

Specific Relief (Amendment) Act, 2018: An Analysis

Ayush Goyal

DES's Shri Navalmal Firodia Law College
Pune, India

ABSTRACT:

The Article focuses on the changes brought to the Specific Relief Act, 1963 by the Specific Relief (Amendment) Act, 2018. This article covers all the changes brought to the Specific Relief Act. The changes will help in increasing the ease of doing business. The discretionary power of the court to grant specific performance is ended and the mandatory enforcement of specific performance has come into picture. In addition to this, a new concept of substituted performance has been introduced as a remedy to the wronged party. In conclusion this article analyzes all the changes brought to the Specific Relief Act, 1963.

Keywords: *Specific Relief, Contract, Remedy, Specific performance.*

I. INTRODUCTION

The Specific Relief Act, 1963 (hereinafter referred to as the 'Act') is an act of parliament of India which provides remedies for those persons whose civil or contractual rights is being violated. Specific relief can be defined as an exact, determined, or particular relief. The remedies for non-performance of a contract are (1) compensatory (2) specific. The primary remedy for breach of contract is damages. However, the act provides the alternative discretionary remedy that the contract in fact should be specifically enforced. The Supreme Court has held that the specific relief act is not exhaustive enough to contain the whole law on the subject¹.

Both the houses of parliament have passed the specific relief amendment act, 2018 proposing amendments to the act. The Specific Relief Amendment Act, 2018 (hereinafter referred to as the 'Amendment Act') was published in the official gazette on 1st August, 2018. The Amendment Act was prepared on the basis of recommendations of an expert committee formed by the central government in 2016. The agenda of the Amendment Act is to increase ease of doing business in India and to ensure enforceability of contracts with great effectiveness. The essence of the Amendment Act is to bring the specific performance of contract not an exception but a norm.

II. BACKGROUND

The Black law dictionary defines 'specific performance' as the court order that is mandatory where a party must fulfill its contractual obligations according to the exact terms of the contract². The Act provides for specific performance of a contract when monetary compensation for failing contractual obligations is not sufficient. The Act says that when the actual damage for not performing a contractual obligation cannot be ascertained or monetary compensation is not sufficient, one party can ask the court for specific performance of

¹ *Hungerford Investment Trust Ltd. V. Haridas Mundhra*, AIR 1972 SC 1826.

² As defined by the Black Law's Dictionary.

contract. The specific performance of a contract is an exception, whereas the damage is the norm. Sometimes it is difficult to ascertain the amount of damages due to complexities of the contract. The specific performance is a discretionary relief.

Contracts are formed for some specific purposes. In case of breach of contract the primary remedy should be to achieve the purpose for which contract was formed and not scrapping the purpose. The idea should be specific performance of contract, not seeking damages. Sometimes damages are inadequate remedy.

III. CHANGES BOUGHT BY THE AMENDMENT ACT:

- **Mandatory Enforcement:**

Previously, the specific performance of contract 'may' be granted by the court at its own discretion, only when, (a) the actual damage caused due to the non-performance of the contract cannot be ascertained; or (b) when monetary compensation would not be adequate relief for the non-performance of the contract. However, the Amendment Act states that it is mandatory for a court to grant specific performance of contract. The Amendment Act seeks to take away the discretionary power of the court in ordering specific performance of the contract.

- **Contracts which cannot be specifically enforced**

Section 14 of the Act deals with contracts which cannot be specifically enforced. The Amendment Act states that the following categories of contracts cannot be specifically enforced: (a) where an aggrieved party has obtained substituted performance of contract; (b) where the contract involves performance of a continuous duty which cannot be supervised by the court; (c) where the contract is dependent on personal qualifications of an individual, such that enforcement of the material terms is not possible; and (d) the contract is determinable by its nature.

- **Persons who cannot claim specific performance**

According to changes bought by the Amendment Act to section 16 of the Act specific performance cannot be enforced in favor of a person:

- **Who has obtained** substituted performance of contract;
- **Who himself** (i) has become incapable of performing the contract; (ii) has violated essential terms of the contract; (iii) has not performed his part of the contract; (iv) acts in fraud, willful variance and in subversion of the contract;

The Amended section 16 suggest that a party seeking specific performance only has to prove that such party has

performed or has been willing to perform the essential terms of the contract and an averment to such effect in pleadings is no longer mandatory when seeking specific performance.

