

# **SPECIFIC RELIEF ACT**

## **Introduction:**

Courts are institutions that serve important functions for society, including dispute processing, and the enforcement of rules. Courts have a profound effect on people within their jurisdiction, especially individuals subjected to a civil law suit. Decisions produced by courts are distinguished from decisions by other governing institutions in two important ways. First, unlike decisions generated by other authoritative institutions within governments, court decisions are guided by law. Decision makers within courts, whether they are judges or other judicial officers, seek to follow the authoritative rules of society as embodied in constitutions, statutes, and court precedents.

It is apt to quote the words of a judicial officer of Delhi (Bharat Chugh) who beautifully depicted ([www.legallyindia.com/tag/bharat-chugh](http://www.legallyindia.com/tag/bharat-chugh)) the irony of the law not serving the cause of justice and exhorted judges to rise to the occasion when equity demands this:

*“Let’s not be the slaves of law’s black writ;  
For- law is common sense and some uncommon wit;  
There were times when the dog used to wag his tail;  
The Procedure was there to ensure that justice doesn’t fail;  
Now the tail has started wagging the dog;  
Procedure has shot down justice, the citizen it has robbed;  
We are the chosen ones, the protectors of rights;  
We have to side with the underdogs, in their one sided fights;  
We’ve erred on the side of caution far too long;  
We’ve been legally (literally) right, but socially wrong;  
We won’t miss the woods of justice, for the trees;  
To do ‘justice’ this divine opportunity we’ll seize!”*

## **EVOLUTION OF THE LAW OF SPECIFIC RELIEF IN INDIA:**

### **1. Pre-1877 legal position in India:-**

A mature legal system goes a step further and endeavours to provide not merely a remedy for every right infringed, but also an adequate remedy. It was in this process of a search for effective remedial action that Specific Relief emanated from the Equity Courts in England. The principles laboriously built up by successive Chancellors of England in this branch of law have been copiously borrowed by the Indian Courts and have served

to enrich the Indian Law. This fertilisation of Indian Law by the equity Jurisprudence of England produced in due course the Specific Relief Act of 1877.

## 2. General principles of interpretation:-

The will of the legislature is the supreme law of the land, and demands perfect obedience. "Judicial power is never exercised for the purpose of giving effect to the will of the Judges: always for the purpose of giving effect to the will of the Legislature; or in other words, to the will of the law".

The language of a statute should be interpreted in its plain grammatical sense. The interpretation should advance the object of the Act as held in a case between Mahmued Hasan Khan v. Narain, reported in **A.I.R. 1949 All. 210 (F.B.)**; Rulia Ram v. Rex, reported in **A.I.R. 1949 All. 716** quoting Maxwell on Interpretation of Statutes; **Bhagwati Prasad v. Sham Chander**, reported in **A.I.R. 1949 All. 68**; **Manohar Das V. Golam**, reported in **A.I.R. 1949 Cal.225**. Restrictive provisions should not be liberally construed or extended through the medium of interpretation.

The natural meaning of the words should be accepted though it may produce unfortunate results. A construction should be avoided which would reduce the legislation to futility.

## 3. Object and Scope:-

The object of the Act may best be stated in the words of Statement of Object and Reasons which runs as under:-

This Bill seeks to implement the recommendation of the Law Commission contained in its 9<sup>th</sup> Report on the Specific Relief Act 1877, except in regard to Section 42 which is being retained as it now stands. An earlier Bill on the subject introduced in the Lok Sabha on the 23rd December, 1960, lapsed on its dissolution. The notes on clauses extracted from the Report of the Law Commission, explain the changes made in the existing Act".

### **The object of the Specific Relief Act is confined to;**

that class of remedies which a suit or seeks to obtain and a court of justice seeks to give him the very relief to which he is entitled. The Law of Specific Relief seeks to implement the idea of Bentham, who said: "The law ought to assure me everything which is mine, without forcing me to accept equivalents,

although I have no particular objection to them”.

