

PAPER PRESENTATION
ON THE
TOPIC OF

THE CONTOURS OF SPECIFIC
PERFORMANCE OF CONTRACT

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THE CONTOURS OF SPECIFIC PERFORMANCE OF CONTRACT

INTRODUCTION:

The Specific Relief Act, 1963, an act comprising almost 70% of the civil litigation in the subordinate courts in India, the specific Relief Act mainly aims at the exact fulfillment of an obligation. And deals with the concept of protection of right and prevention of wrong. The Reliefs provided thereunder are equitable reliefs. Generally where a breach has been committed by one party, the other party is having the following remedies to pursue:

1. Rescission of contract,
2. Suit for Damages,
3. Suit for Specific Performance,
4. Suit for Injunction

SPECIFIC PERFORMANCE OF CONTRACT:

The specific performance is also an equitable relief. The plaintiff seeking this remedy must first satisfy the court that the normal remedy of damages is inadequate, the presumption being that in cases of contracts for transfer of immovable property , damages will not be adequate. Even in these cases specific performance is not always granted, as it is a discretionary remedy.

Section 10 of the Specific Relief Act, 1963:

Cases in which specific performance of contract enforceable:

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

- (a) Where there exists no standard for ascertaining 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.”

NO STANDARD FOR ASCERTAINING ACTUAL DAMAGE:

Compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach. Where there is uncertainty of calculation of damages in cases where they cannot be based on anything. Thus, where A agrees to buy, and B agrees to sell, a rare antique sculpture, A may compel B specifically to perform this contract, for, there is no standard for ascertaining the actual damage caused.

A stipulation in the contract to be liable to repay the amount paid and to pay compensation if the promiser commits a breach, does not dis entitle the person, from filing a suit for specific performance. And does not take away his right.

COMPENSATION IN MONEY IS NOT ADEQUATE RELIEF:

Specific performance will not be granted where compensation is an adequate relief. Damages may be considered to be an inadequate remedy. If it is difficult to quantify them. Eg:

1. Where the subject matter of the contract is an immovable property.
2. Where the subject matter of the contract is movable property and, Such property or goods are not an ordinary article of commerce i.e. which could be sold or purchased in the market. Or the article is of special value or interest to the plaintiff.
3. The article is of such nature that is not easily available in the market.
4. The property or goods held by the defendant as an agent or trustee of the plaintiff.

CONTRACTS TO TRANSFER IMMOVABLE PROPERTIES:

It is considered that breach of contract for transfer of land cannot be adequately compensated in money because it may not be a complete remedy to the purchaser, to whom the land might have been of peculiar and special value.

CONTRACTS TO TRANSFER MOVABLE PROPERTIES:

A contract to deliver specific goods will be enforced by way of specific performance if they are not ordinary articles of commerce, or of special value to the party or are rarely available, or when the goods are held by the Party as a trustee or agent.

PRESUMPTION

This section raises a presumption that compensation would not be adequate in the case of transfer of immovable property, and it would be adequate in case of breach of transfer of movable property. Thus, the party alleging compensation is not adequate relief must prove it.

Section 12 of the Specific Relief Act, 1963:

Specific performance of part of contract

- (1) Except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract.
- (2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by 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.
- (3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either
 - (a) forms a considerable part of the whole, though admitting of compensation in money; or
 - (b) does not admit of compensation in money, he is not entitled to obtain a decree for specific performance; but the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party
 - (i) in a case falling under clause (a), pays or has paid the agreed consideration for the

whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), [pays or had paid] the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part. Explanation. For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.

A court will not, as a general rule, compel specific performance of a contract unless it can execute the whole contract. This section deals with classes of cases in which specific performance may be granted with or subject to special conditions or restrictions. When a part of the contract is not capable of performance is always whether the contract can be executed in substance. This provision can be invoked only where terms of the contract permit segregation of interests and rights of parties in the property, and if not this provision cannot be invoked.

Section 14 of the Specific Reliefs Act, 1963

provides for certain circumstances wherein a contract cannot be specifically performed. These have been discussed as follows:-

Contracts which cannot be specifically enforced:

1. Contracts where breach can be compensated by money:

Contracts, the non-performance of which can sufficiently be compensated by the payment of damages cannot be specifically performed as per S. 14(a) of the Act. For example, a contract for the supply of commodities is generally not specifically enforceable. For example contract for sale of ordinary goods.

