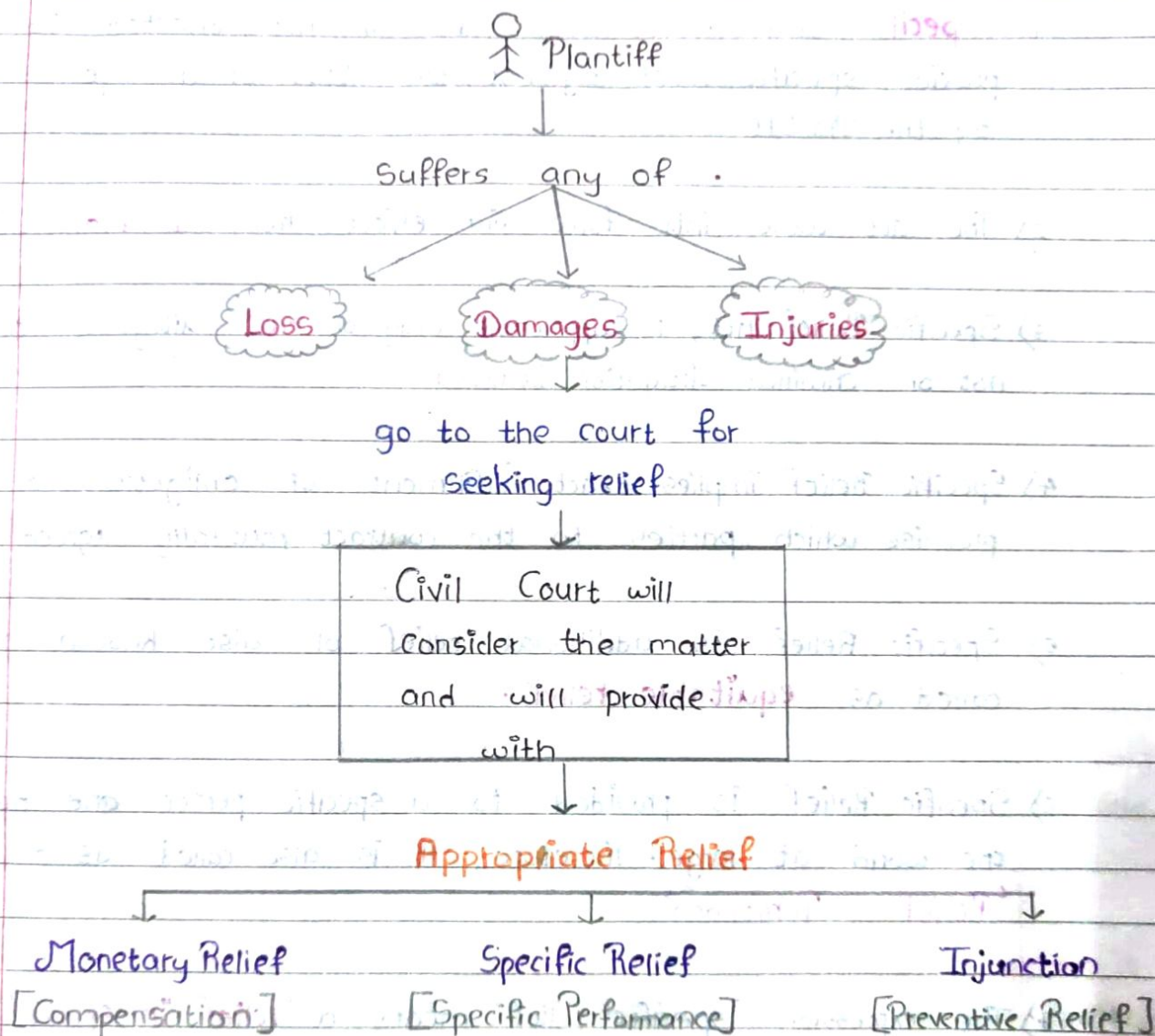


17th April, 2020

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SPECIFIC RELIEF ACT, 1963



When court orders the defendant to do something what he had promised to do.

