

CONTOURS OF RELIEF OF SPECIFIC PERFORMANCE OF CONTRACTS

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Contract law plays a pivotal role in the society as almost all exchanges between persons and enterprises alike, come within the ambit & are regulated of Law of Contracts. This is the basis of all commercial interactions & all legislations relating to trade & commerce. But for the existence of statutory provisions pertaining to contract law, many a private, voluntarily made agreements wouldn't be enforceable due to lack of legal force. Also, it is appropriate to state that contract law is quintessential to transactions relating to goods & services.

The term contract is defined in Sec.2(h) of the Indian Contract Act, 1872 as "An agreement enforceable by law is a contract". Thus for the formation of a contract, there must be – (1) an agreement and (2) the agreement should be enforceable by law. The conditions of enforceability are stated in Sec.10 of the Indian Contract Act. According to this section, an agreement is a contract when it is made for some consideration, between parties who are competent, with their free consent and for a lawful object.

The Specific Relief Act provides for specific reliefs. Specific relief means relief of certain species, i.e. an exact or particular, a named, fixed or determined relief. The term is generally understood and providing relief of a specific kind rather than a general relief or damages or compensation. It is a remedy which aims at the exact fulfillment of an obligation or specific performance of the contract. For instance if somebody unlawfully dispossesses someone of his property, the general relief may be requiring the defendant to pay the other party compensation equivalent to the loss suffered by him due to dispossession. Specific relief may enable to have the possession of the same property over again by requiring the defendant to restore possession of the property. Specific performance is generally granted when there exist no standard for ascertaining actual damages, for instance the object of the sale is picture by the dead painter, or where compensation in money will not provide adequate relief to the plaintiff.

Law is of three categories. They are with regard to rights, remedies and procedure. The Law of Specific Relief belongs to the second category. It is a law which deals with 'Remedies'. The term 'relief' is only another word for remedy which a Court is allowed by law to grant to suitors. The Specific Relief Act deals with the following topics. They are

- (i) Recovery of Possession of Property (Sec 5-8)
- (ii) Specific Performance of Contract (Sec 9 - 25)
- (iii) Rectification of Instruments (Sec 26)
- (iv) Rescission of Contract (Sec 27 – 30)
- (v) Cancellation of Instruments (Sec 31 -33)
- (vi) Declaratory Decrees (Sec 34 & 35)
- (vii) Preventive Relief (Sec 36 - 44)

Recovery of possession of property:

Recovery of Possession is dealt with in Sections 5 to 8 of Chapter II of the Specific Relief Act. Here property may be immovable property or movable property, act provides for the recovery of the property. Section 5 and Section 6 deals with the immovable property and Section 7 and Section 8 deals with the movable property.

Section 5. -- Recovery of specific immovable property:

Section 5 of the Specific Relief Act deals with the recovery of specific immovable property. The section in simple words provides that any person who is lawful owner of immovable property can get the possession of such property by due course of law by filling the suit as per provisions of CPC. He may file suit for ejectment on the strength of his title and can get a decree for ejectment on the basis of title within 12 years of the date of possession. Section 5 of the Act declares that in a suit for the recovery of immovable property by person 'entitled to' provisions Order XXI, Rules 35 and 36 of CPC would apply. There are three types of actions which can be brought in law for the recovery of specific immovable property:

- (i). a suit based on title by ownership;
- (ii). a suit based on possessory title; and
- (iii). a suit based merely on the previous possession of the plaintiff, where he has been dispossessed without his consent, otherwise than in due course of law.

The last remedy is provided in Section 6 of the Act. The suits of the first two types can be filed under the provisions of the Civil Procedure Code. The word 'entitled to possession' means having a legal right to title to possession on the basis of ownership of which the claimant has been dispossessed. Plaintiff must show that he had possession before the alleged trespasser got possession. In *Ismail Ariff v. Mohammed Ghouse*, the Privy Council held, "the possession of the plaintiff was sufficient evidence as title of owner against the defendant by Section 6 of Specific Relief Act, if the plaintiff had been dispossessed otherwise than in due course of law." There may be title by contract, inheritance, and prescription or even by possession and the last will prevail where no preferable title is shown.

Section 6. – Suit by person dispossessed of immovable property.

