THE SPECIFIC RELIEF ACT, 1963

SYNOPSIS

INTRODUCTION

- This article provides section wise detailed analysis of the Specific Relief Act.
- This Act is considered to be in a branch of the Indian Contracts Act, 1872 that deals with the reliefs and recovery of damages of an injured person.
- The suit under Specific Relief Act may be brought to compel the performance of the contract by the person in default.

PROVISIONS OF THE ACT

- This Act is divided into three parts containing a total of eight chapters and forty-four sections.
- There are several important principles accommodated under the sections such as
- The article has analyzed all the important provisions.

CONCLUSION

- The Act provides for a specific performance of a contract in absence of monetary relief, which makes it an alternative remedy.
- The objective is to improve India's track record in enforcing contracts. It aims to protect contractual expectations and wipe out uncertainties.

INTRODUCTION

- The Specific Relief Act, 1963 was brought into force on 13-12-1963. Its main objective is to provide relief to the parties who have suffered civil wrong. Civil injury is a violation of an obligation, specific relief for which can be provided by courts. Specific relief is a remedy that the courts can provide. The right to property is also recognized by the Constitution. No person shall be denied his property without due process of law.
- The provisions of the Constitution are supplemented by legal devices that help people enforce their rights. For instance, if a person has a contractual obligation to perform a

specific act, he or she must not fail to do so. In case of failure, the other party may sue for the performance of the contract.

- Specific performance orders are issued when the damages are not enough to provide a proper remedy. This type of order is discretionary and is made considering the circumstances of a case.

PROVISIONS OF THE ACT

Section 2: Important definitions

- Section 2 of the Specific Relief Act, 1963 deals with important definitions which one must know of to understand this Act-
    - Section 2(a) deals with obligations which are defined as the duties that a person has under the law.
    - Section 2(b) defines settlement that means the delivery of the immovable or movable property to successive interests when it is agreed to be disposed of.
    - Section 2(c) provides the same meaning of trust as under Section 3 the Indian Trusts Act, 1882.
    - Section 2(d) defines trustee as a person who holds the trust in the property.

Section 3: Savings

This section states that the provisions of this Act shall not deprive any person of any right to relief, other than specific performance, which he may have under any contract; or affect the operation of the Indian Registration Act, 1908, on documents, except as otherwise provided in the Act itself.

Section 4: Enforcing only civil individual rights

- This section states that the Act grants special relief only to the enforcement of individual rights. It does not apply for enforcing penal laws.
- It defines is a type of relief that is granted to individuals for their civil rights infringement by establishing substantive nature for that fact.

Section 5: Recovery of specific immovable property

- The Specific Relief Act provides for the recovery of certain immovable property in a manner as provided under Civil Procedure Code, 1908.

- It states that a person who is the lawful owner of immovable property can get possession of it by filing a suit under CPC and Order XXI, Rules 35 and 36 of CPC would apply. He may file a suit for ejectment on strength of his title and be granted a decree for ejectment based on title under this Section.
- There are three types of actions that can be brought in law for the recovery of immovable property. These types of suits can be based on title by ownership, possessory title, and previous possession.
- The word ‘entitled to possession’ means having a legal right to title to possession on the basis of ownership of which the claimant has been dispossessed. The plaintiff must show that he had possession before the alleged trespasser got possession.

<u>Section 6: Suit by person dispossessed of immovable property</u>

- This section states that if a person is dispossessed of his or her immovable property without his consent, he or she may recover possession. This section shall not apply to any suit brought against the Government and no suit can be filed after expiry of six months from dispossession date. Additionally, no appeal or review shall be allowed from any order or decree passed under this section.
- This Section discourages forcible dispossession by stating that one’s disputed rights must also be decided by due process of law. It provides for the restoration of possession of a dispossessed party within 6 months of its dispossessing, which provides a speedy remedy.
- Requisites:
    - The plaintiff must have his judicial possession i.e., recognized by law when dispossession occurred.
    - Dispossession must be without the consent of the plaintiff or against the procedure of law.
    - The suit must be initiated within 6 months of dispossession.
    - Suit must not be against government.
    - Order or decree passed is final, not open to review or appeal, although it is subject to revision by High Court.

