

Specific Relief Act made precise

Specific Relief Act, 1963 provides remedies for protection of possessory and other legal rights. The remedies are unique and in some cases procedure is also provided to seek remedy, determine the dispute and provide relief to the aggrieved.

The entire Act can be broadly divided in two parts, considering the remedies it addresses. One part provides relief regarding immovable property, while second part speaks on Specific Performance of Contract. Very important part of Specific Relief Act is recovery of immovable property by person in possession dispossessed without due process of law. This remedy is very prominent because unlike in respect of other remedies the Specific Relief Act provides entire procedure, limitation and obligations of the courts deciding the remedy. Which can be summarized as under :-

- I. A person disposed without his consent of immovable property otherwise than in due process of law or any person claiming through him can file suit.
- II. Relief in suit is to recover possession without claiming relief of declaration of title.
- III. Suit is required to be brought within six months of the date of dispossession
- IV. No suit can be filed against government.
- V. No defence of title can be raised in the suit, though the defendant may file another suit to establish his title and to recover possession.
- VI. The suit shall be decided within specified time.
- VII. No appeal or review shall lie from any such order or decree.

If this part of the Act is properly applied, the person dispossessed without due process of law will get immediate relief and on dispensation of immediate relief which becomes final in very first cadre of trial will be a lesson for wrong doers not to try to dispossess any one of immovable property without adopting due process of law. Unfortunately, the suits under section 6 are tried by the judges as regular suit and linger in the courts for years together. The practice developed by High Court Rules or manuals i.e. guidelines do not provide for segregation of these suits from other suits. The Bombay City Civil Court Rules provide for long clause and short clause suits but there also is no clear demarcation helping to decide the suit under section 6 expeditiously without allowing the advocates to adopt dilatory tactics.

The next part pertaining to immovable property starts from section 34 which relates to granting decree of declaration.

Declaration – relief of declaration doesn't only relate to property but it can be granted for any legal character to which any person is entitled. It can be summarised as under

- I. suit can be filed by a person entitled to any legal character against the person denying or interested to deny his title to such character or right.
- II. The plaintiff can file suit for only relief of declaration but if he is entitled to any other relief he has to seek such relief, otherwise relief of declaration will be denied by the court.
- III. It is the discretion of the court to grant declaration. How discretion is to be used is not provided in the Act, but according to common law principles discretion is to be used judiciously i.e. by applying principles of natural justice.
- IV. Declaration granted by the court will be binding *In personam* and not *in rem*.

- V. Procedure to file suit is not provided and therefore suit is to be filed before the court by following procedure under the Code of Civil Procedure.

The next part to provide protection to immovable property is by granting injunctions. Injunctions are broadly categorized as perpetual and temporary on the basis of the duration for which they operate. The injunction is also classified as prohibitory and mandatory on the basis of nature of relief the court will provide.

- I. Perpetual injunction may be granted to the plaintiff to prevent breach of obligation existing in his favour.
- II. Injunction is also granted when the defendant invades or threaten to invade plaintiffs right to enjoyment of property.
- III. The criterias to grant perpetual injunction are as under:-
 - (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 on property.
 - (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.
- IV. Perpetual injunction will be denied:-
 - (a) to restrain any person from continuing judicial proceeding unless it is required to restrain multiplicity of proceedings;
 - (b) to restrain any person from instituting any proceeding in the court not subordinate to the court from which injunction is sought;
 - (c) to restrain any person to apply to legislative body;
 - (d) to restrain any person from instituting or prosecuting criminal case;
 - (e) to prevent breach of contract performance of which would not be specifically enforced;
 - (f) to prevent an act on the ground of nuisance unless it is reasonably clear that it will be nuisance;
 - (g) to prevent continuing breach to which the plaintiff has acquiesced;
 - (h) when equally efficacious relief can be obtained by any other usual mode;
 - (i) when the conduct of the plaintiff disentitle him to the assistance of the court;
 - (j) when the plaintiff has no personal interest in the matter.
- V. Prohibitory injunction is direction of the court to the defendant not to do certain acts to prevent the breach of an obligation existing in favour of plaintiff and mandatory injunction is to compel the defendant to perform certain acts which the court in its discretion finds necessary to prevent the breach complained and in certain cases to restore *status quo ante*.
- VI. Temporary injunction is granted for specified time or till the suit for perpetual injunction is decided by following the provisions under Order 39 Rule 1 & 2 of the Code of Civil Procedure.