The Law of specific performance essentially belongs to the law of procedure. It supplements various substantive laws such as the law of Contracts, the Transfer of Property Act, Sale of Goods Act. That is why the opening section of chapter II of the Act specifically says that the defendant can plead by way of defence any ground which is available to him under the law relating to contracts.

The Honourable Justice Subba Rao observed that in England, the relief of specific performance pertains to domain of equity: in India, to that statutory law. In England mere delay or laches is a ground for refusing the specific performance, but in India, mere delay without such conduct on the part of the plaintiff as would cause prejudice to the defendant, does not empower the court to refuse the relief.

4. **Specific relief to be granted only for enforcing individual civil rights and not for enforcing penal laws:-**

Specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

(a) **“Merely” enforcing penal law:-** This is because specific relief is a purely civil remedy. The prevention, prosecution and punishment of crime are the province of criminal law.

5. **By Whom Contract Must Be Performed:**

(a) **By the promisor :-**

A contract may be performed by the promisor, either personally or thorough any other competent person.

(b) **By the agent:-**

Where personal skill is not necessary and the work could be done by anyone, the promisor or his representative may employ a competent person to perform it. Thus a contract to sell goods can be assigned by the seller to his agent.

(c) **By the representative:-**

In the event of the death of the promisor before performance, their representatives are bound by the promises, unless personal consideration are the foundation of the contract.

(d) **By the third person:-**

If the promisee accepts performance of the promise from a third party, there is discharge of the contract. Once the third party performs the contract, and that is accepted by the promisee there is an end of the matter and the promisor is thereby discharged.

**6. Section 20** of the Act regulates the exercise of discretion by the court by prescribing does and don'ts. In addition to the section 20, Mandatory provisions sections 10 to 14 are significant. Section 20 of the Act confers a discretion on the Court to decree or not to decree specific performance depending upon the facts and circumstances of the case. In exercise of discretion, the Courts shall take into consideration the conduct of the parties in order to give effect to the principle that he who seeks the equitable remedy of specific performance must approach the court with clean hands. Setting up a false plea such as payment of substantial portion of sale price or making false averments in the plaint with a view to mislead the court are considered to be relevant factors to dis entitle the plaintiff to the relief of Specific Performance.

(a) Section 20 of the Specific Relief Act empowers the Court with a discretion as to decreeing specific performance. It cannot be said that in every case wherever there is a valid contract or subsisting agreement a decree for specific performance ought to be passed.

(b) **Discretion: Not arbitrary:-**

Reiterating the principle it is not obligatory to decree specific performance. It is always one of discretion. The discretion has to be exercised carefully with circumspection, on sound and reasonable grounds guided by judicial principles. The Court has first to consider whether the plaintiff has established the case. His conduct during, at and from the date of contract till date of suit bears great relevance. He must come to the court with clean hands. If his conduct is tainted with falsity of the case or unworthy of acceptance, equity denies him the relief. If he is entitled to the relief then it is the duty of the court to consider the defence of the defendant. If the defence cuts at the case of the plaintiff, in that eventuality also specific performance could be denied as held by the Honourable High Court Court A.P. in a case between **"G. Rasaiah v. C. Ballaram Reddy,"** reported in **"A.I.R. 1989 AP 179"**.

(c) The cases in which the court may properly exercise discretion not to

decree specific performance has been enumerated in sub-section (2).

They are;

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not avoidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

It is settled law that false allegations in the plaint disentitled the plaintiff for the relief of specific performance. The discretion of the court in regard to the grant or refusal of the relief of specific performance is amenable to control by the Appellate court. The court has to assign reasons for its action so that the Appellate Court can gauge the soundness of the exercise of the discretion. In a case between **"Alluri Narayanamma v. Chutturi Venkanna"** reported in **"2008 (2) SCJ 705"** it was held that;

When no reasons assigned by the trial court as to why discretionary relief of specific performance cannot be granted, if the reasons are assigned it will be capable of correction by the court of appeal hence, exercise of power of discretionary relief by the trial court is arbitrary and not sound and reasonable and neither guided by the Judicial Principles nor capable of correction by court of appeal.

