



DISTRICT & SESSIONS COURT
JANJGIR-CHAMPA
DISTRICT: JANJGIR-CHAMPA

DISTRICT & SESSIONS COURT JANJGIR-CHAMPA

DIVISIONAL JUDICIAL SEMINAR

On

Doctrine of Specific Performance of Contract-Law and Procedure with special reference to recent Apex Court's Pronouncement and explained by means of illustration of a Civil Suit. Limitation on the availability of Specific Performance.

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We apologize for any inadvertent printing errors. We hope this work contributes to a better understanding of the law relating to Specific Performance. We welcome and appreciate any comments or suggestions that may further enhance this presentation.

DISTRICT & SESSIONS COURT

JANJGIR - CHAMPA (C.G)

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Doctrine of Specific Performance of Contract

Law and Procedure

Introduction

Specific performance is a legal remedy in contract law that forces a party to fulfill their exact contractual promises, instead of simply compensating for losses with monetary damages. This is particularly crucial when dealing with unique goods or properties, where monetary compensation cannot adequately replace the item.

The Specific Relief Act of 1963 governs when specific performance can be granted. This Act emphasizes the need for a valid contract, the plaintiff's readiness to fulfill their obligations, and equitable considerations for the court to assess.

Recent amendments, notably those from 2018, have refined the criteria for granting specific performance. These amendments aim to improve judicial discretion and clarify the types of contracts eligible for this remedy. The Act also outlines circumstances where specific performance might be denied, ensuring a fair and judicious application of the remedy.

Definition of Specific Performance of Contract

According to Section 2(h) of the Indian Contract Act, 1872, "An agreement enforceable by law is a contract." This means that for an agreement to be considered a contract, it must meet certain legal criteria that allows it to be enforced in a court of law.

Specific Performance of Contract is not defined in Specific relief Act. Specific Performance of Contract refers to the enforcement of the exact terms of a contract. When a party fails to fulfill their contractual obligations, the aggrieved party can seek a court order to compel the defaulting party to perform their part of the contract.

The primary aim of specific performance is to provide a remedy that is more aligned with the actual intent of the parties involved, especially in cases where monetary compensation would be inadequate.

Chapter 2 (Sec. 9 to Sec. 25) of the Specific Relief Act deals with Specific Performance of Contract.

Illustration :-

👉 Suppose A and B enter into a contract for the sale of a piece of land. A agrees to sell the land to B for Rs. 10 lakhs. B agrees to pay the price and take possession of the land. A breaches the contract by refusing to sell the land to B. B can file a civil suit for specific performance, seeking an order from the court compelling A to sell the land to him.

Nature of Specific Performance of Contract

The Specific Relief Act, 1963, outlines the provisions for specific performance. The relief of specific performance has evolved in its characterization from being primarily discretionary to having a more mandatory nature. Section 10 states that specific performance of a contract shall be enforced by the court, subject to certain conditions and exceptions.

The Act emphasizes that specific performance is generally the rule, while damages are the exception, particularly after the 2018 Amendment, which shifted the nature of specific relief from discretionary to more statutory.

Amendments to Specific Relief Act

The Specific Relief (Amendment) Act, 2018, introduced significant changes to the Specific Relief Act, 1963, particularly regarding the enforcement of specific performance of contracts.

Discretionary to Statutory Remedy

- A) Sec 10:** The substitution of the new section for Section 10 made the enforcement of specific performance mandatory, shifting from a discretionary power of a court to a more obligatory duty. The specific performance must align with the provisions of section 11(2), section 14 and section 16, which outlines certain exceptions and conditions where specific performance may not be enforced.
- B) Sec 11:** In sub-section 1 of Section 11 the word “contract may, in the discretion of the court” is substituted by “contract shall”. Through this amendment, the court's discretion is taken away in order to guide the courts to enforce specific performance.
- C) Sec 14:** It relates to “Contracts not specifically enforceable”. After amendment the section states that where a party to the contract has obtained substituted performance, contract involving continuous duty, contract dependent on personal qualifications of a party and contracts of determinable nature cannot be specifically enforced.

