

**SUMMARY OF WORKSHOP PAPER ON**  
**LAW OF SPECIFIC PERFORMANCE OF CONTRACT**

1           The terms “ Specific Performance’ is not defined in the Specific Relief Act, 1963. According to the Oxford Dictionary “ Spetic Performance” means, the performance of a contractual duty, as ordered in cases where damages would not be adequate remedy. Law of Specific Relief has been enacted for certain kinds of specific relief. Law of Specific Relief is a kind of procedural law and it supplements to the Code of Civil Procedure, 1908. Principles of specific relief are recognized by the English Courts and they are based on rules and practices of Common law courts.

2           Specific relief is a remedy which aims at the exact fulfillment of an obligation. The specific Relief Act, 1963 came into force on 13-12-1963 replacing old Specific Relief Act, 1877. The real object of this Act is to give party seeking specific relief of protection of some civil right or the prevention of some civil wrong. Civil injury means violation of obligation. Specific relief is a form of judicial redress. It is an equitable relief.

3           ‘ ***Ubi jes ibi remedium***’ means where there is a right there is a remedy. The constitution of India recognizes the “Right to Property” in Article 300-A. Therefore, no person shall be deprived of his property save by authority of law. The enumeration of rights and duties guaranteed by the constitution is supplemented by legal devices which help the individual to enforce his rights.

4           In other words, a *contract* is an agreement upon sufficient consideration to do or not to do a particular act. The party on whom this contractual obligation rests must not fail to discharge

such obligation. In case of his failure, the other party will have a right sue for performance of the contract. This is called 'specific Performance'. Orders of specific performance are granted when damages are not an adequate remedy, and in some specific cases such as land sale. Such orders are discretionary, as with all equitable remedies, so the availability of this remedy will depend on whether it is appropriate in the circumstances of the case. Under the Specific Relief Act, 1963, courts grant specific performance when they perceive that awarding damages will be inadequate relief. Specific performance is deemed an extraordinary remedy, awarded at the court's discretion.

### **Object and Scope**

5           The object of the Act may best be stated in the words of Statement of Object and Reasons which runs as under:-

This Bill seeks to implement the recommendation of the Law Commission contained in its Ninth Report on the Specific Relief Act 1877, except in regard to Section 42 which is being retained as it now stands. An earlier Bill on the subject introduced in the Lok Sabha on the 23<sup>rd</sup> December, 1960, lapsed on its dissolution. The notes on clauses extracted from the Report of the Law Commission, explain the changes made in the existing Act".

6           The object of the Specific Relief Act is confined to that class of remedies which a suit or seeks to obtain and a court of justice seeks to give him the very relief to which he is entitled. The Law of Specific Relief seeks to implement the idea of Bentham, who said: "The law ought to assure me everything which is mine, without forcing me to accept equivalents, although I have no particular objection to

them”.

7           The Specific Relief Act explains and enunciates the various reliefs which can be granted under its provisions, provides the law with respect to them. It provides for the exact fulfillment of the obligation of the specific performance of contract. It is directed to the obtaining of the very thing which a person is deprived of and ought to be entitled to ask for. It is a remedy by which party to a contract is compelled to do or omit the very acts which he has undertaken to do or omit. The remedies which has been administered by Civil Courts of Justice against any wrong or injury fall broadly into two classes:

(i) those by which the suit or obtains the very thing to which he is entitled, and

(ii) those by which he obtains not that very thing, but compensation for the loss of it. The former is the specific relief. Thus specific relief is a remedy which aims at the exact fulfillment of an obligation. It is remedial when the court directs the specific performance of contract and protective when the court makes a declaration or grants an injunction.

## 8 **BY WHOM CONTRACT MUST BE PERFORMED**

**1] By the promisor :-** A contract may be performed by the promisor, either personally or thorough any other competent person

**2] By the agent:-** Where personal skill is not necessary and the work could be done by anyone, the promisor or his representative may employ a competent person to perform it. Thus a contract to sell goods can be assigned by the seller to his agent.

