LatestLaws.com

LAW ON SPECIFIC PERFORMANCE OF CONTRACT

Introductory:-

A contract is an agreement upon sufficient consideration to do or not to do a particular act. The party on whom this *contractual obligation* rests must not fails to discharge such obligation. In case of his failure, the other party will have a right sue for performance of the contract. This is called '*Specific Performance'*. Order of specific performance are granted when damages are not an adequate remedy, and in some specific cases such as land sale. Such orders are discretionary, as with all equitable remedies, so the availability of this remedy will depend on whether it is appropriate in the circumstances of the case. Under current law, courts grant specific performance when they perceive that damages will be inadequate compensation. Specific performance is deemed an extraordinary remedy, awarded at the court's discretion

Sections 9-25 deal with specific performance of contracts: Basic rules.

1. Decree of specific performance is discretionary relief**. [Sukumar vs Susheel, 76 C.W.N 116]** [See section 20 of S.R.Act]
2. There should be a valid contract**.[Ambica Prasad vs Naziran Bibi, AIR 1939 All 64], [Balram v Natku, AIR 1928 PC 75]**
3. If damages are an adequate remedy, no specific performance would be ordered.
4. For the act which requires continued supervision of the Court, no specific performance would be ordered. (Sec.14 (1) (d))
5. no specific performance would be ordered for contracts for personal work or service
6. 'Equity' will insist on the principle of mutuality
7. The person against whom the relief is claimed may take plea by way of defence under law relating to contract. (Sec.9)

Question no. 1:- What are the defences available under law of contract?

Answer:- The defences that are available under law of contract are :-

1. Incapacity of parties
2. Uncertainty of contract
3. Absence of concluded contract
4. Fraud

LatestLaws.com

5. Misrepresentation
6. Mistake
7. Illegality or want of authority to enter into contract

Question no. 2 :- When can specific performance of a contract be enforced?

Answer:- According to section 10 of the Act, the specific performance of contract can be enforced in the following cases:-

1. If there exists no standard for ascertaining the actual damage caused by the non performance of the act which agreed to be done
2. When pecuniary compensation for its non performance would not afford adequate relief.
3. When it is probable that pecuniary compensation cannot be got for the non performance of the act agreed to be done

Question no. 3:- Can part of contract be enforced?

Answer: - According to section 12 of the Act, the specific performance of part of contract may be enforced in the following cases:-

1. Section 12 of the Act corresponds to Sections 13 to 17 of the Act with certain modifications.
2. Section 12 (1), (2) and (4) of the Act provide exceptions to the general rule of specific performance of a part of a contract.
3. As a general rule, a contract is intended to be deal with as a whole but not piecemeal. However, section 12(1) is an exception to the general rule. **Lord Romilly M.R** opined that 'the Court can not specifically perform the contract piece meal but it must be performed in its entirety if performed at all'.
4. The part unperformed must be a considerable portion of the whole; or
5. It does not admit of compensation in money;
6. The part to the contract who is not in default can sue for part performance

Question no.4 :- What type of contracts cannot be enforced?

Answer:- Under section 14 of the Act, the following contracts cannot be enforced:

1. Contracts in which compensation in money is an adequate relief.[See section 14 (1) (a) of S.R.Act) **, [Devendar Singh vs Syed Khaja, AIR 1973 SC 2457]**
2. Contracts involving personal service**.[Vaish Degree College, Shamli vs Lakshmi Narayan, AIR 1976 SC 888]**
3. Contracts with uncertain terms.

LatestLaws.com

4. Contracts in its nature determinable
5. Contracts which or not valid in Law
6. Contracts involving continuous supervision of the Court
7. Contracts to build or repair works (subject to some exceptions) **[Union Construction Co. vs Chief Engineer,Estern Command,Lucknow,AIR 1960 All 72]**
8. The Contract by Hindu parent or guardian to give a child in marriage cannot be specifically enforced. **[Gumpat Narain Singh inre, ILR 1 Cal.74]**

Question no.5:- Who can obtain Specific performance of a contract?

Answer:- Section 15 of the Act says specific performance of a contract may be obtained by

Any party thereto

1. The representative-in-interest, or the principal, or any party thereto excepting where the earning skill, solvency or any personal quality of such party is a material ingredient in the court.
2. If personal skill of one party is essential element of the contract of specific performance is frustrated with death of that party and legal representative of that party cannot demand specific performance of the contract

Question no.6 :- What are the defences available to the defendant in suit for specific performance of contract?

