

### OUTLINE OF THE SPECIFIC RELIEF

Specific Relief is one of the incredible contribution made by equity to the words jurisprudence. generally relief implies once a remedy is granted by the court becomes a relief.(to remove burden) What is the nature of Specific Relief if would be expedient to make historical background to know this.

Remedies provided by common law in the early stage of the judicial ascension in England is based on the well known Latin Maxim "ubi remedium ibi jus" it means where there is remedy there is right and due to this rigidity was created in law. Examples :

no-1 the remedy available in case of breach of contract was only for compensation if the aggrieved party pleaded with the court that he should not be compensated but the contract should be complied with that is he would have been brought in the same situation in which the contract would not have been breached so at that time common law did not provide any remedy therefore they would empty handed disappointed. Another hand there may have been some cases where no rights have been violated but in future there may be violated. Such that person threatens another if he will not give him money then he will published defamatory statement against him so the court hair will not provided him with remedy for that anticipatory damage.

In other words based on the examples mentioned above the following short comings in the common law system were revealed.===

- (1)- No remedy in common in certain cases
- (2)- Remedy was not sufficient
- (3)- Procedure was very cumbersome

For seeking remedy people started making application to king. secretary of king started dealing with the applications later on he was known as chancellor. Secretary on behalf of king started giving remedy then the king thought why should not there be a court. Then King establishede Court of Equity based on fairness and Justice. The president of equity court was chancellor.

It must be noted hear that what exactly is the object of equity emergence so following are the statements of the prominent jurist in this regard---

According to professor Maitland the "equity came not to destroy but to complete the common law."

Redcliffe and Cross stated that " common law without equity would have been like a coat with holes in it while equity without the common law would be just the patches floating in the air."

## Specific Relief Act, 1963

The Specific Relief Act, 1963 is an amended form of the Specific Relief Act, 1877 which was repealed by the present act. The statement of object and reason appended to the new Act says that the Act seeks to implement the recommendation of the Law Commission contained in its ninth report on the Specific Relief Act, 1877, except in regard to Section 42 which is being retained as it now stands. Act received the assent of the president on December 3, 1963.

Specific Relief Act



Remedy granted by court is known as relief.

**Specific relief**- means the very thing are remedy which a person is entitled to get the relief "**in specie**" -:

The very thing

Example:- breach of contract the parties entered into a contract. The very thing is **performance of contract**. Normal remedy is one is the entitled to get compensation, but Specific Relief says that the **contract should be performed**.

The suitor has been intend the very thing and the very thing is performance of contract. Bentham has done the right thing :

"The law ought to assure me everything which is mine, without forcing me to accept equivalents, although I have no particular objections to them."

"Give me that which is mine"

Mine-- is performance of contract the remedy of damages is alternative relief but real relief is specific performance of contract.

For example:- the person is dispossessed from the possession or tenant is forcibly dispossessed. normal common law says contest the suit if you have better title. But Specific Relief says when one is thrown out then he should be get first the possession.

Second example X trespasses upon the house of Y, Y why has three remedies in the court of law, wiz:-

Number 1 Y can setup criminal proceedings against him.

Number 2 Suit for compensation in a Civil Court for the period of unlawful possession.

Number 3 A suit for recovery of possession and X "ejectment".

The remedy under third category is known as **Specific Relief** because Y obtains the very thing to which he is entitled while in the second category he gets the compensation and not recovery of possession.

## **Modes of Specific Relief**

1 taking possession(recovery of possession of property)

Immovable

movable(sec 7 & 8)

Title(sec 5). Possession(sec 6)and 2018

2 by ordering a party to do the act which he is obliged(sec 10 to 14).

3 by injunction(sec 36 to 42).

4 by declaratory decree(sec 35 & 35 ).

In addition to this classes of cases of an equitable relief the Act includes and provides for the followings

(I)rectification of instruments(sec 26).

(II) rescission of contracts(sec 28 to 30).

(III) cancellation of instruments(sec 31 to 33).

(IV) enforcementof public duties.

**Dr. Lalit Kishor Srivastava**

ASST. PROF. LUCKNOW UNIVERSITY

(GUEST FACULTY LAW)