Section 6 of the act deals with the suit by person dispossessed of immovable property.-

Sec.6 of Specific Relief Act:

6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, **through whom he has been in possession or any person** may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

The main object of Section 6 is to discourage forcible dispossession on the principle that disputed rights are to be decided by due process of law and no one should be allowed to take law into his own hands, however good his title may be. The operation of Section is not excluded in cases between landlords and tenants where there is no question of title involved. The Section 6 provide summary and speedy remedy through the medium of Civil Court for the restoration of possession to a party dispossessed by another, within 6 months of its dispossession, leaving them to fight out the question of their respective titles in a competent Court if they are so advised. The object of the Section has been beautifully summed up by Mi□ar,J. in *Khojah Enaetohal v. Kissen Saonder*. The object of this Section appears to have been to give special remedy to the party illegally dispossessed by depriving the dispossessor of the privilege of proving a better title to the land in dispute. Section 6 should be read as part of Limitation Act and its object to put an additional restraint upon illegal dispossession with a view to prevent the author of that dispossession, from getting rid of the operation of the Act by his unlawful conduct. If the suit is brought within the period prescribed by that Section, even the right owner of the land is precluded from showing his title.

As per the new amendment, the Parliament has widened its scope by specifying that a suit for recovery of possession under Section 6 of the Act may be filed either by the person who was dispossessed without his consent or any person "through whom he has been in possession" or any person claiming through that person. Before the amendment, only the person who had been wrongly dispossessed or any person claiming through him could have filed this type of suit. Now, even a person **through whom the aggrieved person had**

been in possession of the immovable property, may file a suit under Section 6 of the Act.

Specific Performance of contracts:

Specific performance is an equitable relief given by a court in case of breach of contract in the form of a judgment that the defendant is to actually perform the contract according to its terms and stipulations. Section 37 of the Indian Contract Act says that “the parties to a contract must either perform or offer to perform their respective promises does each party is bound to perform his obligation under the contract unless the performance is dispensed with or excused under the provisions of the Contract Act, or of any other law”.

From every contract, there immediately and directly results an obligation on each of the contracting parties towards the other to perform such the terms of the contract as he has undertaken to perform. And if the person, on whom this obligation rests, fails to discharge it, there results in morality to the other party a right at his election whether to insist on the actual performance of the contract or to obtain satisfaction for the non-performance of it. Consequently, whenever a man comes under a liability to do or forbear from doing anything, he remains under an obligation. This liability may be a consequence of either a contract or a tort. An obligation to forbear is a positive duty generally imposed by a contract. This form of Specific Relief is described as “the specific performance of contract”.

Section 10 of the Specific Relief Act, 1963:

New Section: “10. The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16.”

Old Section: 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) *when 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.*

Old Section 10 of the Act provides the conditions where the specific performance of contract is enforceable. According to the section the specific

performance of any contract may, in the discretion of the court, be enforced when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done or when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. The explanation to the section states that the court in case of immovable property shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and 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.

However, by way of the amendment through the Specific Relief (Amendment) Act, 2018 all the discretion in court is taken away by the Parliament by stating that the specific performance of a contract "shall be enforced" by the court subject to provisions contained in sub-section (2) of Section 11, Section 14 and Section 16 of the Specific Relief Act, 1963.

The whole object behind this amendment seems to aim at **strict enforcement of specific performance of contracts** not necessarily dealing with transfer of immovable properties or other cases of transfer of movable properties as referred in the Explanation to the unamended provision. Therefore, the Bill seeks to permit specific performance by courts as a general rule.

The amendment in this Section seems to have been moved to remove uncertainty in the performance of contracts in order to encourage parties to enter into developmental agreements and promote infrastructural projects for rapid economic growth of the nation.

The Constitution Bench in the case of ***Chand Rani v. Kamal Rani, [1993 (1) SCC 519]*** held that that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. However, even in case if time is not the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are : (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances. In other words the Court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be

exercised. It is therefore evident that there is legal presumption, although rebuttable, that breach of a contract to transfer immovable property cannot be adequately compensated in money. Consequently once a contract to transfer immovable property is proved, the rule should be grant of specific performance and denial of the same may be an exception. It must also be said that it would be burden of defendants to demonstrate that the breach can be adequately compensated. The court also held that even when parties to contract have expressly provided time to be essence of contract then also such stipulation will have to be read along with other terms of contract as on proper construction of these terms may indicate towards excluding inference that the completion of work by particular date was meant to be fundamental.

Performance of trusts:

Section 11(1) provides another circumstance in which contracts **shall be** specifically enforced. The creation of a trust imposes a duty on the trustees, which may be enforced even by strangers to the transaction who may not have been in existence at its date, if they have an interest under the contract. Thus contracts connected with trusts **shall be** specifically enforced either at the instance of the beneficiaries or at the instance of the trustees.

