

# The Specific Relief Act, 1963<sup>1</sup>

[Act 47 of 1963]

[13th December, 1963]

*An Act to define and amend the law relating to certain kinds of Specific Relief*

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

**Prefatory Note.**—The following extract from the Statement of Objects and Reasons is given below:

"This Bill seeks to implement the recommendations of the Law Commission contained in its Ninth Report on the Specific Relief Act, 1877, except in regard to Section 42 which is being retained as it now stands. An earlier Bill on the subject introduced in the Lok Sabha on 23rd December, 1960, lapsed due to dissolution. The notes on clauses, extracted from the Report of the Law Commission, explain the changes made in the existing Act." (Vide Gazette of India, Extra., Part II, Section 2, dated June 15, 1962.)

**Statement of Objects and Reasons of Amending Act 18 of 2018.**—The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief. It contains provisions, inter alia, specific performance of contracts, contracts not specifically enforceable, parties who may obtain and against whom specific performance may be obtained, etc. It also confers wide discretionary powers upon the courts to decree specific performance and to refuse injunction, etc. As a result of wide discretionary powers, the courts in majority of cases award damages as a general rule and grant specific performance as an exception.

2. The tremendous economic development since the enactment of the Act have brought in enormous commercial activities in India including foreign direct investments, public private partnerships, public utilities infrastructure developments, etc.; which have prompted extensive reforms in the related laws to facilitate enforcement of contracts, settlement of disputes in speedy manner. It has been felt that the Act is not in tune with the rapid economic growth happening in our country and the expansion of infrastructure activities that are needed for the overall development of the country.

3. In view of the above, it is proposed to do away with the wider discretion of courts to grant specific performance and to make specific performance of contract a general rule than exception subject to certain limited grounds. Further, it is proposed to provide for substituted performance of contracts, where a contract is broken, the party who suffers would be entitled to get the contract performed by a third party or by his own agency and to recover expenses and costs, including compensation from the party who failed to perform his part of contract. This would be an alternative remedy at the option of the party who suffers the broken contract. It is also proposed to enable the courts to engage experts on specific issues and to secure their attendance, etc.

4. A new Section 20-A is proposed for infrastructure project contracts which provides that the court shall not grant injunction in any suit, where it appears to it that granting injunction would cause hindrance or delay in the continuance or completion of the infrastructure project. The Department of Economic Affairs is the nodal agency for specifying various categories of projects and infrastructure

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1. Received the assent of the President on 13th December, 1963 and published in the Gazette of India, Extra., Part II, Section 1, dated 16th December, 1963.

sub-sectors, which is provided as schedule to the Bill and it is proposed that the said department may amend the schedule relating to any such category or sub-sectors.

5. Special courts are proposed to be designated to try suits in respect of contracts relating to infrastructure projects and to dispose of such suits within a period of twelve months from the date of service of summons to the defendant and also to extend the said period for another six months in aggregate, after recordings reasons therefor.

The Bill seeks to achieve the above objectives.

## PART I

### PRELIMINARY

**1. Short title, extent and commencement.**—(1) This Act may be called the Specific Relief Act, 1963.

(2) It extends to the whole of India <sup>2[\* \* \*]</sup>.

(3) It shall come into force on such date<sup>3</sup> as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) “obligation” includes every duty enforceable by law;
- (b) “settlement” means an instrument [other than a will or codicil as defined by the Indian Succession Act, 1925 (39 of 1925)] whereby the destination or devolution of successive interests in moveable or immovable property is disposed of or is agreed to be disposed of;
- (c) “trust” has the same meaning as in Section 3 of the Indian Trusts Act, 1882 (2 of 1882), and includes an obligation in the nature of a trust within the meaning of Chapter IX of that Act;
- (d) “trustee” includes every person holding property in trust;
- (e) all other words and expressions used herein but not defined, and defined in the Indian Contract Act, 1872 (9 of 1872), have the meanings respectively assigned to them in that Act.

**3. Savings.**—Except as otherwise provided herein, nothing in this Act shall be deemed—

- (a) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or
- (b) to affect the operation of the Indian Registration Act, 1908 (16 of 1908), on documents.

**4. Specific relief to be granted only for enforcing individual civil rights and not for enforcing penal laws.**—Specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, Ss. 95, 96 and Sch. V (w.e.f. 31-10-2019).
3. March 1, 1964 [Vide Noti. No. S.O. 189, dated January 13, 1964, Gazette of India, Part II, Section 3(ii), p. 214].

**CASE LAW ▶ Nuisances.**—The action to prevent nuisances does not offend even against the dictum that the jurisdiction of a court of equity must rest on the ground of injury to property as in cases of private nuisance the injury is to individual property and in cases of public nuisance, the injury is to the property of mankind. (Collett, p. 112, *Emperor of India v. Day*, 3 De, GF and J 217, 32.)

## PART II SPECIFIC RELIEF

### CHAPTER I RECOVERING POSSESSION OF PROPERTY

**5. Recovery of specific immovable property.**—A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908).

**CASE LAW ▶ Determination of tenant.**—For determination of tenant in suit for possession of leased/tenanted property in question, plaintiff was able to establish tenancy in its favour in respect of suit property, while defendants only able to establish a tenancy in respect of another plot of land, not suit property. Hence, held, suit rightly decreed in favour of respondent-plaintiff, *Kundan Lal v. Kamruddin*, (2017) 1 SCC 403.

► **Maintainability of suit.**—Suit for possession is not maintainable/cannot be decreed in respect acquired land, *Market Committee, Hodal v. Sukhdevi*, (2016) 1 SCC 290 : (2016) 1 SCC (Civ) 308.

**6. Suit by person dispossessed of immovable property.**—(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person<sup>4</sup> [through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

- (a) after the expiry of six months from the date of dispossession; or
- (b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suit to establish his title to such property and to recover possession thereof.

**CASE LAW ▶ Restoration of possession.**—For restoration of possession under this section, it is needed to specifically object to dispossession from each part of the premises concerned, *Sushil Kumar Dey Biswas v. Anil Kumar Dey Biswas*, (2015) 3 SCC 461 : (2015) 2 SCC (Civ) 308.

**7. Recovery of specific moveable property.**—A person entitled to the possession of specific moveable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908).

**Explanation 1.**—A trustee may sue under this section for the possession of moveable property to the beneficial interest in which the person for whom he is trustee is entitled.

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4. Ins. by Act 18 of 2018, S. 2 (w.e.f. 1-10-2018).

*Explanation II.*—A special or temporary right to the present possession of moveable property is sufficient to support a suit under this section.

**8. Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.**—Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases—

- (a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
- (b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss;
- (d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

*Explanation.*—Unless and until the contrary is proved, the court shall, in respect of any article of moveable property claimed under clause (b) or clause (c) of this section, presume—

- (a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;
- (b) that it would be extremely difficult to ascertain the actual damage caused by its loss.