D) Expert Assistance

Insertion of **sec 14A** provided that the courts may engage one or more experts for their opinion to resolve specific issues involved in a suit. The expert's opinion becomes part of the court record and parties have the right to examine the expert personally in open court.

E) Limited Liability Partnership (LLP)

Insertion of clause (fa) in sec 15 states that a newly amalgamated LLP may obtain specific performance of contract entered with one of its component LLPs.

Insertion of clause (ca) in sec 19 states that specific performance of a contract may be enforced against a newly amalgamated LLP for contract entered with one of its component LLPs.

F) Personal bar to relief

Clause (a) of Sec. 16 which stated that specific performance cannot be enforced in favour of a person who would not be entitled to compensation for its breach, is substituted by 'person who has obtained substituted performance of contract under sec. 20.'

Under clause (c) of Sec 16 the party seeking specific performance only needs to prove that he has performed or has always been ready and willing to perform the essential terms of the contract and is not required to aver the same in the pleadings and the courts cannot deny the relief if the parties failed to aver.

G) Substituted Performance

The Amendment substituted section 20 with new provision which provides provision for Substituted Performance. Before amendment there was no such provision in the Act. The amendment removed the court's discretion to grant or refuse specific performance. In case of breach, the aggrieved party may now seek substituted performance through a third party or by the aggrieved party's own agency . Such performance can only be acquired upon serving a notice of minimum 30 days to the defaulting party.

H) Infrastructure Projects & Special Courts The Amendment inserted **Sec 20A and 20B** to the Act.

Sec 20A has made special provisions for contracts relating to infrastructure projects specified in the Schedule inserted in the Act by the amendment. It prohibits a civil court from granting an injunction in relation to such infrastructure projects where grant of such injunction would cause impediment or delay in progress or completion of such projects.

Sec 20B provides for designation of Special Courts to try a suit under the Act in respect of contracts relating to infrastructure projects.

I) Time frame for Disposal of Suit

Sec 20C provides for expeditious disposal of suits filed under this Act. It states that the suit shall be disposed of within 12 months from the date of service of summons to the defendant, which may be further extended for a period not exceeding 6 months in aggregate.

J) No Injunction in case of Infrastructure Projects

Under sec. 41 clause (ha) has been inserted which provides that no injunction can be granted if it impedes or delays the progress or completion of any infrastructure project or interferes with the continued provision of relevant facility.

K) Schedule

A schedule related to the category of projects and infrastructure sub-sectors has been inserted after Part III.

L) Sec 21: Power to award compensation in certain cases

In this section the words, "either in addition to, or in substitution of" has been substituted by "in addition to" in order to promote specific performance of contracts rather than claiming compensation in substitution of specific performance.

2018 Amendment Retrospective or Prospective

The 2018 Amendment to the Specific Relief Act is considered prospective. This was established by a 3-judge Bench of the Hon'ble Supreme Court of India in the case of **Katta Sujatha Reddy v. Siddamsetty Infra Projects (2022 SCC Online SC 1079)**. The Court held that the amendment shall not apply to transactions that took place prior to the amendment's effective date of 1 October, 2018. The reasoning was that the amendment introduced substantive principles rather than merely procedural changes, thus affirming its prospective application.

Factors considered by court for granting or denying Specific Performance of Contract

Section 10 of the Act emphasizes that specific performance is usually to be granted and denied only in circumstances as set out in Sections 11, 14 and 16 of the Act. Section 10 of the Act as amended by the Specific Relief (Amendment) Act, 2018 seeks to make a departure and is an attempt to reduce the discretion of the Courts relating to enforcement of specific performance of contracts in keeping with the Statement of Objects and Reasons for the amending Act of 2018.

Similarly, Section 20 of the Act as it stood earlier provided that the grant of relief was discretionary. It provided as under: “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....” However with the amendment to Section 20 by the Amendment Act in 2018, it now also seeks to take away the discretion to an extent.

Despite the amendments as above, the Courts still consider the following well-settled criteria and principles while granting or denying specific performance :

1. Valid Contract between the Parties

The material question which is required for grant of relief of specific performance of contract is a Valid Contract.

