

Specific Relief (Amendment) Act 2018 Into Effect From 1st October 2018

written by Mohana Roy | October 2, 2018

Introduction

The Ministry of Law & Justice has vide notification no. S.O. 4888(E) dated 19th September 2018 has appointed 1st October 2018 as the date on which the provisions of the Specific Relief (Amendment) Act 2018 (herein after referred as "the amendment Act") shall come into force. The Parliament passed the Specific Relief (Amendment) Bill 2018 on 23rd July 2018 with a view to bring significant changes in the Specific Relief Act 1963(herein after referred as "the Act") so as to make the law business friendly and enhance ease of doing business in India.

Key Highlights of the amendment Act

No discretion to the courts in ordering specific performance of contracts- Section 10 of the Act has been amended and now it has been made mandatory for the courts to grant specific performance of a contract earlier specific performance of a contract was a remedy that courts had the discretion to grant, only in case where

(a) the actual damage caused due to the non-performance of the action could not be ascertained; or

(b) when monetary compensation would not be adequate relief for the nonperformance of contract.

Further section 11 has also been amended and the discretionary power of the courts in case of the trusts has also been taken away hence now it is compulsory for trusts as well.

Contracts not specifically enforceable- Section 14 of the Act has been substituted to include the following contracts which cannot be specifically enforced:

a) where an aggrieved party has obtained substituted performance of the contract by virtue of section 20.

b) Where the contract involves performance of a continuous duty which cannot be supervised by the court;

c) where the contract is dependent on personal qualifications of an individual, such that enforcement of the material terms is not possible; and

d) the contract is determinable by its nature.

□ Insertion of Section 14 A: Power of Court to engage experts- The newly introduced section confers power on the courts to appoint experts so as to seek opinion on any issues in a suit.

□ Insertion of clause (fa) in Section 15- A clause stating who shall obtain specific performance in case a limited liability partnership enters in to an amalgamation with another limited liability partnership has also been inserted to clarify the doubts.

□ Persons in whose favour specific performance cannot be enforced- Section 16 of the Act has also been amended to include persons who has obtained substituted performance of contract under section 20

□ Substituted performance of contract- Section 20 has been renamed in to substituted performance of contract under the amendment Act and also been replaced with new provisions. By virtue of the new provisions the aggrieved party can now choose to get the contract performed by third party or by its own agency at the cost of the party who has breached the contract. However before appointing a third party the aggrieved party has to give a notice in writing of not less than 30 days to the breaching party to perform the

contract within the time specified in the notice and in case of such failure to perform only the aggrieved party may get the same performed by third party or his own agency.

Further the aggrieved party shall not be entitled to claim relief of specific performance against the breaching party if he has got the contract performed by the third party or his own agency however he can claim for compensation from the breaching party.

□ Insertion of Section 20B: Special Courts for Infrastructural projects- Section 20 B has been inserted giving direction to the State Governments to setup special courts in consultation with the Chief Justice of the High Courts for speedy disposal of suits pertaining to infrastructural projects.

□ Insertion of Section 20C: Expeditious disposal of Suits- Section 20 C has been newly inserted through the amendment Act providing mandatory time period for disposal of suits under the Act. Therefore suits filed under the Act shall have to be disposed of within a period of 12 months from the date of service of summons which can further be extended for period of 6 months for a reason to be recorded in writing.

Conclusion

The most significant change brought by the amendment Act is mandatory provision for granting relief of specific performance of contract earlier due to the wide discretionary powers; the courts often award damages for breach of contract instead of granting specific performance, which was more or less granted in exceptional cases only. Further also in many cases compensation may not provide the requisite relief and in such cases performance of contract becomes inevitable by virtue of the amendment Act.

Further another significant change brought by the amendment Act is the mandatory time period for the disposal of the suits under the Act hence ensuring speedy relief to the aggrieved party.

Therefore the amendment Act can be said to be a great step towards further ease of doing business in India.

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