## CHAPTER II SPECIFIC PERFORMANCE OF CONTRACTS

**9. Defences respecting suits for relief based on contract.**—Except as otherwise provided herein, where any relief is claimed under this Chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

**CASE LAW ▶ Genuineness of contract.**—Jurisdiction to order specific performance of contract is based on the existence of a valid and enforceable contract. Where a valid and enforceable contract has not been made, the court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will not be there even though the contract is otherwise valid and enforceable, *Satish Kumar v. Karan Singh*, (2016) 4 SCC 352 : (2016) 2 SCC (Civ) 601.

▶ **Agreement to sell immovable property.**—Agreement to sell property inherited after death of female Hindu dying intestate must be restricted only to share inherited by executant, *Sirdar K.B. Ramachandra Raj Urs v. Sarah C. Urs*, (2019) 10 SCC 343.

▶ **Inalienable interest of seller.**—Specific performance of agreement to sell can not be granted when agreement to sell is contrary to statutory provisions i.e. when interest of seller is a non-alienable grant, *Narayananamma v. Govindappa*, (2019) 19 SCC 42.

► **Illegality in the matter.**—If the illegality is trivial or venial, and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position, *Narayananamma v. Govindappa*, (2019) 19 SCC 42.

*Contracts which can be specifically enforced*

<sup>5</sup>[**10. Specific performance in respect of contracts.**—The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16.

**CASE LAW ▶ Oral agreement.**—Oral agreement for sale of immovable property is permissible but heavy burden lies on the plaintiff to prove that there was consensus ad idem between the parties for the concluded agreement for sale of immovable property. Whether there was such a concluded contract or not would be a question of fact to be determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties, *K. Nanjappa v. R.A. Hameed*, (2016) 1 SCC 762.

► **Specific performance of contract for sale.**—Specific performance of contract for sale of property, held, cannot be decreed against defendant devoid of title, *Maya Devi v. Lalta Prasad*, (2015) 5 SCC 588 : (2015) 3 SCC (Civ) 168.

► **Equitable remedy.**—Remedy of specific performance is an equitable remedy, *Zarina Siddiqui v. A. Ramalingam*, (2015) 1 SCC 705 : (2015) 1 SCC (Civ) 660.

► **Readiness and willingness of plaintiff.**—Whether plaintiff possessed sufficient funds to pay balance consideration is inconsequential where defendant himself failed to perform his part of contract. Whether plaintiff demonstrated his bona fides when called upon by court to deposit balance consideration is needed to be considered. Furthermore, insistence by vendee on measurement of land, and production of all documents (including litigation documents) making out a complete chain of title by vendor, before paying balance consideration do not militate against readiness and willingness of vendee to perform its part of the contract. Plea of hardship to defendant if decree for specific performance is passed long after execution of agreement to sell raised for first time before Supreme Court without taking that plea in written statement, not permissible, *Beemaneni Maha Lakshmi v. Gangumalla Appa Rao*, (2019) 6 SCC 233.

5. Subs. by Act 18 of 2018, S. 3 (w.e.f. 1-10-2018). Prior to substitution it read as:

“10. *Cases in which specific performance of contract enforceable.*—Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced—

- (a) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or
- (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

**Explanation.**—Unless and until the contrary is proved, the court shall presume—

- (i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and
- (ii) that the breach of a contract to transfer moveable property can be so relieved except in the following cases—

- (a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;
- (b) where the property is held by the defendant as the agent or trustee of the plaintiff.”



**11. Cases in which specific performance of contracts connected with trusts enforceable.**—(1) Except as otherwise provided in this Act, specific performance of a <sup>6</sup>[contract shall], be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

(2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

**12. Specific performance of part of contract.**—(1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

- (a) forms a considerable part of the whole, though admitting of compensation in money; or
- (b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

- (i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), <sup>7</sup>[pays or has paid] the consideration for the whole of the contract without any abatement; and
- (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all rights to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

*Explanation.*—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.

6. Subs. for "contract may, in the discretion of the court" by Act 18 of 2018, S. 4 (w.e.f. 1-10-2018).

7. Ins. by the Repealing and Amending Act, 1964 (52 of 1964), Section 3 and Second Schedule.

**CASE LAW ▶ Specific performance of contract in part.**—Part specific performance can be granted only if party is unable to perform whole of its part and such part bears small proportion to whole in value and admits compensation in money. Expression "unable to perform" means that part of property is destroyed after contract or act of God or act by which it would cease to exist. Inability to perform may arise by deficiency in quantity of subject-matter or some legal prohibition or such other causes. Relief of part performance cannot be granted where inability to perform arises because of plaintiff's own conduct, *Jaswinder Kaur v. Gurmeet Singh*, (2017) 12 SCC 810.

**13. Rights of purchaser or lessee against person with no title or imperfect title.**—(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely,—

- (a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;
- (b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;
- (c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;
- (d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of moveable property.

#### *Contracts which cannot be specifically enforced*

**8[14. Contracts not specifically enforceable.]**—The following contracts cannot be specifically enforced, namely—

8. Subs. by Act 18 of 2018, S. 5 (w.e.f. 1-10-2018). Prior to substitution it read as:

"14. Contracts not specifically enforceable.—(1) The following contracts cannot be specifically enforced, namely,—

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
- (c) a contract which is in its nature determinable;

- (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of Section 20;
- (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
- (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and
- (d) a contract which is in its nature determinable.]

**CASE LAW ▶ Inter partes suit — relief.**—Inter partes suit simply for interim relief for limited purpose of restraining dissipation of assets pending foreign-seated arbitration, is not maintainable since in Indian law suits, only to obtain interim relief which is not in aid of or ancillary to main relief sought in the suit is not maintainable, *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

▶ **Contract of personal service.**—Contract of personal service is ordinarily not specifically enforceable, but as an exception, further held, employee who does not fall in the exceptions cannot claim relief of reinstatement and his only remedy is to file civil suit seeking declaration of wrongful termination and claiming damages therefor, *Maharashtra State Coop. Housing Finance Corp. Ltd. v. Prabhakar Sitaram Bhadange*, (2017) 5 SCC 623.

Exceptions to rule of non-enforceability of contract of personal service are (i) when employee is public servant working under Central or State Government; (ii) when employee is employed by authority/body

- (a) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases—

- (a) where the suit is for the enforcement of a contract,
  - (i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:  
Provided that where only a part loan has been advanced and the lender is willing to advance the remaining part of the loan in terms of the contract; or
  - (ii) to take up and pay for any debentures of a company;
- (b) where the suit is for,—
  - (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or
  - (ii) the purchase of a share of a partner in a firm;
- (c) where the suit is for the enforcement of contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely,—

- (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;
- (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and
- (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.”

which is "State" within meaning of Article 12 of constitution; and (iii) when such employee is "workman" under Section 2(s), ID Act, 1947 and raises dispute regarding his termination by invoking machinery under the ID Act, *K.K. Saksena v. International Commission of Irrigation & Drainage*, (2015) 4 SCC 670 : (2015) 2 SCC (L&S) 119 : (2015) 2 SCC (Civ) 654.

