

## **Specific Relief Act, 1977**

### **38 of 1977**

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## **Specific Relief Act, 1977**

### **38 of 1977**

An Act to define and amend the law relating to certain kinds of Specific Relief. Whereas it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits, It is hereby enacted as follows:-

### **PART 1 PRELIMINARY**

#### **1. Short Title, Extent And Commencement :-**

(1) This Act may be called the Specific Relief Act, 1977.

(2) It extends to the whole of Jammu and Kashmir State. It shall come into force on the 1st day of Baisakh, 1978.

#### **2. Omitted :-**

#### **3. Interpretation Clause :-**

In this Act unless there be something repugnant in the subject or context-

"obligation" includes every duty enforceable by law;

"trust" includes every species of express, implied or constructive fiduciary ownership;

"trustee" includes every person holding, expressly, by implication, or constructively, a fiduciary character.

#### **4. Savings :-**

Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed-

(a) to give any right to relief in respect of any agreement which is not a contract;

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(c) to affect the operation of the Registration Act on documents.

## **5. Specific Relief How Given :-**

Specific relief is given-

- (a) by taking possession of certain property and delivering it to a claimant;
- (b) by ordering a party to do the very act which he is under an obligation to do;
- (c) by preventing a party from doing that which he is under an obligation not to do;
- (d) by determining and declaring the rights of parties otherwise than by an award of compensation; or
- (e) by appointing a receiver.

## **6. Preventive Relief :-**

Specific relief granted under clause (c) of section 5 is called preventive relief.

## **7. Relief Not Granted To Enforce Penal Law :-**

Specific relief cannot be granted for the mere purpose of enforcing a penal law.

## **PART 2 OF SPECIFIC RELIEF**

### **CHAPTER 1 OF RECOVERING POSSESSION OF PROPERTY**

## **8. Recovery Of Specific Immovable Property :-**

A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.

## **9. Suit By Person Dispossessed Of Immovable Property :-**

If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government. No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

## **10. Recovery Of Specific Movable Property :-**

A person entitled to the possession of specific movable property may recover the same in the manner prescribed by the Code of Civil Procedure.

Explanation 1. - A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2. - A special or temporary right to the present possession of property is sufficient to support a suit under this section.

## **11. Liability Of Persons In Possession, Not As Owner, To Deliver To Person Entitled To Immediate Possession :-**

Any person having the possession or control of a particular article of movable property, of which he is not the owner, the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:-

- (a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;
- (b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss;
- (d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

## **CHAPTER 2 OF THE SPECIFIC PERFORMANCE OF CONTRACTS**

### **12. Cases In Which Specific Performance Enforceable :-**

Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced,-

- (a) when the act agreed to be done is in the performance, wholly or partly, of a trust;
- (b) when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done;
- (c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or
- (d) when it is probable that pecuniary compensation cannot be got

for the non-performance of the act agreed to be done.

Explanation. - Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer movable property can be thus relieved.

### **13. Contract Of Which The Subject Has Partially Ceased To Exist :-**

Notwithstanding anything contained in section 56 of the Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

### **14. Specific Performance Of Part Of Contract Where Part Un-Performed Is Small :-**

Where a party to a contract is unable to perform the whole or part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

### **15. Specific Performance Of Part Of Contract Where Part Unperformed Is Large :-**

Where a party to a contract is unable to perform the whole or part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform; provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

### **16. Specific Performance Of Independent Part Of Contract :-**

When a part of a 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.

### **17. Bar In Other Cases Of Specific Performance Of Part Of Contract :-**

The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

### **18. Purchasers Rights Against Vendor With Imperfect Title :-**

Where a person contracts to sell or let certain property, having only a n imperfect title thereto, the purchaser or lessee except as otherwise provided by this Chapter has the following rights:-

- (a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;
- (b) where the concurrence of other person is necessary to validate the title, and they are bound to convey at the vendors or lessors request, the purchaser or lessee may compel him to procure such concurrence;
- (c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee;
- (d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit interests and cost on the interest of the vendor or lessor in the property agreed to be sold or let.

