

**Summary of papers written by Judicial Officers on the subject "Circumstances in which specific performance can be granted and refused.**

1) Specific Relief Act expressly provides contract which can be specifically enforced and the contract which can not be specifically enforced. Provisions touching these two contingencies are spread over Section 10 to Section 14 of the Specific Relief Act. Section 10, Section 11, Section 12 and Section 13 of the Specific Relief Act deals with provision with regard to specific enforcement of the agreement of the contract whereas Section 14 of the Specific Relief Act would deal with contract which can not be specifically enforced.

2) Section 10 of the Specific Relief Act reads as under :-

10. 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.

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 immoveable 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

immoveable property. Same principle is applicable in case of moveable property if moveable property is of such a nature which is of special interest or value and which can not be substituted by another moveable property.

3) So far we have seen cases in which specific performance can be granted. 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.

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.

4) **The circumstances to be considered while granting Specific Performance.**

1. There should be a valid contract.
2. If damages are an adequate remedy, no specific performance would be ordered.
3. Equity will insist on the principle of mutuality.
4. A contract the performance of which involves the performance of a continuous duty which the court can not supervise.
5. The person against whom the relief is claimed may take any plea by way of defence under law relating to contract.

5) **What type of contracts cannot be enforced?**

Under section 14 of the Act, the following contracts cannot be enforced:

- 1) Contracts in which compensation in money is an adequate relief.
- 2) Contracts involving personal service,
- 3) Contracts with uncertain terms.

- 4) Contracts in its nature determinable,
- 5) Contracts which or not valid in law,
- 6) Contracts involving continuous supervision of the Court.
- 7) Contracts to build or repair works and
- 8) The Contract by Hindu parent or guardian to give a child  
in marriage cannot be specifically enforced.

(1) **Shaligram -Vs-Ramesh**, reported in **2014(3) Mh.L.J.704**.

"Specific Relief Act (47) of 1963), Ss.16(c) and 20- Specific performance of contract - Readiness and willingness to perform part of contract - Absence of pleadingw in suit - Effect of - Law relating to pleading is clear. It is the substance of pleadings and not the form must be seen by Courts - Requirement of Section 16(c) is that by averments made, it should be conveyed to defendant that plaintiff has performed essential terms and contract or has always ready and willing to perform his part of contract - This meaning can possibly be expressed in different words and forms - Such meaning can be ascertained from expression and words used even in poorly or inartistically drafted pleadings by looking to their substance."

**(2) Hetram s/o. Baniram Rahangadale -Vs- Mayabai w/o. Choitram Goplani reported in 2014(5) Mh.L.J. 800.**

"Specific Relief Act (47 of 1963), S. 20 and Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act (99 of 1958), S. 89 - Suit for specific performance of an agreement to sale agricultural land - Lack of permission under section 89 of Tenancy Act could not be an impediment in issuing a decree for specific performance. {2003 Mh.L.J. 134 and 2008(4) Mh.L.J.663, Ref. (Paras 7 to 9)."

**(3) Kanyaiyalal Motilal Talera -Vs- Sarubai Narayan Mulik reported in 2014(2) Mh.L.J.564**

(a). "Specific Relief Act (47 of 1963), Ss. 10, 16(c) and 20- Specific performance of contract - Initial onus is always on the plaintiff and if he discharges that initial onus it shifts to the defendant to prove those circumstances, which would disentitle the plaintiff to the relief prayed for - Defendant who chose not to lead evidence in rebuttal cannot be allowed to defend the suit merely because prices of suit property are rising when the plaintiff is ready and willing to pay the real market value of the property.

(Paras 3 and 8).

(b)- Specific Relief Act (47 of 1963), S.20 - Specific performance of a contract is an equitable relief and equity of both the sides has to be weighed - Ordinarily as of rule the relief of specific performance ought to be granted and only very rarely the relief of specific performance is to be denied - If at all the remedy of specific performance of contract cannot be availed of, then only, the sum of damages may be considered as an alternative.

(Para 5).

(c)- Specific Relief Act (47 of 1963) S. 10 - Suit for specific performance of contract - Party under obligation cannot be allowed to escape from it on flimsy excuse - There must be proof or proper explanation to avoid agreement or for the delay that has occurred to execute sale deed in favour of plaintiff."

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District Judge-1 and  
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