

# **CONTRACT-SPECIFIC RELIEF ACT**

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Class-room live lectures edited, enlarged  
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# **SPECIFIC RELIEF ACT, 1963**

## **INTRODUCTION**

In 1877, the Specific Relief act was enacted and put into force. This was amended in 1963. Whereas the contract act deals with contractual obligations, the specific relief act aims at providing for various legal remedies for violation of the contractual obligations. If A is illegally dispossessed of his house 'H', the specific relief act, provides for a specific remedy to get that very house H, not any other house or money compensation. That is specific relief. This is only an example. Various reliefs like injunctions, Rescission of contracts, Declaratory decrees, cancellation & Rectification of Instruments etc are provided for in the Act.

Much attention should be given to the illustrations and examples.

## Specific Relief Act: 1963 : Sns. 1 to 42

1. i) Recovery of specific immovable property (sns. 5, 6) ii) Recovery of specific movables (Sns. 7 & 8)
2. i) Contracts which can be specifically enforced (Sn. 10 to 13) ii) Contracts which cannot be specifically enforced (Sn. 14)  
iii) Who and against whom contracts may be specifically enforced (Sn. 15 to 19)  
iv) Discretion of court (Sns. 20 to 24) v) Enforcement of Awards (Sn. 25)
3. Rectification of Instruments (Sn. 26)
4. Rescission of contracts (Sns. 27 to 30)
5. Cancellation of instruments (Sns. 31 to 33)
6. Declaratory decree (Sns. 34 and 35)
7. Injunctions and perpetual and temporary injunctions (Sns. 36 to 42).

## Question Bank

1. State and explain the remedies available for dispossession of specific immovable properties.
2. State and explain the contracts which can be specifically enforced.
3. Explain by whom and against whom a contract may be specifically enforced.
4. A. State and explain the contracts which cannot be specifically enforced.
5. What is an injunction? Distinguish between temporary and perpetual injunction. Explain mandatory injunctions. Explain Injunction to perform Negative Agreement
6. State and explain the circumstances when an injunction may be refused or cannot be granted by the court
7. **Write short notes on** : a. Rectification of an instrument, b. Rescission of a contract  
c. Cancellation of instruments d. Declaratory decrees  
e. Kinds of specific reliefs available under Specific Relief Act.  
f. Dispossession of movable Property. G. He who wants equity must do equity

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## CHAPTER 1

### SPECIFIC RELIEF ACT

#### **Ch. 1-1. Specific Relief:**

Specific relief is a judicial remedy or redress for the purpose of enforcing the civil rights of the individuals. It is part of the procedural law i.e., the Civil Procedure Code. The Specific Relief Act 1963 has replaced the Specific Relief act of 1877 and is operative from 1st March 1963.

The various specific reliefs provided for in the Act are as follows:

- i) Recovery of possession of immovable property (Add Ch 1.2)
- ii) Recovery of possession of movable property (Add Ch 1.3)
- iii) Specific performance of contracts (Add Ch 2.1)
- iv) Rectification of instruments (Add Ch 3.1) .
- v) Rescission of a contract (Add Ch 3.4)
- vi) Cancellation of instrument (Add Ch 3.2)
- vii) Declaratory decrees (Add Ch 3.3) and viii) Preventive reliefs i.e., injunctions they are Temporary, perpetual and Mandatory injunctions (Add Ch 4)

#### **Ch. 1.2. Recovery of dispossessed immovable property :**

The specific relief act in Sees. 5 & 6 provide for the recovery of specific immovable property by a person who is entitled either as a owner or as a possessor. The object is to provide for a special and speedy remedy for dispossession.

If a person is dispossessed of his immovable property without consent and not under a court order, such a person may file a suit to recover the possession of specific immovable property. The court will not enquire here into the title of the person. The suit must be brought within six months from the date of dispossession.

Dispossession means, loss of physical possession, of the immovable property. Dispossession made legally through the order of the court is not the subject matter.

Eg : A is tenant and D is the owner of a premises.

A sub-leases to B. At the time of vacating, B delivers the premises to C who is the purchaser of the premises from D. A dispossess C. Held : C was entitled to recover possession from A.