When court orders the defendant not to do something what he had promised to do.

* INTRODUCTION OF THE ACT :-

- 1) Specific Relief Act, 1963 is an Act enacted to provide specific relief against the loss or damages suffered by the Plaintiff.
- 2) The act came into force with effect from 1st March, 1964.
- 3) Specific Relief Act, is applicable only on civil litigation and not on criminal litigation. [cases]
- 4) Specific Relief implies exact fulfillment of obligation or promise which parties to the contract mutually agreed.
- 5) Specific Relief is additional relief or also known or called as equitable relief.
- 6) Specific Relief is provided to a specific person and not to the world at large. Therefore, it is also called as - 'Relief in Personam'.
- 7) The expression 'specific relief' means a 'relief in specie'.

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* Sec-10 → Contract which can be enforced under specific Relief Act, 1963 (Specific Relief Milega).

- 1.] When there is breach of contract then, for the affected party relief in monetary form or compensation is not an adequate relief (not sufficient). So, in that case court will provide specific relief.
- 2.] When there is breach of contract and loss suffered by the affected party cannot be calculated in monetary terms or there is no standard method to calculate the loss amount in monetary terms, therefore court will provide specific Relief.
- 3.] In case of breach of contract, which involves transfer of immovable property, in such case court will order for a Specific Relief or specific Performance.
- 4.] When there is a breach of contract, which involves transfer of movable property, in the following '2' cases court will provide Specific Relief :-

a) When such movable property is not of ordinary nature or it is not obtainable very easily in the market. eg - **Tipu Sultan**

b) When such movable property is held by the defendant either as an agent or trustee of plaintiff.

eg -  [specific performance to defendant].

* Sec 14 - Contract which cannot be enforced under these Act (Specific Relief Nahi milega).

- 1) In case of breach of contract, monetary relief or monetary compensation is an adequate relief against the breach, then court will not provide specific relief.
- 2) In case of breach of contract, loss suffered by the Plaintiff can be calculated in monetary term or there is standard method to calculate loss in monetary terms. Therefore, court will not provide "specific Relief".
- 3) When contract runs into minute changes which cannot be fixed even if court order for "specific performance".
- 4) When contract deals with certain skills, talent or uniqueness, such contract are called as "Personal qualification contract". In case of these contract court provide monetary relief against breach.
- 5) When contract is of such nature that if specific relief provided it will require continue suspension of the court upon such performance. Therefore to avoid such continuous suspension court will provide monetary relief.

Note :- In all the above cases court shall provide compensation to plaintiff and amount of compensation shall be decided by court.

Sec 14 (2) - If the parties to the contract mutually agreed for the settlement through arbitration in that case provisions of specific relief Act will not apply upon any decision given by arbitrator.

* Sec 5 and 6 - Deals with recovery of Immovable Property.

• Sec 5 - Recovery on the basis of title.

- Person having a better title of any specific immovable property can recover the same in the manner as provided under 'Code of Civil Procedure Act, 1908'.
- The suit under these section should be filed within 12 years from the date of opinion that other person has unlawfully possessed such property.

• Sec 6 - Recovery of immovable property by a person depossessed from the property.

- As per sec 6 if any person is dispossessed without his consent by any other person, irrespective of the title that such person holds.
- Suit for recovery under sec 6 need to be filed within '6 months' from date of dispossession.
- No suit can be filed by, if pos dispossession is made by the government or public interest.
- No appeal or review shall be entertained against any decree or order passed under these section.
- The object of these section is to discourage the people from taking the law into their own hands.

* Sec 7 and 8 - Recovery of movable property

• Sec 7 :-

1.] As per sec 7 a person is entitled to recovery of possession of specific movable property in the same manner as provided under the "Civil Procedure Code, 1908"

Possession
+
Rights

2.] Sec 7 further states that a trustee can file a suit for possession of movable property of which he is trustee. Similarly, if a person is holding any special or temporary rights of any movable property, he can file a suit for recovery of possession of such movable property on the basis of such rights.