**3] By the representative:-** In the event of the death of the promisor before performance, their representatives are bound by the promises, unless personal consideration are the foundation of the contract.

**4] By the third person:-** If the promise accepts performance of the promise form a third party, there is discharge of the contract. Once the third party performs the contract, and that is accepted by the promisee there is an end of the matter and the promisor is thereby discharge.

## 9 **Section 10 of the Specific Relief Act reads as under :-**

Cases in which specific performance of contract enforceable. - Except 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 can not be adequately relieved by compensation in money; and

(ii) the breach of a contract to transfer movable property can be also so relieved except in the following cases :-

(a) where the property is not an ordinary article of commerce, or 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.

10 From provisions of Section 10, it appears that specific performance can be granted when there is no standard for ascertaining actual damage or when monetary compensation for non-performance of the agreement is found to be adequate. What is unfolded from Section 10 is, that specific performance should be considered in cases where it is difficult to ascertain loss in monetary terms. As a natural corollary, when non-performance of the agreement can be adequately compensated in terms of money, the Court should not exercise its discretion of granting specific performance. The exception appended to the Section makes it clear that whenever there is breach of contract with regard to transfer of immovable property, unless and until the contrary is proved, the Court should presume that monetary compensation can not be

adequate for breach of contract to transfer immovable property. Same principle is applicable in case of movable property if movable property is of such a nature which is of special interest or value and which can not be substituted by another movable property.

11 Section 14 of the Specific Relief Act spell out circumstances in which specific performance can be refused. Under Section 14(1), in following cases specific performance can not be granted :-

(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 can not supervise.

12 However, sub-section 3 has overriding effect over sub-section 1 and even though cases are covered by clause (a) or clause (c) or clause (d) of sub-section 1 yet Court may enforce specific performance in following cases :-

(a) where the suit is for the enforcement of a contract, -

(i) to execute a mortgage or furnish any other 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;
- (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 purchaser 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 20 of “ Specific Relief Act” provides that**

13 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.

(2)The following are cases in which the Court may properly exercise discretion not to decree specific performance--

- (a) Where the terms of the contract or the conduct of the parties at the time entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or,
- (b) Where the performance of the contract would involve some hardship on the defendant which he did not foresee,
- (c) Where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1:- Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause(b).

Explanation 2:- The question whether the performance of a contract would involved hardship on the defendant within the meaning of clause(b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4)The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable

at the instance of the other property.

14 Before of granting decree for specific performance the Court must be satisfied that

- i The contract is certain and unambitious in its terms.
- ii A valuable consideration is passed,
- iii The contract is fair,
- iv The contract is not vitiated by fraud mistake and misrepresentation,
- v The contract does not offend third party
- vi The contract does not impose a harm and unconscionable bargain,
- ix The plaintiff is not guilty of unreasonable delay and latches.

15 After considering the provision of Sec. 20 of the Act, it appears that merely because of contract is lawful, the specific performance should not be granted. Further, while using the discretion the court has to consider some of the factors in between the parties. The discretion of the court is not arbitrary but should be sound and reasonable, guided by judicial principles and capable of correction by court of appeal. Further while using discretion the court has to consider hardship to the parties. If the greater hardship would be caused to the defendant which he did not foresee and due to non performance of contract no such hardship would be caused to the purchaser then discretion it is not necessary to grant decree for specific performance.