(d) **Discretion: Time for exercise:-**

The discretion in regard to granting or withholding the relief of specific performance may be exercised even in second appeal. The discretion of the lower court should not be lightly interfered with. The appellate court should be satisfied that the lower court exercised its discretion arbitrarily

before interfering with the latter's discretion. Where the basic findings of fact which led the trial court to dismiss the suit for specific performance are set aside in appeal, the appellate court can grant specific performance. In such a case there is no real question of interference with the discretion exercised by the trial court.

(e) **Refusal of Specific Relief: (A) Unfair advantage to plaintiff (Section 20, clause 2 (a)) – General rule: unfair advantage to plaintiff:-**

If the agreement is unfair and one-sided the court may decline the relief of specific performance. If the plaintiff in entering into the contract took an improper advantage of his position or of the difficulties of the defendant, the court can in its discretion refuse specific performance.

**Illustration**

A contracts to sell, and B contracts to buy, certain land. To protect that land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(f) **Hardship:**

The Hardship involved should be the one not foreseen by the parties and should be collateral to the contract. Similarly inadequacy of price coupled with illiteracy of the vendor and prior indebtedness to vendee would justify the refusal of specific relief as held by the Hon'ble High Court of Madhyapradesh in "**Manakchand Vs. Poorna**" reported in "**AIR 1960 Madh Pra 235**".

The fact that the vendor has secured a better offer or as sold to another does not amount to hardship as held by the Hon'ble Kerala High Court in "**Unni Madhuban Nair Vs. Kamalakshi**" reported in "**AIR 1963 Kerala 357**".

(g) **Court's discretionary power:-**

The discretion is however, to be exercised in a judicial manner and cannot be arbitrary.

The discretion can be refused in justifiable cases. Thus, a teacher in an educational institute was in service only for one or two years and thereafter following his suspension from service entered into legal profession for over 25 years. He thus lost touch with educational technique.

The Supreme Court held it is not justified that he should be reinstated in educational service, the same was held in a case between "Kayastha Pathshala Vs. Rajendraprasad" reported in "**AIR 1990 SC 415**".

7. The whole unamended **Section 20** which provided for discretion to decree specific performance has been substituted by a new section. This new provision gives an option to the party which has suffered a breach to go for substituted performance through a third party or by its own agency and recover the expenses and other costs actually incurred, spent or suffered by such party from the party which had committed the breach. However, sub-section (2) of Section 20 requires the party who has suffered such breach to give a written notice of not less than 30 days to the party in breach. Also, the proviso to this sub-section makes it clear that the party who has suffered such breach would be entitled to recovery of such expenses and costs only if the contract has been performed through a third party or by its own agency. Sub-section (3) makes it further clear that once substituted performance has been opted, the party suffering breach would not be entitled to claim relief of specific performance against the party in breach. However, sub-section (4) protects claims of compensation from the party in breach.

8. The Amendment Act of 2018 has further **introduced Sections 20A, 20B and 20C** to the Act. Section 20A has made special provisions for contracts relating to infrastructure projects which have been specified in the Schedule inserted in the Act by the Amendment Act of 2018. It ousts the power of a civil court to grant an injunction in relation to such infrastructure projects where grant of such injunction would cause impediment or delay in progress or completion of such projects. Section 20B provides for designation of Special Courts to try a suit under the Act in respect of contracts relating to infrastructure projects. Section 20C provides for expeditious disposal of suits filed under the provisions of 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.

**9. Section 10** refers to the circumstances in which specific performance of contract may subject to the discretion of the court be enforced;

Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the Court, be

enforced.

(a) When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or

(b) When the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation – Unless and until the contrary is proved, the court shall presume;

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:

(a) Where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market.

