



# THE SPECIFIC RELIEF ACT, 1963



# RECOVERY AND POSSESSION OF PROPERTY

## Section 6 – Suit by person dispossessed of Immovable Property

- (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person **through whom he has been in possession or any person** claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.
- (2) No suit under this section shall be brought--
  - (a) after the expiry of six months from the date of dispossession; or
  - (b) against the Government.
- (3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.
- (4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

## Section 7 – Recovery of Specific Movable Property

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

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

Explanation 2.--A special or temporary right to the present possession of movable property is sufficient to support a suit under this section

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

Any person having the possession or 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:--

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

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

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



# SPECIFIC PERFORMANCE OF CONTRACTS

## Section 10 – Cases in which specific performance of contract enforceable

Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced-

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

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

- (i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and
- (ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:-
  - (a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;
  - (b) where the property is held by the defendant as the agent or trustee of the plaintiff

# Section 10 - Cases in which specific performance of contract enforceable.

(As amended by the Act of 2018)

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.



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

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:--

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

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

## Section 19 – Relief against parties and persons claiming under them by subsequent title

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against--

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- (ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

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

# Section 14 – Contracts not specifically enforceable

The following contracts cannot be specifically enforced, namely:--

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
  - (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
  - (c) a contract which is in its nature determinable;
  - (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.
- (2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.
- (3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-
- (a) where the suit is for the enforcement of a contract,-
    - (i) to execute a mortgage or furnish any other security for security for securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or (ii) to take up and pay for any debentures of a company;

## Section 14 – contd.

(b) where the suit is for,-

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm,

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land: Provided that the following conditions are fulfilled, namely:-

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

## Section 14 – Contracts not specifically enforceable. (As amended by the Act of 2018)

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 – Personal bars to relief

Specific performance of a contract cannot be enforced in favour of a person -

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.-For the purposes of clause (c),-

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

# Section 16 – Personal bars to relief

(As amended by the Act of 2018)

Specific performance of a contract cannot be enforced in favour 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 wilfully 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.

Explanation.--For the purposes of clause (c),--

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff **must prove** performance of, or readiness and willingness to perform, the contract according to its true construction

## Section 17 - Contract to sell or let property by one who has no title, not specifically enforceable.

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor--

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

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



## Section 20A - Special provisions for contract relating to infrastructure project (Inserted by the Act of 2018)

Special provisions for contract relating to infrastructure project-- (1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

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

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

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

**Category of projects and Infrastructure Sub-Sectors**

Sl. No.	Category	Infrastructure Sub-Sectors
1	2	3
1.	Transport	<p>(a) Road and bridges</p> <p>(b) Ports (including Capital Dredging)</p> <p>(c) Shipyards (including a floating or land-based facility with the essential features of waterfront, turning basin, berthing and docking facility, slipways or ship lifts, and which is self-sufficient for carrying on shipbuilding/repair/breaking activities)</p> <p>(d) Inland Waterways</p> <p>(e) Airports</p> <p>(f) Railway Track, tunnels, viaducts, bridges, terminal infrastructure including stations and adjoining commercial infrastructure</p> <p>(g) Urban Public Transport (except rolling stock in case of urban road transport)</p>
2.	Energy	<p>(a) Electricity Generation</p> <p>(b) Electricity Transmission</p> <p>(c) Electricity Distribution</p> <p>(d) Oil pipelines</p> <p>(e) Oil/Gas/Liquefied Natural Gas (LNG) storage facility(including strategic storage of crude oil)</p> <p>(f) Gas pipelines (including city gas distribution network)</p>
3.	Water and Sanitation	<p>(a) Solid Waste Management</p> <p>(b) Water supply pipelines</p> <p>(c) Water treatment plants</p> <p>(d) Sewage collection, treatment and disposal system</p> <p>(e) Irrigation (dams, channels, embankments, etc.)</p> <p>(f) Storm Water Drainage System</p> <p>(g) Slurry pipelines</p>
4.	Communication	<p>(a) Telecommunication (Fixed network including optic fibre/wire/cable networks which provide broadband/internet)</p> <p>(b) Telecommunication towers</p> <p>(c) Telecommunications and Telecom Services</p>

Sl. No.	Category	Infrastructure Sub-Sectors
1	2	3
5.	Social and Commercial Infrastructure	<p>(a) Education Institutions (capital stock)</p> <p>(b) Sports infrastructure (including provision of Sports Stadia and Infrastructure for Academies for Training/Research in Sports and Sports-relating activities)</p> <p>(c) Hospitals (capital stock including Medical Colleges, Para Medical Training Institutes and Diagnostic Centres)</p> <p>(d) Tourism infrastructure viz.</p> <p style="padding-left: 40px;">(i) three-star or higher category classified hotels located outside cities with population of more than one million;</p> <p style="padding-left: 40px;">(ii) ropeways and cable cars</p> <p>(e) Common infrastructure for industrial parks and other parks with industrial activity such as food parks, textile parks, Special Economic Zones, tourism facilities and agriculture markets</p> <p>(f) Post-harvest storage infrastructure for agriculture and horticulture produce including cold storage</p> <p>(g) Terminal markets</p> <p>(h) Soil-testing laboratories</p> <p>(i) Cold chain (including cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat)</p> <p>(j) Affordable Housing (including a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters</p> <p>Explanation.—For the purposes of this sub-clause, the term “carpet area” shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).]</p>

## The Schedule

## Section 20B – Special Courts

(Inserted by the Act of 2018)

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.

## Section 20C – Expeditious Disposal of suits.

(Inserted by the Act of 2018)

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

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

## Section 21- Power to award compensation in certain cases.

- (1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach **in addition to** such performance.
- (2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.
- (3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.
- (4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

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

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

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



# RECTIFICATION AND CANCELLATION OF INSTRUMENTS

## Section 26 – When instrument may be rectified

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

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

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

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

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

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

## Section 31- When cancellation may be ordered

- (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.
- (2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.





# DECLARATIONS

## Section 34 - Discretion of court as to declaration of status or right

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

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

Explanation.--A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

## Section 35 – Effect of Declaration

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



# INJUNCTIONS

## Section 37 – Temporary and Permanent Injunctions

(1) Temporary injunctions 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 (5 of 1908).

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

## Section 38 – Perpetual Injunction when granted

- (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
- (2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.
- (3) When the defendant invades or threatens to invade the plaintiffs right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:--
  - (a) where the defendant is trustee of the property for the plaintiff;
  - (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
  - (c) where the invasion is such that compensation in money would not afford adequate relief;
  - (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

## Section 39 – Mandatory Injunctions

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

## Section 41- Injunction when refused.

An injunction cannot be granted--

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;



## Section 41 – contd.

- g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.