16 In **Sen Kukherjee and Co., Vs. Smt Chhaya Banerji** **ane AIR 1998 Culcatta 252** The Hon'ble Supreme Court has held that the relief of specific performance having its roots in equity,

the Specific Relief Act, 1963 has preserved the discretion of the Court not to grant the relief even though the agreement is specifically performable in law. The only letters imposed by the statute on the exercise of the discretion are that the discretion must not be exercised arbitrarily but soundly and reasonably and guided by judicial principles. The phrase “capable of correction by Court of appeal’ has been inserted possibly to indicate the necessity for the trial Court to state the reasons for exercising its discretion in a particular way. The circumstances mentioned in the clauses (a), (b) and (c) of sub sec. (2) of S.20 are not expressly exhaustive. They indicate the situations in which the Court may properly exercise discretion not to decree specific performance. However, certain considerations have been excluded as relevant factors. These are contained in Explan 1 & 2 to the Section as well as in S.20(4). It is to be noticed that each of these exclusions are preceded by the word ‘mere’. The word ‘mere’ in the context means ‘sole’. In other words, any one of those factors by itself would not justify the exercise of discretion against granting specific performance. The factors cumulatively or with other factors may form the basis of a decision not to grant specific performance.

**The conduct of the plaintiff is deciding Criteria:-**

17           The relief of Specific Performance of contract is based upon the principles of Equity that “He who seeks Equity must do Equity” and the plaintiff has to plead that he has always been ready and willing to perform his part of the essential terms of the contract and he has to prove the same. Thus, it does not suffice on the part of the plaintiff that he is ready and willing to perform his part of the contract but he has to prove the same. The readiness and willingness on the part of the plaintiff can be inferred from the surrounding

circumstances and the conduct of the plaintiff, not only prior to filing of the suit but during the course of the trial. His conduct must be such that he shall not be blamed in any way for the failure of the contract and the said responsibility exclusively lies upon the defendant. Thus, the conduct of the plaintiff plays a vital role in adjudicating, whether he is entitled for the equitable relief of specific performance of the contract. **(Man Kaur Vs. Haratr (2010) 10 SCC 512.**

18 Clause(a) of sub sec.2 of Sec. 20 of Specific Relief Act mention about “conduct of parties” but such conduct is referable to point of time of entering into contract. Conduct of defendant in taking up on sustainable or untrue defence does not come under this clause. Words” at time of entering into contract” in clause (a) would indicate this. Scope of enquiry under clause(a) is to find where any of three ingredients mentioned therein would give plaintiff an unfair advantage over defendant. Bonafide of party who approached to court for reief and his conduct are important factors to be taken into account.**P. Prabhakarrao -Vs-P. (AIR 2007 (Andhra Pradesh)163.**

#### **False representation:**

19 Mere false representation is not enough. It has to be further shown by defendant that this false misrepresentation resulted in adversely affecting their interest, or it altered the position of the parties in such a way that it would be inequitable to grant relief to the plaintiff. **Vuppalapati Butchiraj and another – Vs- Rajah Sri Ranga Satyanarayana Ramchandra Venkata Narasmha Bhupala Bhalavayubim Varu and others, A.I.R. 1967AP 69.**

#### **Ready and Willing of plaintiff**

**20 Lord Campbell in Cort V. Ambergate, etc. railway Co. (1851) 117 ER 1229**

observed as follows: “In common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it if it has not been renounced by the defendant”.

21           **In Amarjeet Vs. Sushiladevi, 2002(2)B.C.R.694** “The words “ready” and willing used in Sec. 16(c) are very significant and in my opinion, where the performance on the part of plaintiff contemplates payment of certain money. The word “willing” in the same context means the plaintiff’s desire to pay the money to the defendant. The term refers to both physical and mental elements, the combination of which answers the requirement of the term. A plaintiff may have the money ready and with him or he may be capable of raising the requisite money, yet he may not have desire to pay the same. Conversely a plaintiff may have an earnest and sincere desire to pay the money, but he may not have the same ready with him or he may not be in a position to raise the same. In either case, the result is the same. Such a plaintiff cannot perform his obligation to pay the consideration amount to his vendor and therefore, he

cannot be regarded to be a person “ready and willing” to perform the essential obligation regarding making payment”.