• Sec 8 :- Liability of a person in possession of any movable property not as owner to return back such property to the person having better title.

1.] As per sec 8, if any person is under the possession of any movable property not as owner has to immediately return back such property to the real owner.

In the following cases person is in possession of any movable property not as a owner, need to deliver such property to the real owners.

> Case I :-

When defendant is agent or trustee of plaintiff and holding any such property has to deliver the same to the plaintiff immediately.

> Case II :-

When the possession of movable property has been wrongfully transferred from plaintiff to any other person, in such case such person has to return back such property to the person having better title immediately.

> Case III :-

When the relief in the form of compensation is not sufficient to the plaintiff.

> Case IV :-

When it is difficult to find out exact loss suffered by the plaintiff in monetary terms.

* Sec 20 :- Discretionary power of court to provide specific relief.

1) As per sec 20(1), it is the discretionary power of the court to grant specific relief. Court after considering the matter and each and every fact, court on the basis of 'Principle of equity and Justice' will provide a relief to the affected party.

2) Sec 20(2) deals with following cases in which court may not provide specific relief.

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> Case I :-

When the contract is of such nature that the plaintiff is having unfair advantage over the defendant.

> Case II :-

When the terms of contract is of such nature that at the time of entering into a contract, defendant does not predicate that he will be suffering loss if court grant specific relief to the plaintiff.

> Case III :-

When the contract is of such nature, that providing with a specific relief would be unjustifiable for the defendant.

Note :- In all the above cases mentioned court will provide with the monetary relief to the affected party.

* Sec 11 :- Contract connected with trust.

Any Act done by the plaintiff as a trustee by entering with contract.

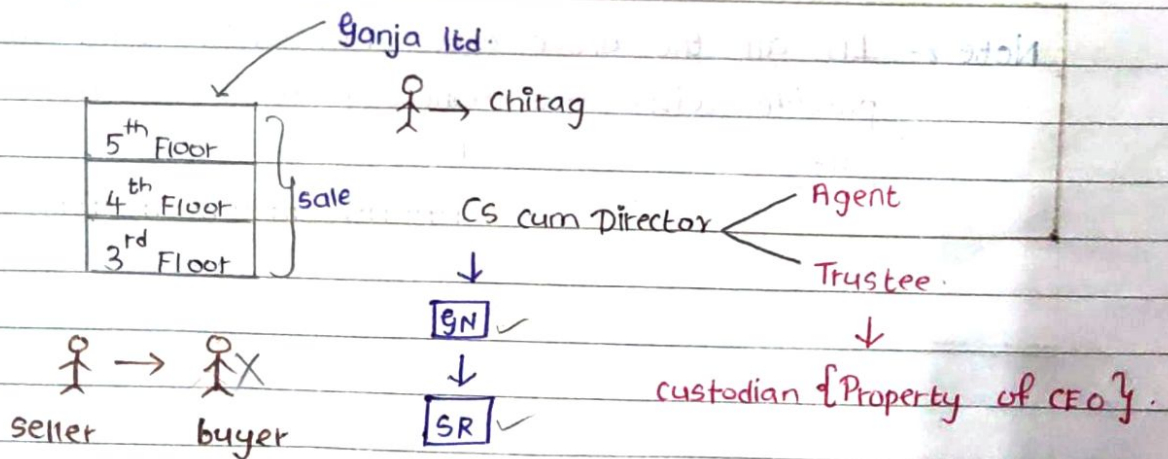
Act done within
the limits / Authorities
Prescribe

Such contract are
enforceable under this
act in case of breach.

Act done beyond
the limits / Authorities
Prescribe

Such contracts are
not enforceable under
this act in case of breach.

Example :-



Imp * Sec 15 - Person to whom specific Relief shall be granted

In case of	Person to whom shall be granted
1. Normal Contract (Breach of contract)	'Parties to the contract' (Dee tee holder)
2. Death of <u>Parties</u> partner [DHD]	Legal Representative
3. Marriage settlement contract.	Beneficiaries to the contract. (Includes family member)
4. Mergers and Amalgamation.	Transferee company.
5. Pre - Incorporation contract.	Promoters.