2. Readiness and Willingness

One of the most important things to be proved in a suit of specific performance is “readiness” and “willingness” to perform the contract .

The Hon’ble Supreme Court in the case of ***U.N.Krishnamurthy v.***

A.M.Krishnamurthy (2022 SCC Online SC 840) held that Readiness means the capacity of the party to perform the contract and Willingness would imply the conduct of the plaintiff.

👉 In light of the 2018 amendments to the Specific Relief Act, whether it is still mandatory for a plaintiff to specifically "aver" (state or allege) "readiness and willingness" in the plaint when filing a suit for Specific Performance of a Contract ?

The obligation cast by Section 16(c) of the Act upon the plaintiff to prove that he has already performed or was always ready and willing to perform essential terms of the contract which were to be performed by him have been emphasised by the Hon'ble Supreme Court in the following judgment :

Mehboob-ur-Rehman v. Ahsanul Ghani (2019 SCC Online SC 203)

Para "15. Though, with the amendment of the Specific Relief Act, 1963 by Act 18 of 2018, the expression "who fails to aver and prove" is substituted by the expression "who fails to prove" and the expression "must aver" stands substituted by the expression "must prove" but then, the position on all the material aspects remains the same that, specific performance of a contract cannot be enforced in favour of the person who fails to prove that he has already 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 the terms of which, the performance has been prevented or waived by the other party."

3. Conduct Unblemished

It is necessary that a plaintiff's conduct in performance of the contract or attempting to fulfill the same shows an unwavering intention of wanting to perform.

The Hon'ble Supreme Court has in **para 12 of its judgment in *Aniglase Yohannan v. Ramlatha & Ors [(2005)7 SCC 534]*** held that :

The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout, entitling him to the specific relief. The provision imposes a

personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.”

4. Readiness must be shown throughout up to the date of the decree

A plaintiff in order to succeed must prove facts which would show his readiness and willingness at all times. It is not enough to show the readiness uptill the time of the plaint but the conduct must be such as discloses readiness and willingness at all times from the time of the contract till the suit and up to the decree. This principle was laid down in the following judgement :

Vijay Kumar v. Om Parkash [2018 SCC Online SC 1913]

Para “6. In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff.”

5. It is not necessary that the plaintiff must tender the money due under a contract

Although one of the factors showing the readiness and willingness may be the ability of a plaintiff to make payment but that cannot be a factor by itself to disentitle the plaintiff the grant of relief.

6. The plaintiff must seek appropriate relief

It often happens that when a contract is terminated, it gives rise to a cause of action to file a suit for performance. In such cases the failure to apply to have the termination set aside would be fatal to performance, as without an appropriate relief to set aside the termination, it would be deemed the plaintiff has accepted the same and then cannot sue for performance of a contract treated as at an end by his conduct.

In *I.S. Sikandar vs. K. Subramani [(2013)15 SCC 27]*, the

Hon'ble Supreme Court held that on failure to pray for and seek to declare that the termination was wrongful, the further relief to perform the terminated agreement could not be granted :

Para “37. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit scheduled property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.”

7. Necessary parties to a suit for specific performance

It is not unusual that during the pendency of a suit or even before, if a party to the contract creates third party rights, then such persons claiming title from one of the contracting parties becomes a necessary party. Who would be appropriate parties to a suit for specific performance would depend on the facts of a case. (Related provision : Order I Rule 10 of the Civil Procedure Code, 1908 and Section 19 of the Act)

Who Can Claim Specific Performance

Section 15 of the Specific Relief Act deals with who may obtain Specific Performance.

The Specific Relief Act, 1963 outlines who may obtain specific performance of a contract. Here are the key points regarding the parties eligible to seek this remedy :

1. Parties to the Contract:

Generally, any party who is a signatory (not as witness) to the contract can seek specific performance. This includes individuals or entities that have entered into a legally binding agreement.

2. **Representatives in Interest:**

A representative in interest of a party to the contract may also seek specific performance. This includes individuals who have a legal interest in the contract, such as heirs or legal representatives of a deceased party .