<u>Section 7: Recovery of specific movable property</u>

- This section states that in order to recover the possession of a movable property, a person can follow the procedure mentioned in the CPC. There are also two sub-clauses that explain that a trustee can sue for possession against the beneficial interest he was entitled to.
- The second sub clause explains that if person has a special or temporary right to the possession of movable property, this section provides for the recovery of such property in specie (things itself). The nature of the property to be recovered must be specific and consistent with the existing conditions of the property.
- Essentials:

- There must be a physical presence of the property in question that can be used to deliver or dispose of it.
- The person suing must also have the possession of the property.
- There may be an existence of a special or temporary right on the property.

Section 8: Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession

- This section aims to provide special dispensation to persons who have the possession or control of certain articles of movable property.
- It allows a person to recover the ownership of a specific movable property from the person who is not the owner of it. Where the property has a peculiar value, the possession of the thing claimed has been wrongfully transferred from the plaintiff and relief for which cannot be adequately compensated in money. This section may be used to compel them to deliver the articles to their entitled recipients.
- Requisites:
    - The defendant must have possession or control over it.
    - The plaintiff, on the other hand, must be the owner of the article.
    - Property must be movable.
    - The plaintiff must be entitled to immediate possession.
    - Anyone of the condition laid down under clauses (a) to (d) must exist.

Section 9: Discretion of the Court in ordering specific performance

- A contractual obligation, if not met, the other party has the right to demand the actual performance or the compensation due to the non-performance of the contract. The former is called specific performance.
- Under Section 9, defences can be made in respect of suits based on contract. In other words, if the defendant has any ground available in law to challenge the claim, he may do so while resisting the suit for specific performance. The various pleadings that are recognized as part of the law of contract, like incapacity of parties, uncertainty of the contract, illegality, want of authority and fraud, are available to the defendant in a suit for specific purpose.

Section 10: Contracts which may be specifically enforced

- Section 10 includes conditions under which specific performance of a contract may be enforced. Generally, the courts have the final say on how these conditions should be performed. When the contract performance does not meet expectations, then the damages or loss can occur and when the compensation amount is not enough to cover the damages and losses.
- It is presumed by the court that the contract of immovable property cannot only be satisfied by money and breach of contract of movable property can be relieved except

in cases where the property is not an ordinary piece of commerce, or it is kept by defendant as a trustee.

- Conditions: The suit must be related to the specific performance of the contract. The case must be fit to warrant specific performance. Case must not fall within any of the Section of Chapter II which prohibits specific performance.

Section 11: Specific performance of contracts connected with trusts enforceable

- Cases where a contract is connected with trust, specific performance can be enforced if the act is performed wholly or partly of a trust. Generally, if a contract is made in excess of the powers of a trustee, or in breach of trust, it cannot be enforced.
- According to Section 11(1), if the act is in the performance of a trust, specific performance may be granted to the discretion of the court.

Section 12: Specific performance of part of contract

- The general rule of equity is that courts will not compel the performance of a contract unless they can enforce the whole contract. This means that courts may not direct the performance of a part of the contract except in cases coming under the 3 following sections- Section 12 (2), (3) and (4).
- Section 12(2) becomes applicable when the contract is not performed because of an item that is only a small portion of the whole in value. The reason why the contract can't be performed may vary depending on the in quantity of subject-matter and variance in the quality of the work.
- The equitable principle underlying in Section 12(3) of the contract states that the contractual performance of a part cannot be enforced for the sole benefit of the purchaser. The part unperformed must be a considerable portion of the whole;
- Section 12(4) is the presumption that a contract is to be treated as a whole and not a piecemeal. When a contract consists of several separate parts that are not bound by any existing obligation or requirement, these may be enforced.

Section 13 Rights of purchaser or lessee against person with no title or imperfect title

- Section 13 applies to contract for sale or lease of immovable property and contracts for sale or hire of movable property which is in existence. If the vendor or the seller does not have a perfect title over the property, upon perfection of his title, the purchaser can compel him to execute the sale. This corresponds to Section 43 of Transfer of Property of Act. While Sec 13(1)(a) deals with only sale or lease, it does not apply to the property which is inalienable.
- This section is based on the extended principle what is known in English Law as the doctrine of feeding the grant by estoppels. A contract may be specifically enforced even though the promisor had no title or imperfect title at the time of the contract. The

promisor is bound to comply with the terms of the contract if he subsequently acquires the power of performing the contract.

Section 14 – Contracts not specifically enforceable.

This section lays down some contracts that cannot be specifically enforced. This includes those with many details and that are personally-made for the parties, those that require continuous work and lastly, when there is a non-performance for the act and money is adequate compensation.

Section 15 – Who may obtain specific performance.