* Sec 16 :- Person to whom specific relief cannot be granted.
[In other words, specific performance of the contract cannot be enforce in favor of a person].

→ As per sec 16 specific Relief shall not be prom provided to the plaintiff in the following cases :-

> Case I :-

When plaintiff himself breach the terms of the contract.

> Case II :-

When plaintiff have made some variation in the terms of contract without obtaining the consent of the other party.

> Case III :-

When plaintiff himself committed fraud or involved in any fraudulent activity.

> Case IV :-

When plaintiff fails to perform his point or part of obligation.

> Case V :-

When plaintiff fails to prove to the court that he was willing to perform his part of obligation but failed to perform.

* Sec 17 :- Court will not provide specific relief to the seller.

fake document

→ Sec 17 deals with the two cases in which specific performance cannot be enforced in the favour of seller :-

> Case I :-

When a person enter into a contract for the sale of property inspite of knowing the facts that he is not a owner of the property. In case of breach of buyer court will not provide specific relief to the seller.

> Case II :-

When a person at the time of entering into contract believe another person, that he is owner of the property but fails to prove his ownership before the buyer or court at a specified time.

* Sec 34 :- Declaratory Decree
order of court

- 1) As per sec 34 declaratory decree is a decree by which the rights of person w.r.t any property or relationship or any other person is judicially determine.
- 2) In declaratory decree a court will provide only declaration of the rights of plaintiff in regards to any property, relationship or any other person.
- 3) Court will not order the defendant to do something or not to do something because sec 34 is neither a specific relief nor monetary relief. In these only the rights are determined by the court which any other person (plaintiff) holds.
- 4) These decree arise when the defendant deny the rights of plaintiff over any property, relation or any other person.
- 5) As per sec 35 (effect of declaratory decree) declaratory decree shall bind only the party to the dispute & shall not bind any stranger or outsider.

Note :-

These decree does not provide any new rights to the plaintiff, but it only declares what he had before.

* Sec 21 :- Court is empowered to grant compensation along with specific relief.

compensation

1) As per sec 21(1) in a suit for specific performance plaintiff can also claim for compensation either in addition or substitution.

no compensation

2) As per sec 21(2) in case of breach of contract suit is filed for specific performance, court is of the opinion that specific performance will fulfill all the claims of plaintiff in the form of relief. In that case court may further not provide any compensation if demanded by plaintiff in such suit.

monetary compensation

3) As per sec 21(3) in case of breach of contract suit is filed for specific performance, and plaintiff in addition also claimed for compensation. In that case if court is under an opinion that providing specific relief will not justify the suit so therefore court may also order for monetary compensation.

compensation decided by court

4) As per 21(4) any compensation amount or additional compensation shall be decided by the court and not by the parties.

5) As per sec 21(5) no such compensation shall be paid to the plaintiff if it is not mentioned in the plaint. However court at any stage of proceeding allow plaintiff to ammend the plaint and mention the compensation amount.

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* Sec 26 :- ^{correction} Rectification of Instrument.

intention of party is
difficult

- 1] Rectification means correction of error in an instrument in order to find out real intention of the party.
- 2] Whenever any contract was made between the parties and subsequently without any intention of parties contracts fails to express the real intention.
- 3] As per sec 26 if court cancel such contract then both the parties may suffer loss and if contract executed in same manner without any rectification, either of the party may suffer loss. So, the better option is to rectify the instrument where no party will suffer loss.

Note :-

Even the representative of the party can apply for rectification.

* Sec 27 :- Rescission of contracts.

- 1) Sec 27, relief is applicable only in the case of "voidable contract" and not "void contract".
- 2) Rescission of contract means making a contract "null and ab initio".
- 3) As per sec 27 relief court will put an end to the contract as if no such contract was enforced.
- 4) As per sec 27 if a plaintiff in a plaint demanded for 'specific performance', in such case in addition to specific performance he can also apply for sec 27 relief. However, if plaintiff in a plaint demanded for sec 27 relief i.e. making a contract null and void from the beginning, in that case he cannot apply for a specific performance as an addition relief because sec 27 relief is 'wider' in nature. It includes specific performance also.

plaint → Relief → SR + sec 27

plaint → Relief → sec 27 relief.