Section 11(2), however, provides that a contract made by a trustees:

- (i) in excess of his powers, or
- (ii) in breach of trust,

cannot be specifically enforced.

In the first case it is beyond his competence and, in the second case, it is unlawful. "In breach of trust" means acting in violation of the duties and obligations imposed by the trust.

The third amendment is made to this section. The proposed amendment is similar to that in Section 10. Here again, the words "contract shall" instead of "contract may, in the discretion of the court" have been substituted. The amendment seeks to take away the discretion of courts and is aimed to guide the courts to mandatorily enforce specific performance.

Section 11(2), however, provides that a contract made by a trustees:

- (iii) in excess of his powers, or
- (iv) in breach of trust,

cannot be specifically enforced.

In the first case it is beyond his competence and, in the second case, it is unlawful. "In breach of trust" means acting in violation of the duties and obligations imposed by the trust.

Section 12 of the “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 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.*

(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 the 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 in a case falling under clause (b), pays or has 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.*

Section 12 deals with specific performance of a part of a contract. It provides in clause (1) that as a general rule, the court shall not grant specific performance of a part of a contract. The section, however, recognized in clauses (2) to (4) certain exceptions to the above rule. Whether specific performance of a part of the contract is to be ordered or not has been wholly left by the section to one deciding factor, namely, the proportion the part which can be performed bears to that which cannot be performed. Where the part which cannot be performed bears only a small proportion to the whole in value and the unperformed part can be compensated adequately in terms of money, the court may order specific performance of one part and compensation for the other.

A slightly different principle comes into play where the part which cannot be performed forms a considerable part of the whole. In such cases the court has first to see whether the major part which has to be left out admits of money compensation or does not do so. If the unperformed portion can be compensated in terms of money the court may order specific performance of the rest, provided that the party seeking relief has paid his consideration under the contract as

reduced by the amount of compensation for the unperformed portion. Where the matter does not admit of compensation the court may order specific performance only when the party seeking relief has paid his whole consideration without any reduction whatsoever.

Where the part that would remain unperformed does not admit of compensation in terms of money, the court would order specific performance only if the party seeking performance undertakes to pay the consideration for the whole of the contract without any abatement. In either situation, the party seeking performance of a part of a contract has to relinquish all claims to the performance of the remaining part and also all rights to compensation either for the deficiency or for any loss or damage sustained through the defendant's default as to performance.

Where a contract was incapable of being performed and a party categorically refused to accept part-performance, it was held that there was no readiness and willingness at all stages to accept part-performance, therefore such a party could not be permitted later to change its position and elect to accept part-performance. The court said:

“In cases where a contract is not capable of being performed in whole then the readiness and willingness, at all stages, is the readiness and willingness to accept part-performance. If a contract is not capable of being accept part-performance, then there is no readiness and willingness, at all stages, to accept part-performance. In that case there can be no specific performance of a part of the contract at a later stage”.

The requirements of the section were stated by the Supreme Court as follows in ***Manzoor Ahmed Magray v. Ghulam Hassan Aram (1999) 7 SCC 703 = AIR 2000 SC 191.***

The requirements which would attract specific performance of the part of the contract under the latter part of sub-section (3) of Section 12 are:

- (i) if a party to an agreement is unable to perform a part of the contract, he is to be treated as defaulting party to that extent, and*
- (ii) the other party to an agreement must, in a suit for such specific performance, either pay or have paid the whole of the agreed amount, for that part of the contract which is capable of being performed by the defaulting party and also relinquish his claim in respect of the other part of the contract which the defaulting party is not capable of performing and relinquishes the claim of compensation in respect of loss sustained by him. If such ingredients are satisfied, the discretionary relief of specific performance is ordinarily granted unless there is delay or laches or any other disability on the part of the other party.*

Illustrations as to Explanation-(a) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b) in consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his house and killed. B's representative may be compelled to pay the purchase-money.

The whole of the property belonging to the joint owners was contracted to be sold. One of them was minor whose share was to be transferred on obtaining court permission. Such permission could not be obtained. The vendee claimed specific performance of that part of the property which belonged to the adult joint-owners. It was held that since they could transfer their shares in the property and they being owners of definite shares and no court permission being necessary for that purpose, the decree was granted. The contract was not of contingent nature. It was nowhere provided that the contract was to become void or unenforceable on the failure of the court permission.

