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THE SPECIFIC RELIEF (AMENDMENT), ACT 2018 –AN OVERVIEW

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ABSTRACT

The Specific Relief (Amendment), Act 2018 has become a mandatory rule of practice to provide specific performance as a remedy to the aggrieved person. The Act seeks to address the issue of delay in relation to the enforceability of contracts. It has eliminated the inadequacy test by substituting Sections 10, 14 and 20 in entirety. The Amended Act provides that the aggrieved person can now choose for a substituted performance or the compensation instead of the specific relief. Thus, the Amendment Act gives considerable weight age to the convenience of choice to the aggrieved person.

Key Words: The Specific Relief (Amendment) Act, 2018, Specific Performance, Substituted Performance, Infrastructure Projects

Introduction

The Specific Relief (Amendment), Act 2018 seeks to address the issue of delay in relation to the enforceability of contracts. It mainly aims to improve the global status on the enforceability of contracts. It presently intends to modify the previous default remedy of award of damages for breach of contract to enforcing specific performance of contracts.¹¹²⁸ By way of amendment all the discretion of Court is taken away by the Parliament by stating, the specific performance of a contract shall be enforceable. The Act facilitates the engagement of experts to assist the court and also upholds the use of special courts for prompt dispute resolution. Further, aims to reduce the interference of the courts to ensure that public works contracts can function smoothly.

HISTORIC MILIEU AND THE EVOLUTION OF THE SPECIFIC RELIEF ACT, 1963

UBI JUS, IBI REMEDIUM,

Where There Is A Right, There Is A Remedy

The Specific Relief Act of 1963, was the result of drafting that came with the previous enactment of the Specific Relief Act of 1877 which was based on the rules and practice of English law. Subsequent to the passing of the Specific Relief Act in the year 1877 based on the principles of English law, even prior to the passing of Act of 1963, the prior Act was amended by Act 4 of 1882 and also by Act 3 of 1951. The present Act was passed on the basis of the report of the Law Commission which was submitted to the Government of India in the year 1958 wherein number of recommendations were made for the purpose of improving the different provisions of the Specific Relief Act, 1877¹¹²⁹. Thus the bill introduced on the basis of recommendations of the Law Commission of India, was given assent by the President on 13th

¹¹²⁸ Available @:
[http://www.surico.in/admin/Pdf/Special%20Feature-%20Specific%20Relief%20\(Amendment\)%20Act%202018.pdf](http://www.surico.in/admin/Pdf/Special%20Feature-%20Specific%20Relief%20(Amendment)%20Act%202018.pdf)

¹¹²⁹ Ninth Report of Law Commission of India.

December, 1963. The Specific Relief (Amendment), Act 2018 is an Act further to amend, the Specific Relief Act of 1963. A part from substantially amending different provisions of the Act, certain new provisions have also been added.¹¹³⁰

FEATURES OF THE AMENDMENT ACT

Specific performance will be a general rule rather than a limited right

The noteworthy feature in the list of the amendments is that the grant of specific performance of contracts has been made compulsory. It has taken the discretionary power of courts.¹¹³¹ The Act substitutes the words “may,¹¹³² in the discretion of the court” with “shall be enforced by the court”¹¹³³. By this substitution, this amendment makes the relief for specific performance a statutory remedy instead of an equitable discretionary remedy. Courts can no more act in discretion but are under obligation to grant specific performance unless expressly barred by the provisions stated in the Specific Relief Act, 1963 (“Act”) i.e. Sections 11(2), 14 and 16. It means that except the cases covered under sections 11(2), 14 and 16, Court is bound to give remedy in the form of specific performance of the contract. Contracts which cannot be specifically enforceable.

It aims to retain some of the unamended clauses. The amended Section 14, now recognizes only four categories of contracts that cannot be specifically enforced, namely: contract where a party has obtained substituted performance under Section 20. A contract involving performance of a continuous duty which cannot be supervised by Courts. A contract so dependent on the personal qualifications of the parties that the Court cannot enforce specific performance of

material terms and a contract of a determinable nature.¹¹³⁴

The Amendment Act has also amended Section 16 of the Specific Relief Act to suggest that a party seeking specific performance, only has to “prove” that such party has performed or has been ready and willing to perform the essential terms of the contract and an averment to such effect in the pleadings is no longer mandatory when seeking specific performance.¹¹³⁵

Power of the Court to Engage Experts

A new section is inserted by the Amendment Act, for engaging technical experts where ever an expert opinion is necessary to assist the Court on any specific issue involved in the suit. Court may direct any person to give relevant information to the Expert or produce or provide access to any relevant documents, goods or any other property for his inspection. The opinion of the expert shall form part of the suit, any parties may examine the expert personally. The expert shall have a right to fee/cost/expense that is to be paid by the parties, at such time fixed by the Court.¹¹³⁶

The Inclusion of Limited Liability Partnerships (LLP)

The Amendment Act has added Limited Liability Partnerships (LLP) to the list of parties who may obtain specific performance by introducing sub-section (fa) in section 15 of the Act. By way of this amendment a new category of entities is introduced who are entitled to claim specific performance of contract. The newly inserted Sections 15(fa) and 19(ca) provide that a LLP which is created out of one LLP amalgamating with another can sue or be sued in a suit for a specific performance. Even though parties can

¹¹³⁰ Justice P.S.Narayana, Girija Shankar Sharma, “*Law of Specific Relief*”, Asia Law House, Hyderabad, (10th ed., 2020), pp. 2-3.