Answer:- The Defendant may set up any one of the following defences in a suit for specific performance of contract.

1. Compensation in money would be adequate relief
2. Plaintiff's unperformed part is large
3. Contract depends on personal qualifications or volition of parties.[**Motiram vs Khyli Ram, AIR 1967 All 484]**
4. Wanting title
5. Wanting in mutuality
6. Contract is devoid of consideration
7. Essential part of contract has ceased to exist
8. Performance of contract would involve hardship to defendant than the plaintiff
9. Performance of contract involves continuous duty over three years
10. Uncertainty in terms of contract

LatestLaws.com

Question no.7 :- Personal bars to relief under specific performance of contract under section 16:-

Answer:- Specific performance of contract cannot be enforced in favour of a person in the following cases:-

1. Who would **not be entitled to recover compensation** for its breach; or
2. Who has become **incapable of performing or violates** any essential term of, the contract that in his part remains to be performed or acts in fraud of the contract, or wilfully acts at variance with or in subversion of the relation intended to be established by the contract; or
3. Who fails to **aver and prove** that he has performed or has always been **ready and willing to perform** the essential terms of the contract?

Question no.8 :- **What does discretion and power of court mean?**

Answer:- Section 20 of the Act says:-

1. The jurisdiction to decree specific performance is discretionary.
2. The Court is not bound to grant such relief merely because it is lawful to do.
3. The discretion of the Court should be arbitrary but sound and reasonable, guarded by judicial principles and capable of correction by a Court of appeal.

Question no.9 :- What are the circumstances in which the Court can exercise its discretion properly ?

Answer:-

1. If the terms of contract give the plaintiff unfair advantage over the defendant; or
2. If the conduct of the parties of contract or other circumstances, gives the plaintiff unfair advantage over the defendant
3. If the performance of contract would involve hardship on the defendant which he did not foresee, whereas its non performance would involve no such hardship on the plaintiff; or
4. Where the defendant entered into the contract under circumstances which, though not rendering the contract voidable makes it inequitable to enforce specific performance

LatestLaws.com

Question no.10 :- What do the terms 'Ready and willing to perform' mean? Whether the conduct of the plaintiff is to be considered in a suit for Specific Performance Suit?

Answer:- In N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao and Ors. MANU/SC/0025/1996 : (1995) 5 SCC 115 at para 5, this Court held:

…Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of the contract.

Question no.11 :- Is specific performance of contract by Minor enforceable?

Answer:- **Sri Kakulam Subrahmanyam and another Vs. Kurra Subba Rao,** AIR1948PC95, Held: A minor's agreement being now decided to be void, it is clear that there is no agreement to be specifically enforced; and it is unnecessary to refer to former decisions and distinctions, following English authorities which were applicable only on the view now overruled by the Privy Council.

Question no.12 :- Is specific performance of contract by Agent enforceable?

Answer:- An agent cannot personally enforce contracts entered into by him on behalf of his principal not is he personally bound by them in the absence of any contract to that effect. See section 230 of Indian Contract Act,1872.

Question no.13 :- Can Legal representative enforce specific performance of contract?

Answer:- The legal representative of a deceased party can enforce a contract of sale . see ruling **1972 (2) MLJ 281, Dorai Swany vs Kanuiappa.**

Question no.14 :- Whether specific performance of contract can be granted with doubtful title?

Answer:- No. Where the doubtfulness of the title cannot be resolved except by proving certain intruinsic facts or by agitating against the parties other than the parties to the contract; the court cannot grant the relief of specific performance; A doubtful title is one

LatestLaws.com

regarding which some doubt persists but a bad title one defective in its nature. See **Ahmedbhoy vs Sir Dinshaw.**

Question no.15 :- When Time is essence of contract?

Answer:- In AIR2011SC3234, 2011(5)ALD100(SC), **Mrs. Saradamani Kandappan's case, it was observed that** the legal position is clear from the decision of a Constitution Bench of this Court in ***Chand Rani* v.*Kamal Rani*** MANU/SC/0285/1993 : 1993 (1) SCC 519, wherein this Court outlined the principle thus:

It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.

In the case of **Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs,** 1993 (1) SCC 519, it was held that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. from the express terms of the contract;

2. from the nature of the property; and

3. from the surrounding circumstances, for example: the object of making the contract.

Question no.16 : – Is suit for specific performance of contract by one of joint promisees maintainable?

