

## **Study of sections 10 to 20 of the Specific Relief Act in light of the new amendment. (2018)**

In the case of breach of contract, one of the remedies that remains before the party is to obtain compensation and the other is to follow the Specific Performance of the Contract.

Here the question becomes worthy of consideration if in each case of breach of contract, the parties plead for specific performance of the contract. So the court may grant the specific performance of the contract in all those cases or not? Therefore, it is necessary that what scheme is given under the Act? The Specific Relief Act, 1963 expressly divides the provisions relating to Specific Performance into two categories. Those contract which are comes under the first category i.e.,” **which contract can be specifically enforced** “ and second category related to those contract **“which cannot be the specifically enforced.”**

Provisions touching these category spread over section 10 to 20 of Specific Relief Act, 1963 where sec.10 describe cases in which specific performance of contract can be enforced and at the same in section 14 describe contracts which cannot be specifically enforced .

It will also be necessary to mention that a significant amendments have been made in the Special Relief Act in 2018. It is one of the most important amendment in the Act as it has made specific performance of a contract the rule instead of being an alternative in cases where the actual damage for non-performance could not be ascertained or where the compensation for non-performance would not be an adequate relief. Section 10 of the Act has been substituted and instead the newly inserted section 10 states that 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 of the Act. Before this important amendment, sec. 10 can be explained as follows.

### **Sec.(10)**

**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 can not 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:—**

Specific enforcement made in brief in the following two situations based on the above mentioned provisions.

No(1) when there exist no standard for ascertaining actual damage.

Specific performance of contract is allowed when there exist no standard of ascertaining actual damage caused by the breach of contract. If the damage caused by the breach of contract is ascertainable, the remedy available is a claim for damages rather than specific enforcement of the contract. For example.

"A" agrees to buy and "B" agree to sell a picture by a dead painter and two rare China vases. "A" may compel "B" specifically to perform this contract, for, there is no standard for ascertaining the actual damage which would be caused by its non performance.

( illustration to Sec. 12(b) Specific Relief Act, 1877)

No( 2) **When money compensation would not provide adequate relief.** Specific performance of contract is also allowed when the act agreed to be done is such that compensation in money for its non performance would not be afford adequate relief.

The explanation along with to this section permitted the court wide discretion to exercise in the case of non performance of contract whether the compensation to be given in the form of money would be adequate or not?

In the cases of transfer of immovable property, the court shall presume that if compensation is given in form of money, it would not be adequate relief. Despite that in the case which is relating to the transfer of movable property, the Court, except in certain cases, held that compensation in money would be adequate relief.

(1) It is movable property and the article transacted is not an ordinary article of commerce, or is a special value of interest to plaintiff if or consists of goods which are not easily available in the market and

(2) Where the property is held by the defendant as Agent or Trustee of the plaintiff.

The above mention provision may be illustrated as ...

(i) A contract with B to sell house for rupees 10000. B is entitled to a decree directing A to convey the house to him he paying the purchase money.

(ii) A contracts to sell, and B contracts to buy, a certain number of railway shares of a particular description. A refuses to complete the sell. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of shareholder which cannot otherwise be procured.

So in cases related to Immovable Property burden of proof lies upon the defendant that he prove before the court that if compensation is given in form of money, it would be adequate relief. Whereas in case of movable property, it will be said that if compensation is given in form of money, then there would not be adequate relief. Under both situation how will the court let this golden opportunity go out of its hands? So it is possible that the court may discourage the specific performance of the contract by exercise its discretionary power and due to these deficiencies, Parliament to make significant amendments in 2018 and as well as 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. In conclusion, it can be said that the whole object

behind this amendment is that Specific Enforcement should be permitted by the court as a general rule not depend upon a subject matter of the Contract.

**Pursuance of the new amendment, the position of Section 10 of S.R.Act,1963(Amendment ),Act 2018 is as follow.**

**Sec.(10)** Specific performance in respect of contracts.—

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.]

As it is clear from careful reading of section 10 that now its provisions have been made Mandatory. Therefore, the specific performance of contract can be made subject to the provision contained in sub-section (2) of section 11, section 14 and section 16.] Hence these provisions can be described as follows.