There is no review or appeal from the decision of the court. No suit can be filed against the State Govt. or Central Govt. under this section.

Scope : The remedy provided here does not bar any person from suing in a civil court to establish his title and to recover possession thereof under the civil procedure code.

### **Ch. 3-3. Recovery of dispossessed movable property :**

The Specific Relief Act, in Sns. 7 and 8 ,deal with the recovery of possession of specific movable property.

The procedure provided in the Civil Procedure Code may be followed :

- i) A trustee may sue and recover movables, to protect the interest of the beneficiary.
- ii) Further, under this section, a special or temporary right to the present possession of movable property is sufficient.

Just like the specific remedy in respect of dispossession of immovable property, provisions are made here to recover specific movable property.

If a person who is not a owner is in possession of having control over specific movable property, he may be compelled specifically to deliver it to the person who is entitled to its immediate possession

The circumstances are as follows :

1) When the thing is held by the defendant who is an agent or trustee of the plaintiff.

A gave his special diamond necklace to B to put on A's daughter for the wedding. B pledged it with C who sold to K. Held, A may recover the specific necklace which was with K.

2) When compensation in money would not be adequate relief for the loss of the thing claimed, the court will grant specific relief.

An ancient Hercules Statue, Hindu family Idol, a memento etc., are items where money compensation is not the proper relief. Hence, specific relief is granted.

3) When it would be extremely difficult to ascertain the actual damage caused by the loss.

Paintings of **Leonardo do Vinci**, Raja Ravi Varma etc belong to this group.

4) When the possession of an article has been wrongfully transferred from the plaintiff.

**Presumption** : The court makes a presumption that the compensation would not be an adequate relief when it would be extremely difficult to ascertain the actual damage. Hence, the burden of proving the contrary is on the defendant

## CHAPTER 2

### SPECIFICALLY ENFORCEABLE CONTRACTS

#### Ch. 2-1. Contract which can be specifically enforced :

As specific performance is an equitable relief, the specific relief act, provides for the relief in specific circumstances, specific performance means the actual execution according to the contractual stipulations and terms. It is distinct and separate from damages and compensation. Remedy is provided at the discretion of the court. If a circumstance arises which is not provided for in the specific relief act, the English principles of equity become applicable.

#### Specific relief is given :

1) When the act agreed upon is in the performance of a trust.

Eg: A holds certain goods in trust for B. A wrongfully sells the goods to C. A is obliged to restore the same quantity of goods to B, and therefore B may enforce specific performance of this obligation. But, if the trustee has acted in excess or breach of his office, then there is no specific performance. Damages may be claimed.

2) The court will grant specific performance, if there is no standard to find out the actual damage caused by non-performance of the contractual obligation.

A agrees to buy and B agrees to sell a picture painted by a deceased-painter, and two rare China vases. A may compel B to perform this specifically because it is not possible to estimate the damage caused by non-performance.

3) There is specific performance if the act is of such a nature that pecuniary compensation is not an adequate relief.

a) A agrees to sell his house to B for Rs.100000/- B is entitled to a specific conveyance of the house on paying the value thereof.

b) A agrees to sell his picture to B for Rs.1000/- The picture is painted. B is entitled to have the picture on payment of Rs.1000/-

c) In a partition deed among A, B and C the family God was agreed to be given to A. B, who is in possession of it refuses to give. Specific performance will be granted.

d) Specific performance is granted when it is probable that pecuniary compensation cannot be got for non-performance.

A transfers without endorsement, but for value, a promissory note to B. A becomes insolvent and C becomes the official assignee. B may compel C to make the endorsement because C has succeeded legally to the liabilities.

## **Ch. 2-2. Contracts which cannot be specifically enforced :**

The specific relief act provides in section 14 that there are certain contracts which cannot be specifically enforced. This section given discretionary power to the court. The discretion is not arbitrary, but must be sound and reasonable, guided by judicial principles.

### **Section 14 enumerates the various circumstances :**

1) Specific performance is not given if payment of compensation is an adequate remedy.

