

## **CASES IN WHICH SPECIFIC PERFORMANCE OF CONTRACT ENFORCEABLE**

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### **ABSTRACT**

When parties enter into a contract and one of the parties fails to fulfill their contractual obligations, the other party may be entitled to seek recompense in the form of specific performance of contract. The Specific Relief Act 1963, India provides a statutory remedy to aggrieved parties, which entitles them to ask for an order that is made by the Court directing one or both of the contracting parties to perform their part of the agreement. The Specific Relief Act 1963 is a law in India that provides for specific remedies for breach of contract. It is a central legislation that governs the specific performance of contracts and other reliefs in India. The Act provides a comprehensive framework for the enforcement of contracts and the grant of specific reliefs in cases of breach of contract. The main objective of the Act is to provide an effective remedy for the enforcement of contracts in cases where monetary compensation is not sufficient or adequate. Specific Performance of Contract is a discretionary remedy granted by the Court under the Specific Relief Act, 1963 in India. This remedial measure is available for both movable and immovable property, as well as for personal services. It is an equitable remedy which means that the court has the discretion to grant or deny this remedy based on the facts and circumstances presented by each case.

Under this act, specific performance is an equitable remedy that is granted in certain circumstances, allowing an aggrieved party to secure a court order requiring another person or business to honor their promise as stated in the contractual agreement. In this research paper, we explore cases in which specific performance of contract is enforceable under Indian law. We will look at the research methodology and review existing literature on this issue before analyzing two landmark judgments in detail and concluding with our opinion on this matter.

## **INTRODUCTION**

The Indian Specific Relief Act of 1877 was enacted to provide for specific relief in cases of breach of contract. The Act was in force for several years, but its provisions were considered to be limited and not comprehensive enough to address the diverse needs of the contracting parties. In recognition of this, the Indian Specific Relief Act of 1877 was replaced by the Specific Relief Act, 1963. The 1963 Act consolidated and amended the law relating to specific relief in India, expanding upon the types of relief available for the enforcement of contractual obligations, including specific performance, injunctions, and rescission of contracts. Since its enactment in 1963, the Specific Relief Act has undergone several amendments to address new challenges and keep pace with the changing needs of the contracting parties. The Specific Relief Act 1963 of India provides for specific performance as a remedy for breach of contract. This remedy is a court-ordered mandate for a party to perform its obligations under a contract. It is an alternative to monetary damages and is considered to be a more equitable remedy in cases where the subject matter of the contract is unique or of special significance.

The Specific Relief Act, 1963 is divided into 3 Parts and can be broadly divided into the following 8 chapters:

Part I: This part contains the preliminary provisions of the Act

Part II: This part contains provisions relating to specific relief

Part III: This part contains provisions relating to preventive relief and

Chapter 1 speaks about Recovering possession of property (Sections 5-8)

Chapter II speaks about Specific Performance of Contracts (Sections 9-25)

Chapter III speaks about Rectification of Instruments ( Section 26)

Chapter IV speaks about Rescission of Contracts (Sections 27-30)

Chapter V speaks about Cancellation of Instruments (Sections 31-33)

Chapter VI speaks about Declaratory Decrees (Sections 34-35)

Chapter VII speaks about Injunctions Generally (Sections 36-37) and

Chapter VIII speaks about Perpetual Injunctions (Sections 38-42) .

In this research paper we will mainly focus on Chapter II which talks about Specific Performance of Contracts .

## **RESEARCH METHODOLOGY**

The research methodology for cases in which specific performance of a contract was enforceable under the Specific Relief Act, 1963 was divided into the following steps:

1. Review of the Specific Relief Act, 1963: The researcher started by thoroughly reviewing the act, including its various sections, provisions, and amendments. This gave a comprehensive understanding of the law and its application in specific performance cases.
2. Case Selection: The researcher then selected relevant cases that had dealt with specific performance of contracts under the Specific Relief Act, 1963. These cases were selected based on the facts, issue in dispute, and the outcome of the case.
3. Analysis of the Cases: The researcher then analyzed the selected cases to understand the reasoning and legal principles applied by the courts in specific performance cases. This analysis also considered the provisions of the Specific Relief Act, 1963 and the amendments made to the act.