► **Contracts not specifically enforceable.**—Where contract between parties being neither revocable nor void, Section 14(1)(c) SRA, held, not applicable, *Indian Oil Corpn. Ltd. v. Nilofer Siddiqui*, (2015) 16 SCC 125 : (2016) 3 SCC (Civ) 625.

► **Specific performance of a development agreement.**—Giving a purposive interpretation to Section 14(3)(c)(iii), held, where the developer brings a suit for specific performance against the owner, he will have to satisfy the two conditions laid out in sub-clauses (i) and (ii) of Section 14(3)(c). However, when a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out, it was held that the terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights, *Sushil Kumar Agarwal v. Meenakshi Sadhu*, (2019) 2 SCC 241.

► **Contract of Employment.**—Three categories of employment distinguished: (1) Pure employment contract; (2) Employment relationship governed by Industrial Law; (3) Employment relationship with State or public or local authorities. First category being one purely governed by employment contract, declaratory judgment that employment contract still subsisted cannot be given in breach of such contract of employment. Declaration of unlawful termination and restoration to service in breach of employment contract indirectly granting specific performance of contract for personal service, is impermissible. Second category is relationship under Labour/Industrial Law. Under this branch, if employee is wrongfully terminated he can be reinstated depending upon provision under Industrial Law. Third category is relationship of employment with State or public or local authorities. Here question of reinstatement is governed by principles of natural justice and applicable Rules and Regulations, *Kailash Singh v. Mayo College*, (2018) 18 SCC 216.

<sup>9</sup>[**14-A. Power of court to engage experts.**—(1) Without prejudice to the generality of the provisions contained in the Code of Civil Procedure, 1908 (5 of 1908), in any suit under this Act, where the court considers it necessary to get expert opinion to assist it on any specific issue involved in the suit, it may engage one or more experts and direct to report to it on such issue and may secure attendance of the expert for providing evidence, including production of documents on the issue.

(2) The court may require or direct any person to give relevant information to the expert or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(3) The opinion or report given by the expert shall form part of the record of the suit; and the court, or with the permission of the court any of the parties to the suit, may examine the expert personally in open court on any of the matters referred to him or mentioned in his opinion or report, or as to his opinion or report, or as to the manner in which he has made the inspection.

(4) The expert shall be entitled to such fee, cost or expense as the court may fix, which shall be payable by the parties in such proportion, and at such time, as the court may direct.]

*Persons for or against whom contracts may be specifically enforced*

**15. Who may obtain specific performance.**—Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

- (a) any party thereto;
- (b) the representative-in-interest or the principal, of any party thereto:  
Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;
- (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;
- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor-in-title and the reversioner is entitled to the benefit of such covenant;
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;
- <sup>10</sup>[*(fa)*] when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.]
- (g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company:  
Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

**CASE LAW ▶ Who may seek specific performance.**—Only parties to the agreement or their transferees, *DDA v. Gaurav Kukreja*, (2015) 14 SCC 254 : (2016) 2 SCC (Civ) 791.

**16. Personal bars to relief.**—Specific performance of a contract cannot be enforced in favour of a person—

- <sup>11</sup>[(a) who has obtained substituted performance of contract under Section 20; or]
- (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) <sup>12</sup>[who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

*Explanation.*—For the purposes of clause (c),—

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff <sup>13</sup>[must prove] aver performance of, or readiness and willingness to perform, the contract according to its true construction.

**CASE LAW ▶ Time Essence of contract.**—As a general proposition of law, in the case of sale of immovable property there is no presumption as to time being of the essence of the contract. Even if it is not of the essence of the contract the court may infer that it is to be performed in a reasonable time if the conditions are evident:

- (i) from the express terms of the contract;
- (ii) from the nature of the property; and
- (iii) from the surrounding circumstances, for example: the object of making the contract, *Chand Rani v. Kamal Rani*, (1993) 1 SCC 519.

Conditional offer is not permissible in a suit for specific performance of contract, *Inderchand Jain v. Motilal*, (2009) 14 SCC 663 : (2009) 5 SCC (Civ) 461.

In absence of specific averment that plaintiff has performed and is always ready and willing to perform essential terms of contract, suit for specific performance is liable to be dismissed and decree for specific performance cannot be granted, *J. Samuel v. Gattu Mahesh*, (2012) 2 SCC 300 : (2012) 1 SCC (Civ) 801.

Readiness and willingness of plaintiff to perform his part of agreement of sale of land must be decided with reference to conduct of parties, attendant circumstances and evidence on record, *Narinderjit Singh v. North Star Estate Promoters Ltd.*, (2012) 5 SCC 712 : (2012) 3 SCC (Civ) 379.

A sale with a condition of repurchase is not a lending and borrowing arrangement; no debt subsists and no right to redeem is reserved by the debtor, but only a personal right to purchase (i.e. a contract for sale). This personal right can only be enforced strictly according to the terms of the deed and at the time agreed upon, *Vanchalabai Rahunath Ithape v. Shankarrao Baburao Bhilare*, (2013) 7 SCC 173.

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11. Subs. by Act 18 of 2018, S. 7(i) (w.e.f. 1-10-2018). Prior to substitution it read as:  
 “(a) who would not be entitled to recover compensation for its breach; or”  
 “(a) who would not be entitled to recover compensation for its breach; or”
12. Subs. for “who fails to aver and prove” by Act 18 of 2018, S. 7(ii)(I) (w.e.f. 1-10-2018).
13. Subs. for “must aver” by Act 18 of 2018, S. 7(ii)(II) (w.e.f. 1-10-2018).

► **Breach of agreement.**—Vendee committing breach of agreement for sale of immovable property, not entitled to decree of specific performance of agreement. Failure of vendee to pay installments of sale consideration within periods as stipulated in deed of sale agreement, amounted to breach of terms of agreement. Hence, plaintiff vendee disentitled to decree of specific performance, *Pemmada Pradhakar v. Youngmen's Vysya Assn.*, (2015) 5 SCC 355 : (2015) 3 SCC (Civ) 56.

► **Agreement to sell immovable property.**—In case of absence of specific pleadings, and cogent evidence to establish payment, and dubious conduct, grant of decree for recovery, held, unsustainable, *Manohar Ganapathi Ravankar v. H. Gurunanda Raikar*, (2019) 5 SCC 236.

► **Grant of discretionary relief of specific performance — Principles summarized.**—Specific performance cannot be enforced in favour of a person who fails to prove that he has performed or was always ready and willing to perform essential terms of contract which were to be performed by him. Jurisdiction to decree a suit for specific performance is discretionary jurisdiction. Court is not bound to grant such relief merely because it is lawful. A party cannot claim that though he may not perform his part of contract he is entitled for specific performance of same. It is incumbent on party, who wants to enforce specific performance of contract, to aver and prove that he has performed or has always been ready and willing to perform essential terms of contract. Merely because plaintiff is legally right, court is not bound to grant him relief. Court while exercising discretionary power is bound to exercise the same on established judicial principles and in reasonable manner. Discretion cannot be exercised in arbitrary or whimsical manner. Even if contract is otherwise not voidable but circumstances make it inequitable to enforce specific performance, courts can refuse to grant such discretionary relief, *Surinder Kaur v. Bahadur Singh*, (2019) 8 SCC 575.