Answer:- **Smt. Nirmala Bala Dasi and Anr. Vs. Sudarsan Jana and Ors.** AIR1980Cal258. Reliance in this connection may also be placed on the following passage from the judgment of Privy Council in the case of **Monghibai v. Cooverji Umersey**, reported in MANU/PR/0023/1939 : AIR 1939 PC 170 :–

"It has long been recognized that one or more of several persons jointly interested can bring an action in respect of joint property and if their right to sue is challenged can amend by joining their co-contractors as plaintiffs if they will consent or as co-defendants if they will not. Such cases as (1879) 11 Chn D 121 and (1898) 2 QB 380 are examples of this principle. Nor indeed would it matter that a wrong person had originally sued though he had no cause of action : See (1902) 2 KB 485. Once all the parties are before the Court, it can make the appropriate order and should give judgment in favour of all the persons interested whether they be joined as plaintiffs or defendants."

LatestLaws.com

Question no.17 :- Can an unregistered agreement of sale be marked in suit for specific performance?

ANSWER:- (i) A document produced for inspection of the Court cannot be admitted in evidence under Section 49(c) of the Registration Act, if it is required registration under Section 17 of the said Act.

(ii) Any document by whatever name called not creating, declaring, assigning, limiting or extinguishing any right, title or interest, but merely creating right to obtain another document does not require registration under Section 17(1) of the Registration Act.

(iii) As a necessary corollary a document of contract for safe of immovable property creating right to obtain another document shall not require registration by reason of the payment of earnest money or whole or part of purchase money by the purchaser.

(iv) In any event, the prohibition under Section 49(c) of the Registration Act does not apply to an unregistered document effecting immovable property in a suit for specific performance under the Specific Relief Act or as evidence of part performance of contract of as evidence of any collateral transaction not required to be effected by registered document.

Question no. 18:- What are the essential elements to constitute 'Lis Pendens'?

Answer:- In order to constitute a lis pendens the following elements must be present :-

(I) There must be a suit or proceeding pending in a Court of competent jurisdiction.

(II) The suit or proceeding must not be collusive.

(III) The litigation must be one in which right to immovable property is directly and specifically in question.

(IV) There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.

(V) Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.

Question no. 19 :- Application of Order 22 Rule 10 of CPC and Order 1 Rule 10 CPC in specific performance of contract?

Answer:- The object of Order 1, Rule 10, C.P.C. is to discourage contest on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to the suit in the following two contingencies: -

(i) When he ought to have been joined as plaintiff or defendant, and is not joined so, or

(ii) When, without his presence, the questions in the suit cannot be completely decided.

LatestLaws.com

Order 1 Rule 10 cpc is wider than the scope Order 22 Rule 10 Cpc. Order 22 Rule 10 Cpc is merely an enabling provision and that it has certain parameters. Order 22, Rule 10, C.P.C. speaks of cases of an assignment, creation or devolution of any interest during the pendency of a suit and the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. (See the ruling **Lingaraja Mohanty vs Binodini Mohanty & Ors. on 20 April, 2011**)

Question no. 20:- Alternative relief of refund of earnest money

Answer:- Where the vendee suing for specific performance of contract of sale in the same suit asked in the alternative for the relief of refund of earnest money or advance money, paid under the contract of sale, can, as an aggrieved person, prefer appeal against the judgment and decree of the first court which granted him only the relief of return of the earnest money or advance money while denying him the relief of specific performance. (See ruling AIR 1991 Madras 163**, Ramani Ammal vs Susilammal)**

Question no. 21. Can amendment application be permitted relating to compensation in a suit for specific performance?

Answer:- Where an amendment relates to relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the ourt will allow the amendment at any stage of the proceeding. [See AIR 1992 SC 1604, **Jagdish Singh vs Nathu Singh]**

Question no. 22. What is the distinction between 'Compensation' and 'Damages'?

Answer:- In the case of **Mahamed Mozaharal Ahad Vs. Mahamed Azimaddin Bhuinya,** AIR1923Cal507, Held: As Lord Esher observed in **Dixon v. Calcraft** (1892) 1 Q.B. 458 (463) the expression compensation is not ordinarily used as an equivalent to damages, although as remarked by Fry, L.J. in **Skinners' Co. v. Knight** (1891)2 Q.B. 542 compensation may often have to be measured by the same rule as damages in an action for the breach. The term **Compensation** as pointed out in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered.

Damages, on the other hand; constitute the sum of money claimed or ad judged to be paid in compensation for loss or injury sustained; the value estimated in money, of something lost or withheld. The term compensation etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent.

Question no. 23. Can Court make an order under section 151 CPc directing the plaintiff to file an undertaking that he will pay some amount directed by the court to the defendant as damages if he fails in the suit?

