**Relief under Specific Relief Act**

The Act originated in 1877 after the Indian Contract Act, 1872 because the Contract Act only provides relief by compensation for cases of “breach” of contract; however, it did not cover the situations in which compensation might not be adequate and specific performance might be needed to render absolute justice. The following kinds of remedies may be granted by a court under the provisions of the Specific Relief Act- Recovery of possession of the property, Specific performance of contracts, Rectification of instruments, Rescission of contracts, Cancellation of Instruments, Declaratory decrees and Injunction.

The relief of recovery of possession is defined in provisions contained in Chapter 1 are relating to both immovable and movable property. Section 5 and 6 deal with specific immovable property and sections 7 and 8 deal with movable property. Section 5 applies the procedure of Civil Procedure Code, 1908 to the recovery. Further, Section 6 provides for two principles. First,that the disputed rights ought to be decided in the due course of law and not otherwise. The second principle is that if a person is in possession of some property, then existing possession ought to be protected notwithstanding any other title that may be set up in the suit.[[1]](#footnote-2)

The section 7 explains that a trustee may sue under this section for the possession of the movable property to the beneficial interest in which the person for whom he is a trustee is entitled. In ChanduNaik and others v. Sitaram B. Naik and another[[2]](#footnote-3)**,** it was held that when the dispute is between two private parties in respect of possession of premises, the provisions of section 8 of the Act are not attracted and the Civil Court has the jurisdiction to entertain and try the suit of the kind with which we are dealing.

However, Section 8 of the Act attaches more importance to title than possession and defines the liability of a person in possession. This Section was further substantiated in Geetarani Paul v. DibyendraKundu[[3]](#footnote-4) where the Supreme Court has held that as long as the plaintiff is able to substantiate and establish that he is lawful and registered owner of the suit lands and the title vests in him, specific details of his dispossession need not be proved and that a decree on the basis of the title can follow, if the suit is filed within the period of limitation.

Specific performance is defined in the provisions of Chapter 2. Section 9 provides that any relief in respect of a contract may be defended on any ground available under the law of contracts.

In Sanjib v. Santosh[[4]](#footnote-5), it was held by the Court that on such an agreement a suit for specific performance could not be founded even though the tenant was put in possession in pursuance of the said agreement as the document was hit by Section 49 which concerns itself with the effect of non-registration.

Section 10 further describes the other conditions under which a Court may exercise its discretion and enforce specific performance. The conditions are: when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief, unless and until the contrary is proved.

Section 11 of the Act provides for cases in which specific performance of contracts connected with trust enforceable except as otherwise provided in this Act, specific performance of a contract may, in the discretion of the court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust. It also provides that a contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

Section 12 further defines specific performance of part of contract. It states that except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract and thus, gives certain conditions. It states that the Court shall not direct the specific performance of a part of the contract unless it can enforce the contract.

Section 13 additionally, defines rights of the purchaser or lessee against person with no title or imperfect title. It states that a contract can still be enforced even when the person has no or an imperfect title and he shall have the rights as mentioned in this section to enforce such contract.

Section 14 also mentions the contracts that are not specifically enforceable. It also refers to the provisions of Arbitration Act which provides for certain contracts to not be enforceable. This section is detailed and clearly mentions almost all circumstances where a contract can be held as not enforceable.
In Executive Committee, State Warehousing Corporation v. Chandra KiranTyagi[[5]](#footnote-6), the Supreme Court held that ordinarily the contracts for personal services cannot be specifically enforced subject to certain exceptions.