Section 13(1) in The Specific Relief Act, 1963: (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:—

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

Section 13 deals with the rights of a purchaser or lessee against a person with no title or imperfect title. The idea underlying this section is that when a person enters into a contract without the power for performing that contract and subsequently he acquires the power of performing the same, he is bound to do

so. This section is, however, limited to contracts to sell or let property. This result may not necessarily follow particularly where the purchaser was aware of the lack of title. In this case, seller was the cultivating tenant of the land in question. The purchaser (Plaintiff) from him as very much aware that he had no title. Court said that such purchaser had no right to seek specific enforcement of the agreement to sell. Even subsequent acquisition of title by the seller would not enure to the benefit of such purchaser, because he could not say that he had come with clean hands.

The different clause of section 13 affect the remedy of the buyer and the obligation of the seller. The section comes into play when the seller of immovable property has no title or only an imperfect title. If he acquires an interest in the property subsequently, the purchaser can compel him to make good the contract out of such interest. Where concurrence of or conveyance by some other person is necessary to enable the vendor to validate his transfer, and if that person is bound to concur at the direction of the vendor, the purchaser can compel the vendor to procure such concurrence and validate the transfer. Where the vendor purported to sell the property as free from any encumbrance, etc., but the property is in fact subject to a mortgage and, if the amount of the mortgage is equal to the sale price, the buyer may compel the vendor to redeem the mortgage and transfer the property to him free from the mortgage. Where the contract of transfer the property to the responsibility of the vendor to apply for and to get the agricultural land converted into non-agricultural use and though he had not obtained such permission, the land in question was held to be specifically recoverable from him when, by virtue of an intervening statutory enactment, the vendee was able to get the land converted to his use. Where the vendor sues the buyer for specific performance and the suit is dismissed on the ground of want of title or imperfect title, the vendee would be entitled to refund of his deposit along with interest and also costs and this claim will operate as a charge upon the interest, if any, of the vendor in the property.

Contracts which cannot be specifically enforceable:

Old Sec.14. Contracts not specifically enforceable.—

(1) The following contracts cannot be specifically enforced, namely:—

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) 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;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an

arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—

(a) where the suit is for the enforcement of a contract,—

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for,—

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm;

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land: Provided that the following conditions are fulfilled, namely:—

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

New Sec.14:

“14. The following contracts cannot be specifically enforced, namely:—

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and

(d) a contract which is in its nature determinable.

14A. (1) Without prejudice to the generality of the provisions contained in the Code of Civil Procedure, 1908, in any suit under this Act, where the court considers it necessary to get expert opinion to assist it on any specific issue involved in the suit, it may engage one or more experts and direct to report to it on such issue and may secure attendance of the expert for providing evidence, including production of documents on the issue.

(2) The court may require or direct any person to give relevant information to the expert or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(3) The opinion or report given by the expert shall form part of the record of the suit; and the court, or with the permission of the court any of the parties to the suit, may examine the expert personally in open court on any of the matters referred to him or mentioned in his opinion or report, or as to his opinion or report, or as to the manner in which he has made the inspection.

(4) The expert shall be entitled to such fee, cost or expense as the court may fix, which shall be payable by the parties in such proportion, and at such time, as the court may direct.”

The fourth amendment is in 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.

The fifth amendment is 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. However, it would be interesting to see how courts will use this provision for achieving the ends. Also, the provision saves the other provisions of the Code of Civil Procedure, 1908 on this aspect.

Who can obtain Specific performance:

Sec.15. Who may obtain specific performance.—

Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto: Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

“(fa) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.”.

(g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

It is a general rule that a contract cannot be got enforced except by a party to the contract. This general rule is embodied in clause (a) of Section 15. But there are certain exceptions to this general rule. These exceptions are contained in clause (b) to (h) of the section and contain list of persons who although not a party to the contract, are entitled to obtain specific performance of contract.

These are:

- 1) A representative in interest or the principal thereto.
- 2) Any person beneficially entitled
- 3) The remainder man
- 4) A reversioner in possession
- 5) A reversioner in remainder
- 6) The amalgamated company
- 7) The company

Other situation where contract can be enforced by any person other than the party thereto are where:

- 1) A trust is created in favour of a stranger by the contract.
- 2) The promisor constitutes himself as agent for the stranger.
- 3) It is so provided by a marriage settlement
- 4) The contract itself provides for maintenance
- 5) The contract itself provides for marriage expenses.
- 6) The aim of contract itself is to benefit a stranger.
- 7) A change is created in favour of a stranger by the contract etc.

The sixth amendment 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.