22           The plaintiff in a suit for specific performance has to allege and if the fact is traversed must prove his continuous readiness and willingness from date of contract to the time of hearing, to

perform the contract on his part. Failure to make good that averment brings with it the inevitable dismissal of his suit.

23 Where the conduct of the plaintiff from the beginning to the end i.e. till the institution of the suit and even thereafter clearly indicated his readiness and willingness to perform his part of contract he would be entitled of decree for specific performance. **Popatlal Maneshankar Pande Vs. nanalal Nagardas Vhora 1987 Mah. L.J. 1055(1064).**

24 **In Ardeshir H.Mama Vs. Flora Sassoon, AIR 1928 PC 208**

“Where the injured party sued at law for a breath, going to the root of the contract, he thereby elected to treat the contract as at an end himself and as discharged from the obligations. No further performance by him was either contemplated or has to be tendered. In suit for specific performance on the other hand, he treated and was required by the court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness from the date of contract to the time of hearing, to perform the contract on his part. Failure to make good that averment bring with it and leads to inevitable dismissal of the suit”.

25 In **Fakir Chand V/s Sudehskumari 2006 (4) Mah. L.R. 553(SC)**

“ The language under Section 16(c) of the Act in our view, does not require any specific phraseology but not only that the plaintiff must aver that he has performed or has always been ready and willing to perform his part of contract. Therefore, the compliance with the readiness and willingness has to be in spirit and

substance and not in letter and form”.

**Compliance of the requirement of Forms 47 and 48 of Appendix-A of the C.P.C. Whether necessary:-**

26           The language of Rule 3 of Order VI of the Code of Civil Procedure is mandatory and any plaint in a suit for specific performance of contract has to be strictly in conformity with form No. 47 or 48 of Appendix A of the Code of Civil Procedure. It shows that in a suit for specific performance there must be averments to the effect that plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

27           **“Ram Awadh(Dead) by L.Rs. And other V/S Achhaibar Dubey and another, AIR 2000SC 860”**. It is held that a court may not, therefore grant relief to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance where of he seeks.

28           Where evidence clearly established that the plaintiff has capacity to pay and was also ready and willing to pay the balance amount, so in absence of any, material to show that the defendant was not acting in an unauthorized manner, it was held that the judgment of the High Court granting decree for specific performance cannot be faulted. **India Financial Assn. Seventh Day Adventists V. MN.A. Unneerikutty 2007(1) Civil L.J. 599 (C) Shaligram Vs. Ramesh 2014(3) Mh.L.J. 704.**

29           Where vendor sold the suit property to third party during

pendency of suit for specific performance of agreement to sell, and the third party purchaser was aware of the previous agreement and pendency of the suit, so the purchaser third party would be bound by the decree in the instant suit and the fact that he has invested huge amount on suit property would be no ground to refuse relief of specific performance of agreement **Raghunath V. Rajendra, AIR 2007(NOC) 1089 (Bom).**

30 To succeed in the suit, plaintiff has to prove his readiness and willingness. The readiness involves proof of capacity to perform, which in turn requires proof of financial ability at the relevant point of time. The willingness to perform the contract is not mere desire; it should be a genuine willingness, to be proved lie any other fact; circumstances may justify an interference that the assertion of the plaintiff as to his willingness is a mere verbal assertion and as a fact, his conduct may disclose that he was really interested in procrastination, because delay was to his advantage; in many cases, a person who agreed to purchase a property of which he is already in possession may not be anxious at all to complete the contract, either because, he has no ready case with him, or any consider it expedient not to part with the money, so that he can have the continued benefit of the money as well as the enjoyment of the property. The respective position of the parties to the agreement, the circumstances under which the agreement was entered into, the relative advantage or disadvantages to the parties by the performance or non-performance of the contract during the relevant period, are some of the relevant circumstances to be considered by the Court, while scrutinizing the evidence adduced before it. The main thrust of the analysis of the facts & circumstances, would be to scrutinize the plaintiff's conduct in relation to the property and the term of the agreement. However,

even if the plaintiff makes out his case for Specific Performance, Court has to still consider as to whether the discretionary relief should be granted in favour of the plaintiff or it should be denied in the light of Section 20 of the Specific Relief Act; no doubt, it is a judicial discretion exercise of which depends upon several factors.

