

A BRIEF WRITE-UP ON THE LAW ON SPECIFIC PERFORMANCE OF CONTRACT.

July 21, 2014

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



INTRODUCTION

The law relating to equity, in India today, is contained in the Specific Relief Act, 1963 (Act 47 of 1963 "*Act*"). It is called "specific" because under this procedure, the plaintiff gets his relief in specific, rather than a general relief or damages or compensation that is, the very thing which the other party was bound to perform or forbear from performing. Specific relief finds its roots in equitable principles. The mission of the Act is to provide a remedy for every wrong done.

The Specific Relief Act, 1963

Meaning of Specific Performance

- A contract is an agreement upon sufficient consideration to do or not to do a particular act, and the party on whom this contractual obligation rests must not fail to discharge such obligations, failing which, the other party will have a right to sue for performance of the contract, and this is called specific performance.
- Order of specific performance is granted by the Courts when the damages are not an adequate remedy, and in some specific cases, such as sale/ transfer of land. Such orders are discretionary, so the availability of this remedy will depend on whether it is appropriate in the circumstances of the case. Under current law, courts grant specific performance when they perceive that damages will be inadequate compensation. Specific performance is deemed an extraordinary remedy, awarded at the court's discretion.

"Specific performance will not be granted where damages are an adequate remedy."





Equitable maxims

- The jurisdiction is discretionary;
- He who seeks equity must do equity;
- Equity acts in personam (*only a person who is a party to the contract can claim specific performance; so also can be called to specific performance*);
- He who comes to equity must come with clean hands; and
- Delay defeats equity.

Doctrine of Mutuality

No person can sue for specific performance of contract if he cannot be sued for it, whether because he is minor or for any other reason. The contract to be specifically enforced must be mutual. The doctrine of mutuality means the contract must be mutually enforceable by each party against the other.



Specific performance of contract based on Ratio Decidendi

(1) 'Ready and willing to perform' and 'Conduct of a plaintiff' in a suit for Specific Performance.

- In **N. P. Thirugnanam (Dead) by Lrs. V/s. Dr. R. Jagan Mohan Rao and Others** [(1995) 5 SCC 115], the Supreme Court held that "*The continuous readiness and willingness on the part of the Plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the Court while granting or refusing to grant the relief. If the Plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the Plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to filing of the suit along with other attending circumstances.*"
- In **Umabai and Anr. V/s. Nilkanth Dhondiba Chavan (Dead) by LRs and Anr.** [(2005) 6 SCC 243], the Supreme Court observed that "*It is now well-settled that the conduct of the parties, with a view to arrive at a finding as to whether the Plaintiff-Respondents were all along and still are ready and willing to perform their part of contract, as is mandatorily required under Section 16 (c) of the Specific Relief Act, 1963 must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice.*"

(2) Time as essence of contract.

- In **Chand Rani V/s. Kamal Rani** [AIR 1993 SC 1743] the Supreme Court held that *"It is well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract."*
- In the case of **Mrs. Saradamani Kandappan V/s. Mrs. S. Rajalakshmi and Ors.** [AIR 2011 SC 3234] the Supreme Court reaffirmed the position of law that was held in *Chand Rani V/s. Kamal Rani* and observed that *"The question whether time is the essence of the contract, with reference to the performance of a contract, what generally may arise for consideration either with reference to the contract as a whole or with reference to a particular term or condition of the contract which is breached. In a contract relating to sale of immovable property, if time is specified for payment of the sale price but not in regard to the execution of the sale deed, then time will become the essence only with reference to payment of sale price but not in regard to execution of the sale deed."*



(3) Alternative relief of refund of earnest money

- In the case of **P. C. Varghese V/s. Devaki Amma Balambika Devi and Ors.** [Appeal (civil) 1984 of 2002] the Supreme Court held that *"merely because an alternative plea of refund of earnest amount and damages has been raised it cannot constitute a bar to claim a decree for specific performance of contract."*





OUR VIEW

To conclude with the observations of Lord Chancellor Cottenham in *Tasker v. Small* 1834 (40) English Report 848 that "It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it are, as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."

Contributed by:

Aradhana Bhansali

Amit Kolekar

AREAS OF PRACTICE

| Capital Markets | Private Equity | Mergers and Acquisitions | Corporate Litigation & Arbitration | Projects & Project Finance |
| Real Estate & Trust | Corporate & Commercial | Banking & Finance | Structuring | TMT | IPR | Employment

DISCLAIMER

This update only contains a summary/ limited description of the topic dealt with hereinabove for general information purposes and should not be construed as a legal opinion or be relied upon in absence of specific legal advice. For further information or legal advice please feel free to contact us.