4. Identification of Trends and Patterns: The researcher identified trends and patterns in the cases analyzed to understand the general approach adopted by the courts in specific performance cases.
5. Synthesis of Findings: Based on the analysis of cases and identification of trends, the researcher synthesized their findings and drew conclusions about the enforceability of specific performance of contracts under the Specific Relief Act, 1963.
6. Recommendations: Based on the conclusions drawn, the researcher provided recommendations for future research or for the improvement of the law in this area.

### **RESEARCH QUESTIONS**

- 1) What are the conditions required for a court to decree specific performance of a contract?
- 2) What is the scope of damages as compared to that of specific performance?
- 3) What are the limitations and challenges of enforcing specific performance of contracts in India and how have they been addressed by the courts and the legislature?

### **RESEARCH OBJECTIVES**

- 1) To examine the legal framework for the enforcement of specific performance of contracts in India, including an analysis of the provisions of the Specific Relief Act, 1963.
- 2) To analyze how damages serve as a presumptive remedy while specific performance is an alternative.
- 3) To understand the changes made by the Specific Relief Act, 1963 in determining cases where specific performance may be granted.

## RESEARCH GAP

Investigating the effectiveness of alternative remedies to specific performance in enforcing contracts, particularly in cases where specific performance may not be feasible or practical. This could include examining the use of damages or other non-monetary remedies in lieu of specific performance, and evaluating their efficacy in achieving similar outcomes as specific performance. Additionally, there may be a need to explore the impact of emerging technologies, such as blockchain and smart contracts, on the enforcement of specific performance in contract law.

## LIMITATION OF STUDY

Other chapters of the Specific Relief Act of 1963 are not included in the research work that has been presented here. Chapter II of the Specific Relief Act of 1963, which covers specific performance of contracts and includes sections 9-25, is the only part of the act that is discussed here.

## REVIEW OF LITERATURE

**1) *The specific relief act, 1963 arrangement of sections - legislative (no date)*. Available at: <https://legislative.gov.in/sites/default/files/Specific%20Relief%20Act%201963-47.pdf>**

**(Accessed: February 11, 2023).** - The "Specific Relief Act, 1963" is an Indian legislation that governs the enforcement of contracts. The act outlines the legal remedies available to parties to a contract in cases where one party breaches the terms of the contract. The act covers issues such as specific performance of contracts, rectification of instruments, rescission of contracts, cancellation of instruments, injunctions, and perpetual injunctions.

**2) K. et al. (2022) *Specific performance of contract and its enforceability*, iPleaders. Available at: <https://blog.ipleaders.in/when-specific-performance-of-contract-is-enforceable/>**

**(Accessed: February 11, 2023).** - The authors explain that specific performance is a legal remedy available to a party to a contract when the other party breaches the terms of the contract and that specific performance can only be enforced in certain circumstances, such as when monetary compensation is not an adequate remedy. The authors also discuss the types of contracts that are

eligible for specific performance and the factors that the court considers when determining whether to grant specific performance.

**3) India, legal S. (no date) *Specific performance of contracts*. Available at: <https://www.legalservicesindia.com/article/942/Specific-performance-of-Contracts.html>**

**(Accessed: February 11, 2023).** -The article by Legal S. titled "Specific performance of contracts" is a comprehensive overview of the concept of specific performance of contracts in India. The author explains that specific performance is a legal remedy available to a party to a contract when the other party breaches the terms of the contract and that it is an equitable remedy that is awarded in cases where monetary compensation is not an adequate remedy.

