to Lord Denning’s Judgement *Jarvis v. Swans Tours Ltd.*<sup>7</sup> wherein, compensation was awarded in a case of contracts of breach of promise to a happy holiday after consideration of mental distress. The court held that the principle of breach of promise of a happy holiday must also apply in the case of breach of promise of marriage.

## 3. Quantum of damages to be awarded-

- a) The court appointed Mr M. D. Pandya as the amicus curie to determine the quantum of damages whose suggestion that since there are no ready measures as in commercial contracts several circumstances must be considered was accepted.
- b) The court considered the financial circumstances of the party and the financial situation that the plaintiff would enjoy if the breach of contract did not occur.

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<sup>5</sup>Maung Sein Kyi v. Maung Sein Kyi, AIR 1916 LB 45.

<sup>6</sup> Section 74, Indian Contract Act,1872.

<sup>7</sup>Jarvis v. Swans Tours Ltd, (1973) 1 QB 233.

- c) The court also considered compensation awarded in similar circumstances such as desertion by the husband and the loss of a husband in a motor vehicle accident. The court finally used the consideration the income and multiplier method in as it would take care of exemplary damages too.

### **POINT OF LAW ESTABLISHED/SETTLED/REITERATED:**

The court reiterated that breach of promise to marry is an offence for which damages can be claimed under section 74 of the Indian Contract Act, 1872<sup>8</sup>, just because there exists a by-product such as illicit cohabitation it cannot be held an immoral transaction and is hence a valid transaction. As long as there exists a cause of action arising from any actionable wrong, damages can be claimed.

The court settled that even though exemplary damage is a concept of tort law and is not applicable in the law of contracts the breach of promise to marry must be considered as an exception to the rule. Hence, in a case to determine the quantum of damages, "exemplary damages" must also be considered along with the financial status of the parties.

### **AUTHOR'S OPINION**

In my opinion, the decision of the court seems to provide justice in the present situation, however, while discussing certain aspects of law which are being dealt with for the first time, the judgement does not do justice to upcoming cases in this aspect. Even though a bold statement has been sent out regarding the issue, guidelines to deal with similar cases have not been established.

1. **Breach of Promise to marry-** The court established that it was beyond doubt that there existed a promise to marry and further the breach is prima facie. The court did not give reasoning on how they came to this decision and nor did they establish what kind of proof

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<sup>8</sup> Section 74, Indian Contract Act,1872.

is required for proving the existence of promise of marriage. In this present situation, it almost comes off as the burden of proof to establish that there was no existence of promise to marry. This makes it arbitrary for the cases to come to follow.

## 2. **Damages**

The decision to allow damages despite the existence of illicit cohabitation is accurate, as just because the immoral by-product, the cause of action must not be negated and if damages were denied on this reasoning, more than half of the men would get away with exploiting women and cause injustice. As referred in the judgement, it is a well-established fact that compensation for breach of promise of marriage can be claimed under section 74 of the Indian Contract Act, 1872.<sup>9</sup>

The decision to award exemplary damages is likewise a good measure to extend the scope of justice. Despite the non-existence of concept of exemplary damages in the law of contracts, this is an exceptional circumstance. When the breach of promise to marry occurs, in most circumstances the women are left with no choice but to take the help of social services this also degrades their quality of life. With the promise to marry it is assumed that there also exists a promise to a certain standard of living and breach to this leads to a lot of mental distress and hence it becomes necessary to take into consideration so that the women can start a new life with a little extra support to uplift themselves.

With the promise to marry it is assumed that there also exists a promise to a certain standard of living. Hence keeping the financial situation, the income of respondent and exemplary damages in mind, the court used the income and multiplier method which is used when a woman loses her husband due to a motor vehicle accident. This method took care of all the above-mentioned variables and since it has been in practice for a long time, is an efficient way to calculate just compensation in my eyes.

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<sup>9</sup> Section 74, Indian Contract Act, 1872.

## **CONCLUSION**

The decision taken by the quorum at Gujarat High Court has extended the scope of justice under Breach of promise to marry and also acts as a precedent for other High Courts and the Supreme Court. This judgement not only clarified that compensation can be claimed but also answered other related questions such as variable and the method to use while awarding such damages.