(b) Where the property is held by the defendant as the agent or trustee of the plaintiff;

**(a) Sec. 10 (A) no standard for ascertaining for damages;**

This section reads that specific performance of contract may be directed when there is exists no standards for ascertaining the actual damage caused. This includes matters mingled with nostalgias effect in breach of contract in respect of breach cannot have any standard for ascertainment of value.

Banerjee on Specific Relief Act in 9<sup>th</sup> E.D., page 116 quoted the old english case “Pusey Vs. Pusey” reported in “(196) 1 VER 273 28 E.R 465”

“An article not have much intrinsic value, but by reason of peculiar association or some special considerations it may have obtained in the eyes of its holder a value that cannot be estimated in any ordinary medium,”.

**(b) Demolition of house pending litigation:-**

A landlord who demolishes the house of the tenant pending the latter’s suit for injunction, can be required to restore the building to its original condition. The same was held in a

case between "Nausha Ali Khan v. Mohammad Siddiq" reported in "A.I.R. 1981 AI 307"

**(c) Decree for specific performance in case of agreement of sell agricultural land.**

The discretionary relief of grant of specific performance of the contract could not be granted to the plaintiffs who filed suit for specific performance, because, particularly in the matters of discretionary relief, the court will refrain from passing a hypothetical decree when it was not possible for it to direct the authority, in this very proceeding, to accord such a sanction to the plaintiff. In a case between "Vasudeo Harchand Kolhe v. Bhaulal Nadarsingh Rajput" reported in "A.I.R. 1994 Bom. 124 (129, 130)" that by virtue of the order passed in favour of a third party under section 31(1)(b) of the Bombay prevention of fragmentation and consolidation of Holdings Act, he acquired certain rights under the special statute. Even, if the plaintiffs were to succeed in the suit for specific performance, the chances were far remote to them that they would now succeed in getting that order under section 31(1)(b) of the Act, permitting them to purchase the land. It was not possible for the court entertaining suit to direct any authority to accord such a permission to the plaintiffs.

**Explanation to section 10: (A) Contracts relating to immovable property:-** By far the most important of the types of contracts for which specific performance is the appropriate remedy are those relating to immovable property. Persons entering into contracts for the sale or lease of immovable property cannot be allowed to escape from them to suit their own convenience by alleging that the person in whose favour the contract was made can be compensated in money in a case between hence the explanation to section 10 which enacts a presumption that compensation in such cases cannot be an adequate remedy.

**(d) Sale of coal-ash:-** In a case between "U.P.S.E., Board Lucknow v. Ram Barai Prasad" reported in "A.I.R 1985 All. 265" it was held that;

A contract to buy coal ash in bulk from an Electricity Board is susceptible of specific performance. This is because it is a waste product not easily available in the market. Compensation in money is not an adequate relief in such case. However, coal-ash or fly-ash is movable property and is an article of ordinary commerce. So the reach of a contract in regard to it is capable

of being compensated in money. Injunction cannot be granted to prevent the breach of such a contract.

**e. Conduct of party -**

For equitable relief of specific performance of agreement to sale, conduct of the party is relevant.

**10. Section 11:** lays down the Cases in which specific performance of contracts connected with trusts enforceable;

Except as otherwise provided in this Act, specific performance of a contract may, in the discretion of the court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

2. A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

**(a) Fetters to Exercise of discretion by trustee:-**

Where a trustee is directed to sell within a specified time, he cannot extend the time unless authorized by a competent court or the extension does not prejudice the beneficiary.

**(b) Jurisdiction of court to interfere with trustee's discretion:-**

Where a trustee has a discretionary power, its exercise by him cannot be restrained by the court so long as it is exercised reasonably and in good faith.

