

The Specific Relief (Amendment) Act, 2018 & Specific performance of contract

Dr. Sanjay Kumar Yadav
Associate Professor
National Law Institute University, Bhopal
Corresponding Author: Dr. Sanjay Kumar Yadav

Abstract: The objects of study is to find out the changes brought by the Specific Relief(Amendment) Act, 2018 on the specific relief in the form of specific performance of contract. The doctrinal research method was adopted by the researcher to study the objectives of the research. The researcher has found out that the Specific Relief(Amendment) Act, 2018 has provided effective remedy in the form of substituted performance of the contract in case breach of contract and also brought special rules regarding infrastructure projects in India.

Keywords: Specific performance, Substituted performance, Specific relief, Infrastructure project, Amendment

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I. INTRODUCTION

Specific performance of contract means to perform the contract as per the terms and stipulations of the contract in case of breach of the contract. The aggrieved party may approach to the court and claim the remedy in the form of specific performance of the contract. The remedy of specific relief was evolved by the equity court in England. Specific performance is an equitable relief, while awarding relief the court looks to the intention and not to the form. In enforcing specific performance of the contract, the court does not look into the letter but to the real substance. Equitable remedy of specific performance of the contract was discretionary remedy subject to the discretion of the court, the court is not bound to award the remedy in the form of specific performance of the contract. The court would award the remedy of specific performance of contract in only those case, when the existing remedy in not sufficient enough to do complete justice in the matter brought before the court.

Before the passing of Amendment Act, 2018 Section 10 of Specific Relief Act, 1963 deals with the cases in which specific performance of contract enforceable, which provided that the specific performance of any contract may, in the discretion of the court, be enforced- (a) when there exists no standard for ascertaining 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.

The rules regarding the specific performance of the contract after the passing of Specific Relief Act, 1877 and afterwards Specific Relief Act, 1963 crystallize the rule regarding the specific performance of the contract in India. The Specific Relief Act, 1877 and the Specific Relief Act 1963 have largely adopted the common law. The main provisions of the specific relief law incorporated the doctrines evolved by the English equity courts. The remedy in the form of specific performance of the contract was subject to the discretion of the court and the court was guided by two broad principles, in cases when the compensation in the form of money was not an adequate relief or it was not possible to quantify in monetary term the damages caused to aggrieved party by the breach of contract. The court was not bound to give remedy in the form of specific performance of the contract.

The Specific Relief (Amendment) Act, 2018 has brought the following changes in the relief provided in the form of specific performance of the contract:

1. Section 10 is substituted by the following words- 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. It means that except the cases cover under section 11(2), 14 and 16, court is bound to give remedy in the form of specific performance of the contract. Section 11(2) provided that a contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced. Section 14 is substituted by the Specific Relief(Amendment) Act 2018. The substituted provisions of section 14 provided that The following contracts cannot be specifically enforced, namely:—(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. Section 16 provided that Specific performance of a contract cannot be enforced in favor of a person- (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 willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or (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.

2. Section 20 is also substituted by the Specific Relief (Amendment) Act, 2018. The substituted section 20 provided that (1) 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. (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.

Section 20 of the Specific Relief (Amendment) Act, 2018 has introduced the concept of substituted performance of the contract in place of specific performance of the contract. The object of substituted performance of the contract is to provide quick and complete remedy to the aggrieved party in case of the breach of contract. The aggrieved party before claiming the remedy in the form of substituted performance of the contract required to serve thirty days notice in writing to the party in breach and give him the opportunity to complete the performance of their part of the contract, if he fail to do so then he may seek the remedy of substituted performance of the contract to complete the unperformed part through third party or by their own agent. The party who seek the remedy in the form of substituted performance of the contract is entitled to recover the cost of performance and damage from the party who failed to perform his part of the contract as a result of which aggrieved party compelled to seek the remedy in the form of substituted performance of the contract.

3. The Specific Relief (Amendment) Act, 2018 added new section 14A, which conferred power on the court to engage the experts in case relating to the specific performance of the contract. Section 14 A provided that- (1) 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. (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.

4. The Specific Relief (Amendment) Act, 2018 added a new section 20 A, which provides that 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. The object of section 20 A is to prevent the completion of the infrastructure on time and prevent the increase in the cost of the infrastructure projects. The Specific Relief (Amendment) Act, 2018 also provide provisions regarding fast disposal of suit relating to infrastructure projects.

II. CONCLUSION

The Specific Relief(Amendment) Act, 2018 has brought a drastic change in the specific remedy in the form of specific performance of the contract under section 10. The remedy in the form of specific performance of the contract is not subject to the discretion of the court, the court is bound to give relief in the form of specific performance of the contract in case of breach of contract. In case of breach of contract the aggrieved party may call upon other party to perform their part of contract if they fail to do so then aggrieved party entitled for substituted performance of the contract. In this way the Specific Relief(Amendment) Act, 2018, has brought effective remedy in case of breach of contract. The Specific Relief(Amendment) Act, 2018 has also special rules for completion of infrastructure project on time also.

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