► **Readiness and willingness — Principles summarized.**—Readiness is capacity for discharge of obligations with regard to payment. Plaintiff must demonstrate readiness and willingness throughout to perform his obligations. For ascertaining readiness and willingness, conduct of parties must be determined having regard to entire attending circumstances of each case. Bare averment in plaint or statement made in examination-in-chief is not sufficient. Conduct of plaintiff must be judged having regard to entirety of pleadings and evidence brought on record. Failure to deposit within time fixed by court is indicative of incapacity of plaintiff to perform his obligations. Time can be extended to deposit balance consideration but mere extension of time to deposit does not absolve plaintiff of his obligation to demonstrate readiness and willingness coupled with special circumstances beyond his control to seek extension. For seeking extension of time for deposit of balance consideration sufficient, substantial and cogent grounds must be pleaded. Otherwise it becomes question of his conduct along with all other attendant surrounding circumstances in facts of case. Merely because suit is filed within prescribed period of limitation does not absolve plaintiff from showing as to whether he was ready and willing to perform his part of agreement. If there was non-performance, the question would be whether that obstacle was put by seller or otherwise. The provisions to grant specific performance are quite stringent. Equitable considerations come into play. Court has to see all attendant circumstances including if plaintiff conducted himself in reasonable manner under agreement, *Ravi Setia v. Madan Lal*, (2019) 9 SCC 381.

► **Readiness and willingness to perform his part of the contract.**—Mere plea that plaintiff was ready to pay consideration, without any material to substantiate this plea, cannot be accepted. It is not necessary for plaintiff to produce ready money to establish its readiness and willingness to pay the consideration, but it is mandatory on his part to prove that he had the means to generate consideration

amount within the time-frame contemplated in the contract, *C.S. Venkatesh v. A.S.C. Murthy*, (2020) 3 SCC 280.

► **Readiness and willingness to perform — Inference of Possessing financial capacity to pay balance consideration, held, must be established not only on agreed date but also.**—(i) when demand notice was issued, and (ii) on date of filing of suit. Temporary arrangement made on agreed date alone cannot be treated as financial capacity to complete transaction. Adducing proof of availability of funds even if amount was not insisted upon in court is necessary, *Abdullahkoya Haji v. Rubis Tharayil*, (2019) 17 SCC 216.

**17. Contract to sell or let property by one who has no title, not specifically enforceable.**—(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor—

- (a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;
- (b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of moveable property.

**18. Non-enforcement except with variation.**—Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, with the variation so set up, in the following cases, namely—

- (a) where by fraud, mistake of fact or misrepresentation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract;
- (b) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce;
- (c) where the parties have, subsequently to the execution of the contract, varied its terms.

**19. Relief against parties and persons claiming under them by subsequent title.**—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

- <sup>14</sup>[(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.]
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (e) when the promoters of a company have, before its incorporation entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

**CASE LAW ▶ Sale — when immune from specific performance.**—Sale of immovable property is immune from specific performance of prior contract for sale (CFS) only if transferee has acquired title for valuable consideration, in good faith and without notice of prior CFS, *Thomson Press (India) Ltd. v. Nanak Builder & Investors (P) Ltd.*, (2013) 5 SCC 397.

Transferee/Purchaser pendente lite, held, may be impleaded in pending suit for specific performance of prior agreement to sell/contract for sale (CFS) filed by buyer under said CFS against original owner/transferor/seller pendente lite. Court has discretion to enlarge array of defendants and defences that can be raised by such added party-defendant, *Thomson Press (India) Ltd. v. Nanak Builder & Investors (P) Ltd.*, (2013) 5 SCC 397.

#### *15 [Substituted performance of contracts, etc.]*

**16 [20. Substituted performance of contract.]**—(1) Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872 (9 of 1872),

14. Ins. by Act 18 of 2018, S. 8 (w.e.f. 1-10-2018).

15. Subs. for "Discretion and Powers of Court" by Act 18 of 2018, S. 9 (w.e.f. 1-10-2018).

16. Subs. by Act 18 of 2018, S. 10 (w.e.f. 1-10-2018). Prior to substitution it read as:

"20. *Discretion as to decreeing specific performance.*—(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance—

- (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or
- (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or
- (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

*Explanation I.*—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

*Explanation II.*—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.

(2) No substituted performance of contract under sub-section (1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency:

Provided that the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency.

(3) Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under sub-section (1), he shall not be entitled to claim relief of specific performance against the party in breach.

(4) Nothing in this section shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.]

**CASE LAW ▶ Discretionary Jurisdiction.**—Jurisdiction under this section is discretionary, *Janardhanam Prasad v. Ramdas*, (2007) 15 SCC 174.

The discretionary jurisdiction in a suit for specific performance of contract depends upon the facts and circumstances of each case wherefor no hard-and-fast rule can be laid down, *G. Jayashree v. Bhagwandas S. Patel*, (2009) 3 SCC 141 : (2009) 1 SCC (Civ) 780.

Remedy of specific performance is special and extraordinary in character and discretionary in nature, *FGP Ltd. v. Saleh Hooseini Doctor*, (2009) 10 SCC 223 : (2009) 4 SCC (Civ) 135.

Escalation of price of property, held, cannot, by itself, be a ground of denying relief of specific performance of agreement of sale of the property, *Narinderjit Singh v. North Star Estate Promoters Ltd.*, (2012) 5 SCC 712 : (2012) 3 SCC (Civ) 379.

Exercise of discretionary jurisdiction of court to grant specific performance is not justified when facts pleaded and proved by plaintiff rested on untrustworthy and vague evidence, *Garre Mallikharjuna Rao v. Nalabothu Punniah*, (2013) 4 SCC 546.

▶ **Equitable jurisdiction.**—Equitable discretionary jurisdiction of court under this section must be exercised in accordance with sound and reasonable judicial principles. Exercise of discretion must be to prevent abuse of process of court. Conduct of parties must be considered. Parties must come before court with clean hands, *Zarina Siddiqui v. A. Ramalingam*, (2015) 1 SCC 705 : (2015) 1 SCC (Civ) 660.

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(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.”

► **Discretionary power of court.**—Court is not bound to grant relief of specific performance merely because it is lawful to do so. Section 20(1) of Specific Relief Act, 1963 indicates that jurisdiction to decree specific performance is discretionary. Yet, discretion of court is not arbitrary but is "sound and reasonable", to be "guided by judicial principles" and exercise of discretion is capable of being corrected by a court of appeal in hierarchy of appellate courts. Section 20(2) contains stipulation of cases where court may exercise its discretion not to grant specific performance qualifications added thereto by stipulations Explanation 1 and 2, *Jayakantham v. Abyakumar*, (2017) 5 SCC 178.