**11. Section 12** deals with Specific performance of part of contract:

**(a) Specific performance of part of contract where part unperformed is small:-**

Here a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

**(b) Bar in other cases of specific performance of part of contract:-**

The court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

**(c) Vendor's suit for specific performance of part separable and divisible:-**

Section 12(1) at the threshold bars specific performance of a part of a contract. The principle seems to be that when A promises to sell his house to B, B cannot seek to specific performance of half of the house, for then he without the consent of other party A, effects a novation of contract which plainly is impermissible.

But, it may so happen that A enters into contract for sale of a property owned by A and his sister. His sister does not join in the promise and later B seeks specific performance of the contract so far as it relates to A's share in the property. Then section 12 (1) has no application.

In a a case between Kartar Singh v. Harjinder singh reported in **AIR 1990 SC 854** :

The respondent and his sister owned some properties. He entered into a written agreement with the appellant of himself and on behalf of his sister for sale of all the said properties. It was specifically mentioned in the agreement that he had agreed to sell not only his entire share in the property, but also that of his sister and that he would be responsible for getting the sale deed executed from his sister. The sister refused to sell the property coming to her share. In the above context when the appellant filed a suit for specific performance of the said agreement, the Supreme Court held that the said case was not one covered by section 12 of the Specific Relief Act. The relevant observation of the Supreme Court runs as follows:-

“It clear from section 12 that it relates to the specific performance of a part of a contract. The present is not a case of the performance of a part of the contract but of the whole of the contract so far as the contracting party, namely, the respondent is concerned. Under the agreement, he had contracted to sell whole of his property. The two contracts viz., for the sale of his share and of his sister's share were separate and were severable from each other although they were incorporated in one agreement. In fact, there was no contract between the appellant and the respondent's sister and the only valid contract was with respondent in respect of his share in the property. As regards the difficulty pointed out by the High Court, namely, that the decree of specific

performance cannot be granted since the property will have to be partitioned, we are of the view that this is not a legal difficulty. Whenever a share in the property is sold the vendee has a right to apply for the partition of the property and get the share demarcated”.

Hence the Supreme Court granted specific performance regarding the said respondent's share alone in the property in the said case.

**(d) Claim to compensation when disallowed: falsa demonstratio non nocet-False description does not render a deed or other writing inoperative:-**

If there be a description of the property sufficient to render certain what is intended, the additional of the wrong name or of an erroneous statement as to quantity, occupancy, locality are an erroneous enumeration of particulars will have no effect. In a case between **Tata Industrial Bank V.Rustomji** reported in **A.I.R 1920 Bombay 1960**;

The plaintiff contracted to purchase 'Meadows Street Property' for Rs.7 lakhs. The property was described both by name and by boundaries. The area was specified to be 1,480 sq. Yards, but was actually found to be only 1,280 sq. yards. The plaintiff claimed specific performance with compensation under section 14.

Held: (I) The subject-matter of the sale was 'Meadows Street Property' and the area mentioned was only a "false demonstration" so that there was no failure on the part of the vendor to perform the whole of the contract.

**12. Section 13 of the Act deals with Rights of the purchaser or lessee against person with no title or imperfect title.**

This section specifies the remedies of a person who finds that he has entered into a contract in regard to immovable property with one who has only an imperfect title there to. The contract in question should be one for the execution of a sale or lease and so an agreement or mortgage is not governed by this section. This section is analogous to the doctrine of estoppel embodied in section 43 of transfer of Property Act.

**(a) What is imperfect title:-**

A defect of title one which exposes the purchaser to adverse claims

to the land.

It has been held by the Hon'ble High Court of Delhi in a case between "Chandrani v. Om shankar" reported in AIR 1987 Del. 194 that;

Where in an agreement for sale the intending vendor recites that he is the absolute owner of the property, in a suit against him for specific performance, he is estopped from contending that the property belongs to the joint Hindu family of which he is kartha. Hence, the decree for specific performance can be granted against him.