Old Sec.16. Personal bars to relief.—

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.—For the purposes of clause (c),—*

*(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.*

New Sec.16. Personal bars to relief.—

Specific performance of a contract cannot be enforced in favour of a person—

(a) who has obtained substituted performance of contract under Sec.20.

(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 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.—For the purposes of clause (c),—

(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 prove** performance of, or readiness and willingness to perform, the contract according to its true construction.*

Section 16 of the Act has been amended as a consequence of the Parliament's approach to enforce specific performance irrespective of grant of damages or compensation as an alternative for breach or non-performance. Also, the 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. It would be interesting to note the effect of this amendment on the suits seeking specific performance as the courts were used to denying the relief of specific performance when the plaintiff failed to aver its readiness and willingness to perform the contract.

Before acting under Order 8, Rule 10 of the Civil Procedure Code, the court in a suit for specific performance has to scrutinise the facts set out in the plaintiff to find out whether all the requirements, in particular those indicated in section 16 of the Specific Relief Act regarding readiness and willingness, have been complied with or not as held in ***Syed Dastgir v. T.R. Gopalakrishna Setty* [(1999) 6 SCC 337]**. There has also to be a finding that all the requirements of an enforceable agreement are there. The Supreme Court has observed ***Dheeraj Developers (P) Ltd., v. Om Prakash Gupta* [(2016) 116 ALR 484]** that decreeing a suit for specific performance only on the basis of a finding that the agreement was genuine, is not proper, Several other aspects like readiness and willingness have also to be considered.

Ready and willing

Explanation II makes it necessary for a party claiming specific performance to aver and prove that he has been all the time ready and willing too perform his part of the contract. Continuous readiness and willingness to perform his part of the contract on the part of the plaintiff is a condition precedent for the grant of the relief. Where the plaintiff was found to be dabbling in real estate transaction without means to purchase the property and failed to pay the consideration money within the time given to him by the trial court, it was held

that he was not ready and willing to perform his part. Where a contract for sale of a house stipulated making of part-payment of purchase price within a specified period so as to enable the owner who was residing in the house to purchase a suitable residence by utilising the amount, it was held that the part-payment must be made within a reasonable time and failure to do so would seriously affect the proposed vendor's right to acquire and accommodation and show that the proposed vendee was not ready and willing to perform his part of the contract. The court said that the grant of a decree for specific performance in the circumstances would amount to an instrument of oppression giving an unfair advantage to the proposed vendee which the court should take care to avoid as held in ***P.R. Deb and Associates v. Sunanda Roy* [(1996) 4 SCC 423]**.

In a suit, for specific performance of a contract for sale of land, the readiness and willingness of plaintiff to perform his part of the contract is to be ascertained from his conduct and attending circumstances. Where the plaintiff neither had sufficient funds to pay the consideration amount nor was he acting promptly within the stipulated time where time was the essence of the contract, it was held that he was neither ready nor willing to perform his part of contract. Hence he was not entitled to a decree for specific performance of the contract as held in ***Acharya Swami Ganesh Dassji v. Sita Ram Thappar* [(1996) 4 SCC 526]**. The making of a conditional offer for payment of the stipulated amount does not fulfill the requirement of law contained in Forms 47 and 48 of Appendix A to the Civil Procedure Code. Depositing of any amount in the court at the appellate stage would not meet the requirement of Section 16(c).

Whether the land under sale was mortgaged to the bank and the buyer had agreed to pay back the loan and redeem the mortgage but he did nothing in that direction nor showed any inclination to do so, rather he was appropriating the usufruct of the land to himself, the Supreme Court held that he was not ready and willing to perform his part as held in ***R.K.Parvatharaj Gupta v. K.C.Jayadeva Reddy* [(2006) 2 SCC 428]**. Where the vendee sent a legal notice rescinding the contract and filed a suit for refund of advance paid and that was decreed by the trial court, his application for revision and for specific performance was dismissed. The court said that it would not lie in his mouth to say that he was ready and willing to go ahead with performance from his side as held in ***Pukhraj D Jain v. G. Gopalakrishna* [(2004) 7 SCC 252]**. Where the purchaser clearly averred his readiness and willingness to perform, the court said that it was not necessary for him to show his possession of money to the court. The Court found that the transferor was trying to scuttle the sale in favour of the transferee. He executed a sale in favour of his relative for a lesser amount who knew of the

earlier sale. Grant of relief of specific performance to the first purchaser was held to be proper as held in ***Usha v. Sukhdev Singh*** [AIR 2015 NOC 338 (P&H)].

