

Enforcement of Business Contracts in India: An Analysis of The Reforms on Specific Relief

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Abstract- *Specific Relief is for performing a contract when monetary compensation for failing to complete contractual obligations is not enough. The law prescribes that in an event where the actual damage for not performing the contract cannot be measured or monetary compensation is not adequate, one party can ask the court to direct the other party to fulfill the requirements of the contract. This is called specific performance of a contract. The grant of relief of specific performance was exercised at the discretion of the court under the Specific Relief Act, 1963 in certain special circumstances. With the object of seeking greater certainty in contractual enforcement and time bound adjudication of rights of contesting parties, the Specific Relief (Amendment) Act, 2018, amending the Specific Relief Act, 1963 was enacted by the Parliament. The article analyses the provisions as to Mandatory Specific Performance of the Contracts, Contracts not specifically enforceable, Substituted Performance, Timeline for disposal of suits, Injunctions, Special Courts, Engagement of Experts and Recognition to Limited Liability Partnerships. The amendments to the Specific Relief Law are likely to reduce litigations and ensure the performance of the contractual work in a timely manner.*

Index Terms- *Contracts, enforcement, specific performance, specific relief, substituted performance*

I. INTRODUCTION

Contracts are inevitable part of day-to-day business. When a party to the contract does not perform the contractual obligations, the aggrieved party can sue for damages. In certain cases where no amount of compensation or any other legal remedy can mitigate losses of the suffering party, such party may seek relief requiring performance of the specific obligations undertaken in the original agreement between the parties. The law which contains provisions for specific relief is the Specific Relief Act, 1963. The grant of relief of specific performance was exercised at the

discretion of the court under the Specific Relief Act, 1963 in certain special circumstances including where there existed no standard for ascertaining actual damage caused by the non-performance of the contract, or where compensation in money for its non-performance would not afford adequate relief. With the object of seeking greater certainty in contractual enforcement and time bound adjudication of rights of contesting parties, the Specific Relief (Amendment) Act, 2018 (Amendment Act), amending the Specific Relief Act, 1963 (Principal Act) was enacted by the Parliament and received the presidential assent and published in official gazette on 1st August 2018.

II. BACKGROUND

Specific Relief is for performing a contract when monetary compensation for failing to complete contractual obligations is not enough. The law prescribes that in an event where the actual damage for not performing the contract cannot be measured or monetary compensation is not adequate, one party can ask the court to direct the other party to fulfill the requirements of the contract. This is called specific performance of a contract. The relief of specific performance evolved as a discretionary remedy granted by English courts of equity in cases where either the common law courts could not provide a remedy, or the remedy was inadequate. In India, the Specific Relief Act was enacted embodying this same outlook towards specific performance. Prior to the amendment, the Principal Act gave courts a discretionary power to grant specific performance of a contract under two circumstances i.e., where (a) monetary compensation for breach of contract was inadequate; or (b) the extent of damage caused by the breach could not be ascertained. Consequently, grant of specific relief for breach of contract was more of an exception, with courts granting damages as a general

rule. The Central Government notified and published the Specific Relief (Amendment) Act, 2018 (Amendment act) in the Official Gazette on August 01, 2018 vide which certain existing enforceability conditions have been removed and certain new concepts have been introduced in the Principal Act. The have been made amendments are made pursuant to keep pace with the growing Indian economy, the need to uphold the sanctity of an executed contract and for promoting and facilitating 'Ease of Doing Business' in India.

III. ANALYSIS AND DISCUSSION

The following are the crucial aspects of the reforms under Specific Relief (Amendment) Act, 2018:

A. Mandatory Specific performance of the Contracts

Grant of relief of specific performance was exercised at the discretion of the court under the Principal Act in certain special circumstances including where there existed no standard for ascertaining actual damage caused by the non-performance of the contract, or where compensation in money for its non-performance would not afford adequate relief. The Amendment Act has however taken away this discretion of the courts and the courts have to now mandatorily enforce specific performance of a contract except in cases where the contracts cannot be specifically enforced under the provisions of the Amendment Act. This is a major shift in enforcement of executed contracts intended to bring certainty to performance by parties to a contract. The track record of grant of relief of specific performance of contracts was poor due to several reasons including the discretion provided to the courts, which has now been removed for ensuring due performance of a contract.