13. **Section 14** of the Act which specifies the contracts which are not specifically enforceable. The old Section is substituted by the new one which aims to retain only some of the unamended clauses. It states that only such contracts are not specifically enforceable where either (i) substituted performance in accordance with Section 20 of the Act has been obtained, or (ii) where the performance is of continuous duty which the courts cannot supervise; or (iii) where the contract is dependent on personal qualifications of parties that the court cannot enforce it of its material terms; and (iv) where the contract is determinable.

3. Insertion of a **new Section 14A** which deals with power of Courts to engage experts to assist the court on any specific issue involved in the suit. The provision is made to empower civil courts to engage an expert whose opinion or report will form part of the record of the suit and can be examined on the same. Court may further direct any person to give relevant information, or produce or provide to the expert access to any relevant document, goods or property for inspection.

14. **Section 15** of the Act which deals with the persons for or against contracts may be specifically enforced. The specific performance of contract may be obtained by:

- (a) Any party thereto;
- (b) The representative in interest or the principal of any party thereto;
- (c) the beneficiary of the contract in settlement of marriage or compromise of doubtful rights between the member of the same family.
- (d) Where the contract is entered by tenant for life the remainder man

- (e) Reversioner in possession
- (f) Reversioner in remainder
- (g) Where a company entered into a contract, the new company which arises out of amalgamation

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.

16. **Section 16** deals with the specific performance of a contract which cannot be enforced in favour of a person

(a) Who would not be entitled to recover compensation for its breach

(b) who has become incapable of performing or violates any essential part of contract which remains to be performed or acts in fraud or willfully acts at variance or in subversion of the relation intended to be established by the contract or who fails to ever and through that he has performed or as already been ready and willing to perform the essence of contract.

requirement stated in clause (c) of Section 16 to aver that the party is ready and willing to perform the essential terms of the contract has been done away with. Now, the party seeking specific performance only needs to prove the same and is not required to aver in the pleadings.

17. **Section 17** deals with contract to sell or let the property by anyone who has no title, not specifically enforceable. The contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessee who has entered into the contract to sell or let the property having knowledge that he is not having title to the property, who entered into the contract in good faith. This section equally applies to the movable property.

18. **Section 18** lays down that where the plaintiff seeks specific performance of the contract in writing in which the defendant sets up variation. The plaintiff cannot obtain the performance sought except with variation so set up, except in case of fraud, mistake of fact or misrepresentation where the object of parties were to produce a certain

legal result which the contract as framed is not calculated to produce and where the parties subsequent to the contract varied the terms.

17. In **Section 19** of the Act whereby provision has been made by inserting clause (ca) which enables specific performance of a contract to be enforced against a limited liability partnership which arises out of amalgamation when the limited liability partnership which had entered into a contract had got subsequently amalgamated with another limited liability partnership.

## **21. IMPORTANT PROPOSITION**

The important proposition applicable to the contracts relating to immovable

properties is time is not considered to be the essence of contract in the contracts for immovable property. That is the normal presumption it can be displaced only on proof of the express stipulation to the contrary and/or circumstances through which strongly indicate that the parties had in the forefront of their mind a particular time limit within which the contract is to be performed. The principles in this regard were succinctly stated by reviewing all the authorities on this aspect by the Honourable Supreme Court in a case between "**Chand Rani vs Kamal Rani** reported in **AIR 1993 SC 1742**. wherein it was held that;

“ even if the time is not the essence of the contract, the court may infer that it has to be performed in a reasonable time by having regard to the express terms of the contract, the nature of the property and the surrounding circumstances such as the object of making the contract. Though the general proposition of law is that time is not essence of the contract in the case of sale of immovable property, yet the parties intended to make time as essence under clause (1) of agreement”.

23. The remedies that could be granted as an alternative and supplemental to the relief of specific performance are dealt under sections 21 to 24 of the Act.

(a) There is a small amendment in **Section 21** (which deals with power to award compensation) wherein sub-section(1), the words "in addition to" have been substituted for the words "either in addition to, or in substitution of". This amendment is manifestation of the intention of the Legislature to

promote specific performance of contracts rather than claiming compensation in substitution of specific performance.