## **FINDINGS**

The researcher's findings are based on the research objectives of the research paper. Section 10 of the Specific Relief Act, 1963 in India governs the enforcement of specific performance of contracts by the courts. The specific performance of a contract refers to the fulfillment of the obligations set out in a contract by the parties involved. This means that if one party breaches the terms of the contract, the other party may seek an order from the court for the specific performance of the contract. The purpose of specific performance is to provide a remedy to the non-breaching party for the damages suffered due to the breach of contract.

However, there are limitations to the enforcement of specific performance of contracts, as set out in sections 11(2), 14, and 16 of the Specific Relief Act. Section 11(2) talks about it is impossible to expressly enforce a contract that a trustee has formed that is in violation of the trust since it was created in excess of the trustee's authority. Section 14 talks about The following contracts cannot be specifically enforced, namely: (a) When a party to the contract has received a replacement performance that follows the guidelines outlined in section 20 of the act. (b) Contracts where the performance requires a constant obligation that the court cannot oversee. (c) Contracts that rely heavily on the individual qualities of the parties and the court cannot enforce its crucial conditions. (d) Contracts that are inherently indefinite in nature. Section 16 talks about The specific performance of a contract cannot be enforced in favor of the following:

(a) Someone who has received alternative fulfillment of the contract as per section 20

(b) Someone who has become unable to fulfill the contract, violates any key terms of the contract, acts deceitfully, or intentionally acts against the intended relationship established by the contract.

(c) Someone who cannot prove they have fulfilled or were always willing to fulfill the essential terms of the contract that were their responsibility, except in cases where the performance was prevented or waived by the defendant.

- Explanation: For clause (c), in regards to a contract that involves paying money, the plaintiff does not need to actually offer the defendant the money or deposit it in court unless directed to do so by the court. The plaintiff must show evidence of fulfilling or being ready to fulfill the contract according to its true meaning.

Section 11 of the Specific Relief Act 1963 states that specific performance of a contract connected with trusts can be enforced, unless otherwise specified in the Act. Section 12 of the Act governs the specific performance of a part of a contract. The court is not allowed to order specific performance of just a part of a contract unless it is a small proportion of the whole in value and can be compensated for with money. If a party cannot perform their entire part of the contract and it forms a significant portion of the whole or cannot be compensated for with money, they are not eligible for a specific performance decree. However, if a part of the contract can be performed independently, the court may direct specific performance of that part. The section also explains that a party will be considered unable to perform their part of the contract if part of the subject matter no longer exists at the time of performance.

Section 13 of the act talks about the purchaser or lessee rights against a person with no title or imperfect title. - If a person agrees to sell or rent out immovable property without proper title or with an imperfect title, the buyer or lessee has the right to enforce the contract if the seller or lessor later obtains an interest in the property, to have the necessary concurrence of other parties for a valid title, to have the mortgage redeemed, and to get a return of the deposit if the seller or lessor's suit for specific performance is dismissed due to a lack of title or imperfect title. These

provisions also apply to contracts for the sale or rental of movable property to a certain extent. Section 14 talks about the The court can engage experts in a suit under this act if needed to help with any specific issue involved in the suit. The court can ask for information from relevant persons and direct the expert to report on the issue and provide evidence. The expert's opinion will be part of the record and the court or the parties involved can examine the expert in court. The court can also determine the expert's fee, costs and expenses and how they will be paid. Section 15 of the Specific Relief Act, 1963 outlines who may obtain specific performance of a contract. Except for any other provisions in the act, specific performance of a contract can be obtained by:

- ❑ Any party to the contract
- ❑ The representative or principal of any party to the contract, provided that if the party's skills, solvency, or other personal qualities are material to the contract or if the contract states that their interest cannot be assigned, then their representative or principal cannot obtain specific performance unless the party has already performed or if their performance has been accepted by the other party
- ❑ In the case of a marriage settlement or a compromise of doubtful rights between family members, any person who is legally entitled
- ❑ In the case of a tenant for life who entered into the contract in the proper exercise of their power, the remainderman
- ❑ In the case of a covenant entered into with a predecessor in title and the reversioner is entitled to its benefit and would sustain harm from its breach, the reversioner in possession
- ❑ In the case of a covenant entered into with a predecessor in title and the reversioner is entitled to its benefit, the reversioner in remainder
- ❑ In the case of a limited liability partnership that has entered into a contract and then merges with another limited liability partnership, the new merged limited liability partnership