A person who makes himself a party to an illegal contract cannot enforce his rights under this section.

Where one of the terms of an agreement for sale was that the appellants would withdraw their suit for specific performance and the suit was not withdrawn, it was held that the appellants-plaintiffs could not be said to be ready and willing to perform their part of the agreement. The finding in the ready and willing to perform their part of the agreement. The finding in the impugned judgment that the condition regarding withdrawal of the suit was a condition precedent, was also correct. As the appellants did not withdraw the suit they could not be said to be ready willing to perform their part of the agreement. For this reason also the claim for specific performance could not have been enforced as held in ***Bishandayal & Sons v. State of Orissa*** [(2001) SCC 555].

Sec.17. Contract to sell or let property by one who has no title, not specifically enforceable.—

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor—

(a) who, knowing not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

Where performance not possible without variation:

Sec.18. Non-enforcement except with variation.—

Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely:—

(a) where by fraud, mistake of fact or misrepresentation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract;

(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.

Where the contract is in writing and, as against the party seeking specific performance, the other party sets up the defence of variation, then in the following cases specific performance cannot be awarded:

(a) Where by reason of fraud, mistake of fact or misrepresentation, the written contract is different from what the parties agreed to, or does not contain all the terms on the basis of which they entered into the contract;

(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 varied the terms of the contract subsequent its execution.

In *K. Narendra v. Riviera apartments (P) Ltd.*, [(1999) 5 SCC 77 = AIR 1999 SC 2309], it is held that where a part of the property was inalienable on account of being excess land under a ceiling legislation and another part was inalienable because of acquisition of State, it was held that buyer could not seek specific performance of such a contract in respect of the remaining portion of the property only. The court said that such a situation was not covered by Sec.18.

Relief against parties, legal representatives or subsequent transferee

19. Relief against parties and persons claiming under them by subsequent title.—

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

“(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.”

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

Section 19 provides that the relief of specific performance can be obtained against the following parties.

1. against either party to the contract;
2. against any other person who claims title arising subsequently to the contract, but not against a transferee for value who paid for the property in good faith and without notice of the original contract;
3. against any person claiming under prior title which was known to the plaintiff, where the title was such that it could have been displaced by the defendant;
4. against a new company which arises out of the amalgamation of the transferor company;
5. against a company whose promoters entered into a contract for the purposes of the company before its incorporation, provided that the contract is warranted by the terms of the incorporation of the company.

The eighth amendment is 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.

Relief against legal representative

Section 19(b) provides that relief can be claimed against any person who claims title arising subsequently to the contract. This would not be so where the legal representative is not competent under the applicable personal law. A vendor died after entering into the agreement. After his death, his widow took further advance from the vendee. According to the Muslim Law applicable to the vendor, the widow (mother) is not the legal guardian of her minor children. The advance taken by her for alienation of the property of her minor children did not bind them. The court said that she could not be compelled to execute the sale on the advance taken by her as held in ***Amar Ahmad Khan v. Shamim Ahmad Khan*** [AIR 2012 Jhar 39].

Subsequent bona fide buyer:

Under Section 19(b) of the Specific Relief Act, 1963, a specific performance of a contract can be enforced not only against either party thereto but against any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of original contract. Further, Section 91 of the Indian Trusts Act, 1882 provides that where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which a specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract. In a case defendants 4 to 7 had notice of the contract between the plaintiff and defendant 1 and they were not bona fide purchasers, therefore, the High Court was quite justified in passing a decree against them as well as held in ***Vasantha Viswanadhan v. V.K. Elayalwar*** [(2001) 8 SCC 133].

In the case of a bona fide purchaser in good faith for value without notice of the original contract between persons in actual possession and owner of the property, it was held by the Supreme Court that in order to establish his bona fides such purchaser must show that he had made appropriate enquirers. The court said in ***R.K. Mohammed Ubaidullah v. Hajee C. Abdul Wahab*** [(2000) 6 SCC 402] that: "Section 19 (b) of the Specific Relief Act, 1963 protects the bona fide purchaser in good faith or value without notice of original contract. This protection is in the nature of an exception to the general rule. Hence, the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent purchaser. Good faith is a question of fact to be considered and decided on the

facts of each case. Section 52 of the Penal Code Clauses Act emphasis is laid on honesty.”