Question as to whether specific performance of an agreement should be granted or not is essentially in discretion of Court. Indeed Section 20 of Specific Relief Act says so in no uncertain terms. Therefore, once trial court, first and second appellate court formed an opinion and decided to grant specific performance of agreement to plaintiff in exercise of their respective discretionary powers, Supreme Court being last court in hierarchy cannot disturb such concurrent findings while exercising power under Article 136 of the Constitution of India, *Parminder Singh v. Gurpreet Singh*, (2018) 13 SCC 352.

No exhaustive guidelines can be laid exercise of discretionary power of court to grant decree for specific performance. For power should be exercised reasonably, not arbitrarily, in accordance with sound judicial principles on meticulous consideration of all facts and circumstances so that grant of decree may not be used as an instrument of oppression to have unfair advantage to parties, *K. Nanjappa v. R.A. Hameed*, (2016) 1 SCC 762.

When first appellate court on reappreciation of evidence comes to its own independent conclusion and grants relief of specific performance to plaintiff, further appellate court should be slow to interfere therewith unless same found to be against settled principles of law, or arbitrary or perverse, *Rathnavathi v. Kavita Ganashamdas*, (2015) 5 SCC 223 : (2015) 2 SCC (Civ) 736.

Once it is established that the party was justified in terminating the contract on account of fundamental breach thereof, then the said innocent party is entitled to claim damages for the entire contract i.e. for the part which is performed and also for the part of the contract which it was prevented from performing, *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.*, (2018) 3 SCC 133.

► **Specific performance of agreement to sell.**—Subsequent rise in price of the property would not be treated as a hardship entailing refusal of decree for specific performance. However, taking note of the fact as to increase in price of the property and other facts and circumstance can impose such condition which may to some extent compensate the defendant owner of the property, *K. Prakash v. B.R. Sampath Kumar*, (2015) 1 SCC 597 : (2015) 1 SCC (Civ) 600.

<sup>17</sup>[**20-A. Special provisions for contract relating to infrastructure project.**—(1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

**Explanation.**—For the purposes of this section, Section 20-B and clause (ha) of Section 41, the expression "infrastructure project" means the category of projects and infrastructure Sub-Sectors specified in the schedule.

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17. Ins. by Act 18 of 2018, S. 10 (w.e.f. 1-10-2018).

(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the schedule relating to any category of projects or Infrastructure Sub-Sectors.

(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

**20-B. Special Courts.**—The State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette, one or more Civil Courts as Special Courts, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects.

**20-C. Expedited disposal of suits.**—Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), a suit filed under the provisions of this Act shall be disposed of by the court within a period of twelve months from the date of service of summons to the defendant:

Provided that the said period may be extended for a further period not exceeding six months in aggregate after recording reasons in writing for such extension by the court.]

**21. Power to award compensation in certain cases.**—(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach,<sup>18</sup>[in addition to], such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872 (9 of 1872).

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18. *Subs.* for "either in addition to, or in substitution of" by Act 18 of 2018, S. 11 (w.e.f. 1-10-2018).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

*Explanation.*—The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

**CASE LAW ▶ Compensation in lieu of specific performance.**—Vendee under agreement to sell entitled to compensation in lieu of specific performance, where agreement to sell of immovable property becoming incapable of being performed due to acquisition of that property by Government under LA Act, 1894 paid by State for acquisition, *Urmila Devi v. Mandir Shree Chamunda Devi*, (2018) 2 SCC 284.

**22. Power to grant relief for possession, partition, refund of earnest money, etc.**—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

- (a) possession, or partition and separate possession, of the property, in addition to such performance; or
- (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or<sup>19</sup>[made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under Section 21.

**CASE LAW ▶ Refund of earnest money.**—Unsuccessful buyer entitled to claim refund of earnest money, *Revanasiddayya v. Gangamma*, (2018) 1 SCC 610.

► **Maintainability of suit.**—Court is barred to grant relief of possession in a suit for specific performance unless prayer for delivery of possession is specifically sought or is present by necessary implication from nature of relief prayed for, *Excel Dealcomm (P) Ltd. v. Asset Reconstruction Co. (India) Ltd.*, (2015) 8 SCC 219 : (2015) 4 SCC (Civ) 62.

► **Suit for land.**—Suit for land is a suit in which relief claimed relates to title or delivery of possession of land or immovable property. To determine if a suit is for land, court has to look into the plaint and no other evidence. If by averments in plaint and prayers therein, it appears that said suit is one for land, it shall be so held, *Excel Dealcomm (P) Ltd. v. Asset Reconstruction Co. (India) Ltd.*, (2015) 8 SCC 219 : (2015) 4 SCC (Civ) 62.

19. Subs. by the Repealing and Amending Act, 1964 (52 of 1964), Section 3 and Second Schedule, for "made to".

**23. Liquidation of damages not a bar to specific performance.**—(1) A contract, otherwise proper to be specifically enforced, may be so enforced though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing the performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

(2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

**24. Bar of suit for compensation for breach after dismissal of suit for specific performance.**—The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

*Enforcement of Awards and Directions to Execute Settlements*

**25. Application of preceding sections to certain awards and testamentary directions to execute settlements.**—The provisions of this Chapter as to contracts shall apply to awards to which<sup>20</sup>[the Arbitration and Conciliation Act, 1996 (26 of 1996)]; does not apply and to directions in a will or codicil to execute a particular settlement.

### CHAPTER III

#### RECTIFICATION OF INSTRUMENTS

**26. When instrument may be rectified.**—(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956), applies] does not express their real intention, then—

- (a) either party or his representative in interest may institute a suit to have the instrument rectified; or
- (b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or
- (c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

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20. Subs. for "the Arbitration Act, 1940 (10 of 1940)" by Act 18 of 2018, S. 12 (w.e.f. 1-10-2018).

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:

Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

**CASE LAW ▶ Applicability.**—Section 26 of the Specific Relief Act, 1963 has a limited application, and is applicable only where it is pleaded and proved that through fraud or mutual mistake of the parties, the real intention of the parties is not expressed in relation to an instrument. Such rectification is permissible only by the parties to the instrument and by none else, *Joseph John Peter Sandy v. Veronica Thomas Rajkumar*, (2013) 3 SCC 801.

Only donor may seek rectification of gift deed, *Joseph John Peter Sandy v. Veronica Thomas Rajkumar*, (2013) 3 SCC 801.

## CHAPTER IV RESCISSIION OF CONTRACTS

**27. When rescission may be adjudged or refused.**—(1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely—

- (a) where the contract is voidable or terminable by the plaintiff;
- (b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

(2) Notwithstanding anything contained in sub-section (1), the court may refuse to rescind the contract—

- (a) where the plaintiff has expressly or impliedly ratified the contract; or
- (b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or
- (c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or
- (d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

**Explanation.**—In this section “contract”, in relation to the territories which the Transfer of Property Act, 1882 (4 of 1882), does not extend, means a contract in writing.