Answer:- A Court in exercise of inherent power under Section 151 of the Code cannot make an interim Order directing the Plaintiff to file an undertaking that he will pay a sum directed by the Court to the Defendant as damages in case he fails in the suit. [2010(5) ALD124(SC), **Vinod Seth Vs. Devinder Bajaj and Anr.**]

LatestLaws.com

Question no. 24. Is escalation in the price of the land ground to deny relief of specific performance? Explain section 20 of SR Act.

Answer. Escalation in the price of the land cannot, by itself, be a ground for denying relief of specific performance. In K**. Narendra v. Riviera Apartments (P) Ltd**. (supra), this Court interpreted Section 20 of the Act and laid down the following propositions:

Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

Performance of the contract involving some hardship on the Defendant which he did not foresee while non-performance involving no such hardship on the Plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. <u>However, mere inadequacy of consideration or the mere fact that the contract is onerous to the Defendant or improvident in its nature, shall not constitute an unfair advantage to the Plaintiff over the Defendant or unforeseeable hardship on the Defendant.[</u> See AIR2012SC2035**, Narinderjit Singh Vs. North Star Estate Promoters Ltd**.]

Question no. 25. Whether grant of relief for specific performance will cause hardship to Defendant within meaning of Clause (b) of Sub-section (2) of Section 20 of Specific Relief Act, 1963?

Answer:- The question as to whether the grant of relief for specific performance will cause hardship to the Defendant within the meaning of Clause (b) of sub-section (2) of Section 20 of the Specific Relief Act, 1963, being a question of fact, the first appellate court without framing such an issue ought not to have reversed the finding of the trial court while concurring with it on all other issues with regard to the Appellant's entitlement to relief for specific performance of contract.[**Prakash Chandra Vs. Narayan,** AIR2012SC2826]

Question no. 26. When does 'false representation' disentitle the plaintiff to t he equitable relief under section 22 of the Act?

Answer:- The question naturally arises as to whether this false representation disentitles the plaintiffs to the equitable relief under S. 22 of the Act. As stated earlier, mere false representation is not enough. It has to be further shown by the defendants that this false representation resulted in adversely affecting their interest, or it altered the position of the parties in such a way that it would be inequitable to grant relief to the plaintiffs.(AIR1967AP63, **Vuppalapati Butchiraju and Anr's case**)

LatestLaws.com

Question no. 27. The plea of 'Bonafide purchaser'

Answer:- Section 19(b) of the Specific Relief Act, 1963, protects the bona fide purchaser in good faith for value without notice of the original contract. This protection is in the nature of an exception tot he general rule. Hence the onus of proof of good faith is on the purchaser who takes the plea that he is in innocent purchaser. Good faith is a question of fact to be considered and decided on the facts of each case. Section 52 of the Penal Code emphasises due care and attention in relation to good faith. In the General Clauses Act emphasis is laid on honesty.(**Narayana Reddy (deceased) (D2) and Ors. Vs. P. Chandra Reddy,** MANU/TN/7408/2007)

Question no. 28:- Whether Court need to grant the order for specific relief on the ground that it is lawful to grant specific relief?

Answer:- "The jurisdiction to decree specific relief is discretionary and the Court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the Court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the Court shall exercise such discretion.

If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the Court would desist from granting a decree to the plaintiff." (This para was observed in **Nallam Seeta Mahalakshmi and Ors. Vs. Talari Vijayalakshmi,** 2005(4)ALD130).

Question no. 29.:- Would a bare averment in the plaint or a statement made in the examination-in-chief suffice to prove ready and willing to perform contract?

Answer:- **In Umabai and Anr. v. Nilkanth Dhondiba Chavan (Dead) by LRs and Anr.** MANU/SC/0285/2005 : (2005) 6 SCC 243, it was observed as follows.

It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the Plaintiff-Respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the Plaintiff-Respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.

Question no. 30:- Can Karta Alienate of joint family property?

Answer:- Even if it is to be assumed that the property in question was part of the assets of the co-parcenerary or joint family, it is possible for a karta, which, the appellant indeed is, to alienate the property for the family necessity. The right of the karta of a Hindu Joint Family, in this regard, is almost unquestioned. The only rider is that the co-parceners can challenge

LatestLaws.com

the sale so made, at a later point of time, by pleading that there did not exist any genuine family necessity, warranting the sale of the property.(**Jala Anjaiah Vs. Ramisetty Anjaiah,** MANU/AP/1014/2011).