Section 15 mentions who all are eligible to pray for specific performance and Section 16 further states all personal bars to relief.
Section 16 has been discussed in the case of N.P. Thirugnanam v. Dr. R.J. Mohan Rao[[6]](#footnote-7), which observed that where it is clear from the evidence that the plaintiff was not “ready and willing” to perform his part of the contract, he would not be entitled to get the decree of specific performance.[[7]](#footnote-8)

Ratification of instruments is described in Section 26, and can be made on the ground of mistake of law. In Shanti Ranjan Das v. Dasuram[[8]](#footnote-9) it was held that even a representative in interest may apply for rectification. However, such rectification cannot affect the right of the third party.
Also, in Raipur Mfg. Co. Ltd. v. JoolagantiVenkatasubbaRaoVeerasamy& Co.[[9]](#footnote-10), it was held that where in the course of a suit for damages for breach of contract, the plaintiff contends that if there is a clerical error in the document embodying the contract, it is not always necessary that a separate suit should have been brought for rectification of the document and it is open to the court in a proper case to allow the plaintiff to amend the plaint and ask for the necessary rectification.

Chapter 4 deals with Rescission of contracts in Sections 27-30.
In Prem Raj v. D.L.F.M Co. Ltd.[[10]](#footnote-11), it was held that a person who sues for rescission of contract cannot claim alternative relief of specific performance but a person who files the suit for specific enforcement can alternatively claim for rescission of the contract.[[11]](#footnote-12)

Cancellation of instruments is covered in Sections 31-33 and any person having apprehension of a reasonable man, that the instrument would cause him injury can get it cancelled by the Court on merit, however, such contract must be in writing and void or voidable.
Prem Singh vs. Birbal[[12]](#footnote-13), the Supreme Court pointed out a similar ratio in para 16 that “when a document is valid, no question arises of its cancellation” and that “when a document is void ab initio, a decree for setting aside the same would not be necessary, as the same is nonest in the eye of law”

Section 34 and 35 further go on to provide for Declaratory Decrees. These decrees are declaration of the Court in favor of the plaintiff being entitled. However, these decrees are not a matter of right and are given at the discretion of the Court. These are also described in Section 42 however, that section is not exhaustive as was held in In VeruareddiRamaraghava Reddy v. KonduruSeshu Reddy[[13]](#footnote-14), where the Supreme Court held that Section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the Courts have the power to grant such a decree independently of the requirements of that sections.

Finally, preventive relief in form of injunction is covered in Section 36 and it may be temporary or perpetual. In Pirthi v. Mohan Singh[[14]](#footnote-15), it was held that if the plaintiff abuses the process of Court and approaches Court with clean hands, the suit for the permanent injunction will be liable to be dismissed.
In a suit for mandatory injunction, the burden of proof lies on the plaintiff. It was held in Shankar Kumar v. Mohanlal Sharma[[15]](#footnote-16), relief cannot be given on the ground that the defendant failed to prove his case beyond reasonable doubt.

This year, the Parliament passed the Specific Relief (Amendment) Bill. The Amendment Bill substantially alters the Specific Relief Act, 1963. The Amendment Bill has been passed by the Parliament and is awaiting Presidential assent. The Bill was based on Expert Committee Recommendations of 2016.[[16]](#footnote-17)The Amendment Bill contains very limited grounds for refusal of specific performance in line with international principles such as the Principles of European Contract Law and the UNIDROIT Principles of International Commercial Contracts. These amendments are introduced with the aim of keeping pace with rapid economic growth in the country. The amendments, which intend on increasing contract enforceability, will potentially increase India’s ranking on the ‘ease of doing business index’ which is released by the World Bank.[[17]](#footnote-18)
Specific performance of contracts under the 1963 law is an alternative and can be put into place only when monetary compensation is not sufficient can the court ask for it. There is a provision which says that there will be no specific performance of those contracts where monetary compensation is sufficient, or the contract involves performance of a continuous duty which the court cannot supervise and thus, there was a need for change.
Also, it is a discretionary relief, as per Section 20, as it is left to the court to decide whether specific performance should be given to a party asking for it and this gives rise to uncertainty.
The government wants to ensure that there is ease of doing business, and the specific relief law is a hindrance. Uncertainty in contracts often means investors become vary of getting entangled in legal trouble.[[18]](#footnote-19) Thus, these recommendations will safeguard investments and reduce uncertainty of existing provisions.