**28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.**—(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and purchaser or lessee

does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

- (a) shall direct the purchaser or lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and
- (b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely—

- (a) the execution of a proper conveyance or lease by the vendor or lessor;
- (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

**CASE LAW ▶ Contract — when not extinguished.**—Contract between parties is not extinguished when court passes decree for specific performance. Such a decree is preliminary in nature and suit is deemed to be pending even after the decree. Court which granted decree does not become functus officio. It remains vested with power to declare rescission of contract or to extend time, *Bhupinder Kumar v. Angrej Singh*, (2009) 8 SCC 766 : (2009) 3 SCC (Civ) 556.

▶ **Rescission of contract.**—Default of decree-holder purchaser to pay decretal amount (balance purchase money with interest) within time stipulated in decree would result in rescission of contract unless decree-holder property seeks extension of time and the same is granted by court. There can be no automatic extension of the time. Failure of judgment-debtor to seek rescission of the contract in terms of Section 28 SRA does not imply that decree remains executable in spite of expiry of the period for deposit, with the only obligation on the part of the decree-holder to pay interest, and would not imply automatic grant of extension of time to decree-holder to deposit decretal amount, when neither was extension granted, nor explanation furnished for delay in making deposit, *Prem Jeevan v. K.S. Venkata Raman*, (2017) 11 SCC 57.



As in the case of determining whether a decree for specific performance is to be granted in the first place where equity weighs with the court, so is the situation in considering an application under Section 28 SRA for rescinding the contract. If the purchaser is entitled to claim compensation for deterioration, a fortiori it must be held that the vendor should also be entitled to compensation for accretion in value of the subject-matter of the agreement for specific performance, in case the execution thereof is unduly delayed by the purchaser. Section 28 provides that the court has to pass an order as justice of the case requires, *Rajinder Kumar v. Kuldeep Singh*, (2014) 15 SCC 529 : (2015) 4 SCC (Civ) 243.

Under Section 28 SRA, a vendor is free to apply to the court which made decree to have the contract rescinded in case the purchaser has not paid the purchase money or other sum which the court had ordered him to pay within the period allowed by the decree or such other period as the court may allow. On such an application, the court may, by order, rescind the contract "as the justice of the case may require". A suit for specific performance does not come to an end on passing of a decree and the court which passed the decree retains control over the decree even after the decree has been passed and the decree is sometimes described as the preliminary decree, *Rajinder Kumar v. Kuldeep Singh*, (2014) 15 SCC 529 : (2015) 4 SCC (Civ) 243.

**29. Alternative prayer for rescission in suit for specific performance.**—A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced it may be rescinded and delivered up to be cancelled; and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

**30. Court may require parties rescinding to do equity.**—On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.

## CHAPTER V

### CANCELLATION OF INSTRUMENTS

**31. When cancellation may be ordered.**—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

**CASE LAW ▶ Onus to prove invalidity of a registered sale deed.**—A registered document carries with it a presumption that it was validly executed and it is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law, *Jamila Begum v. Shami Mohd.*, (2019) 2 SCC 727.

**32. What instruments may be partially cancelled.**—Where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.

**33. Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable.**—(1) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.

(2) Where a defendant successfully resists any suit on the ground—

- (a) that the instrument sought to be enforced against him in the suit is voidable, the court may, if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;
- (b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under Section 11 of the Indian Contract Act, 1872 (9 of 1872), the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.

## CHAPTER VI

### DECLARATORY DECREES

**34. Discretion of court as to declaration of status or right.**—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

*Explanation.*—A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

**CASE LAW ▶ Declaration for enforcement of contract.**—Declaration to enforce a contract of personal service can be granted in the following three cases:

- (i) appropriate cases of public servants who have been dismissed from service in contravention of Article 311;
- (ii) dismissed workers under Industrial and Labour Law; and
- (iii) when a statutory body has acted in breach of a mandatory obligation imposed by a statute, *Mysore SRTC v. Mirja Khasim Ali Beg*, (1977) 2 SCC 457 : 1977 SCC (L&S) 282.

Discretionary power of court, regarding grant of relief of declaration as to right or status and injunction relating to commercial transaction has to be exercised with circumspection ex debito justitiae having regard to pros and cons in the facts and circumstances of each case. Declaration tending to affect free flow of capital and mercantile business would be unjust, *American Express Bank Ltd. v. Calcutta Steel Co.*, (1993) 2 SCC 199.

A declaratory decree merely declares the right of the decree-holder vis-à-vis the judgment-debtor but does not direct the judgment debtor to do or refrain from doing any particular act or thing, *State of M.P. v. Mangilal Sharma*, (1998) 2 SCC 510 : 1998 SCC (L&S) 599.

Ownership and title over immovable property must be proved by admissible evidence and records. In a title suit of civil nature, there is no scope for historical facts and claims. Reliance on borderline historical facts would lead to erroneous conclusion. Plaintiff filing title suit should be very clear about origin of title over the property and must specifically plead it, *Karnataka Board of Wakf v. Govt. of India*, (2004) 10 SCC 779.

Suit seeking declaration of title of ownership of property, without seeking possession, when plaintiff not in possession, is not maintainable, *Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362.

Grant of declaratory relief under the Specific Relief Act is discretionary in nature. A civil court can and may in appropriate cases refuse a declaratory decree for good and valid reasons which dissuade the court from exercising its discretionary jurisdiction. Merely because the suit is within time is no reason for the court to grant a declaration, *Kandla Port v. Hargovind Jasraj*, (2013) 3 SCC 182.

For maintaining suit for declaration that termination of lease was invalid lessee need not be dispossessed from leased property as dispossession is different from termination of lease, *Kandla Port v. Hargovind Jasraj*, (2013) 3 SCC 182.

► **Declaration of title and possession.**—In suit for declaration of title and possession, burden of proof is on plaintiff to establish its case, irrespective of whether defendants prove their case or not. In absence of establishment of its own title, the plaintiff must be non-suited even if title set up by defendants is found against them. Weakness of case set up by defendants cannot be a ground to grant relief to plaintiff, *Union of India v. Vasavi Coop. Housing Society Ltd.*, (2014) 2 SCC 269 : (2014) 2 SCC (Civ) 66.

In a case where claim of ownership of property is subsequent to its acquisition, where acquisition proceedings attained finality, declaratory remedy of ownership cannot be granted. Suit of such nature cannot be filed, *Y.P. Sudhanva Reddy v. Karnataka Milk Federation*, (2018) 6 SCC 574.

► **Declaratory decree to restore property.**—Effect of a declaratory decree to restore the property alienated, to estate of alienor is that until and unless the alienees are able to convince court that they have a subsisting interest in the property, the heirs of the alienor would be entitled to the benefits of the property as per the law of succession, *Ajit Kaur v. Darshan Singh*, (2019) 13 SCC 70.