3. **Principal of a Party:**

If a party to the contract is acting on behalf of another (as an agent), the principal can also seek specific performance. However, this is subject to the condition that the contract does not explicitly prohibit such action .

4. **Any Beneficiary:**

Any beneficiary is entitled to specific performance if the contract involves a marital settlement or a compromise of disputed rights between members of the same family.

5. **The Remainderman:**

If a tenant for life has entered into a contract in due exercise of a power, the remainderman may seek the remedy.

6. **A reversioner in possession:**

Illustration: A (grandfather), B (father), and C (son). A does not want to give his property to B. Instead, he wanted to give his property to C. A entered into a contract with Z (tenant for life) to

enjoy his property till his life and pay the rent to C, and after Z's death, the property will be accelerated to C. Here, the reversioner in possession also has the right to obtain the specific performance of the contract entered by another person.

7. **A reversioner in remainder:**

If an agreement is a covenant and the reversioner suffers material injury in case of breach of contract, then reversioner in remainder will be entitled to the benefit. **Illustration:** A gave his house to B and asked to pay the rent to C. If B does not pay the rent, then C has to bear the injury caused.

8. **New Limited Liability Partnership:**

When a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership arising out of the amalgamation may seek remedy of specific performance.

9. **Amalgamated Company:**

If a company merges with another company under the terms of a contract, the new company that is formed as a result of the merger may also seek this remedy.

Against whom Specific Performance of Contract may be obtained

Section 19 of the Specific Relief Act, 1963 specifies the parties against whom specific performance of a contract may be enforced. Here are the key points regarding this aspect:

→ **Parties to the Contract:**

Specific performance can be enforced against either party involved in the contract. This means that if one party fails to perform their obligations, the other party can seek specific performance against them .

→ **Transferees:**

Specific performance can also be enforced against 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. This includes individuals who have acquired rights or interests in the contract after its execution, except for those who are transferees for value who have paid money in good faith and without notice of the original contract .

→ **Prior Title Holders:**

Specific performance may be enforced against a party who claims under a title which, though prior to the contract and known to plaintiff, might have been displaced by the defendant. This means that if a party has a prior claim that could affect the contract, they could be included in the suit for specific performance.

→ **Amalgamated Entities:**

Amalgamated Companies or Partnerships: If a company or limited liability partnership has entered into a contract and subsequently becomes amalgamated with another entity, the new entity that arises from the amalgamation can also be subject to specific performance of the original contract.

Limitations on the Availability of the Specific Performance of Contract

Section 11, 14 and 16 of the Specific Relief Act, 1963 outlines several limitations on the availability of specific performance of contracts. These limitations ensure that specific performance is granted only in appropriate circumstances.

1. **Valid Contract Requirement:**

Specific performance can only be granted if there is a valid and enforceable contract between the parties. If the contract is void or voidable, specific performance will not be available.

2. **Readiness and Willingness:**

Section 16(C) of the Specific Relief Act: The plaintiff must demonstrate readiness and willingness to perform their part of the contract. If the plaintiff fails to prove this, they may be barred from obtaining specific performance. This requirement acts as a personal bar to relief .

3. **Nature of the Contract:**

Contracts that are inherently determinable, such as leases or contracts for personal services, cannot be specifically enforced. The nature of the contract must be seen to allow claim of specific performance.

4. **Contracts Involving Continuous Duties:**

Supervisory Challenges: Contracts that involve continuous duties which the court cannot supervise are not eligible for specific performance. For example, contracts requiring ongoing

personal services or continuous performance over time may fall under this limitation .

5. Public Policy and Illegality:

Contracts Against Public Policy: If a contract is found to be illegal or against public policy, specific performance will not be granted. The courts will not enforce contracts that promote unlawful activities .

6. Adequate Remedy in Damages:

Monetary Compensation: If the aggrieved party has an adequate remedy in the form of monetary damages, the court may refuse to grant specific performance. The principle is that specific performance is an equitable remedy and is not granted if damages suffice .

