

IN CERTAIN CIRCUMSTANCES, CONTRACT SPECIFICALLY ENFORCED AGAINST A PARTY

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INTRODUCTION:

The citizens of India have been granted contractual rights that comes within the ambit of The Indian Contract Act. It endows duties, obligations and rights on the parties contracting and help them conclude business successfully from evidencing the businesses of multi-national companies to our everyday life transactions. The Indian Contract Act, 1872 was enacted on April 25th, 1872 and then got into force on September 1st 1872. The Indian Contract has its origin from the English law.

“An agreement enforceable by law is a contract” under Indian Contract Act, 1872¹.

¹ Avtar Singh, Contract and Specific Relief 11th ed. (2013)

In 1877 Specific Relief Act got enacted. It was drafted on The Draft, New York Civil Code, 1862, originally, and important provisions were evolved from the English Equity Courts. The Act of 1963 is the final outcome of the acceptance of proposal by the central government on the recommendations made by the Indian Law Commission. On 13th December, 1963 a bill to repeal the act was passed in both houses of the Parliament on which the president also gave his assent.

Specific reliefs is provided in The Specific Relief Act. Specific Reliefs means relief of the certain species, i.e. a named, an exact, fixed or determined, particular relief. In General the term is understood as not providing general relief or damages, compensation instead providing specific relief. It is a remedy that aims at performance of a contract or the exact fulfillment of an obligation. When there exists no standard for determining actual damages then Specific Relief is granted. For example the article on sale is a picture made by the dead painter, or where the compensation given will not be providing adequate relief to the plaintiff.

The Plaintiff wanting to take this remedy should satisfy the court of law that normal remedy of damages would be inadequate, the presumption being in the cases of contracts would be for transfer of immovable property, damages wouldn't be adequate enough. As the cases of specific relief are dependent on the Discretion on court, the specific performance is not always granted.

Relief has to be specifically claimed. When someone claims for the specific performance of a particular agreement, the suit would be filed only for specific performance of only that agreement, not of any other.

From the date fixed for performance, if no such date exists or is fixed, the prescribed period of limitations for a suit of specific performance is of 3 years also when the plaintiff noticed that the performance of the agreement has been refused.²

The conditions where the specific performance of the contract is enforceable is given in the Section 10 Of the Act. In reference to this section the specific performance of any contract may, in discretion of court of law, shall be enforced when there exists no standard for ascertaining the actual damage caused due to the non-performance of the agreed act that had to be done is such

² Dr. S.K. Kapoor , Contract-i and Specific Relief Act i(1999) 12 edition

that compensation in money for its non-performance would not be providing adequate relief. The explanation of the section is stated as that the court in cases of immovable property cannot has to presume the breach of contract of transferring the immovable property cannot be adequately relieved by damages in money; and that the breach of a contract of transferring movable property can be relieved except in the cases specified below:-

- (a) When the property is just not an ordinary article of business, or consists of goods which are not easily attainable in the market, or is of special interest or value to the plaintiff.³
- (b) When the property is with the defendant as the trustee or an agent of the plaintiff.⁴

ENFORCEABILITY OF CONTRACT (SECTION 10, 12, 14):

The specific performance of contract can be specified in the cases given below, in accordance of Section 10 of the Act:-

- 1) When there does not exists any standard for ascertaining the real damage caused due to the non-performance of the act that has been agreed to be done.
- 2) When the pecuniary compensation for the non-performance of an act would not be an adequate relief to the plaintiff.
- 3) In a condition where it is probable that the pecuniary damages cannot be given for the non-performance of the act that was agreed to be done by the defendant.