**Sec.(11 ) Cases in which specific performance of contracts connected with trusts enforceable.—**

(1) Except as otherwise provided in this Act, specific performance of a **[contract shall]**, be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

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

**Sec.(14)**Contracts not specifically enforceable.—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.**

**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 section 20; 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 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 of 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.

As the amendment has made it clear, no specific grounds or discretion will be required to comply with the contract now only to following the requirements laid down in clause (2) of the sec. 11, 14 and 16 .

The appropriately described provisions can be summarized through leading cases and examples.

#### **specific performance of contracts connected with trusts enforceable.—**

The effect of clause 1 of section 11 makes it clear that contracts connected to the trust can be enforced specifically except otherwise provided. For ex...A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B and B enforce specific performance of the obligation.

But clause (2) of section 11 is the effect that if the trustee has entered into any contract beyond the power conferred or the trust has been breached then in the said conditions the contract cannot be specifically enforced. For ex...(1) A Trustee of land with power to lease is it for 7 years. He enters into a contract with B to grant lease of the land for 7 years with a covenant to renew the lease at the expiry of the term. The contract cannot be specifically enforced because of the contract made beyond the power. Ex..(2) Two trustees A and B empowered to sell trust property worth a lakh rupees, contract to sell it to C for rupees 30000. the contract is so advantageous as to be a breach of trust so C can not enforce its specific performance.

Section 14 has been rewritten according to which the following contracts cannot be specially performed

Clause(a)of the sec. 14, which was earlier thus removed “A contract for the non-performance of which compensation in money is an adequate relief “has been described as Substituted performance.

**(a) Substituted performance** means where the contract is not performed by one of the parties to the contract the aggrieved party has the option to get the contract complied through a third party or agency, and it is noteworthy that whatever or other expenses he may have to bear, he is in breach of contract will be able to recover from party in default.

**(b)** Where contract requires **continuous acts** and involves watching of those act by the court the same cannot be specifically enforced.

for example.. contract to build or repair a structure.

**(c)** Contract of service **depend on the personal volition of the parties** and therefore the same cannot be specifically enforced. For ex..A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during next two months, and B engages to pay her 100 rupees for each night’s performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract. But he cannot compelled to perform the contract because it's depend on the her personal qualification.

**(d)** Contract which is an it’s **nature determinable**

When a contract is of the nature that it is determinable the same cannot be specifically enforced. it means contract which can be determined or put to an end by a party to the contract.for example in

case of **partnership at will** any partner can put to an end of relation of partnership. so cannot be specifically enforced.

**Sec.16 imposed personal bar** which are based on the well settled principle of the equity that ,

**One Who Seek Equity Must Do Equity.**

**He Who Comes to Equity Must Come With Clean Hands.**

In short, who a person claims the specific enforcement of a contract should not be subject to the following disqualifications.

(1) In the case of breach of contract, a person **who does not have the right to recover compensation**, he cannot also get a specific enforcement of the contract .For ex.. (sec. 230 Indian Contract, Act)When a person has entered into a contract on behalf of principal he cannot personally in force the same.

(2)Who becomes **incapable of performing** the contract that remains to be performed by him.For ex...

A contract to sell B a house and to become tenant thereof for a term of 14 years from the date of the sale at the specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

(3) Who violets and **essential term of the contract** that remains to be performed by him. ex.. A contracts to sell B a house and garden in which there are ornamental trees, a material elements in the value of the property as a residence. without B's consent fells the trees. A cannot enforce specific performance of the contract and further he has not committed any fraud in the contract and has not made any variance or act in his terms which will lead to the destruction of the contract.

A significant change has been made in clause (c) of Sec. 16. Earlier it was a requirement of the section that the plaintiff must aver performanc of or readiness and willingness to perform contract accordance to its true construction.This means that the plaintiff should clearly declare in the plaint that he is ready and willing to perform. In fact,it is no longer needed because the new provision states that now the party seeking specific performance **only needs to prove the same and is not required to aver in the pleadings.**

**The reason behind this is that earlier the court use to deny the relief of specific performance of contract when plaintiff fail to aver its readiness and willingness to perform the contract. Now there is no need for it .**



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