7. Substituted Performance:

Section 20 of the Specific Relief Act: If a party has obtained substituted performance of the contract through a third party, they may be barred from claiming specific performance. This provision allows for performance to be carried out by someone else, thus limiting the original party's right to specific performance.

8. Change in Circumstances:

Equity Considerations: If circumstances have changed significantly since the contract was made, making specific performance inequitable, the court may refuse to grant it. This includes situations where the value of the property has drastically changed or where the performance of the contract has become impossible.

Defences Available to Defendants

In a suit for specific performance of a contract, the defendant may raise several defences to contest the claim. The Specific Relief Act, 1963 outlines various grounds on which a defendant can challenge the suit for specific performance. Here are the key defences available:

→ Adequate Remedy in Damages:

The defendant can argue that monetary compensation would be an adequate remedy for the plaintiff, thus negating the need for specific performance .

→ Unlawful Agreement:

If the contract is found to be unlawful or against public policy, the defendant can use this as a defence against the claim for specific performance .

→ Personal Qualifications:

If the contract is based on the personal qualifications or volition of the parties, the defendant may argue that specific performance is not appropriate .

→ Plaintiff's Failure to Perform:

If the plaintiff has failed to perform their part of the contract, the defendant can use this as a defence, arguing that the plaintiff is not entitled to specific performance .

→ Lack of Consideration:

The defendant may claim that the contract lacks consideration, which is essential for its enforceability.

→ Contingent Contract:

If the contract is contingent upon certain events that have not occurred, the defendant can argue that specific performance cannot be granted.

→ Alteration of Contract:

If the plaintiff has altered the terms of the contract without the defendant's consent, this can serve as a defence against the claim for specific performance.

→ Consent Issues:

The defendant can argue that their consent to the contract was not free, possibly due to coercion, undue influence, or misrepresentation .

→ Uncertainty in Terms:

If the terms of the contract are uncertain or vague, the defendant can assert that specific performance cannot be granted due to lack of clarity.

Specific Performance of Part of Contract.

The Specific Relief Act, 1963 provides provisions regarding the specific performance of part of a contract. **Section 12** of the act deals with Part Performance of Contract.

General Principle:

Specific Performance of Part of a Contract: The Act allows for the specific performance of a part of a contract, provided that the unperformed part is significant in relation to the whole contract. This

means that if a party has partially fulfilled their obligations, the other party may still seek to enforce the remaining obligations.

Conditions for Specific Performance of Part of a Contract :

According to **Section 12(3)** of the Specific Relief Act, the following conditions must be met for a suit for specific performance of part of a contract :

1. A party to the contract fails to perform a part of the contract.
2. The unperformed part forms a considerable part of the whole contract in value.
3. The promisor may or may not have admitted compensation for the unperformed part.
4. The suit for specific performance can only be filed by the affected party.

Acceptance of Part Performance :

Election to Accept Part Performance: A party can elect to accept part performance of the contract at any stage of the litigation. This means that even if a party initially seeks full performance, they can later choose to accept the performance of only a part of the contract.

Limitations/Conditions:

Inability to Compel Performance: If a significant portion of the subject matter of the contract has ceased to exist, the affected party may not compel the other party to perform their obligations. For example, if a contract involves the sale of a specific property and part of that property is destroyed, the seller may be unable to perform their obligations, and the buyer cannot compel performance .

Period of Limitation for Specific Performance

The period of limitation for filing a suit for specific performance of a contract is governed by the Limitation Act, 1963 and is specifically addressed in Article 54 of the Act. The period of limitation for filing a suit for specific performance of a contract is three years.

Calculation of Period of Limitation:

- **Date Fixed for Performance:** If a specific date for performance is stipulated in the contract, the limitation period begins from that date.
- **No Date Fixed:** If no date is fixed for performance, the limitation period starts from the date when the plaintiff has notice that the performance is refused by the other party.

Case Laws on Period of Limitation

Rajesh Kumar v. Anand Kumar & Ors. (2024 SCC Online SC 981)

- 👉 The Supreme Court in this case held that all suits of specific performance will not be decreed merely because it is filed within the limitation period ignoring the time limits stipulated in the agreement.
- 👉 The fact that the limitation is three years does not mean that a purchaser can wait for one or two years to file a suit.
- 👉 The Court held that a limitation period of three years does not grant liberty to the plaintiff to file a suit at the last moment and obtain specific performance despite knowing about the breach of contract.