### **Doctrine of specific performance of contract**

31 Specific performance of contract is an extraordinary equitable remedy that compels a party to execute the contract according to the precise terms agreed upon or to execute it substantially so that under the circumstances, justice will be done between the parties. It grants the plaintiff what he actually bargain for in the contract rather than the damages for not receiving it. Thus, it is an equitable rather than a legal remedy. By compelling the parties to perform exactly what they had agreed to perform, more complete and perfect justice is achieved than by avoiding damages for breach of contract.

### **Doctrine of delay and laches: time – essence of contract**

32 Laches cannot be equated with limitation. It is not a question of time. It is a question whether it shall be inequitable to permit the claim to be enforced. Court has to see whether there has been some change in the condition or relation of the property and the parties. Mere lapse of time therefore short of limitation cannot operate as laches.

33 Delay, short of statutory period of limitation will be fatal in cases of change in circumstances, accrual of right of third party or

where there is inordinate delay etc.

**Time: Essence of contract**

34 Section 55 of the Contract Act provides that if a party to a contract fails to do a certain thing agreed upon within the stipulated period the contract becomes voidable at the option of other party for purpose of the part not performed if the parties intended that time would be of the essence of the contract. The Court has to look at the substance of contract and not at the letter to determine whether the parties intended completion of the obligation under the contract within the stipulated period notwithstanding fixation of a date for performance. If time is of essence of contract, delay operates as bar to a decree for specific performance.

35 It is the settled position of law that normally time is not of essence of a contract to save immovable property however, contract must be performed within a reasonable time. A provision in the contract that in the event of default by the vendee the vendor will be at liberty to cancel the contract and forfeit the earnest money does not necessarily make the time the essence of contract. It all depends upon the intention of the parties and therefore, to make time of essence of contract, the terms must be clear and unambiguous. Whether time is the essence of contract has to be ascertained from the intention of the parties, nature of property and the surrounding circumstances.

**Rectification and cancellation of instruments and rescission of contracts (Chapter III to V, Section 26 to 33)**

36 By law, many transactions are required to be in writing. Because of expediency, many more transactions are put into writing. A written transaction is called an instrument. An instrument is a

result of negotiations. Sometimes, an instrument may fail to express the intention of the involved parties. Rectification of such an instrument may become necessary. Help towards parties who want to have their documents (which are mistakenly executed) rectified, is provided in Chapter III of the Specific Relief Act. Closely related with documents mistakenly executed, is the category of documents which are at a later point found to be void or which become void. These documents ought to be cancelled. Chapter V provides relief from such kinds of documents. Also, there is a category of contracts which, for some reason or the other (e.g. lack of free consent) can be deemed voidable by the party which consent was not free. This party has the right to have the contract rescinded. Relief by way of rescission is provided by Chapter IV of the Specific Relief Act.

### **SPECIFIC PERFORMANCE OF PART OF CONTRACT (Section 12 of the Specific Relief Act, 1963)**

37 Provision regarding the specific performance of part of contract are contained in Section 12, sub-section 1 to 4 of the Specific Relief Act, 1963. Sub section (1) of Section 12 postulates that except as otherwise provided in the section, the Court shall not direct the specific performance of a part of contract. Sub-section (4) thereto envisages that when a part of the contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part. Various reliefs provided by the Act are essentially equitable in nature and so the malafides or otherwise of the contestants are both relevant while deciding the dispute that crops up between them. The whole doctrine

of specific performance of contract rests on the ground that party to the contract is entitled in equity to have in specie the specific thing for which he had bargained. Reference in this connection may be made to the authority reported in ***AIR 1964 S.C. 1385 Balmukund Versus Kamla Wati.***