Eg. a) A agrees to sell to B four percent Govt. bonds for Rs .1 lakh. He later refuses to comply with his agreement. Here, the court will award a decree for compensation, as compensation is an adequate remedy.

b) A contracts to lend money to B. This cannot be specifically enforced.

2) A contract which goes to mention minute, or numerous details, or a contract which is dependent on the personal qualification of persons, cannot be specifically enforced.

Eg. i) A contracts to serve B in the hospital for 20 days. He fails to do so.

ii) A an author contracts with B a publisher, to complete a story book. A fails to do so.

In the above cases no specific performance is granted. Similarly, in respect of dramatic performance, acting in films etc. compensation is an adequate relief.

iii) A contracts to marry B, but later refuses. This cannot be specifically enforced.

A contract which contains certain terms which the court finds that they are uncertain.

a) A, a hotel owner, contracts with B to provide lodging for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform. Here, the nature of accommodation and appliances are not perfectly defined. Hence, no specific performance can be granted.

4) A contract which is by nature avoidable in nature cannot be specifically enforced.

5) A contract made by trustees committing a breach of trust or acting in excess of their authority.

Eg : A contract of sale of property by a guardian without the sanction of the court.

T, a trustee has power to lease a building for one year. He leases out for ten years. These are not enforceable specifically.

6) A contract made by a company in excess of its powers.

Directors of a company agree to sell, without authority, certain properties of the company to B. B cannot specifically enforce the contract.

7) For a contract which involves the performance of continuous duties extending beyond 3 years, the court will not grant specific performance.

Eg : W, a wife sues her father-in-law for specific performance of a contract to give maintenance perpetually. Held : No specific performance.

8) A contract in which the subject matter does not exist at all. In such a case, there is no specific performance.

A contracts to sell his horse, which is in his stable, to B. The horse is dead at the time of the contract.

## CHAPTER 3

### Ch. 3-1. Rectification of instrument:

#### (Sn. 26 of Specific Relief Act)

Rectification means correction of an error in an instrument with a view to giving effect to the real intention of the parties. This was allowed formerly by the equity courts in England.

An error may creep in due to fraud or mistake of fact or law. The instrument will not then express the real intention of the parties.

In some cases, both parties may be innocent, but the mistake may have crept in. In such cases, one of the parties may bring a suit to rectify the instrument. If the court is satisfied that there is fraud or common mistake in framing the instrument, and that the instrument does not speak to the real intention of the parties, it may in its discretion direct the correction of the instrument.

One exception is provided for.

If the rectification affects the interests of third parties who have acquired rights in good faith and for valuable consideration, no correction is allowed. Further, when a decree has been obtained on an unrectified instrument and in its execution money is recovered, correction is not allowed.

Eg : A intends to sell to B his "House and godown". The sale deed shows three godowns of A. This is introduced by the fraud of B. B subsequently allows the use of one godown by C and leases the others to D. C and D are innocent.

Held : That the instrument may be duly rectified so as to include only the one godown which was intended by the parties. C and D are innocent and hence the court will not allow to rectify the sale deed to affect the interest of C and D.

The Rule contained in section 26 is not applicable to M/A and A/A of a company.

### Ch. 3-2. Cancellation of instrument: Sn. 31.

This is a specific remedy provided for in the specific relief act, in sec. 31. The principle relating to cancellation of the instrument is based on administration of protective justice. The remedy is available in respect of void or voidable instrument. The party must have a reasonable

apprehension that the instrument if left un-cancelled, may cause serious injury. In such cases the party affected may file a suit and get a declaration from the court so that the instrument may be delivered up and cancelled.

If the instrument had been registered, the court will send a copy of the order to the Registrar. That officer shall make a note of cancellation of the instrument.

Eg : 1. A is the owner of a ship. He induced B to insure the ship as 'Sea-worthy'. Later, B may obtain cancellation of the insurance under this section.

2. A deed is registered by force and in the face of opposition. The affected party may sue for cancellation of such a spurious deed.

3. A finds that his title is affected, as B who is in possession of the property, has set up and registered a document. A may sue to get the declaration from the court that the registered deed be cancelled.

Partial cancellation is allowed, but this may be done by the court in a case where there is proper evidence to show that when a part is cancelled, the other part may stand on its own.