Sub-section (2) confers power on the court to award compensation for the breach of contract even though specific performance is refused for some reason or the other. The explanation to section 21 reinforces the idea that the Court can, in suitable cases, award compensation even where the contract has become one capable of specific performance, Sub-Section (3) empowers the court to award compensation for breach of contract in the interests of justice, however, Sub-section (4) emphasizes that the amount of compensation awarded shall be guided by the principles specified under section 73 of the Indian Contract Act. Sub-section(5) imposes an important restriction to the effect that no compensation shall be awarded unless the plaintiff has claimed it in the plaint. However the proviso enjoins that contemplates that the plaintiff may be allowed to amend the plaint on such terms as may be just for including the claim for compensation. The Honourable Supreme Court in a case between **“Jagdish Singh vs Natthu Singh”** reported in **AIR 1992 SC 1604** clarified the distinction between the amendment mentioned above the amendment by way of conversion of suit into one for damages. The Supreme Court observed thus;

“if the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance, the court will allow the amendment at any stage of the proceedings. That is a claim for compensation falling under section 21 of the Specific Relief Act and the amendment is one under the provision to sub-section (6). But, different and less liberal standards apply if what is sought by the amendment is the conversion of a suit for specific performance into one for damages for breach of contract in which case section 73 of the Contract Act is invoked. This amendment is under the discipline of order VI rule 117 of Code of Civil Procedure”.

The Honourable Apex Court also pointed out that in a case where the plaintiff, by his option, made the specific performance impossible, section 21 does not entitle him to seek damages. But, if it becomes impossible of performance for no fault of the plaintiff, then Section 21 enables the award of compensation in lieu of specific performance.

24. **Section 24** bars the plaintiff's right to sue for compensation for the breach of contract, once the suit for specific performance is dismissed. Hence, Section 21 makes it compulsory for the plaintiff to claim compensation in the suit for specific performance itself. But, it does not bar his right to sue for other reliefs which he is entitled by reason of such breach, such as refund of money already paid.

25. **Section 23** enacts the principle that the stipulation of liquidated damages in the event of breach of contract is not a bar to specific performance. However, before applying the same, the court must be satisfied that the liquidated damages was named only for the purpose of securing the performance of the contract and not the purpose of giving the party in default an option of paying money in lieu of specific performance.

26. **Section 22 enables** the person suing for specific performance of contract for transfer of immovable property to ask in an appropriate case, for possession or partition or separate possession in addition to specific performance. The Honourable Supreme Court in a case between **Babu Lal vs Hazari Lal Kishori Lal & Ors** reported in **AIR 1982 SC 818 held that**

Expression in “appropriate case” occurring in sub-section (1) of section 21 is very significant and that in a contract of sale, the relief of possession need not always be asked for. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter without specifically providing for delivery of possession may give complete relief to the decree holder. In order to satisfy the decree against him completely, the vendor is bound not only to execute the sale deed but also to put the property in possession of decree holder. The Hon'ble Supreme Court at the same time pointed out that there may be circumstances a relief for possession cannot be effectively granted to the decree holder without specifically claiming the relief for possession.

### **CASE LAW**

1. Section 16 and 20 Specific performance of agreement of sale – Time not essence of court – Failure of appellant – vendee to pay the balance of sale consideration within stipulated time – Grant of relief of specific performance which is an equitable remedy – Discretion of Court – Discretion be exercised in a proper and judicious manner as per guidelines furnished in section 20 – Respondent agreed to sell the land to clear loans due to Bank and other creditors – Agreement stipulated that appellant -

