

## Important judgements under relief act

Whenever there is a breach of contract by either of the parties, who is a part of the contract, the remedy to the other party is available in two forms:

Pecuniary compensation as compensation for the damages resulted from a breach of a contract.

Specific performance by the parties responsible for causing the breach of a contract.

Specific relief is only provided by the court when the aggrieved party can prove to the court that pecuniary compensation will not be adequate compensation for the damages caused to the party and therefore, the need for specific relief comes in. Thus, specific performance is a discretionary remedy provided by the court to the affected party. Specific performance governed by Specific Relief Act, 1963 is the duty imposed by the courts on the defendant to perform which he promised and is obliged to perform according to the terms of the contract he has entered into with the plaintiff. There lies a difference between the two types of cases that arise from a breach of contract and calls for the application of the Specific Relief Act. They are:

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When there is a breach of recitals of an agreement which the parties agreed to carry out.

When there is a breach of contract for which awarding of specific performance provides adequate relief.

In both cases, the application of the Specific Relief Act will be different. To understand and relate to the differences and the ways in which the Act applies, there comes the necessity to be aware of the judgments delivered by the courts which can act as a precedent for the parties entering into a contract as well as for the courts to pass a verdict with reasonability after a clear understanding of the matter.

### Specific Relief Act, 1963

The statute governing the specific performances is the Specific Relief Act, 1963. Section 10 of the Specific Relief Act, 1963 provides the cases for which specific performance of a contract is enforceable. The provision lays down certain parameters as well which are provided hereunder:

The cases in which damages are difficult to ascertain, the court may order specific performance to be carried out by the defendant for the aggrieved plaintiff.

The act which was supposed to be carried out by the defendant as has been provided in the contract as well is of such nature that monetary relief for breach of such act will not be of adequate relief, the court may order specific performance.

Section 4 of the Specific Relief Act, 1963 provides that the motive of this Act is not to impose a penalty on the defendant for not carrying out the job he was assigned to do rather the Act intends to promote the enforcement of individual rights for both the plaintiff and the defendant. The Specific Relief Act governs both movable and immovable property. While Section 5 of the Act provides for the remedies when the person is deprived of immovable property. This recovery can be carried out under the procedure laid down under the Code of Civil Procedure, 1908. Similarly, the provision for recovery of movable property is laid down under Section 7 of the Specific Relief Act, 1963. There are some contracts which cannot be enforced especially that have been laid down under Section 14. This Section was an addition in the recent amendment of the Specific Relief Act, 1963 which came to be known as The Specific Relief(Amendment) Act, 2018. The contracts which fall under this category are:

When pecuniary compensation is adequate for the breach of contract.

The contract which is inclusive of a lot of court work and the court cannot supervise the same.

Any contract which includes a lot of details and is personal to the parties who are involved in the contract.

Section 34 of the Specific Relief Act, 1963, lays down the provision for the declaratory decree. The Section says that if any person who is entitled to a legal right concerning any property has the right to initiate a suit against any person who is restricting such legal rights from being possessed. The court may declare such right to the aggrieved person on its discretion. After such a declaration, the party cannot ask for any further relief. The Act also provides for preventive relief in the form of injunctions. By injunction, it means that the court can direct the defendant to stop the activity he is carrying out immediately which is amounting to the breach of the contract he has entered into. Section 37 of the Act provides for the two types of the injunction that a court can grant. They are:

Temporary injunction

Perpetual injunction

While the former is granted to be valid for a specified time period, the latter is granted to avoid the breach of any obligation which is in existence in the favour of the plaintiff. An injunction can be refused by the courts as well taking into consideration the motive and the activity of the defendant. Therefore, these are some of the ways in which a specific relief can be carried out.

Landmark judgments

The Act got utilised more and more and developed through case laws. Judgments passed by the courts are therefore an efficient wheel for the Act to function effectively. Some of the famous judgments of the courts in relation to the Specific Relief Act, 1963 are listed below.

K. Narendra vs Riviera Apartments(P) Ltd

In the case of K. Narendra vs Riviera Apartments(P) Ltd, a conflict arose over land which was given under lease to the petitioner by the President of India. The only usage of the concerned land that could be carried out was building a single storey residential building for bringing up private dwelling homes. The appellant further entered into an agreement with the respondent thereby assigning the rights, interests, and titles of the concerned property.