A transferee for value, who has paid his money in good faith and without notice of the original contract, is excluded from the purview of clause (b) of section 19 of the Specific Relief Act providing for specific performance against “any other person claiming under him by a title arising subsequently to the contract”. In order to fall within the excluded class, a transferee must show that:

- a) he has purchased for value the property (which is the subject-matter of the suit for specific performance of the contract);
- b) he has paid his money to the vendor in good faith; and
- c) he had no notice of the earlier contract for sale (specific performance of which is sought to be enforced against him);

Acquiring title during pendency of suit:

When a person purchases a property which had already been sold earlier and a suit about the sale is pending, he does not have the right to say that he is a bonafide buyer for value. Such transfer is hit by the principle of lispendence as held in ***Ceean International (P) Ltd., v. Ashok Surana [AIR 2003 Cal 263]***.

Pleadings : Form 47, 48 of Appendix A of CPC provides necessary ingredients in pleading the relief of specific performance.

Court Fee: The court fee shall be computed on the amount of the consideration as provided under Sec.39 of A.P.Court Fees & Suits Valuation Act.

Adding of parties & bonafide purchaser: Guidance on this aspect is available from the landmark judgment of Hon’ble Supreme Court in the case of ***Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & others [2010 LawSuit (SC) 431]***, in which discussion on the aspect of exercise of discretion while impleading parties was made.

“We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.

12.1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for nonjoinder of a necessary party.

12.2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary

party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

- 12.3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.*
- 12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the*

discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.”

Time whether essence of contract & limitation: Art.54 of Limitation Act prescribes the period of limitation for specific performance as three years from the date fixed for performance or if no such date is fixed, when the plaintiff has noticed that the performance is refused. In cases relating to immovable property, time is never essence of contract. Even then the Court has to look into express terms of the contract; nature of the property; and the surrounding circumstances in adjudicating the case. However the parties may intend to make as essence of contract; but this must be expressed in unequivocal language.

Impounding: It is a common practice that parties may often request the Court to send the unregistered agreement of sale for impounding. Sometimes inordinate delay may occur during the proceedings. Recently the Hon'ble High Court of Andhra Pradesh in the case of **Buddha Jagadeeswara Rao vs Sri Ravi Enterprises** referred to the case of **Y.Peda Venkaiah vs. RDO** wherein the Hon'ble High Court held that when original document was sent to the Collector at request of party u/s.38(2) of the Stamp Act by the Court, the trial of the case need not be stayed till the document is received back by the Court.

Alternative relief: The Plaintiff can seek alternative relief for refund of the advance sale consideration but this is subject to limitation.

Recent amendments : The Act is recently amended by virtue of which Sec.14A, 20A, 20B, 20C, 41(ha) are introduced. Gazette notification is also published and the Act came into force on 1st October, 2018.

Extension of time: As held in **Sujatha vs. B.Vykunta Rao [2000 (1) ALD 237]** the Court has power to extend time for deposit of balance sale consideration. Earlier there was divergence of opinion on this aspect.

Execution: It is interesting to note for academic discussion that there is a distinction between executing a decree for specific performance by filing an Execution petition and filing an Interlocutory Application. There is a specific provision i.e., Sec.28(3) of Specific Relief Act which provides that upon compliance of the Orders of the Court to deposit money, the Court may on the application in the same suit award such further relief including execution of proper conveyance, delivery of possession or partition or separate possession.

Return of documents: The Court must be quite vigilant while dealing with documents including return of documents after disposal of the suit. In this connection the Hon'ble High Court of Andhra Pradesh issued certain guidelines which are reproduced here:

Limitation: The prescribed period of limitation for a suit of specific performance is three years from the date fixed for performance, or, if no such date is fixed, when the plaintiff has noticed that performance has been refused.

Defences: Section 9 of the Specific Relief Act 1963 provides that except as provided in chapter two sections 9 to 25 all defences open under the law of contract shall be open to a defendant where any relief is claimed under this chapter in respect of a contract. Defences that are available under the law of contract such as incapacity of parties, the uncertainty of contracts, coercion, undue influence, fraud, misrepresentation, mistake, etc. have all been dealt with in the Indian Contract Act this section avoids their repetition in the Specific Relief Act. Thus it is necessary that the contract in question should be valid and enforceable. The supreme court refused to grant the relief of specific performance where the contract was in an alternative form and one form had failed to materialise and the other was void, being not enforceable by virtue of uncertainty. It was a contract of sale stipulating that if the co-seller failed to sign the sale deed then the principal seller would execute a sale deed to her own "one of two shares", otherwise pay back the advance and compensation in the same amount. The co-seller did not sign. The alternative for the promisor was either to sell his share or pay compensation. If she opted for compensation there was no breach and no question of specific performance, which was also not possible because her share was not defined nor was there any indication of the part of the lump sum consideration which was applicable to her share as held in ***Mayawanti v. Kaushalya Devi [(1990) 3 SCC 1]***.

