

19th June, 2020

SPECIFIC RELIEF (AMENDMENT) ACT, 2018: KEY AMENDMENTS

SECTION 6

Before Amendment

Only person who has been wrongly dispossessed or any person claiming through him can file suit for possession of immovable property.

After Amendment

Now, even a person through whom the aggrieved person had been in possession of the immovable property may file a suit under Section 6 of the Act.

SECTION 10

Before Amendment

Discretion to courts in deciding to either direct or not to direct specific performance of a contract.

Discretion existed even when:-

- Actual damage unascertainable
- Compensation not adequate relief

After Amendment

Mandatory for Courts to enforce Specific performance of a contract instead of being an alternative in cases where the compensation for non-performance could not be ascertained or was not an adequate relief.

Subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16 of the Act.

Objective to permit specific performance as a general rule.

Most important amendment.

SECTION 11

Before Amendment

Discretion of Court for specific performance of the contracts connected with trusts.

After Amendment

Mandatory to enforce specific performance connected with Trusts.

SECTION 14

Before Amendment

Categories of various contracts which are not specifically enforceable.

After Amendment

Specifies contracts which are not specifically enforceable.

- Substituted performance in accordance with Section 20 of the Act has been obtained, or
- Performance is of continuous duty which the courts cannot supervise, or
- Contract dependent on personal qualifications of parties that the court cannot enforce it, or
- Contract is of determinable nature

INSERTION OF SECTION 14A

Before Amendment

Power of Courts to engage experts to assist the court on any specific issue involved in the suit.

SECTION 15

Before Amendment

Limited Liability Partnership (LLP) could not obtain specific performance.

After Amendment

LLP formed from the amalgamation of two existing LLPs, one of which may have entered into a contract before the amalgamation can obtain specific performance.

SECTION 16

Before Amendment

Required to state in the pleadings as well as prove that the party claiming is ready and willing to perform the contract

After Amendment

Not required for party claiming specific performance of the contract to plead in its pleadings that it is ready and willing



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to perform the essential terms of the contract, but is only required to prove the same.

SECTION 19

After Amendment

Specific performance of a contract can be enforced against a LLP, arises out of amalgamation, when the LLP which had entered into a contract had got subsequently amalgamated with another LLP

SECTION 20

Before Amendment

Discretion to decree specific performance of the Contract.

After Amendment

- Concept of substituted performance of contracts introduced.
- Option to the party which has suffered a breach to go for substituted performance through a third party or by its own agency
- And recover the expenses and other costs actually incurred, spent or suffered.
- Required written notice of not less than 30 days to the party in breach.
- Entitled only if the contract has been performed through a third party or by its own agency.

Insertion Section 20A, 20B and 20C

After Amendment

- Section 20A has made special provisions for contracts relating to infrastructure projects specified in the Schedule inserted by the amendment.
- Prohibits grant of injunction in relation to such infrastructure projects
- That would cause impediment or delay in progress or completion of such projects
- Section 20 B provides for designation of Special Courts to try a suit under the Act in respect of Contracts relating to infrastructure projects.
- Section 20C provides for expeditious disposal of suits- 12 months

SECTION 21

After Amendment

Award of compensation was to be in addition or in substitution of Specific Performance

Before Amendment

Award of compensation only in addition to the Specific Performance

SECTION 25

After Amendment

Reference to Arbitration and Conciliation Act, 1940

Before Amendment

Substituted for Arbitration and Conciliation Act, 1996

SECTION 41

After Amendment

No sub-section (1) (ha)

Before Amendment

Sub-section (1) (ha) inserted to enlists the situations in which an injunction cannot be granted in respect of an infrastructure project

Schedule

After Amendment

No such Schedule

Before Amendment

Schedule for infrastructure projects added.

Conclusion:

These amendments made by the Parliament clearly show the intention of taking away the wide discretion of courts to grant specific performance and to make specific performance of contract a general rule. Moreover, the provisions introducing substituted performance of contracts and recovery of expenses and costs, including compensation, from the party in breach are made so that projects are not delayed and development is not hindered by breaches. Special provisions made in relation to infrastructure projects also carry the same intention. The Amendment Act of 2018 has further empowered the courts while implementing the changes made in law through these amendments.