

Lesson 2: Specific Relief Act, 1963

1. Meaning of Specific Relief and Introduction to Specific Relief Act, 1963

- The expression 'specific relief' means a relief in specie.
- It is a remedy which aims at the exact fulfilment of an obligation.
- The Law relating to specific relief in India is provided in the Specific Relief Act of 1963.
- The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief.

2. Recovering Possession of Property

Recovery of specific immovable property

According to Section 5 of the Specific Relief Act, 1963, a person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Suit by person dispossessed of immovable property

- Section 6 provides that if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person 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.
- No suit under section 6 shall be brought:
 - after the expiry of six months from the date of dispossession; or
 - against the Government.
- No appeal shall lie from any order or decree passed in any suit instituted under Section 6 nor shall any review of any such order or decree be allowed.
- Section 6 shall not bar any person from suing to establish his title to such property and to recover possession thereof.

Note: Section 5 and 6 provide alternative remedies which are mutually exclusive.

Recovery of specific movable property

As per Section 7 a person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Note:

- *A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.*
- *A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.*

Liability of person in possession (not as owner) to deliver to persons entitled to immediate possession

Section 8 provides that any person having the possession/control of a particular article of movable 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:

	<p>(a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;</p> <p>(b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;</p> <p>(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;</p> <p>(d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.</p>
<p>Note: <i>Unless and until the contrary is proved, the court shall in respect of any article of movable property claimed under clause (b) or clause (c) above presume as follows:</i></p> <ul style="list-style-type: none"> ➤ <i>that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;</i> ➤ <i>that it would be extremely difficult to ascertain the actual damage caused by its loss.</i> 	

3. Relief by specific performance of contract (Section 9 - 13)	
Defences respecting suits for relief based on contract (Section 9)	Where any relief is claimed 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.
Specific performance in respect of contracts (Section 10)	The specific performance of a contract shall be enforced by the court subject to the provisions contained in section 11(2), section 14 and section 16 of the Specific Relief Act, 1963.
Cases in which specific performance of contracts connected with trusts enforceable (Section 11)	<ul style="list-style-type: none"> ▪ A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced. ▪ Section 11 provides that except as otherwise provided in this Act, specific performance of a contract shall be enforced when the act agreed to be done is in the performance wholly or partly of a trust.
Specific performance of part of contract	<p>Section 12 deals with specific performance of a part of a contract.</p> <ul style="list-style-type: none"> ▪ Sub-section (1) lays down the general principle that except as otherwise hereinafter provided in this section, the Court shall not direct the specific performance of a part of a contract. ▪ Sub-sections (2)-(4) lay down the exceptions to this general rule as follows: <ul style="list-style-type: none"> ➤ Sub-section 2 says that 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 the either party, direct the specific performance of so much of the contract as can be performed and award compensation in money for the deficiency. <p><i>For Example: X contracts to sell Y a piece of land consisting of 1000 bighas. It turns out that 980 bighas of the land belongs to X and the twenty remaining bighas to a stranger, who refuses to part with them. The twenty bighas are not necessary for the use of enjoyment of the 980 bighas nor so important for such use or enjoyment that the loss of them may not be made in goods or in money. X may be directed at the suit of Y to convey to Y</i></p>

	<p><i>the 980 bighas and to make compensation to him. For not conveying the two remaining bighas; Y may be directed at the suit of X to pay to X, on receiving the conveyance and possession of the land, the stipulated purchase money less the sum awarded as compensation for the deficiency.</i></p> <p>➤ Sub-section 3 lays down that 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—</p> <p>(a) forms a considerable part of the whole, though admitting of compensation in money; or</p> <p>(b) does not admit of compensation in money;</p> <p>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-</p> <p>(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) pays/has paid; the consideration for the whole of the contract without any abatement; and</p> <p>(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.</p> <p><i>For example, X contracts to sell Y a piece of land consisting of 1000 bighas for Rs. 10, 00,000. It turns out that only 500 bighas of land belong to X. 500 bighas are substantial part of the contract. X cannot demand specific performance of the contract but Y can demand specific performance to get 500 bighas of land from X by paying the full consideration i.e. Rs. 10,00,000.</i></p> <p>a) Sub-section 4 lays down that 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.</p> <p><i>Note: A party to the 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 for the purposes of this section.</i></p>
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Rights of purchaser or lessee against person with no title or imperfect title (Section 13)	<p>Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee has the following rights, namely:</p> <ul style="list-style-type: none"> ▪ 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; ▪ where the concurrence of other person 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; ▪ 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; ▪ 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 lesser in the property which is the subject-matter of the contract.
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4. Contract not Specifically Enforce (Section 14)	
<p>The following contracts cannot be specifically enforced namely:</p> <ul style="list-style-type: none"> ▪ where a party to the contract has obtained substituted performance of contract in accordance with the provisions of Section 20; ▪ a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise; ▪ 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 ▪ a contract which is in its nature determinable. 	
Who may obtain specific performance	<p>Section 15 lays down that the specific performance of a contract may be obtained by:</p> <ul style="list-style-type: none"> ▪ any party thereto; ▪ the representative in interest or the principal of any party thereto; ▪ where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled there under; ▪ where the contract has been entered into by a tenant for life in due

