NOTES

Specific Performance of Contracts under Specific Relief Act, 1963

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Specific performance of Contracts is an equitable remedy compelling a party to perform its contractual obligations exactly as promised, rather than merely paying damages for breach. The Specific Relief Act, 1963 governs this remedy under Sections 9 to 25.

Historically, courts *treated specific performance as discretionary and exceptional, granted only when monetary compensation proved inadequate*. However, the **Specific Relief (Amendment) Act, 2018** fundamentally *transformed this discretionary character into a more rule-based entitlement.*

This amendment marked a decisive shift from the traditional common law approach toward a regime favouring actual performance over damages. The legislature recognised that India's contract enforcement mechanism needed strengthening to support commercial confidence and ease of doing business.

Pre-Amendment Position of Section 10

Prior to the 2018 amendment, Section 10 rendered specific performance a highly discretionary remedy, empowering courts to grant it only when no standard existed to ascertain actual damage, or when monetary compensation would not afford adequate relief.

This discretionary framework created uncertainty for commercial parties who could not predict whether courts would enforce their contracts specifically. The unpredictability discouraged foreign investment and complicated dispute resolution in commercial matters.

Post-Amendment Position:<u>Section 10 Substituted</u>

The 2018 Amendment substituted Section 10 entirely, removing judicial discretion and making specific performance the default remedy for contract enforcement. Now, courts must grant specific performance *unless the case falls within the exceptions specifically carved out under Section 11(2), 14, or 16.*

This ***reversal places the burden on the defendant to justify why specific performance should not apply.*** The amendment effectively codifies specific performance as the primary remedy, not merely an equitable afterthought.

This change aligns Indian law more closely with international commercial arbitration standards and global contract enforcement practices.

Substituted Performance: <u>Section 20</u>

The 2018 Amendment introduced a pragmatic commercial remedy through **Section 20**, codifying the concept of 'substituted performance'. If a promisor defaults, the aggrieved party holds the statutory option to have the contract performed by a third party or via their own internal agency, subsequently recovering all actual expenses and costs from the defaulting party.

Activating this remedy strictly requires serving a written notice of **not less than thirty days** to the defaulting party, demanding performance within that window. If the promisor still fails to perform, the aggrieved party may execute the substituted performance.

Structurally, **Section 20(3)** mandates that once the aggrieved party **has actually got the contract performed** through an alternative agency, they permanently forfeit the right to file for specific performance. Crucially, merely issuing the 30-day notice does not trigger an automatic, immediate forfeiture; rather, it is the **actual completion of the third-party performance** that acts as the absolute statutory bar. This nuance allows commercial parties a measure of flexibility to pivot their legal strategies if arranging third-party substitutes proves commercially unviable midway.

Contracts Not Specifically Enforceable: <u>Section 14</u>

Section 14 lists contracts that courts cannot specifically enforce, even under the amended regime. These include contracts where monetary compensation provides adequate relief, contracts requiring continuous performance courts cannot supervise, and contracts of a determinable nature.

Additionally, contracts involving personal skill, volition, or qualification, such as employment contracts, remain non-enforceable specifically. This exception protects individual liberty by preventing courts from forcing unwilling parties into personal service relationships.

The 2018 Amendment notably removed the ***earlier exclusion of contracts requiring*** **"*constant supervision,*"** ***recognising that courts can now appoint independent monitors under Section 14A.***

This procedural innovation allows specific performance even for construction or infrastructure contracts that traditionally required ongoing oversight. Consequently, infrastructure and construction disputes, previously excluded from specific performance, now qualify for this remedy.

Personal Bars to Relief: <u>Section 16</u>

Section 16 of the Specific Relief Act establishes absolute personal bars, identifying distinct circumstances where a plaintiff is disqualified from obtaining specific performance regardless of the defendant's breach.

Under **Section 16(a)**, a plaintiff who has successfully obtained substituted performance under Section 20 for the same contract is structurally barred from seeking specific performance. Furthermore, under **Section 16(c)**, a plaintiff must affirmatively prove continuous readiness and willingness to perform their own essential contractual obligations to qualify for relief.