- In the case of a company that has entered into a contract and then merges with another company, the new merged company
- In the case of a contract entered into by the promoters of a company before its incorporation, the company, provided it has accepted the contract and communicated this acceptance to the other party.

Section 17 of the Specific Relief Act, 1963 states that if a vendor or lessor does not have the proper title to a property they are trying to sell or lease, they cannot be granted specific performance to enforce the contract. The contract can only be enforced if the vendor or lessor can provide a title free from reasonable doubt to the buyer or lessee. Section 18 of the Specific Relief Act, 1963 states that if the defendant sets up a variation to the contract, the plaintiff can only obtain specific performance of the contract with that variation in place if the written contract is different from what the parties agreed to, does not produce the desired legal result, or has been varied by the parties after its execution. Section 19 states that specific performance of a contract can be enforced against either party, anyone claiming under them with a subsequent title, and a newly formed company that has arisen from an amalgamation, with some exceptions. This enforcement does not apply to a transferee who paid in good faith and without notice of the original contract, or to a person claiming under a prior title that might have been displaced by the defendant. However, if a limited liability partnership or a company enters into a contract before incorporation and the contract is warranted by the incorporation, the company can be held responsible for the contract if it has accepted and communicated this acceptance to the other party. Section 20 explains the procedure for substituted performance of a contract. If a contract is broken due to non-performance by one party, the affected party has the choice of having the contract performed by a third party or themselves and can recover expenses incurred from the party responsible for the breach. However, the affected party must give a written notice of at least 30 days to the party in breach, demanding that they perform the contract. If the party in breach refuses, the affected party may proceed with substituted performance. They cannot recover expenses unless the contract is performed either by a third party or themselves. After performing the contract, the affected party cannot demand specific

performance from the party in breach, but they can still claim compensation. Section 20 A speaks about special provision for contract relating to infrastructure project. Section 20 B speaks about special courts and section 20 C talks about expeditious disposal of suits. Section 21 allows the court to award compensation in a suit for specific performance of a contract. If the court decides that specific performance is not appropriate, but the contract has been breached by the defendant, the court shall award compensation to the plaintiff. If the court grants specific performance, but it is not enough to satisfy the case, the court can still award compensation. The amount of compensation is determined based on the principles of section 73 of the Indian Contract Act. The plaintiff must claim compensation in the initial suit, but the court can allow an amendment to include the claim at any stage of the proceedings. The fact that a contract is incapable of specific performance does not prevent the court from awarding compensation. Section 22 allows a person suing for specific performance of a contract for the transfer of real property to request additional relief, such as possession, partition, and separate possession, or the refund of any deposit paid. The court must grant this relief only if it has been specifically requested in the suit, but the court may allow the plaintiff to amend their claim if they have not requested this relief. Section 23 tells that If a contract is proper to be enforced, it can still be enforced even if it specifies a sum to be paid in case of breach and the defaulting party is willing to pay it, as long as the court sees that the sum was only meant to ensure performance and not give the defaulting party the option to pay instead of specific performance. When enforcing specific performance, the court cannot also order payment of the specified sum. Section 24 is about If a lawsuit for specific performance of a contract or part of it is dismissed, the plaintiff's right to sue for compensation for the breach of the contract or part of it is prohibited. But, their right to sue for any other relief they are entitled to due to the breach is not restricted and section 25 tells The provisions of this Chapter regarding contracts also apply to awards not covered by the Arbitration and Conciliation Act, 1996 and to directions in a will or codicil to carry out a specific settlement.

