

Specific Relief Act 1963 Chapter II - Specific performance of contracts

9. Defences respecting suits for relief based on contract:

Except as otherwise provided herein, where any relief is claimed under this Chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

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.

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.

12. 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 be a only a small proportion to the whole in

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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 a case falling under clause (b), pays or had paid the consideration for the whole of the contract without any abatement; and

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

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract

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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.

**13. Rights of purchaser or lessee against person with no title or imperfect title:**

**(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 less or 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 person is necessary for validating the title, and they are bound to concur at the request of the vendor or less or, 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 less or, 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**

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redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or less or 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 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 lesser 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.

**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

**14A. Power of court to engage experts:**

(1) Without prejudice to the generality of the provisions contained in the Code of Civil Procedure, 1908 (5 of 1908), in

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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.

**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

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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

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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:

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 willfully 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;

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(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.

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 less or--

(a) who, knowing himself 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.

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 case, 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 contact

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(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.

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

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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.

20. Substituted performance of contract:

(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

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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.

20A. Special provisions for contract relating to infrastructure project:

(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

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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. Special Courts:

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. Expeditious disposal of suits:

Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 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.

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

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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.

(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.

**22. Power to grant relief for possession, partition, refund of earnest money, etc:**

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing

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for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief 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 relief.

(3) The power of the Court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.

**23. Liquidation of damages not a bar to specific performance:**

(1) A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances,, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

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**(2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.**

**24. Bar of suit for compensation for breach after dismissal of suit for specific performance:**

**The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.**

**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.**

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