2. Where Specific Performance of material terms cannot be enforced:

Section 14 (b) states that A contract which runs into such minute or numerous

details or which is so dependent on the personal qualifications or volition of the parties or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms. For example a contract for personal service.

3. A contract which is in its nature determinable:

Determinable contract means a contract which can be determined or revoked or put to an end by a party to the contract. For example in case of partnership at will any partner can retire by giving notice in writing to other partners and can dissolve the firm.

4. Contracts which involve the performance of continuous duty which court cannot supervise:

Earlier under Specific Relief act, 1877 the continuous duty which court cannot supervise is considered over a period of 3 years which was omitted under Specific Relief Act, 1963 and no time limit restricted for the performance of a continuous duty. These include contract of appointment of employees for continuous service.

5. Contract of arbitration:

According to Section 14(2), a contract to refer present or future differences to arbitration shall not be specifically enforceable.

Section 14(3) of the Specific Relief Act, 1963:

The court may enforce specific performance in the following cases:

1. A contract to execute a mortgage or furnish other security for repayment of any loan which the borrower is not willing to repay at once, the court would grant specific performance to execute mortgage or to give any other security.
2. A contract to take up and pay for any debentures of a company.
3. A contract to execute a formal deed of partnership at will when the business has already commenced.
4. A contract for the construction of any building or the execution of any other work on land if; Details or the terms of the contract has been sufficiently explained & the court can determine the exact nature of building or work.
5. The plaintiff has a substantial interest in performance of the contract and compensation in money is not an adequate relief.

6. The defendant has in accordance with the contract, obtained possession of whole or part of the land on which the building is to be constructed or other work is to be executed.

Section 16 in The Specific Relief Act, 1963:

Personal bars to the relief of specific performance. Specific performance of a contract cannot be enforced in favour of a person:

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation:

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

The Hon'ble Supreme Court of India, in a recent judgment laid down requirements for the parties in their respective pleadings, and proof with evidence in accordance with law in suit for specific performance in *Kamal Kumar V Premlata Joshi & Ors, Civil Appeal No. 4453 Of 2009, 7th Of January 2019*. held as under:

“It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property; Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; Third, whether the plaintiff has, in fact,

performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.

In our opinion, the aforementioned questions are part of the statutory requirements (See Sections 16 (c), 20, 21, 22, 23 of the [Specific Relief Act, 1963](#) and the forms 47/48 of Appendix A to C of the Code of Civil Procedure). These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.”

In this case, the appellant filed a civil suit against the respondents claiming specific performance of contract in relation to the suit property, which was contested by the latter. The trial court dismissed the suit. The appellant felt aggrieved and filed first appeal before the Hon'ble High court. The Hon'ble High Court dismissed the appeal and affirmed the trial court's judgment and decree, and the same was challenged by way of special leave before the Hon'ble Apex Court. While allowing the appeal, the Hon'ble Supreme Court listed out requirements to be met in a specific performance suit as under:

1. Whether a valid and concluded contract exists between the parties for sale/purchase of the suit property?
2. Whether the plaintiff has been ready and willing to perform their part of contract and whether they are still ready and willing to perform their part as mentioned in the contract?
3. Whether the plaintiff has, in fact, performed their part of the contract and, if so, how and to what extent, and in what manner they have performed. And whether such performance was in conformity with the terms of the contract.
4. Whether it will be equitable to grant the relief of specific performance to the

plaintiff against the defendant in relation to the suit property. Or will it cause hardship to the defendant and, if so, how and in what manner and extent if such relief is eventually granted to the plaintiff?

5. Whether the plaintiff is entitled to the grant of any alternative relief. and, if so, on what grounds?

The Hon'ble Supreme Court held that these requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. Only then can the court can exercise its discretion and grant or refuse the relief of specific performance.

Readiness And Willingness:

The Hon'ble Supreme Court of India in **(1996) 4 SCC 526** in ***His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar*** Held as under “*There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. The factum of readiness and willingness to perform plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.*”