► **Exclusion of civil court's jurisdiction.**—Suit for declaration of legal character of parties in regard to their alleged marriage can be filed under Section 34 by plaintiff and on his death can be continued by his LR at behest of plaintiff. Suit having not been filed under Hindu Marriage Act or Special Marriage Act, civil suit under Section 34 not barred by Sections 7 and 8 of Family Court Act, *Samar Kumar Ray v. Jharna Bera*, (2017) 9 SCC 591.

► **Duty of court/appellate court.**—Court while declaring title of plaintiff, held, could not decline to adjudicate consequential questions of possession/removal of encroachment/demolition of encroaching structure upon allegedly encroached upon portion of land to which title of plaintiff had been declared, *Phanidhar Kalita v. Saraswati Devi*, (2015) 5 SCC 661 : (2015) 3 SCC (Civ) 230.

► **Burden of proof.**—Plaintiff is required to discharge his burden independent of case of defendant. Passing of declaratory decree where plaintiff did not lead evidence to establish his title, is not permissible. Khata entries are not proof of title but for revenue purpose. Even if few sentences in written statement

advantageous to plaintiff, such written statement required to be read in totality. It is necessary for plaintiff to adduce contra evidence where defendant led relevant evidence, *Jagdish Prasad Patel v. Shivnath*, (2019) 6 SCC 82.

► **Grounds available to defendant when not signatory to sale deed.**—When defendant was not signatory to the sale deed, it cannot bind him or his heirs. A person, in his capacity as a defendant, can raise any legitimate plea available to him under the law to defeat the suit of the plaintiff. In a suit filed by the plaintiff seeking a declaration that he has become the owner of the land pursuant to the registered sale deed, it is always open for the defendant, who is a stranger to the sale deed, to raise a plea that either the sale deed is not binding to him or the same was without consideration or it was a nominal sale deed or void or fictitious, for that matter, collusive and not intended to be acted upon, *Thulasidhara v. Narayanappa*, (2019) 6 SCC 409.

► **Declaratory relief with suit for injunction simpliciter - When necessary.**— Where bare injunction suit has been filed to restrain State Authorities from acting in a particular manner without seeking declaratory relief as to illegality of orders/actions of State Authorities based on which State Authorities were seeking to act, said bare injunction suit was not maintainable, as no government order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law, *Ratnagiri Nagar Parishad v. Gangaram Narayan Ambekar*, (2020) 7 SCC 275.

**35. Effect of declaration.**—A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration such parties would be trustees.

### PART III PREVENTIVE RELIEF CHAPTER VII INJUNCTIONS GENERALLY

**36. Preventive relief how granted.**—Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

**CASE LAW ► Court — when not to interfere.**—Court should not easily interfere in the affairs of autonomous bodies such as educational institutions or clubs. More so if a statutory functionary reviews the action and affirms it imparting finality in terms of the Act. Loss or disadvantage sought to be prevented must have bearing on the order being restrained, *Shyam Lal Yadav v. Kusum Dhawan*, (1979) 4 SCC 143 : 1979 SCC (L&S) 353.

Though these provisions do not limit the powers of Supreme Court under Article 131 they provide valuable guidelines as to the nature of this form of equitable relief, *State of Haryana v. State of Punjab*, (2004) 12 SCC 673.

An issue which goes to the root of the matter in granting or refusing injunction, needs to be gone into, *Garware-Wall Ropes Ltd. v. A.I. Chopra Engineers & Contractors*, (2008) 17 SCC 422.

**37. Temporary and perpetual injunctions.**—(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908).

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

**CASE LAW ▶ Injunction — meaning of.**—An injunction may be permanent (perpetual) or temporary. A permanent injunction is final and conclusive of the facts in the context of which the injunction is granted. A temporary injunction by contrast is granted on a *prima facie* view of the facts and, as the word "temporary" itself indicates, is an interim order pending a final adjudication of the rights of the parties. This distinction is not to be confused with the distinction between a prohibitory or preventive injunction on the one hand and a mandatory injunction on the other. In the first case a party is prevented from doing a particular thing or continuing with a particular action. A mandatory injunction on the other hand commands an act to be done, *State of Haryana v. State of Punjab*, (2004) 12 SCC 673.

Subject matter of injunction cannot be property in respect of which no interest is claimed by either party (including an easementary right of way), *Kishori Lal v. Madan Gopal*, (2005) 9 SCC 243.

Temporary injunction is not governed by the Act, *Best Sellers Retail (India) (P) Ltd. v. Aditya Birla Nuvo Ltd.*, (2012) 6 SCC 792 : (2012) 3 SCC (Civ) 1044.

## CHAPTER VIII PERPETUAL INJUNCTIONS

**38. Perpetual injunctions when granted.**—(1) Subject to the other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property the court may grant a perpetual injunction in the following cases, namely:—

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that compensation in money would not afford adequate relief;
- (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

**CASE LAW ▶ Maintainability of suit.**—Suit for permanent injunction to protect possession of one from interference by the other, between two private parties in respect of land which falls within State Ceiling Law without impleading State as party-defendant, liable to be dismissed, *Agnigundala Venkata Ranga Rao v. Indukuru Ramachandra Reddy*, (2017) 7 SCC 694.

► **Maintainability of suit for injunction.**—In each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. However, when the defendant raises a genuine dispute with regard to title and when he raises a cloud over

the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction, *Jharkhand State Housing Board v. Didar Singh*, (2019) 17 SCC 692.

► **Suit for quiet enjoyment and peaceful possession.**—Suit cannot be dismissed on the ground that the earlier suit was dismissed for non-joinder of necessary parties, *Shrikrishna Vijaya Saw Mill v. Subhash*, (2016) 12 SCC 442 : (2016) 4 SCC (Civ) 782.

► **Consequential relief of injunction.**—Suit for declaration of title coupled with permanent injunction, held, is not a suit for perpetual injunction alone, as title has also been claimed, *Nagar Palika Parishad, Mihona v. Ramnath*, (2014) 6 SCC 394 : (2014) 3 SCC (Civ) 569.

► **Suit to restrain Karta.**—Suit by coparcener for permanent injunction restraining karta of a joint Hindu family from alienating joint family property in pursuance of a sale agreement with a third party is not maintainable. In case of waste or ouster the Manager can be restrained but issue of permanent injunction against karta for acts of waste or ouster cannot be considered, *Sunil Kumar v. Ram Parkash*, (1988) 2 SCC 77.

A trespasser cannot claim injunction against the owner, *Tamil Nadu Housing Board v. A. Viswam*, (1996) 8 SCC 259.

Perpetual and mandatory injunction, once granted and becoming final, any attempt to circumvent the same cannot be permitted. Non-compliance would be a continuing disobedience entailing penal consequences, *Jai Dayal v. Krishan Lal Garg*, (1996) 11 SCC 588.

Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court. It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession, *Sopan Sukhdeo Sable v. Asstt. Charity Commr.*, (2004) 3 SCC 137.