In the case of cancellation of an instrument, the court may issue a decree stating what compensation is to be paid to the party affected.

### **Ch. 3-3. Declaratory decrees : Sn. 34.**

The object of a declaratory decree is to strengthen the testimony regarding the title of the plaintiff, so that the decree may not weaken it.

**The principle is that if a cloud is cast on the title or legal Character of a person, he is entitled to dispel that cloud through the court.**

Eg : A is the owner of a house, B is in possession of it. B is alleging that he is the owner of the house. A may obtain a declaratory decree that he i.e., A is the owner.

The plaintiff must be entitled to legal character or to a right to the property, and the defendant must have denied or must be interested in denying the character or title of the plaintiff. There must be some present danger or detriment to the interest of the plaintiff. In such cases, the court may issue a declaratory decree declaring that the plaintiff is entitled to the legal character or title to the property.

Exception: The court will not issue the decree, if the plaintiff is able to seek further relief than a declaratory decree but, omits to do so. Further, relief means a remedy which is available to the plaintiff which may be more appropriate and effective under the circumstances.

Eg : A buys a property in the name of the defendant B. later B claims the property. A may ask for a declaratory decree that A is the owner and B is a benamidar.

A decree may be given declaring status:

1) Marriage 2) Divorce 3) Adoption 4) Legitimacy 5) Right of franchise 6) Right to contest for election 7) Right of being elected as a municipal councilor 8) Right to remain in service against an illegal order etc.

No decree will be given for a claim of the plaintiff to receive his 'Dakshina', at a temple.

### **Ch. 3-4. Rescission of a contract : Sn. 27**

Rescission means the right of a party to exercise his right of action to terminate the contract.

When a contract is voidable because of fraud, misrepresentation or undue influence or coercion, (where the consent of the parties is vitiated) he should terminate the contract by taking recourse to court. The court will look to the circumstances and if it is satisfied, will help him to terminate the contract.

It may be rescinded when the contract is un-lawful for causes not apparent on the face of the contract and when the defendant is more to be blamed. A contract to stifle a pending prosecution is unlawful and may be set aside.

Rescission may be granted when a decree for specific performance of a contract of sale has been made and the purchaser makes default in payment of purchase money.

Eg : A sells his land to B. There is a right of way over the land in favour of C. A has cancelled this. B may get a court decree to rescind the contract.

The court may Refuse to rescind: (i) If plaintiff has ratified the contract

(ii) If due to change of circumstances which has taken place since the date of contract, the parties cannot be restored back.

Rescission of contract is not available for mere mistakes, unless a party against whom it is given has to be substantially restored to the same position as if the contract had not been made. Hence where there is no restoration, there is no rescission.

(iii) If third parties, without notice but in good faith & for value, have acquired rights.

(iv) Partial rescission when it is not severable from contract.

## CHAPTER 4

### PREVENTIVE RELIEF

#### Ch. 4-1. Preventive Relief:

The specific relief act provides for various specific reliefs and one such relief is an injunction. An injunction is a specific order or command of the court preventing a party from doing that which he is under a legal obligation not to do, or directing him the performance of a particular act or thing. Injunction is granted by court exercising its discretionary powers i.e., it may or may not grant the remedy. Of course, it exercises no arbitrary power but follows the recognised fundamental principles based on judicial norms.

An injunction is granted when the court finds that it is just, equitable and convenient that the order of injunction is to be given as a remedy.

Injunctions may be Prohibitory or Mandatory

A prohibitory injunction forbids a defendant from doing a wrongful act which would infringe some legal or equitable right of the plaintiff. It takes the form 'let the defendant be restrained'.

Eg : Not to build any wall to affect the plaintiff's right to light and air.

A mandatory injunction forbids the defendant to permit the continuance of a wrongful state of things that already existed at the time when the injunction is issued. It takes the form 'Let the defendant be restrained from permitting the continuance of the building of any wall to affect the plaintiff's right to light and air'. This injunction calls the defendant to do some positive act.

Eg : To pull down a wall, to cut off the branches of a tree. The purpose of mandatory injunction is to restore order from a wrongful state of things.

