

SPECIFIC RELIEF ACT, 1963

INTRODUCTION

1. Specific Reliefs Act is complimentary to provisions of Contract Act and Transfer of Property Act, as the Act applies both to movable property and immovable property.
2. The Act applies in cases where Court can order specific performance of a contract or act. As per section 4, specific relief can be granted only for purpose of enforcing individual civil rights and not for the mere purpose of enforcing a civil law.
3. 'Specific performance' means Court will ask the party to perform his part of agreement, instead of asking him to pay damages to other party.

A. RECOVERING POSSESSION OF IMMOVABLE PROPERTY –

1. A person who is entitled to possession of a specific immovable property may recover it in the manner provided in Code of Civil Procedure. (Section 5)
2. If any person is disposed without his consent, of immovable property otherwise than by course of law, he can recover possession, even if any other title is set up in such suit. Such suit shall be brought within 6 months.
3. No suit can be filed against Government for recovery of possession. [Section 6]. -
- **That is why it is termed as 'possession is 9 points in law'.**
4. **Even an unlawful possession of immovable property can be taken away only by lawful means and not forcefully.**

B. RECOVERING POSSESSION OF SPECIFIC MOVABLE PROPERTY

- a. A person who is entitled to possession of a specific movable property may recover it in the manner provided in Code of Civil Procedure. (Section 7)
- b. If any person is in possession or control of a specific movable property of which he is not owner, he can be compelled to specifically deliver it to the person entitled to immediate possession, in cases specified in section 6. - - Thus, if a person holding the movable property is owner of goods, he cannot be compelled to deliver it to other.
- c. However, in other cases, he can be compelled to deliver it, even if other person is not owner, as long as he is entitled to its immediate possession.

C. SPECIFIC PERFORMANCE OF CONTRACT

Specific performance of contract can be ordered, at discretion of Court, in following cases –

- (a) Where there exists no standard for ascertaining damage caused by the non-performance of act agreed to be done or
- (b) When the act agreed to be done is such that compensation in money for non-performance will not give sufficient relief. [Section 10].
- (c) Please note that as per explanation (ii) to section 10, breach of contract in respect **of movable property** can be relieved (by paying damages) unless the property is not an ordinary article of commerce or is of specific value or interest to the tariff, or consists of goods which are not easily available in the market. -

In other words, Court may order to deliver specific article only if it is special or unique article, not available in market. In other cases, Court will order damages but not order specific performance of contract.

- (d) In case of **immovable property**, normally, specific performance will be ordered, as such property is usually unique. - - Section 12(1) states that Court shall not order performance of part of contract, except in cases specified in that section.

D. CONTRACTS WHICH CANNOT BE SPECIFICALLY ENFORCED –

Following contracts cannot specifically enforced –

- (a) Where compensation is adequate relief
- (b) Contract runs into such minute or numerous details or depends on personal qualifications of parties or is such that Court cannot enforce specific performance of its material terms
- (c) Contract which in its nature is determinable
- (d) Contract, performance of which involves a continuous duty, which Court cannot supervise. [Section 14]. - - In other words, in case of movable articles or contract of intricate nature, specific performance will normally not be ordered by Court. - -
- (e) Specific performance of contract of personal nature cannot be ordered.

E. DISCRETIONARY POWERS OF COURT

- a. Jurisdiction of Court to decree specific performance is discretionary. Court will not order specific performance merely because it is lawful to do so. [Section 20(1)].
- b. Court will consider various aspects before issuing decree for specific performance.
- c. Court can grant compensation in lieu of even in addition to specific performance. [Section 21].

F. OTHER CASES WHEN COURT CAN ORDER SPECIFIC PERFORMANCE

- (a) Order rectification of instrument if it does not reflect real intention of parties. This may happen through fraud or mutual mistake. [Section 26]
- (b) Order rescission of contract (section 27)
- (c) Cancellation of instrument by getting declared that it is void (section 31).

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☞ Why are people so afraid? The answer is that they have made themselves helpless and dependent on others. We are so lazy, we do not want to do anything ourselves. We want a Personal God, a Savior or a Prophet to do everything for us.

Swami Vivekanand