The specific performance of part of contract can be specified in cases given below, with accordance of Section 12 of the Act:-

³ The Specific Relief act 1963

⁴ *ibid*

- 1) The Section 12 of the Act refers to the Sections 13 to 17 of the Act with certain new and different modifications.
- 2) Exceptions to the general rule of The specific performance of a part of a contract is provided in the Section 12 (1), (2) and (4).
- 3) In general a contract is made to deal with as a whole but not in part. However, there lies an exception to the rule and i.e. Section 12 (1). In the words of Lord Romilly M R that , “ the court cannot specifically perform the Piece meal contract but it must be performed in its whole if performed at all”.
- 4) That part which remains to be unperformed must be of a considerable portion as the whole.
- 5) Compensation of money is not admitted
- 6) That part of contract which is not in default can sue for the performance done in part

The contracts specified below cannot be enforced in accordance of Section 14:-

- 1) When the compensation in money in cases of contracts is an adequate relief.
- 2) When Personal service is involved in the contract.
- 3) Contract has determinable nature.
- 4) Contract has certain uncertain terms.
- 5) Void contracts or Invalid contracts.
- 6) Contracts which require a continuous Supervision of the court of law.
- 7) Contracts for repairing works or building works.
- 8) Contracts cannot be specifically enforced which have conditions by Hindu Parent or guardian to give a child in marriage.

EMPHASIS ON SECTION 11:

Performance of contracts connected with trusts are enforceable is given the Section 11 of the Specific Relief Act. The Specific performance of some contract shall, in the sole discretion of the court of law, be enforced when the act that has to be done is in performance partly or completely

based on trust. In Reference to Section 11 (1) the agreed act to be done, partly or wholly, is based on trust, the specific performance of the act may be granted on the discretion of the court of law. For instance X holds certain article of Y in trust. X wrongfully disposed the article. The law will create a legal obligation on X to give the same quantity of Article to Y, and Y shall have to enforce specific performance of the created obligation.

DEFENCES AVIALABLE TO THE DEFENDANT IN SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT:

- 1) The compensation in value of money would be an adequate relief.
- 2) The Plaintiff is at fault (his unperformed section is large)
- 3) The Contract depends upon violation of parties or depends on personal qualifications.
- 4) Wanting in Mutuality
- 5) When the contract is not having any consideration
- 6) Wanting title
- 7) When a certain essential part of the agreed contract has ceased to exist.
- 8) A contract where the performance would result in hardship to the defendant that the plaintiff.
- 9) The time period is over 3years and requires continuous duty.
- 10) Contract has uncertainty in terms

CONCLUSION:

The legal background which governs the specific performance of a contract in India is provided by The Specific Relief Act, 1963. The general rule that prevails is that the relief to be provided for the specific performance is allowed only when there exists no other relief that meets the certain circumstances of the case. The relief of specific performance is available on in the given cases is provided in Section 10, (a) when exists no standard to ascertain the real or actual damage

caused by the breach of contract, or (b) When the compensation of money would not be the adequate relief on the breach of contract. But, in certain cases the relief is given in accordance to the provisions under the Act and is not a right available to the plaintiff, is solely based on the discretion of court, exists only as a remedy for the damages caused. Section 14 lays certain conditions when the specific relief cannot be given i.e. (a) compensation provided is adequate enough for the damages, (b) when the contract has very minute or various kinds of details or violation of parties or depends upon personal qualifications, the nature is such, that the execution of specific performance of its material terms is not possible; (c) nature is determinable of the contract; (d) contract involving the continuous supervision of the court.

On reading all the sections (Section 10-14) carefully and going through them all makes it understand that when a contract is by its nature determinable, the court of law has more reasons not to give order for the specific performance of the contract, unless and until it somehow falls under provisions or exceptions provided in sub-section 3 of the Section 14 of the Specific Relief Act and the conditions levied in the sub-section gets fulfilled.

I may conclude with observations of Lord Chancellor Cottenham in *Tasker v. Small* 1834 English Report 848 that "It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non- performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."⁵

⁵ <http://www.legalservicesindia.com/article/article/suit-for-specific-performance-of-contract-in-india-1587-1.html>
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