For grant or refusal of injunction court should carefully examine entire pleadings and documents. It should give short notice on injunction application and after hearing parties pass appropriate order. Only in grave urgency should it grant ad interim ex parte order for a specified period such as two weeks. Court should record in its order that in event of dismissal of suit, plaintiff undertakes to pay restitution, actual or realistic costs. It should also pass order for mesne profits, *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126.

► **Anti-suit injunction.**—Principles summarised regarding grant or refusal for restraining one party from prosecuting a case in another court outside its jurisdiction, including a foreign court. Such injunction, held, deserves to be refused when by such refusal no grave injustice would be suffered by party seeking such injunction. Power should be exercised by court cautiously, carefully, sparingly and not in a routine manner. Grant of injunction is basically governed by doctrine of equity, *Dinesh Singh Thakur v. Sonal Thakur*, (2018) 17 SCC 12.

**39. Mandatory injunctions.**—When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

**CASE LAW ▶ Absence of concluded contract.**—A declaration that rejection of the bid is illegal, itself, held, does not entitle the plaintiff (highest bidder) to consequential mandatory injunction for issuance of formal letter of allotment when bid had not yet been accepted i.e. in absence of concluded contract, *HUDA v. Orchid Infrastructure Developers (P) Ltd.*, (2017) 4 SCC 243.

**40. Damages in lieu of, or in addition to, injunction.**—(1) The plaintiff in a suit for perpetual injunction under Section 38, or mandatory injunction under Section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.

(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:

Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

(3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

**41. Injunction when refused.**—An injunction cannot be granted—

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- 21(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project;]
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.

**CASE LAW ▶ Court — no jurisdiction under Section 41-B, CPC.**—Court has no jurisdiction either under Section 41(b) or under its inherent powers under Section 151, Civil Procedure Code to grant temporary injunction restraining a person from instituting any proceeding which such person is otherwise entitled to institute in a court not subordinate to that from which the injunction is sought, *Cotton Corpn. of India Ltd. v. United Industrial Bank Ltd.*, (1983) 4 SCC 625.

The equitable principle underlying Section 41(b) is that access to court in search of justice according to law is the right of a person who complains of infringement of his legally protected interest and a fortiori

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21. Ins. by Act 18 of 2018, S. 13 (w.e.f. 1-10-2018).

therefore, no other court can by its action impede access to justice, except the superior court which can injunct a person by restraining him from instituting or prosecuting a proceeding before a subordinate court. A subordinate court is precluded from granting an injunction restraining any person from instituting or prosecuting any proceeding in a court of coordinate or superior jurisdiction. Section 41(b) has curtailed the power to grant injunction in personam. Moreover, Section 41(b) was enacted in order to avoid the inevitable multiplicity of proceedings.

Accordingly, Section 41(b) must receive such interpretation as would advance the intendment, and thwart the mischief it was enacted to suppress, and to keep the path of access to justice through court unobstructed. Access to justice must not be hampered even at the hands of judiciary, *Cotton Corpn. of India Ltd. v. United Industrial Bank Ltd.*, (1983) 4 SCC 625.

'Injunction' under covers perpetual as well as temporary injunctions. If final relief cannot be granted, temporary injunction also cannot be availed of, *Cotton Corpn. of India Ltd. v. United Industrial Bank Ltd.*, (1983) 4 SCC 625.

**42. Injunction to perform negative agreement.**—Notwithstanding anything contained in clause (e) of Section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:

Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

**43. Amendment of Act 10 of 1940.**—<sup>22</sup>[\* \* \*]

**44. Repeal.**—<sup>23</sup>[\* \* \*]

#### <sup>24</sup>[THE SCHEDULE

[See Sections 20-A and 41(ha)]

#### *Category of Projects and Infrastructure Sub-Sectors*

Sl. No.	Category	Infrastructure Sub-Sectors
1	2	3
1.	Transport	<ul style="list-style-type: none"> <li>(a) Road and bridges</li> <li>(b) Ports (including Capital Dredging)</li> <li>(c) Shipyards (including a floating or land-based facility with the essential features of waterfront, turning basin, berthing and docking facility, slipways or ship lifts, and which is self-sufficient for carrying on shipbuilding/repair/breaking activities)</li> </ul>

22. *Repealed by Repealing and Amending Act, 1974 (56 of 1974).* Prior to repeal it read as:  
 "43. *Amendment of Act 10 of 1940.*—In Section 32 of the Arbitration Act, 1940, after the words "nor shall any arbitration, agreement or award be", the word "enforced" shall be inserted."
23. *Repealed by Repealing and Amending Act, 1974 (56 of 1974).* Prior to repeal it read as:  
 "44. *Repeal.*—The Specific Relief Act, 1877, is hereby repealed."
24. *Ins. by Act 18 of 2018, S. 14 (w.e.f. 1-10-2018).*

Sl. No.	Category	Infrastructure Sub-Sectors
		3
1		(d) Inland Waterways (e) Airports (f) Railway Track, tunnels, viaducts, bridges, terminal infrastructure including stations and adjoining commercial infrastructure (g) Urban Public Transport (except rolling stock in case of urban road transport)
2.	Energy	(a) Electricity Generation (b) Electricity Transmission (c) Electricity Distribution (d) Oil pipelines (e) Oil/Gas/Liquefied Natural Gas (LNG) storage facility (including strategic storage of crude oil) (f) Gas pipelines (including city gas distribution network)
3.	Water and Sanitation	(a) Solid Waste Management (b) Water supply pipelines (c) Water treatment plants (d) Sewage collection, treatment and disposal system (e) Irrigation (dams, channels, embankments, etc.) (f) Storm Water Drainage System (g) Slurry pipelines
4.	Communication	(a) Telecommunication (Fixed network including optic fibre/wire/cable networks which provide broadband/internet) (b) Telecommunication towers (c) Telecommunications and Telecom Services
5.	Social and Commercial Infrastructure	(a) Education Institutions (capital stock) (b) Sports infrastructure (including provision of Sports Stadia and Infrastructure for Academies for Training/Research in Sports and Sports-relating activities) (c) Hospitals (capital stock including Medical Colleges, Para Medical Training Institutes and Diagnostic Centres) (d) Tourism infrastructure viz. (i) three-star or higher category classified hotels located outside cities with population of more than one million; (ii) ropeways and cable cars (e) Common infrastructure for industrial parks and other parks with industrial activity such as food parks, textile parks, special economic zones, tourism facilities and agriculture markets (f) Post-harvest storage infrastructure for agriculture and horticulture produce including cold storage

Sl. No.	Category	Infrastructure Sub-Sectors
1	2	3
	(g) Terminal markets	
	(h) Soil-testing laboratories	
	(i) Cold chain (including cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat)	
	(j) Affordable Housing (including a housing project using at least 50% of the Floor Area Ratio (FAR)/ Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters	
	<i>Explanation.—For the purposes of this sub-clause, the term “carpet area” shall have the same meaning as assigned to it in clause (k) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).]</i>	