38 Party to a contract which brings the suit under provisions of sub-section (3) of Section 12 of the Specific Relief Act, 1963 for specific performance of contract, must frame its suit in the light of that sub-section incorporating the required averments to bring its case within its four corners. In other words the frame of the suit for specific performance of part of it, as different considerations arise in the two suits. The defendant must have an opportunity by pleading and if necessary by adducing evidence to show that plaintiff is not entitled to specific performance of part of contract. This can only be done if there is pleading by plaintiff bringing his case within the purview of sub-section(3) of Section 12. Though plaintiff can make an alternate claim for specific performance of whole of the contract or only a part of it, but if he intends to do so, it must be clear from the plaint so as to give notice of it to the defendant. Reference in this respect can be given from the authority reported in ***AIR 1979 Bombay 208 (Baburao Versus Mahadeo)*** In the leading authority in ***AIR 1990 SC 854 (Kartar Sing Versus Harjindar Sing)*** it has been settled that whenever a share in the property is sold, the vendee has a right to apply for partition of the property and get the share demarcated and there is no legal difficulty in granting decree for specific performance because property will have to be partitioned.

39 If the contract is one and indivisible, definitely it has to

be enforced only in its entirety. But a part of contract is also enforceable if it comes within one or other of the exceptions provided in sub sections (2) to (4) of Section 12. Position under the present Specific Relief Act, 1963 is that plaintiff in a suit for specific performance can get the relief in respect of share of the property on paying the proportionate consideration provided therein and that is possible at the instance of either party if the part which is left unperformed bears only a small portion to the whole in value and admits of compensation in money. The Court may in such case direct specific performance of so much of the contract as can be performed and award compensation in money for the deficiency. It has been observed in **AIR 1992 Bombay 8. (Farohar and Company Versus Hemant Manohar Naban)** that law does not prohibit the Court of arbitrators from granting specific performance of part of contract altogether. In a given situation depending upon the interpretation of the contract, facts and equity of the case, conduct of the party, severability of the consideration for different obligations under the contract etc., arbitrator or the Court may even grant specific performance of the part of contract.

### **LIMITATION**

40 Article 54 of the Limitation Act deals with the limitation of suit for specific performance. It is stated, in the third column of Article 54 of the Limitation Act, 1963, that the suit for specific performance has to be filed within three years from the date stipulated in the contract or from the date of refusal to perform the contract.

41 In the case of **Sultan Latif Shamshuddin Ahmed Versus Shaikh Alia Baksh Jani, (2002) 4 ALD 799, (2003) 1 ALT 24**, it has been held that the period of limitation begins from

the date of refusal by the vendee or the defendant and applying the said principles the period of three years mentioned under Article 54 of the Limitation Act, shall be reckoned from the date of refusal to exercise the deed of reconveyance.

42 In the case of **Ahmmadsaheb Abdul Mulla(deceased by L.Rs.) Versus Bibijan and others. AIR 2009 Supreme Court 2193** Honourable Apex Court has observed as under--

“The inevitable conclusion is that the expression ‘date fixed for the performance’ is a crystallized notion. Thus is clear from the fact that the second part ‘time from which period begins to run’ refer to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on ‘ when the plaintiff has notice that performance is refused. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from the circumstances. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record.

43 The expression ‘ date’ used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calander.

### **Conclusion**

Specific performance is a remedy developed by courts of equity. A party to a contract who has suffered damage because of breach of contract by another party has the option to file a suit for specific performance compelling the others to perform their part of

the contract. Because equity court will compel specific performance, however, the contract must be one which can be specifically performed. As the law of specific performance is basically founded on equity, considerations such as conduct of the plaintiff, the element of hardship that may be caused to one of the parties, the availability of adequate alternative relief and such other factors are taken into consideration. Ultimately, it is a discretionary relief.