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* Sec 31 :- Cancellation of instrument (cancel before performance)

↳ applicable in case of void and voidable contract.

- 1] If plaintiff anticipates that defendant is going to cause any loss to him if such instrument left outstanding.
- 2] Therefore to prevent such loss plaintiff can make an application to court to cancel the contract. It is a discretionary power of the court whether to cancel the contract or not.
- 3] For cancellation, instrument need to be registered under 'Indian Registration Act, 1908'.
- 4] Before cancellation plaintiff have to prove to the court that if instrument left outstanding he is going to suffer with 'substantial loss'.
- 5] Relief under sec 31 shall be provided under void and voidable contract.

Note :- Relief of cancellation under sec 31 would be available when :-

- 1] Instrument is void or voidable against plaintiff.
- 2] Plaintiff may suffer loss if it is left outstanding.
- 3] Cancellation will be only appropriate relief in such circumstances.

* Preventive Relief (Injunction).

+ve

Perform

SP

-ve

Perform

Breach

1. An injunction is an order of court preventing a person from committing any wrongful act.
2. Preventive relief is such a relief in which court prevents a party from doing such act, which he had promised that he will not do.
3. The main difference between "injunction" and "specific performance" is that the remedy in case of injunction is generally when court prevents the violation of negative act whereas in case of specific performance court compels the party to perform positive part.
4. Injunction is applicable not only in cases of contract but also in case of tort. In case of specific performance it mainly deals with contract.

* Types of Injunction :-

1] Temporary Injunction :-

When court order or issue any injunction order for specified period such order is nothing but temporary injunction.

It is regulated by 'Civil Procedure Code, 1908'.

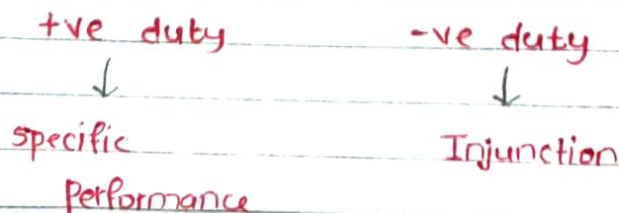
Issued at any stage of proceeding.

2] Perpetual Injunction :-

When injunction order issued by the court for lifetime such order of the court is perpetual injunction. It is provided only at time when decree was pronounced or judgement was given i.e. in the form of merits.