The purpose was to construct a multi-storeyed building on the land. Modification in the existing terms and conditions was brought in the agreement. The petitioner was said to be facing several hardships in terms of social, financial problems. This was one of the reasons on the part of the petitioner to transfer the property to the respondent who was believed to take care of the property in a better way. Issues raised relating to the fact that whether there was a complete transfer of possession from the appellant to the respondent of the property or not. The court was also made to decide whether breach of a contract taking place due to hardships of one of the parties of the contract is a valid ground for the court to not issue specific performance or not. The court based its judgment on Section 20 of the Specific Relief Act, 1963 which makes the declaration of specific performance to be discretionary on the part of the court.

The Section also provides that the court is not bound to provide such relief to the parties just because the activities carried out by both of them is lawful. The court clearly mentioned in this case that if the defendant has to go through hardships while performing a contract which was not foreseen by the defendant during non-performance of such contract, it does not cause any hardship to the plaintiff. This is one such circumstance under which the court can exercise discretion properly. But this discretion should be executed by the court only in relevant situations with sound reasonability and not arbitrary or irrationally. This was observed in the case of Lourdu Mari David and others v. Louis Chinnaya Arogiaswamy and others.

Alongside this, it was in the case of K.S. Vidyanagar & others vs. Vairavan where the court observed that specific performance can be refused on grounds of difficulties even if difficulties arise after the

contract is concluded. These difficulties may affect the defendant rather than the terms of the contract and for these scenarios, the plaintiff will be no way held responsible. The court in this case of K.Narendra vs Riviera Apartments opinionated that although specific performance will not be provided, the respondent must receive some amount of compensation for the activities of the petitioner under Section 21 of the Specific Relief Act,1963 which lays down awards of compensation either as an addition or a substitution of the specific performance.

#### Parag Engineering Works vs Union of India and Ors

In the case of Parag Engineering Works vs Union of India, the Gauhati High Court discussed the meaning and application of Section 14 of the Specific Relief Act,1963 which talks about the contracts which are not specifically enforceable. The issue, in this case, revolves around the subscription of a telephone by the petitioner company.

There was a default on the part of the telephone company to function properly whenever the petitioner was in need of the same. The Telephone Department had once mentioned that the problem being suffered by the petitioner is because of the fault in the cable and cited it as a chronic problem which can be minimised if the indicator of the apparatus is changed with a new one. The petitioner had filed a writ petition in the High Court with several demands focusing on the fact that there was negligence on the part of the Telephone Department.

The court considered Section 14 for coming to a conclusion in this case. Section 14(d) of the Specific Relief Act,1963 expressly provides that where there is a performance which involves continuous work and it becomes difficult for the court to supervise, in such situations the court should not pass any order. Thus, the court in the case concluded that the petitioner is not supposed to be provided with specific performance on the part of the telephone company because the working mechanism was new for the company and the claims that had been mentioned in the writ petition involved continuous supervision by the court which is not possible physically.

#### Gobind Ram vs Gian Chand

In this case of Gobind Ram vs Gian Chand, the respondent had filed a suit for specific performance on the part of the appellant for failure to perform the sale deed according to the contract entered by both within the specified time period. As the appellant was not capable enough to pay the amount which he was subject to according to the contractor's term, the respondent had paid on behalf of the appellant.

The court took into consideration Section 20 of the Specific Relief Act,1963 once again stating that the court before issuing a decree for specific performance must also consider the motive behind the litigant. The court must ensure that the litigant is not abusing the appellant by asking for specific performance from the court. Therefore whatever decision is taken by the court, the same must be based on reasonability, uprightness, and fairness. The court in this case also viewed that no undue advantage or misuse was carried out on the part of the respondent and therefore he is entitled to get the decree from the court of law.

#### Clara Auroro de Braganca v. Sylvia Angela Alvares

The case of Clara Auroro de Braganca v. Sylvia Angela Alvares is one such case of Specific Relief Act, 1963 where a relationship between the Act and Power of Attorney was drawn. The parties involved in this case carried out a power of attorney thereby empowering a person to execute a partition deed in respect of a property that has been specified. The power of attorney was declared void on the following grounds:

Mental disability of the parties.

The execution of partition deed involved properties exceeding what was mentioned by the holder of the power of attorney. The power was therefore abused by the attorney holder.