The 2018 Amendment updated Section 16(c) by removing the archaic, hyper-technical requirement that a plaintiff must plead specific formulaic phrases verbatim in their initial plaint. However, this change is not a substantive relaxation of the standard; while the **formal rules of pleading** have been modernized, the legal burden remains absolute. The plaintiff must still demonstrate a genuine, uninterrupted willingness (mental intent) and readiness (financial and practical capacity) to fulfill their reciprocal obligations throughout the lifecycle of the dispute.

Landmark Cases

In ***Katta Sujatha Reddy v. Siddamsetty Infra Projects (2022)***, the Supreme Court held that the 2018 Amendment operates **prospectively** and cannot be applied to **transactions or agreements executed before October 1, 2018**, even if the suit itself was instituted after the amendment came into force.

In ***Sughar Singh v. Hari Singh (2021)***, the Supreme Court reiterated that readiness and willingness must be assessed holistically from the parties conduct throughout the transaction, rather than through rigid pleading formulas. This judgment reinforced the amended Section 16 philosophy of flexible, conduct-based assessment.

Compensation in Specific Performance Suits: <u>Section 21</u>

Section 21 allows courts to award compensation in addition to or in substitution of specific performance when justice so requires. A plaintiff may claim compensation even if they did not originally seek it, provided the plaint is amended appropriately during proceedings.

This flexibility ensures plaintiffs are not left without remedy when specific performance becomes impossible during litigation. However, courts retain discretion regarding the quantum and appropriateness of such compensation awards.

The provision harmonises equitable relief with compensatory justice, ensuring no plaintiff suffers total loss due to procedural rigidity.

Specific Performance of Contracts

A remedy requiring the contract to be performed as promised—not merely compensated with damages.

THE 2018 SHIFT

The **Specific Relief (Amendment) Act, 2018** changed specific performance from a largely discretionary remedy into the default remedy, subject to statutory exceptions.

1. SECTION 10 — FROM DISCRETION TO DEFAULT

BEFORE

AFTER

BEFORE 2018: Courts generally granted specific performance only when damages were inadequate or actual loss was difficult to measure.

AFTER 2018: Courts must grant specific performance unless an exception under Sections 11(2), 14, or 16 applies. The defendant must justify why the remedy should not be granted.

2. SECTION 20 — SUBSTITUTED PERFORMANCE

30 DAYS

If the promisor defaults, the aggrieved party may arrange performance through a third party or its own agency and recover actual costs.

1. Serve written notice of at least 30 days demanding performance.
2. If default continues, arrange substitute performance.
3. Recover actual expenses and costs from the defaulting party.

Once substituted performance is **actually completed**, the right to **seek specific performance** is **permanently lost.** Merely sending the notice does not create the bar.

3. SECTION 14 — CONTRACTS COURTS CANNOT SPECIFICALLY ENFORCE

- Contracts where money provides adequate relief.
- Contracts requiring continuous performance that courts cannot supervise.
- Determinable contracts.
- Contracts depending on personal skill, volition, or qualification, such as employment contracts.

Section 14A allows independent monitors, so certain construction and infrastructure contracts may still qualify despite ongoing oversight.

4. SECTION 16 — PERSONAL BARS

A plaintiff is disqualified when they already obtained substituted performance under Section 20 for the same contract, or cannot prove continuous readiness and willingness to perform their own essential obligations.

DEFINITION: Readiness means financial and practical capacity; willingness means genuine, uninterrupted intent. Formulaic pleading language is no longer required, but the legal burden remains absolute.

5. LANDMARK SUPREME COURT DECISIONS

- **Katta Sujatha Reddy v. Siddamsetty Infra Projects (2022):** The 2018 Amendment operates prospectively and does not apply to agreements executed before 1 October 2018.
- **Sughar Singh v. Hari Singh (2021):** Readiness and willingness are assessed holistically from the parties' conduct, not rigid pleading formulas.

6. SECTION 21 — COMPENSATION

Courts may award compensation in addition to or instead of specific performance when justice requires. A plaint may be amended to claim compensation during the proceedings.

BOTTOM LINE: Specific performance is now the primary enforcement remedy—but statutory exceptions and the plaintiff's own conduct still matter.

Educational overview | Specific Relief Act, 1963