### **19. Power To Award Compensation In Certain Cases :-**

Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides the specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is

entitled to compensation for that breach it shall award him compensation accordingly.

If in any such suit the Court decides specific performance ought to be granted but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation. - The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

## **20. Liquidation Of Damages Not A Bar To Specific Performance :-**

A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

## **21. Contracts Not Specifically Enforceable :-**

The following contracts cannot be specifically enforced:-

- (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 the terms of which the Court cannot find With reasonable certainty;
- (d) a contract which is in its nature revocable;
- (e) a contract made by trustee either in excess of their powers or in breach of their trust;
- (f) a contract made by or on behalf of a corporation of public company created for special purposes or by the promoters of such company, which is in excess of its powers;
- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;
- (h) a contract of which a material part of the subject matter, supposed by both parties to exist, has, before it has been made,



ceased to exist;

and, save as provided by the 1[Jammu and Kashmir Arbitration Act 2002] no contract to refer present or future differences to arbitration shall be specifically enforced.

1. Substituted by Fourth Schedule to Act II of 2002 for "Code of Civil Procedure".

## **22. Discretion As To Decreeing Specific Performance :-**

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.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:-

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiffs part.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:-

III. Where the plaintiff has done substantial acts or suffered losses in consequence of contract capable of specific performance.

## **23. Who May Obtain Specific Performance :-**

Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained, by-

(a) any party thereto;

(b) the representative in interest, or the principal of any party thereto; provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned, his representative in or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(c) where the contract is a settlement of marriage, or a compromise of doubtful rights between members of the same family any person beneficially entitled thereunder;

- (d) where the contract has been entered into by a tenant for life, in due exercise of a power, the remainder man;
- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit to such covenant;
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;
- (g) when a public company has entered into contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of incorporation, the company.

#### **24. Personal Bar To The Relief :-**

Specific performance of a contract cannot be enforced in favour of a person,-

- (a) who could not recover compensation for its breach;
- (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;
- (c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or
- (d) who previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) has been made and was then in force.

#### **25. Contracts To Sell Property By One Who Has No Title Or, Who Is A Voluntary Settler :-**

A contract for the sale or letting of property, whether movable or immovable, cannot be specifically enforced in favour of a vendor or lessor,-

- (a) who, knowing himself not to have any title to the property, has contracted to sell or let the same;
- (b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;
- (c) who, previous to entering into the contract, has made a

settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

## **26. Non-Enforcement Except With Variation :-**

Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely):-

- (a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;
- (b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;
- (c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil;
- (d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;
- (e) where the parties have subsequently to the execution of the contract, contracted to vary it.

## **27. Relief Against Parties And Person Claiming Under Them By Subsequent Title :-**

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which though prior to the contract and known to the plaintiff might have been displaced by the defendant;
- (d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (e) when the promoters of a public company have, before its incorporation, entered into a contract, the company; provided that

the company has ratified and adapted the contract and the contract is warranted by the terms of the incorporation.

### **28. What Parties Cannot Be Compelled To Perform :-**

Specific performance of a contract cannot be enforced, against a party thereto in any of the following cases:-

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension or surprise; provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

### **29. Bar Of Suit For Breach After Dismissal :-**

The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiffs right to sue for compensation for the breach of such contract or part, as the case may be.

### **30. Application Of Preceding Section To Awards And Testamentary Direction To Execute Settlement :-**

The provisions of this Chapter as to contracts shall, mutatis mutandis, apply to awards and to directions in a will or codicil to execute a particular settlement.

## **CHAPTER 3 OF THE RECTIFICATION OF INSTRUMENTS**

### **31. When Instrument May Be Rectified :-**

When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to

have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

### **32. Presumption As To Intent Of Parties :-**

For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

### **33. Principles Of Rectification :-**

In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the enquiry what the language of the instrument was intended to be.