	<p>exercise of a power, the remainder man;</p> <ul style="list-style-type: none"> ▪ 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; ▪ 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; ▪ 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. ▪ when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation ▪ 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. However, the company has accepted the contract and has communicated such acceptance to the other party to the contract.
Personal bars to relief	<p>According to Section 16, Specific performance of a contract cannot be enforced in favour of a person:</p> <p>(a) who has obtained substituted performance of contract under section 20; or</p> <p>(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</p> <p>(c) 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 of the performance of which has been prevented or waived by the defendant.</p> <p><i>Note: For the purposes of clause (c) above:</i></p> <p><i>(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;</i></p> <p><i>(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.</i></p>
Non-enforcement except with variation	<p>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 except with the variation so set up in the following cases, namely:</p> <ul style="list-style-type: none"> 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.
Relief against parties and persons claiming under them by subsequent title. (Section 19)	<p>Section 19 lays down that specific performance of a contract may be enforced against:</p> <p>(a) either party thereto;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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. It may be noted that the company has accepted the contract and communicated such acceptance to the other party to the contract.</p>

5. Power of the Court to Engage Experts (Section 14)	
<ul style="list-style-type: none"> ▪ Section 14A (1) provides that without prejudice to the generality of the provisions contained in the Code of Civil Procedure, 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. ▪ Section 14A (2) states that 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. ▪ As per Section 14A (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. 	

- According to Section 14A (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.”

6. Substituted Performance of Contract

- Section 20(1) states that without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872 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.
- According to Section 20(2), No substituted performance of contract under above 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.
However, 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.
- Section 20(3) provides that 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.

Note: Section 20 shall not prevent the party who has suffered breach of contract from claiming compensation from the party in breach.

7. Special Provisions for Contract Relating to Infrastructure Project

Section 20A lays down Special provisions for contract relating to infrastructure project.

- According to section 20A(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.
- As per Section 20A (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.
- Section 20A(3) provides that every notification issued under the 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.

8. Rectification of Instruments

- Rectification means correction of an error in an instrument in order to give effect to the real intention of the parties.
- 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 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.

9. Rescission of Contract (Section 27- 30)

Section 27 deals with when rescission may be adjudged or refused.

- “Rescission” means putting an end to a contract which is still operative and making it *null* and *void ab initio*. It does not apply to void contracts.
- Section 27(1) states that 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.
- As per Section 27(2) 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.

<p>Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed</p>	<ul style="list-style-type: none"> ▪ Section 28(1) provides that where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the 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. ▪ As per Section 28 (2), where a contract is rescinded under sub-section (1), the Court: <ul style="list-style-type: none"> a) shall direct the purchaser or the 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 the lessee as earnest money or deposit in connection with the contract. ▪ According to Section 28(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: <ul style="list-style-type: none"> 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.
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10. Declaratory Decree (Section 34- 35)

A declaratory decree is a decree whereby any right as to any property or the legal character of a person is judicially ascertained.

- **Discretion of court as to declaration of status or right:** As per the provisions of Section 34 of the Act, 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.

Note: Court shall not make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

- **Effect of declaration:** According to Section 35 of the Act, a declaration made 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.

11. Preventive Relief (Section 36-41)

Preventive Relief means preventing a party from doing that which he is under an obligation not to do.

- **Injunction:** Preventive relief is granted at the discretion of the court by way of an injunction. An injunction is a specific order of the Court forbidding the commission of a wrong threatened or the continuance of a wrongful course of action already begun, or in some cases (called as 'mandatory injunction') commanding active restitution of the former state of things.
- **Characteristics of an injunction:** An injunction has three characteristic features:
 - It is a judicial process.
 - The object of this judicial process is to restrain or to prevent.
 - The act restrained or prevented is a wrongful act.
- **Injunctions:** As per Section 36 of the Act, preventive relief is granted at the discretion of the court by injunction:
 - **Temporary injunctions (Section 37)** are such as are to continue until a specific 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.
 - **Perpetual injunction (Section 38)** 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.

- **Mandatory injunctions:** As per Section 39 of the Act, 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.
- **Damages in lieu of or in addition to injunction:** Section 40 dealing with damages in lieu of or in addition to injunction.

It states that 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.

- **Injunction when refused:** Section 41 gives a list of cases when injunction cannot be granted. It says that an injunction cannot be granted:
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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;
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to restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injunction is sought;
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to restrain any person from applying to any legislative body;

to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

to prevent the breach of a contract the performance of which would not be specifically enforced;
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to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

to prevent a continuing breach in which the plaintiff has acquiesced;

when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
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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.

when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;

when the plaintiff has no personal interest in the matter

12. Special Court

Section 20B empowers 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.

13. Expeditious Disposal of Suits

Section 20C states that notwithstanding anything contained in the Code of Civil Procedure, 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.

Note: The above stated 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.
