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Review Document

Specific Relief Act, 1963

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SPECIFIC RELIEF ACT,1963¹

ACT NO. 47 OF 1963

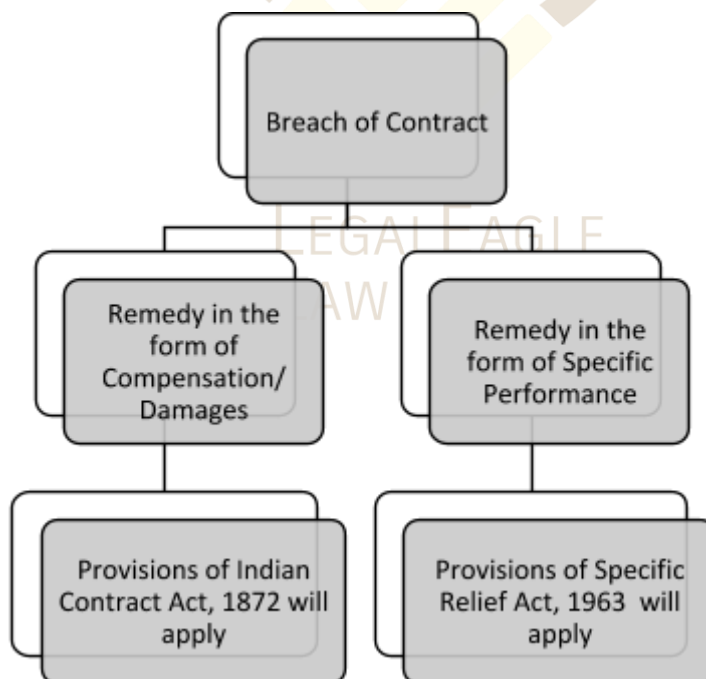
[13th December 1963]

SIGNIFICANCE OF THE ACT

The law related to specific relief was originally codified by the Specific Relief Act, 1877. The provisions of this enactment were considered by the Law Commission in its Ninth Report which led to the enactment of The Specific Relief Act, 1963. It replaced an earlier Act of 1877.

OBJECT OF THE ACT

Passed by the Parliament of India, The Specific Relief Act, 1963 is a procedural law which provides remedies such as the recovery of possession of property, specific performance of contracts, rectification of instruments, rescission of contracts, cancellation of Instruments, declaratory decrees, injunction for persons whose civil or contractual rights have been violated.



¹ The Specific Relief Act, 1963 (Act No. 47 of 1963) Accessed at <http://legislative.gov.in/sites/default/files/Specific%20Relief%20Act%201963-47.pdf>

The Act defines and amends laws relating to specific relief including specific performance of and immovable property and applies in cases where Court can order specific performance of a contract or an act. In the Specific Relief Act, the word 'obligation' has an inclusive definition and it includes every duty enforceable by law.

IMPORTANT PROVISIONS

Section 4 provides for specific relief to be granted for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

Chapter-II, Section 5-8 grants relief regarding possession of the movable and immovable property

A. In the case of Immovable Property (Section 5&6)

- Under Section 5, when a person is entitled to the possession of the specific immovable property, he can recover the same by filing the suit as per provisions of Code of Civil Procedure, 1908. The period of limitation is of 12 years from the date when the possession of the immovable property becomes adverse as against the plaintiff.

If case a person is disposed of, without his consent, of an immovable property, or, otherwise by law, Section 6 allows him to recover possession, even if any other title is set up in such suit. Such suit shall be brought within 6 months. Provided, no suit can be filed against the Government for recovery of possession. When possession is taken by the State Government, grievance cannot be made by the petitioner until it has established its better title to the property and therefore becomes entitled to possession.²

One of the major distinctions between these two sections is that Section 5 provides the person entitled to the possession of specific immovable property to institute a suit to recover it in the manner prescribed by the Code of Civil Procedure. A suit under this provision is therefore to be based on title. However, under Section 6, a summary remedy can be granted to the person dispossessed of immovable property without establishing the title.