- Section 15 deals with the person against whom the contracts can be specifically enforced:
  - Any party to contract or any party to suit.
  - Representative in interest or principal, which holds certain important ingredients- Any special skill, or any qualification.
- The principal in interest shall be not be entitled to specific performance where the contract is for settling a marriage or to compromise the situation between the family members or when a contract has been entered into by a tenant over a property for life.

Section 16 – Personal bars to relief.

- As per Section 16, specific performance of a contract cannot be enforced in favor of a person or be claimed by a person—
  - who has obtained substituted performance of contract under Section 20,
  - who has become incapable of performing,
  - who has violated any essential term of the contract that on his part remains to be performed,
  - who has acted in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract.
  - who has failed 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 have been prevented or waived by the defendant.

Section 17: Contract to sell or let property by one who has no title not specifically enforceable

- If a contract to sell or let a property is made by a vendor or lessor who has no title to the property, the terms of the contract cannot be specifically enforced in any way.

- Even if vendor believed that he had a good title to the property, he 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.

Section 18: Non-enforcement except with variation

- This section pertains to cases where the contract entered into is valid. It also sets out cases when contracts cannot be enforced except with a variation. The remedy of specific performance is available in these types of contracts once the plaintiff has accepted the variation.
- Requisites:
  - Contract must be in writing. The section does not apply unless there is a complete contract.
  - Defendant sets up a variation.
  - The plaintiff is put to an election either to have his action for specific performance dismissed or have it subject to such variation.
  - But if plaintiff does not accept variation, he does not loose ordinary common law remedy of damages.

Section 20 – Substituted performance of contract.

Section 20 of the Act permits a party suffering from a breach of contract, to have the contract performed by a third-party or through its agent and recover the costs and expenses incurred in substituting such performance, from the defaulting party (unless agreed otherwise under the contract).

Section 21 – Power to award compensation in certain cases.

This section states the power to award compensation by the court to the aggrieved person. There are certain cases which are as follows:

- When there is a suit filed for specific performance of the contract due to its breach, the aggrieved person may also demand compensation in addition.
- When according to the court, the specific performance may not be granted but there has been a breach of contract, the court accordingly will order for compensation to be given to the aggrieved party.
- When the court thinks that in this case specific performance of the court shall be granted but it will not be an adequate relief so, compensation in money can be ordered.

- No compensation shall be awarded when the relief for money is not itself mentioned in the plaint.

Section 22: Power to grant relief for possession, partition, refund of earnest money, etc.

Any person who sues for the specific performance of contract under which he or she asks for possession or partition a property or recover the earnest money deposited in the contract should be granted relief under this section.

No relief shall be granted unless it has been claimed. Where the plaintiff has not claimed relief in the ordinary course of the proceeding, the court may modify the plaint to accommodate any claim for such relief.

Section 23 – Liquidation of damages not a bar to specific performance.

If the amount to be paid in default is the sum specified in the contract which the party in default is willing to pay, the court if satisfied that the sum was named only for securing performance of contract, the contract may be enforced. The court shall not also decree payment of the sum so named in the contract.

Section 25: Application of preceding sections to certain awards and testamentary directions to execute settlements.

This section states that provisions of this chapter shall also apply to awards to which the Arbitration Act, 1940 does not apply and to directions in a will or to execute a particular settlement.

Section 26 – When instrument may be rectified.

- Sec. 26 provides that a contract or any other instrument may be rectified when it does not express the real intention of the parties because of any fraud or mutual mistake of the parties. Rectification consists in bringing the document in conformity with the actual or prior agreement.
- The essentials of application of rule of rectification are:
    - There must have been a genuine agreement different from the expressed agreement.
    - It was through fraud or mutual mistake between the parties that the contract in question did not express truly the intention of the parties.
    - A unilateral mistake will not afford relief for rectification of instrument.
    - The court has to determine the intention of the parties with regard to meaning and legal consequences of the instrument. It is discretionary for the court to grant the relief of rectification.

Section 27 –30: Remedy of Recession

According to Section 27, a contract may be rescinded on following grounds-Where the contract is voidable or terminable by the plaintiff. A contract is voidable when it falls under the ambit of Section 19, 19 A, 39, 53 and 55 of the Indian Contract Act or where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore any benefit from another party to make any compensation to him which justice may require.

Section 31-33: When cancellation may be ordered.