Sabbir (Dead) Through LRs v. Anjuman (Since Deceased) Through LRs (2023 SCC Online SC 1292)

- ✎ The Court held that the period of limitation for filing a suit of specific performance as per Article 54 of the Schedule is 3 years from the “date fixed by the contract” or “if no such date is fixed when the plaintiff has “notice that performance is refused”

A.Valliammai v. K.P. Murali (2023 SCC Online SC 1150)

- ✎ The Supreme Court held that where time for performance is not fixed by the contract, then as per Article 54 Part II of the Schedule the limitation period will run from the date on which the plaintiff had notice of refusal on part of the defendant to perform the contract to determine the period of limitation.

PYDI Ramana @ Ramulu v. Davarasety ManMadha Rao (2024 SCC Online SC 1688)

- ✎ The Supreme Court held that “ Parties cannot take leverage of the availability of limitation period of 3 years for specific performance suits without justifiable grounds.

Usha Devi & Ors vs Ram Kumar Singh & Ors (2024 SCC Online SC 1915).

- ✎ The Hon’ble Supreme Court addressed the issue of the limitation period for filing a suit for specific performance. The court held that the limitation period for a specific performance of suit will run from the date fixed for performance, rather than from the expiry of the validity of the agreement.

- ✎ This judgment clarifies the timeline for plaintiffs seeking specific performance, emphasizing that the critical date for calculating the limitation period is the date set for the performance of the contract, which can significantly impact the ability to pursue legal remedies in cases of breach.

Recent Hon'ble Apex Court Judgments on Specific Performance of Contract

1. Readiness and Willingness:

- ✎ ***Siddamsetty Infra Projects Pvt Ltd v. Katta Sujatha Reddy & Ors***
(2024 SCC Online SC 3214)

The Hon'ble Supreme Court held that relief of specific performance can only be granted when the party claiming such relief demonstrates their readiness and willingness to perform their obligations under the contract. This emphasizes the necessity for the plaintiff to show that they are prepared to fulfill their part of the agreement.

- ✎ ***P. Ravindranath & Anr. V. Sasikala & Ors (2024 SCC Online SC 1749)***

In this case, the Court emphasized that the plaintiff in a suit for specific performance must provide direct, specific and accurate

pleadings indicating their willingness and readiness to perform their obligations under the contract, supported by evidence.

☞ ***PYDI Ramana @ Ramulu v. Davarasety ManMadha Rao (2024 SCC Online SC 1688)***

A two Judge Bench of the Supreme Court comprising Justice Pamidighantam Sri Narsimha and Justice Aravind Kumar passed a judgement dated 10-07-2024 upheld that continuous readiness and willingness is condition precedent to grant the relief of specific performance.

☞ ***Rajesh Kumar v. Anand Kumar & Ors. (2024 SCC Online SC 981)***

The Hon'ble Supreme Court emphasized that a suit for specific performance cannot be decreed based solely on the deposition of a power of attorney holder regarding the plaintiff's readiness and willingness to perform the contract. The plaintiff must provide direct evidence of their readiness and willingness.

2. The Availability of Funds.

☞ ***R. Shama Naik v. G. Srinivasiah (2024 SCC Online SC 3586)***

In this case, the Hon'ble Supreme Court ruled that a plaintiff seeking specific performance of an agreement to sell must demonstrate the availability of funds. The court emphasized that the plaintiff is obliged to provide specific statements and necessary evidence to show they can make payment as per the contract terms.

☞ ***Janardan Das & Ors Vs Durga Prasad Agarwalla & Ors (2024 SCC Online SC 2937)***

The Hon'ble Supreme Court held that a plaintiff seeking specific performance of an agreement to sell must demonstrate the availability

of funds. The onus is on the plaintiff to ensure that all necessary consents and participation are secured to prove readiness and willingness to perform the contract.