vendee should pay certain amount out of sale consideration directly to bank by a certain date – Nothing to show that appellant made any efforts to pay the said amount to bank either by that date or at any time thereafter due to default committed by appellant, respondent discharged bank loan by mortgaging his and his relations' properties – Non – payment of amount by appellant resulted in accumulation of interest – Non – remittance of amount to bank by appellant up to date of filing of suit which is more than two years from due date indicating that he was neither ready nor willing to discharge his obligation – Evidence of appellant's witness itself showing that the witness canceled the agreement of sale entered into by him with appellant due to non-payment of consideration – the said evidence demonstrating absence of readiness or willingness to pay the balance of sale consideration on the part of appellant – In such circumstance of the case, court can exercise its discretion and refuse relief of specific performance sought by appellant – Dismissal of suit by appellant court – Upheld. Shaik Mahaboob Sahab v. K. Nageswara Rao; 2008 (3) ALT 144.

2. Hon'ble Apex Court in **Panchanan Dhara and Others vs. Monmatha Nath Maity (Dead) Through LRs. and Another**, reported in **(2006)5 SCC 340**, has specifically held that

"a plea of limitation is a mixed question of law and fact. The question as to whether a suit for specific performance of contract will be barred by limitation or not would not only depend upon the nature of the agreement but also on the conduct of the parties and also as to how they understood the terms and conditions of the agreement."

In this judgment, Hon'ble Apex Court has further held that

while determining the applicability of the first or the second part of Article 54 of the Limitation Act, 1963, the court will firstly see as to whether any time was fixed for performance of the agreement of sale and if it was so fixed, whether the suit was filed beyond the prescribed period unless any case of extension of time for performance was pleaded and established. When, however, no time is fixed for performance of contract, the court may determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract and

in that event the suit is required to be filed within a period of three years therefrom.

3. In a case between **PARAKUNNAN VEETILL JOSEPH'S SON MATHEW vs. NEDUMBARA KURUVILA'S SON AND OTHERS**, reported in "1987 (Supp) **SCC 340**, Apex Court having examined the scope and ambit of Section 20 of the Act has held as follows:

Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff."

4. In a case between **GOBIND RAM vs. GIAN CHAND**, reported in (2000) 7 **SCC 548**, Apex Court has held as follows:

It is the settled position of law that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the court and the court has to consider whether it will be fair, just and equitable. The court is guided by principle of justice, equity and good conscience. As stated in "**P.V. Joseph's Son Mathew** (1987 Supp SCC 340) the court should meticulously consider all facts and circumstances of the case and motive behind the litigation should also be considered."

5. In a case between "**BAL KRISHNA AND ANOTHER vs. BHAGWAN DAS (DEAD) BY LRS. AND OTHERS**", reported in (2008) 12 **SCC 145**, the Hon'ble Apex Court has held as follows:

" It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take

into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void."

6. It was observed by the Hon'ble High Court in Nallam Seeta Mahalakshmi and Ors. Vs. Talari Vijayalakshmi, reported in 2005(4)ALD130).

The jurisdiction to decree specific relief is discretionary and the Court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the Court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the Court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the Court would desist from granting a decree to the plaintiff."

### **CONCLUSION:**

One of the greatest hurdles in administering justice is delay. Delay in justice needs to be tackled by joint efforts of all stakeholders. Advocates are 'officers' of the court and have an equally important contribution for early and effective resolution of disputes. They must draft pleadings (plaint and written statement) in such a way that there is little room for ambiguity and the cause of action becomes instantly evident. The right sought to be enforced or protected must be stated in clear terms, alongwith events throwing light on the threat of infringement. The pleadings must set-forth

sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. Unnecessary adjournments should be avoided. Hon-ble Justice Warren Burger, the former Chief Justice of the American Supreme Court observed: "The harsh truth is that we may be on our way to a society overrun by hordes of lawyers, hungry as locusts, and bridges of judges in numbers never before contemplated. The notion that ordinary people want black-robed judges, well-dressed lawyers, fine-paneled courtrooms as the setting to resolve their disputes, is not correct. People with legal problems like people with pain, want relief and they want it as quickly and inexpensively as possible."

Smt. K.K.S.Latha

Junior Civil Judge,  
Palasa.