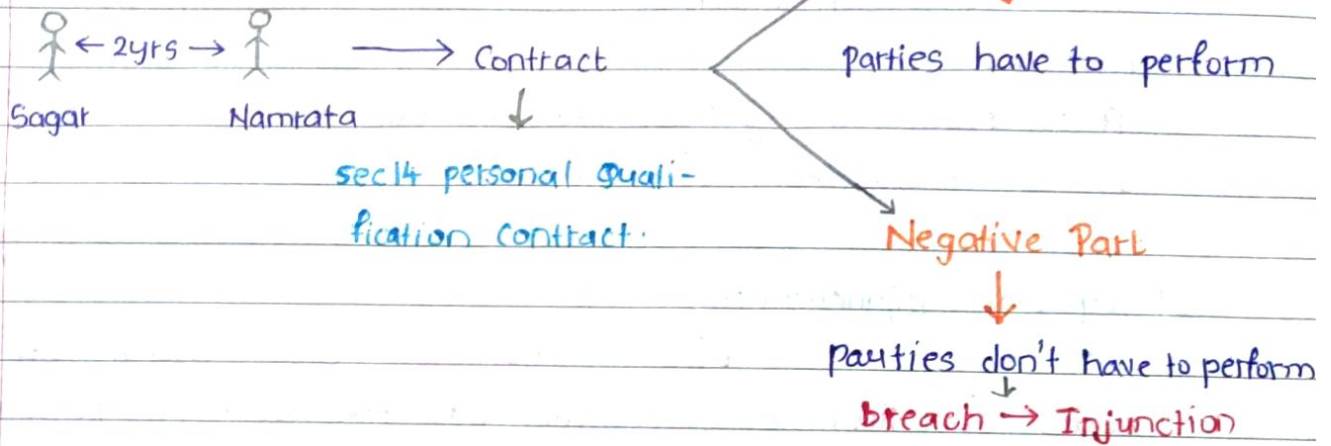
3] Mandatory Injunction :-

As per sec 39 when court anticipate any future dispute between the parties because of any act of defendant, in that case court may order defendant not to do such act which will result into dispute, such order of court is mandatory injunction. Sometimes to prevent breach/dispute court also compel to perform required acts.



Imp. * Sec 42 :- Provisions relating to injunction to perform the negative part.

Lumley v/s wagner



1. If a contract consist of 2 part i.e. positive part and negative part. In a positive part one party has to perform something for other party whereas in case of negative part such party shall not perform something for that other party.
2. However in case of breach of negative part court shall issue an injunction order to enforce such negative part. However court cannot enforce positive part in case of breach, if the nature of contract is personal qualification contract. [Personal contract are not enforceable under specific Relief Act, 1963 as per sec 14].

* Sec 41 :- When injunction can be refused

In the following cases court cannot grant perpetual injunction :-

• Case I :-

Court shall not issue an injunction order for preventing the defendant not to make any submission or representation before the court in a matter which is pending. [However court may stop the defendant for filing similar suit before any other court in order to avoid conflict between court decision].

• Case II :-

Court shall not issue an injunction order with restrain the defendant from making an appeal or revision before the high court.

• Case III :-

Court shall not restrict the defendant from making any application to the legislative body. [Parliament or State legislature].

• Case IV :-

Court shall not provide injunction in those matter where specific performance cannot be enforced.

• Case V :-

Court shall not restrict the defendant from doing any act on the basis of nuisance till the time such activity is not declared as nuisance.

• Case VI :-

Court shall not provide injunction in such cases where plaintiff was already aware about the breach.

• Case VII :-

Court shall not restrict the defendant in any matter in which plaintiff has no interest or claim.

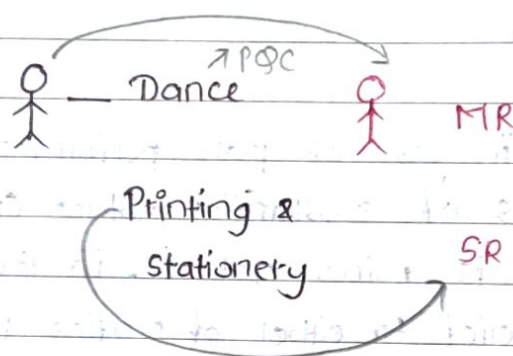
V. Imp *

Sec 12 :- Part performance of contract.

- As per sec 12(1) in case of part performance of contract, court will provide monetary compensation and will not provide specific relief because it is difficult to find out the part which is performed and part unperformed.
- However sec 12(2) and sec 12(4) are exception to general rule i.e. sec 12(1).
- As per sec 12(2) in case of part performance of contract, where part performance is of substantial nature (major) and part not performed is minor nature, in that case court will provide specific relief to either of parties based on facts and circumstances. In case, if full payment has been done in advance court will order to return the amount against the unperformed portion.
- As per sec 12(3) in case of part performance of contract, where part performed is of minor nature and part not performed is of major or substantial nature, in that case court may provide monetary compensation to the affected party on a condition that he will relinquish (wave off) all his right / claim in present or in future upon the unperformed portion.

→ As per **sec 12(4)** in case of part performance of contract and both the part are independent to each other and can be enforced separately, in such case court will provide "**Specific Relief**" against the part which can be enforced under this Act and will provide "**monetary Relief**" against a part which cannot be enforced under this act.

Eg:-



X X X