B. Contracts not specifically enforceable

Section 14 of the Principal Act provided for certain contracts which were not specifically enforceable. This section has been substituted by the amendment act with certain new exclusions which are largely similar to the earlier section 14 of the Principal Act. However, the earlier exclusion where the contract was not specifically enforceable "for the non-performance of which compensation is an adequate relief" has now

been omitted and going forward, even if adequate relief is a possibility a contract can now be specifically enforced, provided it does not fall under the exclusions. As such, specific performance cannot be enforced for the following types of contract: (a) a contract where a party has obtained substituted performance of the contract in accordance with the provisions of Section 20 of the Act; (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise; (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and (d) a contract, which, by its nature, is determinable.

C. Substituted Performance

The newly substituted Section 20 of the Principal Act provides an aggrieved party the option of 'substituted performance' through a third party or by its own agency. Further, while availing the remedy of 'substituted performance' disentitles an aggrieved party from claiming specific performance, it does not disentitle the aggrieved party from claiming damages for the breach of contract.

D. Timeline for disposal of suits

Another crucial aspect brought in by the Amendment Act is the timeline for disposal of suits under the Act. It provides for disposal of a suit within twelve months from the date of service of summons upon the defendant and such time period may be extended not exceeding six months in aggregate. However, the court is required to write the reasons while giving such extension.

E. Injunctions and Special Courts

Section 20A has been introduced in Amendment Act that curbs the power of the court in granting injunctions in contracts involving "infrastructural project" as specified in the Schedule where granting injunction would cause delay in the progress or completion of such "infrastructure project". A similar exclusion has been added in Section 41 of the Principal Act. The Amendment Act further introduces Section 20B requiring the State Government to designate one or more civil courts as special courts within the local limits of the area to exercise jurisdiction and to try

suits under the Act in respect of contracts relating to infrastructure projects.

F. Engagement of experts

The Amendment Act inserts a new provision for engaging technical experts in suits where the court considers it necessary to get an expert opinion to assist the court on any specific issue involved in the suit. Courts will determine the terms of payment of such experts, and the payment will be borne by the parties to the suit in such proportion, and at such time, as the court may direct.

G. Recognition to Limited Liability Partnerships

By introducing sub-section (fa) in Section 15 of the Principal Act, the Amendment Act added limited liability partnerships to the list of parties who may seek specific performance.

IV. MERITS

(i) Since compelling specific performance is now mandated as the first resort, parties will have fewer reasons to breach contracts and drag disputes to Courts.

(ii) Introduction of the concept of substituted performance further emphasizes that performance of contracts is of paramount importance, whether by the contracting party or otherwise. Allowing damages in addition to specific performance acts as a further deterrent against instances of breach.

(iii) The Amendment also avoids the risks associated with over-compensation or under-compensation while awarding damages for breach of contract.

(iv) Further, the focus on timely completion of contracts involving public utility is a welcome move in a country where several infrastructure projects remain in abeyance due to prolonged litigation.

V. ISSUES

(i) The Amendment, unlike the erstwhile section 20, fails to consider the possibilities of unforeseeable hardship and inequity in compelling specific

performance. Compelling specific performance in certain circumstances might be impractical, in particular, where the defaulting party to a contract is on the brink of financial distress or potential insolvency proceedings under the Insolvency & Bankruptcy Code.

(ii) The amended provisions expressly takes away the powers of a civil court to grant injunction in respect of all disputes arising out of a contract relating to an infrastructure project. While the object behind such amendment is stated to be the prevention of any impediment or delay in progress or completion of such projects which are generally in larger public interest, the possibility of the courts refusing to entertain an injunction application in bona fide cases cannot be ruled out

(iii) The Amendment Act may affect the jurisdiction of the courts under the Commercial Courts Act, 2015, with potential overlap between the jurisdiction of the special courts envisaged to adjudicate contracts relating to infrastructure projects and general commercial disputes relating to construction and infrastructure contracts.

VI. CONCLUSION

These amendments have been introduced with the aim of keeping pace with rapid economic growth in the country. The amendments to the Specific Relief Law are likely to reduce litigations and ensure the performance of the contractual work in a timely manner with the introduction of the concepts of substituted performance and the imposition of time limits for disposal of cases. The amendments, which intend on increasing contract enforceability, will improve the ease of doing business in India.

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