IV. EXPERT OPINION:

The Amendment Act seeks to introduce section 14A which talks about the courts power to engage experts. The section 14A states that the court can engage one or more experts seeking opinion on any issues in the suit. The court can ask any person to provide any such information to the expert essential for his report or opinion. The opinion or report submitted by the experts shall form part of the record of the suit. The expert is entitled to such fees, expense, etc as fixed by the court. The fees of the expert shall be borne by the parties in such proportion as ordered by the court. The section 14A doesn't prejudice the generality of the provisions contained in the Code of Civil Procedure, 1908 in any suit under this act. The intent behind introduction of the section 14A is to provide assistance to the court in a suit.

V. SUBSTITUTED PERFORMANCE OF CONTRACT:

The Amendment Act seeks to substitute section 20 with new provisions. The amended section 20 introduces the concept of 'substituted performance'. As per the amended section 20, if the contract is breached, the affecting party can choose to get the contract performed by a third party or by his own agency at the cost of party at default. The affected party must give a notice of 30 days to the other party calling him to perform the contract within the time stated in the notice. The refusal or failure to perform the contract by the other party, the affected party may get the same contract performed by the third party or by his own agency. The affected party, after getting the contract performed, cannot claim relief of specific performance against the party in breach. However, the affected party has the relief to claim compensation from the party in breach.

It is well understood that the damages doesn't fulfill the end purpose of the contract. With the option of substituted performance, the aggrieved party is able to be restored to the position it would have been in had the breach not occurred. The substituted performance may be the most effective alternative remedy available in the event of a breach.

VI. SPECIAL PROVISIONS RELATED TO INFRASTRUCTURE PROJECTS:

The Amendment Act seeks to introduce a new section 20A. Section 20A restrains the courts from granting injunctions in a suit involving contract relating to infrastructure projects specified in schedule. If granting of such injunction will cause impediment or delay in the progress or completion of such infrastructure projects. The Amendment Act seeks to introduce a schedule which talks about category of infrastructure projects. However it is to be noted that exception is only applicable for contractual suit. It will not apply to any other

legal proceedings due to considerations other than a contractual one (for example: environmental challenges, easement rights, government clearance, etc.).

This section expects to reduce uncertainty in projects for infrastructures or those involving huge public investments. This section ensures that public work contracts happen without undue delay.

Special Courts

The Amendment Act seeks to introduce a new section 20B. Section 20B says that state government in consultation with the Chief Justice shall designate one or more civil courts as ‘Special Courts’ to try a suit filed under this act in respect of contracts relating to infrastructure projects.

Time Period

The Amendment Act seeks to introduce a new section 20C. Section 20C states that a suit filed under the provisions of this act shall be disposed off within a period of 12 months. The courts can further extended the time period for another 6 months after recording reasons for such extension.

Section 21

Section 21 of the act (before the amendment) states that ‘in a suit for specific performance the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance’. The Amendment Act seeks to substitute words ‘in addition to’ and ‘in substitution of’ with the word ‘in addition to’. Therefore, the compensation needs not to be sought as an alternative remedy it can be claimed in addition to the specific performance.

VII. RECOGNITION OF LIMITED LIABILITY PARTNERSHIPS

The Amendment Act has introduced a sub-section (fa) in section 15 of the Act, it added limited liability partnerships to the list of parties who may seek specific performance.

Impact of the Amendment Act

- The true impact of the Amendment Act will be on the construction and infrastructure industries.
- The new contracts drafted may even prompt parties to contain specific clauses related to substituted performance of the contract.
- The specific performance (including substituted performance) of contract will be a legal remedy and can be granted as a rule rather than an exception.
- The proposed amendments will help in achieving the end purpose for which the contracts are formed.
- The Amendment Act incorporates sufficient safeguards to protect the defaulter by giving him reasonable opportunity to cure the defect.

VIII. CONCLUSION

In my opinion, while interpreting any provision of a statute, it is imperative to first analyze the object and intent of the statute. The Amendment Act is a well intended step to promote swiftness and efficiency in the field of contractual performance. The Amendment Act brings forward a refined level of objectivity in the remedial laws of the contractual breach. The changes brought will help in fulfilling the purpose for which the contract is made along with the other remedies.