A contingent contract to the effect that the mortgage house would be sold as soon as the mortgage was redeemed was held by the Supreme Court to be specifically enforceable on the redemption of the mortgage, though no relief could be provided on facts because the claim was filed more than 3 years after the date of redemption as held in ***Ramzan v. Hussaini [(1990) 1 SCC 104]***.

Privity of contract between the parties to the suit is also a thing of Cardinal importance for a decree of specific performance

Delay as ground of Defence under law of contract:

Where a suit was within the period of limitation, but delay had resulted in third parties acquiring rights in the subject matter of the suit or had given rise to a

plea of waiver it was held that it would provide grounds of defence in a suit for specific performance of contract for sale of immovable property

The aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property are

- i) delay running beyond the period prescribed under the limitation act
- ii) delay in cases where, though the suit is within the period of limitation, yet:
 - a) due to delay the third parties have acquired rights in the subject matter of the suit;
 - b) in the facts and circumstances of the case, delay may give rise to plea of waiver are otherwise it will be any inequitable to grant a discretionary relief.

Performance of Contingent contracts:

The expression “contingent contract” is defined in Sec.31 of the Indian Contract Act. It is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. It is a sort of conditional contract and the condition is of uncertain nature. A contract which is subject to a certain or an absolute type of condition cannot be regarded as a contingent contract. A contract for example to pay a sum of money on the expiry of its time or on the death of a person is not contingent contract because these events are of a certain nature.

Discretion:

For section 20 of the principal Act, the following sections shall be substituted, namely:—

“20. (1) Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872, and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.

(2) No substituted performance of contract under sub-section (1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency:

Provided that the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency.

(3) Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving

notice under sub-section (1), he shall not be entitled to claim relief of specific performance against the party in breach.

(4) Nothing in this section shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.

The ninth amendment is in Section 20 of the Act whereby the concept of **substituted performance** of contracts has been introduced. 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.

Sec.20A. (1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

Explanation.—For the purposes of this section, section 20B and clause (ha) of section 41, the expression “infrastructure project” means the category of projects and infrastructure Sub-Sectors specified in the Schedule.

(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.

(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

20B. The State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official

Gazette, one or more Civil Courts as Special Courts, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects.

20C. Notwithstanding anything contained in the Code of Civil Procedure, 1908, a suit filed under the provisions of this Act shall be disposed of by the court within a period of twelve months from the date of service of summons to the defendant:

Provided that the said period may be extended for a further period not exceeding six months in aggregate after recording reasons in writing for such extension by the court.”.

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 prohibits 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.

21. Power to award compensation in certain cases.—

*(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach **in addition to** such performance.*

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

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.

*25. Application of preceding sections to certain awards and testamentary directions to execute settlements.—The provisions of this Chapter as to contracts shall apply to awards to which **the Arbitration and Conciliation Act, 1996 (26 of 1996)**, does not apply and to directions in a will or codicil to execute a particular settlement.*

The amendment in Section 25 is a consequence of the introduction of the Arbitration and Conciliation Act, 1996 and repeal of the old Arbitration Act, 1940.

41. Injunction when refused.—An injunction cannot be granted—

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;*
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injunction is sought;*
- (c) to restrain any person from applying to any legislative body;*
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;*
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;*
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;*
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;*
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;*
- [(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.]***
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court; (j) when the plaintiff has no personal interest in the matter.*

There is a further amendment in Section 41 of the Act which enlists the situations in which an injunction cannot be granted. Clause (ha) has been inserted which provides that 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 facility related to such project or services being the subject-matter of such project.

These amendments made by the Parliament clearly show the intention of taking away the wide discretion of courts to grant specific performance and to make specific performance of contract a general rule. Moreover, the provisions introducing substituted performance of contracts and recovery of expenses and costs, including compensation, from the party in breach are made so that projects are not delayed and development is not hindered by breaches. Special provisions made in relation to infrastructure projects also carry the same

intention. The Amendment Act of 2018 has further empowered the courts to engage experts in specific cases. It would, however, be interesting to see the approach of courts while implementing the changes made in law through these amendments.

These are the brief aspects involved in the specific performance of the contract. With this I humbly conclude my presentation.

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