B. In the case of Movable Property (Section 7&8)

As per Section 7, a person who is entitled to possession of a specific movable property

²*R.C Indra Kumar Pvt. Ltd. v. State of Orrisa*, AIR 1972 Ori 40

may recover it in the manner provided in the Code of Civil Procedure, 1908. The Act provides for the recovery of movable property in specie, i.e. the thing itself. The things to be recovered must be specific in the sense they are ascertained and capable of identification. A special or temporary right to the present possession of an immovable property has to be shown to support a suit under this section. A trustee can sue under this section, the person having possession of movable property, to protect the beneficial interest of the beneficiary and it is not necessary to make the beneficiaries, parties to the suit. Section 8 lays down the conditions under which, if a person holding the movable property is the owner of goods, he can be compelled to deliver it to other, even if the other person is not the owner, as long as he is entitled to its immediate possession.

Contracts which cannot be specifically enforced

Section 15 enumerates persons for or against whom contracts may be specifically enforced.

- Clause (a) - enumerates the general rule which is that a suit on a contract can be maintained by one of the parties.
- Clause (b) - by the representatives in interest of either party, provided learning skill, solvency and personal quality of party is a material ingredient, interest of parties shall not be assigned to the representative and he is not entitled to performance.
- Clause (c)- any person who is beneficially entitled, if the contract is of marriage settlement or compromise of doubtful rights between members of the same family.
- Clause (d) to (g)- mentions special cases where the cause of action, which is assignable to the other party, is assigned by or survived by the operation of law on the death or extinction of one of the parties to the contract.

As per the amendment of Section 14 in 2018, the following categories of contracts cannot be specifically enforced:

- a. where an aggrieved party has obtained substituted performance of the contract
- b. where the contract involves the performance of a continuous duty which cannot be supervised by the court

Specific performance of a contract is to be granted on all grounds except the ones mentioned under Section 16 which states that specific performance of a contract cannot be enforced in favor of a person or be claimed by a person—

- a) who has obtained substituted performance of contract under section 20;
- b) who has become incapable of performing,
- c) who has violated any essential term of, the contract that on his part remains to be performed?
- d) who has acted in fraud of the contract, or willfully acts at variance with, or in the subversion of, the relation intended to be established by the contract; or
- e) who has failed to prove that he has performed the essential terms of the contract which are to be performed by him, other than terms of the performance of which have been prevented or waived by the defendant.

Specific Performance with a Variation

Section 18 of the Act sets out the following cases in which a contract may be enforced subject to variation and such a variation is in favour of the defendant.

- (a) where the performance is sought by fraud, mistake of fact or misrepresentation or where the contract does not contain all the terms agreed to between the parties on the basis of which the defendant entered into.
- (b) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce.
- (c) where the parties have, subsequently to the execution of the contract, varied its terms.

The Court in the case *K. Narendra v Riviera Apartments*³ held

“when the defendant sets up a variation then the plaintiff may have the contract specifically performed subject to the variation so set up only, but not in cases of fraud, mistake of fact or misrepresentation or where the contract has failed to produce a certain legal result which the contract was intended to do or where the parties have subsequent to the execution of the contract varied its term

³*K. Narendra v Riviera Apartments*, 1993 (25) DRJ 72

Other Cases where Court can order Specific Performance

Rectification

- Section 26
- Where a contract has been reduced into writing owing to fraud or mutual mistake and fails to express the real intention, the Court can rectify the writing instrument to bring effect to the true intention of the engagement
- Depends upon the Court's discretion

Rescission

- Section 27-30
- A contract may be revoked if the contract is falling within the ambit of Section 19, 19A, 39, 53 and 55 of the Indian Contract Act and is thus voidable or terminable by the Plaintiff; where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than plaintiff
- There exists certain limitation to the right of rescissions such as implied/explicit ratification by Plaintiff, where parties cannot be restored back to the original position which existed prior to the contract was made, third party has acquired rights in good faith with notice for a value and lastly, where part not severable to the rest of the contract has to be rescinded.

Cancellation

- Section 31-33
- Conditions of cancellation- applicable to any instrument (includes contract, will etc, Any person can have the instrument cancelled if the instrument is void or voidable against him and who has reasonable apprehension that such instrument if left outstanding may cause him serious injury, Ordering cancellation is discretion of the Court, If the instrument has been registered the court shall also send a copy of its decree to registration office, The instrument can be cancelled partially, The court may direct plaintiff to restore benefits taken or grant compensation to the defendant.