## **CASE ANALYSIS**

**1. KAMAL KUMAR VS PREMLATA JOSHI, 2009**

The issue in this case was that what are the necessary elements that must be stated and demonstrated by someone who is asking for the enforcement of a contract through specific performance? The facts of the case were the Appellant sued the Ld. Additional District Judge at Harda for particular execution of the contract on the suit property. The Ld. Additional District Judge did not order specific performance, hence the Appellant appealed to the Hon'ble Madhya Pradesh High Court. The Hon'ble High Court denied the appeal and upheld the Ld. Additional District Judge's decision and decree, prompting the Supreme Court appeal. The Hon'ble Supreme Court said in its conclusion that the judgements of the two Courts below were neither unconstitutional or perverse to the point that no judicial person may record them. The Hon'ble Court agreed with the lower Courts' petitions and evidence. The Hon'ble Supreme Court then noted that particular performance relief was discretionary and listed the following critical considerations for a Court to examine before awarding it: Is there a binding contract? Whether the plaintiff has been and is still willing to execute his side of the contract? If the plaintiff has executed his side of the contract, how much and how well, and was it in accordance with the contract? Whether particular performance will be equitable or create hardship to the defendant, and if so, how and to what degree should it be allowed to the plaintiff? Can the plaintiff get a return of their earnest money deposit? The Honourable Supreme Court observed that Sections 16(c), 20, 21, 22 and 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendix A to C of the Code of Civil Procedure, 1908 govern such problems. Thus, parties must properly plead and establish these criteria with evidence. Only then may the Court grant or deny particular performance. The Hon'ble Supreme Court noted that the two lower Courts below had comprehensively examined the plaintiff/pleadings Appellant's and evidence and found that he was not ready and willing to execute his side of the contract. The Supreme Court rejected the appeal.

**2. SATYA JAIN VS ANIS AHMED RUSHDIE 2013**

This is a Supreme Court Case of India. The court in this case held that release of specific performance of agreement cannot be denied as ground of efflux of time and escalation of price of property.

### **3. M/S J.P.Builders & Anr vs A.Ramadas Rao & Anr, 2010**

This is a Supreme Court Case in India . Court observed that section 16(c) mandates readiness and willingness of the plaintiff and is a condition precedent to obtain the relief of specific performance. The court further observed that , “ readiness” refers to the financial capacity and “willingness” refers to the conduct of the plaintiff wanting the performance.

### **(4)K.S. Vidyanadam And Ors vs Vairavan, 1997**

This is a Supreme Court case of India .The Court held that in this case merely because an agreement mentions a particular sum payable by the defaulting party to the other, that shall not be a ground for refusing the specific performance.

### **(5) P. D'Souza vs Shondrilo Naidu , 2004**

This is a Supreme Court case of India.The Court stated that defendant cannot take advantage of his own wrong and then plead that decree for specific performance would be an unfair advantage to the plaintiff.

## **OPINION**

This research paper has examined several cases in which the specific performance of contracts is enforceable under the Specific Relief Act 1963, India. To understand the nuances of enforceability, legal research was conducted which included a review of literature and a detailed analysis of judicial precedents. It was found that while courts are usually reluctant to grant specific performance unless a very convincing case is made out by the aggrieved party, such relief can be obtained in cases where there exists an unconscionable situation or a breach would cause too much

hardship. It is recommended that legal research should be conducted into further cases to evaluate if there are any additional factors impacting whether or not specific performance is enforceable.

## **CONCLUSION**

In conclusion, the Specific Relief Act, 1963, is the primary law enforcing specific performance for contracts in India. While cases are often decided on their own merits, it is clear that the judiciary looks at the goals of the original contract, the purpose of specific performance, and the hardship that would be caused by a denial when deciding whether to award specific relief. It is also noteworthy that the courts have used a varied approach in deciding cases, relying on their own discretion instead of a standard procedure. The courts have sought to balance the interests of both the parties in deciding judgments.

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