- Sec 31 to 33 of SRA deals with cancellation. Following conditions need to be satisfied to have an instrument cancelled:
  - The provisions are applicable to any instrument (includes contract, will etc).
  - Any person can have the instrument cancelled if the instrument is void or voidable against him and who has reasonable apprehension that such instrument if left outstanding may cause him serious injury.
  - Ordering cancellation is discretion of the court. If the instrument has been registered, the court shall also send a copy of its decree to registration office.
  - The instrument can be cancelled partially.
  - The court may direct plaintiff to restore benefits taken or grant compensation to defendant.

Section 34: Discretion of court as to declaration of status or right.

If any person entitled to any legal character, or to any rights as to any property is denied by another and if any suit is filed by the person so denied, it is called a declaratory suit. This provision provides for declaratory decree.

Essentials of a declaratory suit:

- The person filing the suit must be entitled to legal right or any right as to any property.
- The person against whom the suit is to be filed must actually be denying the right or is interested in denying the right of the plaintiff.
- Passing a declaratory decree is on the discretion of the court.

Section 35: Effect of declaration

- This section states that a declaratory decree is binding only on the parties to the suit and upon the representatives of the parties to the suit. So, declaratory decree is ―in personam and not ―in rem.
- A declaratory decree is one which resolves the legal uncertainty of the rights and status of the parties. However, passing of a declaratory decree is a matter of discretion of court and it cannot be claimed as a right.

Section 37: Temporary and perpetual injunctions

- Injunctions are of three kinds: (i) temporary; (ii) permanent (iii) mandatory. This section lays down that a permanent injunction can only be granted by a decree at the hearing and upon the merits of the case. Thus, for obtaining a permanent injunction, a regular suit is to be filed in which the right claimed is examined upon merits and finally, the injunction is granted by means of judgement.

- A permanent injunction decides the rights of a person unlike temporary injunction. A permanent injunction completely forbids the defendant to assert a right which would be contrary to the rights of the plaintiff.

Section 38: Perpetual injunction when granted

- This section specifies certain circumstances under which permanent injunction may be granted by the court:
    - Where the defendant is a trustee of the property for the plaintiff.
    - Where there exists no measure to ascertain the loss or actual damage caused.
    - Where the invasion is such that compensation in terms of money is not an adequate relief.
    - Where it is necessary to prevent a multiplicity of judicial proceedings.
- Requisites for the application of this section:
    - There must be an expressed or implied legal right in favour of the plaintiff.
    - Such a right must be violated or there should be a threatened invasion.
    - Such right must be an existing one.

Section 39 – Mandatory injunctions

- The object of a mandatory injunction is to restore plaintiff to the original condition and not create a new state of things. It is a most exceptional remedy and one which is never to be applied except with the greatest safeguard for the prevention of waste, as well as injustice.
- Two elements have to be taken into consideration:

- Court has to determine what acts are necessary in order to prevent a breach of the obligation.
- The requisite acts must be such as the Court is capable of enforcing.

- In a suit for mandatory injunction, it is necessary to prove special injury or substantial damage. Before a suit for mandatory injunction can be filed, there must be an obligation on the part of the defendant to perform certain acts, whether or not it is alleged that other party has committed a breach of an obligation on his part. The obligation must be a legal obligation and not a mere moral duty.

<u>Section 40: Damages in lieu of, or in addition to, injunction.</u>

This section states that plaintiff in a suit may claim damages either in addition to, or in substitution for injunction and the court may, if it thinks fit, award such damages.

No relief for damages is granted unless the plaintiff has claimed such relief in his plaint: Provided that where no such damages have been claimed in the plaint. However, court may allow the plaintiff to amend the plaint on such terms as may be just for including such claim. The dismissal of a suit to prevent the breach of an obligation existing in favor of the plaintiff shall bar his right to sue for damages for such breach.

<u>Section 41: Injunction when refused.</u>

- It lays down cases where the injunction when cannot be granted - An injunction cannot be granted –
  - to restrain any person from prosecuting a judicial proceeding at the institution of the suit, in which injunction is sought, unless restraint is necessary to prevent multiplicity of proceeding,
  - to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that, from which injunction is sought,
  - 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 could not be specifically enforced,
  - to prevent on the ground of nuisance, and 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 be certainly be obtained by any other usual mode of proceeding except in case of breach of trust, when conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.
  - when the plaintiff has no personal interest in the matter.

Section 42: Injunction to perform negative agreement

According to Section 42, any person entitled to any legal character, or to any rights 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, the plaintiff need not in such suit ask for any further relief.