



“बेटी बचाओ, बेटी पढ़ाओ”

JAYOTI VIDYAPEETH WOMEN'S UNIVERSITY, JAIPUR
FACULTY OF LAW & MANAGEMENT

Faculty Name : Ms. Pratibha
Program : LLB, Semester 1st
Course Name : Contract
Topic : Specific performance of Contract
Session No. & Name : 2023-2024

Academic Day starts with –

Greeting with saying ‘**Namaste**’ by joining Hands together following by 2-3 Minutes Happy session, Celebrating birthday of any student of respective class and **National Anthem**.

Lecture Starts with - Review of previous Session

National song’ Vande Mataram’

Introduction

Performance of contract means where both parties are legally bound to fulfil their obligation/duties created under the contract terms. The parties are bound to fulfil their reciprocal promises in the contract. When either of the parties does not fulfil its obligations as per the terms of the contract then the party to whom the breach is so caused shall sue for specific performance of a contract. It is an equitable relief given by the court in the form of an award for the completion of

the performance of a contract. This article discusses specific performance under contract law thereby focusing on other related aspects of the same.

Contracts that are specifically enforced Cases of any contract at the discretion of the court When an act is agreed to be performed between the parties and it is not performed, then the actual damage caused to the party purchasing cannot be ascertained. The party purchasing can compel specifically to perform the act. When compensation is paid in damages for non-performance of the act agreed to be done then the decree for specific performance cannot be made. But compensation paid in damages cannot be compensated for contracts relating to the transfer of immovable property and in the case of transfer of movable property can be sought before the court for specific performance of a contract, provided that the goods are of unusual beauty, rarity and distinction and of special value to the party suing by reason of personal, family association or the like.

For example, D agrees to purchase and E agrees to sell a patent. D may compel E specifically to perform this said contract as there exists no standard for ascertaining the actual damages which would be caused by E's non-performance.

Let's take into consideration that Y contracts to sell 100 shares of a Company to Z. Y refuses to sell a part of it. Z may compel Y to specifically perform this contract as it would not always be available in the market.

Contracts connected with trusts

The Court may order for specific performance of contract only when the contracts agreed to be performed is for performance of a trust provided the trustee does not perform a breach of contract and does not go beyond the powers conferred in the contract.

Let's take for example that M entered into a contract with N for distributing the assets of the trust to M's son and grandson. N misappropriated the assets of the trust and transferred all the assets to his only son. Here the law creates an obligation on N to retransfer the assets of the trust to M's son and grandson and M may enforce specific performance of the contract.

Part of the contracts left unperformed is small or large

No specific performance of the contract shall be directed by the court except under the following cases:

1. **When part of the contract left unperformed is small :** Section 12(2) of the Specific Relief Act, 1963 explains that when the whole part of a contract is left unperformed by the party to an agreement and bears only a small proportion of the whole value, can be estimated in compensation in money and the court may direct specific performance of contract at the suit of either of the parties and award compensation in money to the party to whom damage is so caused.
2. **When part of the contract left unperformed is large :** Section 12(3) of the Specific Relief Act, 1963 explains that when a party to a contract is unable to perform the whole or part of it and where compensation in money can be estimated or not, the party filing the suit is not entitled to obtain the decree for specific performance of contract provided that:
 1. The party in default agrees to perform his part of the contract left unperformed by paying compensation in money for the whole of the contract reduced by the consideration amount for the part left unperformed; or
 2. Has agreed to pay the compensation in money without any abatement; or

3. Through the default, the defendant relinquishes all the claims of performance of part of the contract and compensation in money for the loss/damages sustained by him, in either of the cases.
4. When a **contract consists of separate and independent parts** : Section 12(4) of the Specific Relief Act, 1963 states that when a contract consists of a separate and independent part from another part of the same contract which cannot be specifically performed, then the specific performance of the former contract can be enforced by the court.
4. **The contract having imperfect title** : Section 13 of the Specific Relief Act, 1963 explains the rights of purchasers who have imperfect titles in immovable property. The following are the rights of the purchaser:
 1. When the landlord acquires any interest in the property.
 2. When concurrence or conveyance by another person(s) is necessary to validate the title.
 3. When mortgaged property is sold to a vendor or is left with encumbrances or charges whatsoever.
 4. When a suit is filed by a vendor for specific performance of the contract and is dismissed on grounds of imperfect title to the property.

By whom the specific performance can be obtained

The specific performance of a contract can be obtained by any party to suit its representative-in-interest or the principal.

Against whom contracts can be specifically enforced

Specific performance of a contract can be enforced against:

1. Either of the parties to a contract.

2. When the contract is made by fraud, mistake of fact or misrepresentation and the terms that were agreed between the parties have not been mentioned in the contract.
3. When the seller knows that he has no title to the property contracted to sell.
4. When a time is given to the seller to clear the doubts of the purchaser with respect to the title to the property he contracted to sell.
5. Any person who has no notice of the original contract and pays money in good faith.
6. Prior to entering into a contract any person known to the plaintiff claims under a title, might have been displaced by the defendant.
7. The new company arises after the amalgamation of two companies.
8. To the company, when the promoters enter into a contract warranted by the terms of its incorporation.