The court said that as the execution was carried out not by mentally stable individuals, the validity of the same does not exist and therefore it can be kept aside without many discussions. To support what the court had said, it used the provision laid down under Section 31 of the Specific Relief Act, 1963 declaring its decision as justified. Section 31 of the Act states that the court may direct cancellation of the instrument for any person against whom the written instrument stands void or voidable or the person is aware that the same can cause injury to him. The court as well stated that under Section 34 of the Act, the grant or refusal of injunction and relief declaration is discretionary on the court's part. The petitioner on its part should have shown interest rather than just expecting for the court's verdict. Therefore on these parameters, the court refused the party to maintain a suit under Section 34 of the Specific Relief Act, 1963.

#### The East India Hotels Ltd vs Syndicate Bank

The case of The East India Hotels Ltd vs Syndicate Bank is of relevance for it decided the fate of Section 6 of the Specific Relief Act, 1963. The case surrounds the facts which say that the plaintiff, a company which runs hotels at different locations provided the defendants with a space on lease and license for a stipulated time of 12 years. Under these conditions, the defendant agreed to provide the plaintiff with a loan of a certain amount. In the meantime, the plaintiff had written a letter to the defendant asking for vacating the space on the expiry of the time frame as have been provided.

The defendant in return had asked for a renewal of the deed. There was a fire outbreak one day in the plaintiff's hotel which affected the suit premises as well. The defendant vacated the place soon after. Later the defendant had asked to give back the possession of the space to him but the plaintiff claimed that the period as had been stated had expired already. The defendant had filed a suit under Section 6 of the Specific Relief Act, 1963. Section 6 deals with the provision that a person who has been disposed of immovable property can file a suit to regain it back. The plaintiff further filed an injunction under Section 6(4) of the Act. The court taking this into observation said that under the specific provision, the plaintiff can be provided with the remedy of possession of the land but not for an injunction. But this decision was opposed by other Counsels. There were suggestions which stated that following the rule of harmonious construction for Section 6(1) and Section 6(4), a suit for an injunction can be claimed under Section 6(4). Taking note of this case, it can be said that if the party is still in possession of the place then a suit for an injunction can definitely be filed.

A similar view was observed in the case of Mohd. H. Shaikh v. Batukbai Valjibhai and others. In several High Courts, such suits were maintainable while some denied. The court concluded with the following views:

The defendant's possession after the expiry of the mentioned period is like a person with no legal rights, correctly can be termed as a trespasser.

The defendant will not be benefited from the suit he filed.

The plaintiff did not take the law in its hand and illegally carried out anything. Therefore the suit for injunction is maintainable.

#### Praveen Garg vs Satpal Singh & Anr

The Delhi High Court while considering the case of Praveen Garg vs Satpal Singh & Anr took into consideration Section 20 and Section 16(c) of the Specific Relief Act, 1963. The case revolves around the fact that the plaintiff was a Government contractor who was engaged in the construction business and was looking for a property.

The plaintiff entered into an agreement to sell with the respondent for his property by paying a certain amount of consideration. No documents related to the transfer of title of property from the respondent to that of the plaintiff were disclosed to the plaintiff. There was a delay in the disclosure of documents and in the meantime, the plaintiff due to financial incapacity failed to complete the transactions involved in the sale. The respondent had filed a suit claiming the decree of specific performance on the part of the plaintiff.

The trial court was with the opinion that the decree cannot be granted on grounds that when the agreement was entered into by the parties, the plaintiff did not get the title of ownership of possession on the respondent's property. The High Court agreed with the decision of the trial court as the relief mentioned under Section 20 is clearly discretionary by nature. Further Section 16(c) states that there must be a willingness on the part of the parties which was successfully matched in case of the plaintiff and therefore there was no reason to file a decree against him. The court rested its decision on this basis only.

#### Surinder Kaur v. Bahadur Singh

A recent judgment passed by the Supreme Court of India in the case of Surinder Kaur v. Bahadur Singh highlighted the court's discretion in granting the relief of specific performance as has been discussed in previous cases as well. Specific performance can only be issued in exceptional cases. For being entitled to get the relief of specific performance, the aggrieved party in a contract must have fulfilled all necessary conditions and must also ensure that there are no loopholes on his part. Only then can the relief of specific performance be granted. In this case, the Supreme Court bench consisting of Justice Deepak Gupta and Justice Aniruddha Bose while deciding on the question as to whether a vendee who fails to perform one of his promises as mentioned in the contract can be subjected to the relief of specific performance for that contract or not came to the conclusion that if there is an absence of duty on the part of one of the parties of the country, he will not be entitled to the relief of specific performance.