¹¹³¹ Section 3 of the Specific Relief (Amendment) Act, 2018.

¹¹³² Section 10 of the Specific Relief Act, 1963(Principal Act)

¹¹³³ Section 10 of the Specific Relief (Amendment) Act, 2018.

¹¹³⁴ Section 5 of the Specific Relief (Amendment) Act, 2018.(Substitution of new sections for section 14 of the Principal Act.)

¹¹³⁵ **The Specific Relief (Amendment) Act, 2018**, In section 16 of the Principal Act,— (i) for clause (a), the following clause shall be substituted, namely:— “(a) who has obtained substituted performance of contract under section 20; or”; (ii) in clause (c),— (I) for the words “who fails to aver and prove”, the words “who fails to prove” shall be substituted; (II) in the Explanation, in clause (ii), for the words “must aver”, the words “must prove” shall be substituted.

¹¹³⁶ Insertion of new - section 14A, of the Specific Relief (Amendment) Act, 2018

give expert evidence to support their cases, a court appointed expert would be more fair, independent and impartial¹¹³⁷

Substituted Performance

The Amendment Act also amends Section 20, to provide for substituted performance. In the event of a breach of a contract, the aggrieved party is entitled to arrange for the performance of the contract by a third party or by his own agency and, to recover the costs and expenses actually incurred. This however does not prevent the aggrieved party from claiming compensation from the defaulting party. It is thus evident that, once the substituted performance provision requirement has been invoked, the affected party would then not be able to claim specific performance i.e., making the defaulting party to perform the contractual obligations as per earlier agreed terms.¹¹³⁸

No Injunction against Infrastructure Projects

The Specific Relief (Amendment) Act, 2018 also provides provisions regarding fast disposal of suit relating to infrastructure projects. The object of this section is to reduce court intervention in infrastructure projects and also to ensure that public interest attached to such projects is not affected by court proceedings. The new section 20A provides that no injunction shall be granted by a court in a suit that involves a contract relating to an infrastructure project, where granting injunction would cause impediment or delay in the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility thereto or services being the subject matter of such project.¹¹³⁹ The special recognition accorded to infrastructure projects stems from the sentiment that public infrastructure work should continue without interruption or delay and therefore seeks to

abolish the indiscriminate practice of granting injunctions on public utility projects.¹¹⁴⁰

Other Amendments... Affixed

Amendment to section-6, as per the Principal Act, only the person wrongly dispossessed or any person claiming through him could recover the immovable property. But according to the Amendment Act, 2018 even the person through whom the aggrieved person had been in possession of the immovable property can recover after the words "he or any person", the words "through whom he has been in possession or any person" is been inserted. Hence, the amendment has widened the scope of persons who may file a suit under Section 6.¹¹⁴¹

Section 11 of the Principal Act provides that specific performance of contract may in the discretion of Court be agreed to be done in performance of a Trust. The Amended Act now provides that specific performance of contract shall in the discretion of Court be agreed to be done in performance of a Trust.¹¹⁴²

Conclusion

The Specific Relief (Amendment) Act, 2018 has brought a drastic change in the specific remedy in the form of specific performance of the contract under section 10. The remedy in the form of specific performance of the contract is not subject to the discretion of the Court. In case of breach of contract the aggrieved party may call upon other party to perform their part of contract if they fail to do so then aggrieved party is entitled for substituted performance of the contract. The 2018 Act, has also framed special rules for completion of infrastructure project on time and also to dispose of such suits within a period of twelve months from the date of service of summons to the defendant

¹¹³⁷ The Specific Relief (Amendment) Act, 2018, International Journal of Law Management & Humanities©2018 | Volume 1, Issue 5 | ISSN: 2581-5369,P.9. Available @: <file:///C:/Users/OMKAR/Desktop/Contract%20-aA/The-Specific-Relief-Amendment-Act-2018.pdf>.

¹¹³⁸ The Specific Relief (Amendment) Act, 2018 – Overview & Implications, Available @: <https://blog.ipleaders.in/specific-relief-amendment-act-2018/>

¹¹³⁹ Amendment of section 41.section 41(ha).

¹¹⁴⁰ TrilegalAmendments to the Specific Relief Act, 1963, Available@: <https://www.mondaq.com/india/contracts-and-commercial-law/731812/amendments-to-the-specific-relief-act-1963>.

¹¹⁴¹ Recent Amendments Made In The Specific Relief Act – A Brief Overview, Available@: <https://www.mondaq.com/india/contracts-and-commercial-law/754498/recent-amendments-made-in-the-specific-relief-act-a-brief-overview>.

¹¹⁴² In section 11 of the Principal Act, in sub-section (1), for the words "contract may, in the discretion of the court", the words "contract shall" has been substituted.

and to extend the period for another six months in aggregate after recording reasons .In summation, the Amendment is a welcome change as law makers have attempted to strengthen the existing law pertaining to specific performance of contracts and mitigate uncertainties in enforcement of such contracts. Indeed, the Amendment has widened the scope of specific performance as a remedy to contracting parties irrespective of whether damages are an adequate relief.