3. Territorial Jurisdiction

☞ *Rohit Kochhar vs. Vipul Infrastructure Developers Ltd. & Ors.*
(2024 SCC Online SC 3584)

The Hon'ble Supreme Court held that a suit for specific performance of an agreement to sell must be filed in the court that has jurisdiction over the location of the property that is the subject of the agreement. This ruling clarifies the procedural requirements for filing such suits.

4. Is time the essence of the contract?

☞ *Gaddipati Divija vs. Pathuri Samrajyam (2023 SCC Online SC 442)*

The Hon'ble Supreme Court addressed the issue of specific performance of contracts. The key finding from this judgment is that when specific performance of the terms of the contract has not been executed, the question of time being the essence does not arise .

This ruling indicates that if the parties have not fulfilled their contractual obligations within a specified timeframe, it does not automatically preclude the possibility of seeking specific performance. The court's decision suggests that other factors may be considered when determining the enforceability of the contract, rather than solely focusing on the timing of performance.

5. Other Case Laws

☞ *Maharaj Singh & Ors Vs Karan Singh (Dead) through Lrs and Ors (2024 SCC Online SC 1668)*

The Supreme Court held that a plaintiff need not seek cancellation of a subsequent sale deed executed with prior knowledge of an agreement to sell. The court stated that a suit for specific performance could be enforced against a third person who purchased the property with notice of the agreement to sell in favour of the plaintiff.

☞ *Babasaheb Dhondiba Kute vs Radhu Vithob Barde (2024 SCC Online SC 160)*

The Supreme Court ruled that a suit for specific performance can be decreed even if the agreement to sell requires permission from a competent authority, provided that such permission is obtained.

Paradoxical Situation

The Paradox of Readiness and Willingness: Seeking Specific Performance While Claiming Remission of Court Fees

This scenario presents a paradoxical situation where a plaintiff, 'A', files a suit for Specific Performance of a land sale contract.

Claim of Readiness and Willingness: 'A' asserts his readiness and willingness to perform his part of the contract, stating he had the funds ready at the time of registration. This is a crucial element in a Specific Performance suit, as the plaintiff must demonstrate their ability and intent to fulfill their contractual obligations.

Claim of Poverty and Court Fees Remission: Simultaneously, 'A' applies for a remission of court fees under Section 35 of the Court

Fees Act, claiming to belong to the weaker section of society with an annual income of only 25,000. This claim suggests a financial constraint that might contradict the assertion of readiness and willingness to pay the remaining rupees for the land.

The Paradox:

The paradox lies in the inherent contradiction between:

Asserting Readiness and Willingness: This requires demonstrating the financial capacity to fulfill the contractual obligation (paying the remaining 5 lakh rupees).

Claiming Poverty and Seeking Court Fees Remission: This suggests a lack of financial resources, potentially undermining the claim of readiness and willingness.

Should Remission be Provided?

The court would need to carefully examine the following:

Genuine Poverty: Whether 'A' genuinely belongs to the weaker section of society and qualifies for court fees remission.

Source of Funds for Earnest Money: How 'A' managed to pay the earnest money if they genuinely belong to the weaker section of society.

Consistency of Claims: The court would need to reconcile the claim of readiness and willingness with the claim of poverty.

Possible Outcomes:

Remission Granted: If the court finds genuine poverty and that the earnest money was obtained through legitimate means (e.g., loans, savings), remission may be granted.

Remission Denied: If the court finds inconsistencies or doubts about the genuineness of the poverty claim, remission may be denied.

Conditional Remission: The court may grant partial remission or impose conditions for continued remission (e.g., regular income proof).

Conclusion.

The doctrine of specific performance serves as a crucial mechanism in contract law, ensuring that parties fulfill their obligations and that justice is served in cases of breach. It reflects the equitable principles underlying contract enforcement, aiming to uphold the sanctity of agreements and protect the interests of the aggrieved party.

This doctrine is particularly significant in commercial transactions and real estate dealings, where the unique nature of the subject matter makes specific performance a more appropriate remedy than monetary damages.

*****End*****