Along with the carrying out of the duty, the party must prove the same in front of the court as well. The court paid attention to Section 16(c) of the Specific Relief Act, 1963 as well. The Section provides that it is incumbent for the party who demands the enforcement of the specific performance for his contract, to make the court believe that he has performed all his duties diligently or that he always had the willingness to carry out the activity as have been in the contract. The court rested its decision abiding by the provision under sub-clause(c) of subsection (2) of Section 20 which states that even if the contract in consideration is not declared as voidable, the circumstances surrounding the contract makes it inequitable for the specific performance to be enforced. The court in such cases can refuse to grant a discretionary relief.

#### M/S Gujarat Bottling Co.Ltd v. Coca Cola Co & Ors

The Supreme Court of India in the case of M/S Gujarat Bottling Co. Ltd v. The Coca Cola Co & Ors, opinionated that as the relief provided by the court in terms of specific performance is of an equitable nature, it is the responsibility of the party who is invoking the jurisdiction of the court to show that he was not responsible in bringing state of affairs, his acts were not carried out by using unfair means, the handling of the parties involved have been carried out in an upright and fair manner. These considerations have to be abided with by,

Who seeks an injunction under Order 39?

Who approaches the court for vacating the ad interim injunction?

The case provides a view of Section 42 of the Specific Relief Act, 1963. Section 42 provides for an injunction to perform the negative agreement. The facts of this case revolve around a negative agreement between the plaintiff and defendant companies. Section 41 of the Act provides for the grounds where injunction cannot be enforced. Section 41(e) provides that injunction will be refused

to prevent a breach of contract from taking place for those contracts which can never be especially enforceable. The court taking into consideration the provision provided under Section 41(e), would grant an injunction for negative agreement when a contract includes an affirmative agreement to perform a certain action which also consists of a negative agreement and the court in such cases will not be able to declare specific performances for the affirmative agreement.

**Smt. Gita Rani Paul vs Dibyendra Kundu Alias Dibyendra**

In the case of Smt. Gita Rani Paul vs Dibyendra Kundu Alias Dibyendra, the Supreme Court of India took a view that if a suit regarding dispossession is filed by a party, the only fact that needs to be proved by the party before the court is that he is entitled to the title of that particular property. Therefore the title of the property should be proved before the court. The proving of the very title of the property will further initiate the proving of other necessary items as well.

**N.P. Thirugnanam v. Dr. R.J. Mohan Rao**

The Supreme Court of India in the case of N.P. Thirugnanam v. Dr R.J. Mohan Rao once again took into consideration the provision of Section 16(3) of the Specific Relief Act, 1963. The plaintiff, in this case, entered into an agreement of sale with the defendant. The plaintiff had to alienate property in the city of Madras in return of consideration of a certain amount. The plaintiff paid a certain amount as an advance and also agreed to provide rent each month. A suit was filed by the petitioner on the ground that the respondent was absent in the entire agreement and even failed to execute the sale deed. The respondent claimed that they were willing to take part in the agreement. They also mentioned that the plaintiff on his part did not provide with the sum he was supposed to provide with. Once again Section 20 was looked at by the court while it stated that the remedy for specific performance is equitable and at the discretion of the court. Just being in an agreement does not satisfy the fact that the remedy will be available to one of the parties whenever necessary.

The plaintiff before filing a suit against the respondents must provide to the court necessary information as to the work carried out by him and there is a transparent willingness from the petitioner's end. This was observed by the apex court under Section 16(3). The court will only make decisions on this regard after considering the plaintiff's actions. The court came to a conclusion that said the petitioner was reluctant and hesitant as far as his duty was concerned according to the terms of the agreement. Thus the court dismissed the special leave petition on grounds of negligence and hesitancy by the plaintiff.

**Conclusion**

The Specific Relief Act, 1963 is a very special, comprehensive and practical Act that aims to secure an agreement entered by two parties. It is a procedural statute rather than a subjective one. The provisions of the Act are promising in nature with a taste of reality. This Act aims in securing justice in its truest sense. Several judgments passed by the courts in our country have referred to different sections of the Act in order to decide the relief to be provided to the aggrieved party. The Act works towards bringing in mutuality between the two parties involved in the contract. It is more than just providing relief to the parties and therefore the usage of the Act is also restricted to certain exceptional cases only. A relief in kind is more effective than relief in monetary terms. This Act observes this principle in the process of regulation of breach of contracts.