Declaration

- Section 34
- Mode of relief where there is no specific performance and no award compensation when a person entitled to any legal character or to any rights as to property has been denied by another. Such a suit is called a declaratory suit, which settles the rights.
- The effects of declaration is mentioned under Section 35

Injunction

- Preventive relief, in which the Court may order restrain to the threatening party and refrain him from doing a particular act

AMENDMENT

The Act was amended in the year 2018. The Specific Relief (Amendment) Bill, 2017 was introduced in the Parliament on December 22, 2017. Passed by the Lok Sabha on March 15, 2018, and the Rajya Sabha on July 23, 2018, it received the assent of the President on August 1, 2018. The Act came to be known as Specific Relief (Amendment) Act, 2018 (“Amendment Act”)⁴ which was in furtherance to objectives of the Act to prevent the obligator from refraining to fulfil the promises made by him which may be detrimental to the interests of the other party and amended the following provisions:

- Section 10 was amended and substituted to empower the enforcement of specific performance of a contract which could not be specifically enforced as provided in Sections 11(2), 14 and 16 of the Act. The importance of this amendment is that it has made the specific performance of a contract a rule instead of being an alternative in cases where the actual damage for non-performance could not be ascertained or where the compensation for non-performance would not prove to be an adequate relief. This implies that it is no longer a defense, in a suit for specific performance that:
 - there exists a standard for ascertaining the actual damage caused by non-performance of the contract.
 - the act agreed to be done is such that, for its breach, compensation in money would be an adequate relief.
- Section 14 was substituted to specify contracts which cannot be specifically enforced like where:
 - a. A party has obtained substituted performance by virtue of Section 20.
 - b. The performance of the contract involves the performance of a continuous duty which the court cannot supervise
 - c. Contracts are dependent on personal qualifications of parties that the court possibly cannot enforce specific performance on material terms
 - d. nature of the contract is indeterminable.

⁴ Specific Relief (Amendment) Act, 2018 (Act No. 18 of 2018) accessed on <http://www.egazette.nic.in/writereaddata/2018/187919.pdf>

- A new Section 14A was inserted which deals with the power of Courts to engage experts to assist on specific issues involved in a suit and also direct the production of documents in cases where Court considers it necessary. Also, the provision saves the other provisions of the Code of Civil Procedure, 1908 on this aspect.
- The Concept of substituted performance of contract was introduced for the first times in the amendment act by the means of Section 20. Under this Section, where a contract is broken due to non-performance of promise, such party suffering the breach shall have an option of substituted performance through a third party or by his own agency, and recover the expenses and other costs incurred (subject to the condition that it should be performed by a third party or his own agency).
- More new Sections such as 20A, 20B and 20C were incorporated in the Act to provide Special Provision for contracts relating to infrastructure projects, where granting injunction would cause impediment to the project itself, to provide for designation of Special Courts to try a suit under this Act in respect of contracts relating to infrastructure projects and to provide for expeditious disposal of suits filed under the Act to be disposed of within 12 months from the date of service of summons to the defendant, which may be extended for a further period not exceeding six months in aggregate, respectively.
- As per Section 41(ha) of the amendment Act, an injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant related facility or services being the subject matter of such project.
- The next amendment is in Section 15 of the Act which deals with the persons who may obtain specific performance. It now includes a limited liability partnership (LLP) formed from the amalgamation of two existing LLPs, one of which may have entered into a contract before the amalgamation.

CONCLUSION

There existed certain drawbacks in the previous Act, which the amendment Act has rectified. These amendments portray the clear intention of the Parliament was to provide greater certainty in enforcement of Contracts which earlier used to be a matter of discretion of the Court, has now become a general rule. Additionally, mandating timely enforcement of contracts would aid in reducing time taken for enforcement of contracts. By giving special treatment to public utility projects, the benefitting growth of public as well as the investors can now be protected. Lastly, the amendment Act has widened the scope and powers of Court to interfere and engage experts in many cases. This will help in better enforcement of the Act if implemented properly.



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About the Author



Ria Garg is a final year law student at Alliance University, Bangalore, pursuing BBA LL.B with honors in Finance and International Law. Her interest in law peaked at a very young age. Always been eager to learn new tasks, she has interned at a few law firms and with different practicing Advocates in the Bombay High Court where she was mainly engaged in legal research and drafting. She has developed reasonable skills in this position and aspires to develop her research experience and enhance knowledge. She believes that life is a learning journey and is always looking for more opportunities to take in.