The Amendment Bill also introduces the concept of substituted performance. If a contract is broken due to non-performance of a promise by a party, the party suffering the breach has the option of availing substituted performance through a third party or through its own agency after giving a notice in writing of not less than 30 days to the party in breach.
The amendments to the Specific Relief Act are likely to reduce litigations and ensure the performance of the contractual work in a timely manner with the introduction of the concepts of substituted performance and the imposition of time limits for disposal of cases. Altering the nature of specific relief from an exceptional rule to a general rule will certainly ensure contractual enforcement.[[19]](#footnote-20)

BIBLIOGRAPHY

* <https://drive.google.com/file/d/0B-ZUXtJuPbi3ak0wbENVdUdjQTZWcTNQSW5vNWpUSWVNYnc0/view>
* <https://www.legalbites.in/remedies-specific-relief-act-1963/>
* <http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/contract-enforcement-finally-sees-relief-amendments-to-the-specific-relief-act.html?no_cache=1&cHash=8dafbcfeca599325b1443cdbec7acd25>.
* <https://indiankanoon.org/doc/1768154/>
* <http://pib.nic.in/newsite/PrintRelease.aspx?relid=146360>
* <https://www.livemint.com/Politics/uNG9gJVysAolCNjYNW9XlI/What-is-the-Specific-Relief-Act-and-why-does-the-govt-want-t.html>
* <https://barandbench.com/specific-relief-amendment-act-hurried-legislation/>
* [http://www.mondaq.com/india/x/736966/Contract+Law/The+Specific+Relief+Amendment+Act+2018+Overview+Implications](http://www.mondaq.com/india/x/736966/Contract%2BLaw/The%2BSpecific%2BRelief%2BAmendment%2BAct%2B2018%2BOverview%2BImplications)
1. *Remedies available under Specific Relief Act, 1963,* <https://www.legalbites.in/remedies-specific-relief-act-1963/> [↑](#footnote-ref-2)
2. 1978 AIR 333 [↑](#footnote-ref-3)
3. AIR 1991 SC 395 [↑](#footnote-ref-4)
4. AIR 1922 Cal 436 [↑](#footnote-ref-5)
5. 1970 AIR 1244 [↑](#footnote-ref-6)
6. 1996 AIR 116 [↑](#footnote-ref-7)
7. *Supra* Note 1. [↑](#footnote-ref-8)
8. AIR 1957 Assam 49 [↑](#footnote-ref-9)
9. AIR 1921 Mad 664 [↑](#footnote-ref-10)
10. 1968 AIR 1355 [↑](#footnote-ref-11)
11. *Supra* Note 1. [↑](#footnote-ref-12)
12. 2006 (5) SCC 353 [↑](#footnote-ref-13)
13. 1967 AIR 436 [↑](#footnote-ref-14)
14. CIVIL APPEAL NO. 6391 OF 2003 [↑](#footnote-ref-15)
15. AIR 1998 Ori 117 [↑](#footnote-ref-16)
16. <https://drive.google.com/file/d/0B-ZUXtJuPbi3ak0wbENVdUdjQTZWcTNQSW5vNWpUSWVNYnc0/view> [↑](#footnote-ref-17)
17. *Contract enforcement finally seeks relief,* <http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/contract-enforcement-finally-sees-relief-amendments-to-the-specific-relief-act.html?no_cache=1&cHash=8dafbcfeca599325b1443cdbec7acd25>. [↑](#footnote-ref-18)
18. *What is the Specific Relief Act and why does the govt want to change it?*<https://www.livemint.com/Politics/uNG9gJVysAolCNjYNW9XlI/What-is-the-Specific-Relief-Act-and-why-does-the-govt-want-t.html> [↑](#footnote-ref-19)
19. *CONTRACT ENFORCEMENT FINALLY SEES RELIEF*<http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/contract-enforcement-finally-sees-relief-amendments-to-the-specific-relief-act.html?no_cache=1&cHash=8dafbcfeca599325b1443cdbec7acd25>. [↑](#footnote-ref-20)