### **34. Specific Enforcement Of Rectified Contract :-**

A contract in writing may be first rectified and then if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

## **CHAPTER 4 CHAPTER IV**

### **35. When Rescission May Be Adjudged :-**

Any person interested in a contract may sue to have it rescinded and such rescission may be adjudged by the Court in any of the following cases, namely;-

- (a) where the contract is voidable or terminable by the plaintiff;
- (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;
- (c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

### **36. Rescission For Mistake :-**

Rescission of a contract cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract has not been made.

### **37. Alternative Prayer For Rescission In Suit For Specific Performance :-**

A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

### **38. Court May Require Party Rescinding To Do Equity :-**

On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

## **CHAPTER 5 OF THE CANCELLATION OF INSTRUMENTS**

### **39. When Cancellation May Be Ordered :-**

Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

### **40. What Instruments May Be Partially Cancelled :-**

Where an instrument is evidence of different rights or different obligations, the Court may in a proper case, cancel it in part and allow it to stand for the residue.

### **41. Power To Require Party For Whom Instrument Is**

## **Cancelled To Make Compensation :-**

On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

## **CHAPTER 6 OF DECLARATORY DECREES**

### **42. Discretion Of Court As To Declaration Of Status Or Right** **:-**

Any person entitled to any legal character, or to any right as to any property may institute a suit against any person denying, or interested to deny, title to such character or right, and the Court may in its discretion making therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

Bar to such declaration. - Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation. - A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

### **43. Effect Of Declaration** :-

A declaration made under this Chapter is binding only on the parties to the suit, person claiming through them respectively, and, where any of the parties are trustee, on the persons for whom, if in existence at the date of the declaration, such parties would be trustee.

## **CHAPTER 7 OF THE APPOINTMENT OF RECEIVERS**

### **44. Appointment Of Receivers Discretionary** :-

The appointment of a receiver pending a suit, is a matter resting in the discretion of the court.

Reference to Code of Civil Procedure. - The mode and effect of his appointment and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.

## **CHAPTER 8 OF THE ENFORCEMENT OF PUBLIC DUTIES**

### **45. Omitted** :-

**46. Omitted :-**

**47. Omitted :-**

**48. Omitted :-**

**49. Omitted :-**

**50. Omitted :-**

**51. Omitted :-**

### **PART 3 OF PREVENTIVE RELIEF**

### **CHAPTER 9 OF INJUNCTION GENERALLY**

#### **52. Preventive Relief How Granted :-**

Preventive relief is granted at the discretion of the Court of injunction, temporary or perpetual.

#### **53. Temporary Injunctions :-**

Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

Perpetual injunctions. - A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

### **CHAPTER 10 OF PERPETUAL INJUNCTIONS**

#### **54. Perpetual Injunctions When Granted :-**

Subject to the other provisions contained in, or referred to by this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiffs right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:-



- (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;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation. - For the purpose of this section a trademark is property.

### **55. Mandatory Injunctions :-**

When to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

### **56. Injunction When Refused :-**

An injunction cannot be granted-

- (a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;
- (c) to restrain persons from applying to any legislative body;
- (d) to interfere with the public duties of any department of the Government of India or 1[the Government of a State within the Indian Union excluding the Jammu and Kashmir State] or the State, or with the sovereign acts of a Foreign Government;
- (e) to stay proceedings in any criminal matter;
- (f) to prevent the breach of a contract, the performance of which would not be specifically enforced;
- (g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (h) to prevent a continuing breach in which the applicant has acquiesced;
- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (j) when the conduct of the applicant or his agents has been such

as disentitle him to the assistance of the Court;

(k) where the applicant has no personal interest in the matter.

1. Substituted by A.L.O. 2008 for "the Local Government of a Province of British India".

### **57. Injunction To Perform Negative Agreement :-**

Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.