

# *De Jure*

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**Grant of specific performance, whether a matter  
of right or discretion of the Court?**



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simple solutions

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The Specific Relief Act, 1963 ("**Act**") was amended by virtue of Amendment Act 18 of 2018 ("**Amendment**") wherein one of the prime objects was to do away with the discretion of the Courts under Section 10 r/w. other provisions of the Act and make specific performance of a contract a general rule rather than an exception on certain limited grounds.

Therefore, in terms of the Amendment to the Act, the exception of granting specific performance of a contract by the Courts has been done away with and as such, the relief of specific performance of a contract can be sought as a statutory relief.

The amended Act has further narrowed down the instances where specific performance of a contract cannot be granted *i.e.* to say:

- (i) where a party to the contract has obtained '*substituted performance*';
- (ii) person incapable of performing the contract *i.e.* to say, contract so dependent on the personal skills/qualifications which cannot be enforceable through others;
- (iii) violation of the essential terms of the contract;
- (iv) fraudulent conduct;
- (v) acts of variance under the contract;
- (vi) failure to prove readiness and willingness to perform the essential terms of the contract.

Though the Amendment to the Act has been brought into force as early as October, 2018, the key issue pertaining to grant of specific performance as statutory remedy has been rejected under the jurisprudence despite having the right.

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One such instance came in the matter of **B. Santoshamma v. D. Sarala**, (2020) 19 SCC 80, where the decree granting specific performance of substantial part of the agreement for sale in favour of the Respondent was challenged before the Hon'ble Apex Court.

It was confirmed under this judgement that the Court is, now obliged to enforce the specific performance of a contract, subject to the provisions of sub-section (2) of Section 11, Section 14 and Section 16 of the Act as grant of relief of specific performance of a contract is no longer discretionary, after the Amendment. However, Section 12 of the Act carved out exceptions, where the Court might direct specific performance of part of contract. Where a party to the contract is unable to perform the whole of his part of the contract, the Court may, in the circumstances mentioned in Section 12 of the Act, direct the specific performance of so much of the contract, as can be performed, particularly where the value of the part of the contract left unperformed would be small in proportion to the total value of the contract and admits of compensation.

The ratio therefore confirms to the principles of an obligation of the grant of right of specific performance of part of contract in terms of Section 12 of the Act thereby balancing and acknowledging the rationale for bringing in the Amendment. So, for the portion of the contract, which could not have been performed by the party, the Court has the power to award monetary compensation for the deficiency.

Another important aspect of the Amendment speaks about doing away with the requirement of making an express averment for proving readiness and willingness for the purpose of grant of relief of specific performance.

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The Hon'ble Apex Court in the matter ***Shenbagam & Ors. v/s. K. K. Rathinavel*** [2022 SCC Online SC 71] in the case of sale of an immovable property where the Order of the High Court confirming grant of specific performance by affirming the decision of the first appellate court held that while ascertaining the readiness and willingness of party, it is not only necessary to view whether he had the financial capacity to pay the balance consideration, but also assess his conduct throughout the transaction.

The Hon'ble Apex Court further held that in deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties *i.e.* whether party seeking for specific performance has come to court with clean hands, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault.

It is necessary for a party seeking specific performance relief had complied with the statutory prerequisites under Section 16 (c) of the Act, before claiming relief of specific performance. As per clause (c) of Section 16 of the Act, which clearly states that unless the party establishes his readiness and willingness to perform his part of the contract, he would not be entitled to a decree of specific performance as the law remains that, no evidence can be led in on a plea that was never put forward in the plaint/pleadings.

Even though the terminology/averment of “*ready and willing to perform the contract*” in the plaint would not have an adverse impact on the plaintiff's case, so long as plaintiff's readiness and willingness to perform the essential terms of the contract could be gathered on a holistic reading of the plaint.

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In another interesting matter between ***Bandhana Modak (Das) vs. Parswanath Saha*** [2022 SCC Online Tri 513: AIR 2023 (NOC 221) 81] which came up before the Hon'ble High Court of Tripura, the Court while setting aside the judgment and decree of grant of specific performance in favour of Plaintiff took cognizance of the Defendants plea that the Defendants would be rendered homeless, and shelterless in the event if specific performance of the agreement for sale is decreed in favour of the Plaintiff despite the Plaintiff having proved his readiness and willingness as per the law laid down under the Act and per the material evidence on record, grant of specific performance was set aside due the plea of becoming homeless and shelterless.

Therefore, readiness and willingness cannot be considered by way of a standard formula, it must bear the weightage of all and entire facts and circumstances of each case and the intention and conduct of the parties concerned. Even if a party to the contract is ready, but he may not be willing to perform his part of the contract or *vice versa*. Both readiness as well as willingness must be established by the plaintiff on whom the burden is cast in a suit for specific performance of an agreement.

At the same time, it incumbent to note that the period of limitation for filing a suit for specific performance under the Limitation Act 1963 is three years from the date fixed for performance of the contract. If no date is fixed, then, three years from the date on which the party is put to notice of refusal to perform the agreement.

In relation to time being of essence for grant of relief for a specific performance of contract, a recent judgment in the matter between ***Rajesh Kumar v. Anand Kumar & Ors.*** [2024 SCC Online SC 981] where the Hon'ble Apex Court while

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upholding the judgment passed by the lower court based on the facts and circumstances held the fact that limitation period for filing a suit for specific performance though being three years does not mean that a purchaser can wait for one or two years to file a suit and obtain specific performance thereafter. In the instant case, the Appellant/Plaintiff who preferred a suit only on the last date of limitation was held not entitled for specific performance on this ground also.

One must bear in mind that seeking relief of grant of specific performance though being a statutory remedy in terms of the Amendment to the Act can be denied if the party seeking relief is unable to prove its readiness and willingness to perform its' essential obligations under the contract. In terms of the Amendment to the Act, a party can also seek compensation and/or damages in addition to seeking grant of relief of specific performance from Courts.

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