The other part of the Specific Relief Act relates to specific performance of contract. This part defines which contracts are enforceable and which are not.

Enforceable contracts

- I. When the act agreed to be done is in the performance of a trust.

- II. Part of contract when the part unperformed is a small proportion to the whole in value and compensation in money can be granted for unperformed small part.
- III. When the part of the contract unperformed forms a considerable part but party under obligation has received the agreed consideration for whole of the contract and if the party claiming performance waives its right to seek compensation for deficiency.
- IV. Court can grant specific performance against person with no title or imperfect title if subsequent to contract his title is perfected or he gets the title.
- V. To execute a mortgage or furnish any other security.
- VI. To takeup and pay any debentures of a company.
- VII. Enforcement of contract for construction of building when the terms of contract are clear to determine exact nature of construction, denial of specific performance cannot be compensated in money and the defendant has in pursuance of contract obtained possession of land where the building is to be constructed.

Non enforceable contracts

- I. A contract of non performance of which compensation in money is adequate relief.
- II. A contract which runs in minute details or depends on personal qualification of the parties
- III. Contract which is determinable.
- IV. A contract the performance of which if ordered compel the court to supervise its performance continuously.
- V. A contract to refer differences to arbitration.

This part of the Act also specify who may obtain and who may not obtain specific performance.

Who may obtain specific performance

- A. Any party to the contract.
- B. Representative in interest, however, when the learning skill solvency or personal quality of such party is material ingredient of contract or when contract specifies that interest shall not be assigned, the representative cannot claim performance.
- C. Where the contract is for settlement on marriage, or compromise of doubtful rights between members of same family any person beneficially entitled there under.
- D. When lease is for life, the remainder man.
- E. Reversioner in possession when he is entitled to benefit of a covenant in the agreement.
- F. A reversioner in remainder when he is entitled to the benefit by covenant in the agreement.
- G. New company formed after amalgamation of company which has entered into a contract.
- H. A company when the promoter has entered into a contract before formation of contract and the company has accepted the contract after its formation.

Who may not obtain Specific performance

- A. Person who is not entitled to recover compensation for its breach.
- B. Person who has become incapable of performing his remaining part of contract, Person who violates any essential terms of contract or acts fraudulently or in variance of the terms of the contract.

- C. A person who fail to aver and prove that he has performed and has always being ready and willing to perform his part of contract.
- D. A person who has no title but enters into contract of sale knowingly that he has no title to the property or entered into contract believing that he has good title to the property fail to give purchaser or leasee a title free from reasonable doubt.

The Act also provides the instances of use of discretion in favour of granting or denying specific performance of contract.

- I. Instances of use of discretion to decree specific performance.
 - A. Discretion of the court shall be sound and reasonable guided by judicial principles and capable of correction by courts of appeal.
 - B. When the plaintiff has done substantial act or suffered losses in consequences of a contract capable of specific performance.
 - C. The court will not refuse specific performance merely on the ground that contract is not enforceable at the instance of a party.

Discretion to deny specific performance

- A. Where from the terms of contract or conduct of parties it appears to the court that the contract though not voidable gives plaintiff an unfair advantage over the defendant.
- B. When the performance of contract would involve hardship on the defendant which he did not foresee while entering into contract. Whereas, its non performance would involve no hardship on the plaintiff.
- C. When the circumstances existing at the time of execution of contract make it inequitable for the defendant.

One part of the Specific Relief Act also refer to protection the right of possession of movable property by creating obligation on the person who has found the movable property. Section 8 of the Act creates a liability on person in possession of movable property not as a owner to deliver it to the person entitle to immediate possession. If he do not do so he may be compelled to deliver possession of the property to the person who was in immediate possession of the movable property. Following are the requirement to grant such relief.

- A. When the thing claimed is in possession of defendant as agent or trustee of 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 assert the actual damage caused by its loss.
- D. When possession of thing claimed has been wrongfully transferred from the plaintiff.