#### Ch. 4-2. Temporary injunction :

Injunctions are classified into two : Temporary and Perpetual Temporary injunctions are those granted by the court, for a specific time or until the hearing of the case or until further orders of the court. They may be granted at any period of suit according to the procedure in the civil procedure code. The object of these injunctions is to prevent mischievous waste unlawful alienation, fraudulent removal or disposal or wrongful seizure of property, pending a trial. This is done in order to preserve the property, in dispute, in its status-quo until final disposal by the court. It is merely provisional in character. It does not conclude a right. To grant this, the court will look to:

- 1) Balance of convenience
- 2) plaintiff's fair question relating to the property right

Balance of convenience means that the plaintiff must show a prima facie case

and he must also show that the mischief or inconvenience that would result when an injunction, is not granted.

### **Circumstances:**

1) A agrees to lease out his premises to B. A is endeavoring to bring C as a tenant. This is against the right of B. B must show his right to the lease and also claim for a temporary injunction restraining the defendant from granting the lease to C.

2) A gets a decree of a court by fraud. He puts an application for execution against B. B may ask for a temporary injunction against execution.

3) Court may not issue a temporary injunction in respect of an election under a Govt. order if there is no harm or waste to the party in question.

**Appeal:** An appeal is allowed from an order of refusal to grant a temporary injunction.

### **Ch. 4-3. Perpetual injunction : Sn. 38.**

It is an injunction wherein the defendant is perpetually restrained from asserting his right or from committing an act contrary to justice, equity and good conscience. It can only be granted by the decree made at :

i) The hearing

ii) On the merits of the suit and says:

"The defendant is thereby perpetually restrained from doing acts contrary to the plaintiff's rights".

It may be granted to prevent a breach of an obligation which is in favour of the plaintiff.

If the defendant invades or threatens to invade the right of the plaintiff the court may grant a perpetual injunction. The circumstances for granting are specified :

i) Where the defendant is the trustee of plaintiff's property ii) Where the actual damage cannot be estimated iii) Where money compensation is not adequate

iv) Where injunction is necessary to prevent multiplication of judicial proceedings.

Ex. : a) A leases out his vacant land to B on condition that he should not dig therein. If B digs, he may ask the court to issue a perpetual injunction.

b) D is the doctor of P. D known P's disease. P may ask the court to restrain the doctor from disclosing.

c) A, B and C are partners of a firm. A threatens to destroy some property of the firm. B and C may ask for an injunction. [**Miles V. Thomas.**]

d) A continuously rings the bells and also creates other types of deafening noise interfering materially with the comfort of B. B may sue for an injunction.

e) A infringes the copy right of B. B may ask for a perpetual injunction.

#### **Ch. 4-4. Mandatory injunctions : Add Ch. 4-2.**

Mandatory injunctions are granted by the court, in its discretion, to prevent any breach of an obligation complained of by the plaintiff. Two conditions are to be satisfied.

- i) It must be necessary to compel the performance of the obligation to prevent a breach.
- ii) The court must be capable of enforcing such a relief or remedy.

#### **Illustrations:**

a) A, by putting up a wall, obstructed light and air of B ; B who had acquired such an easementary right to light and air may obtain a mandatory injunction not to build, and also to pull down so much of the wall which is causing obstruction.

b) A builds projecting the eaves over B' land. B may sue for a mandatory injunction.

c) A is a doctor of B. B had written a letter to A admitting his immoral connections. A threatens to publish. B may sue for a mandatory injunction.

#### **Exception :**

Mandatory injunction is not granted, when compensation is an adequate remedy.

#### **Ch. 4-5. Refusal of injunctions : Sn. 41.**

In the following circumstances, the court will not issue an injunction to the party to the dispute.

a) Injunction is not granted to stay judicial proceedings pending in other courts, at the time of the institution of the suit in which an injunction is prayed for. However, to prevent multiplicity of proceedings, an injunction may be granted

(Sns. 10 and 11 C.P.C. Res Sub Judice, Res Judicata).

b) Injunction is not granted to stay proceedings in a court not subordinate to the court in question.

c) Injunction is not granted to restrain persons from applying to Parliament or State Legislature.

d) It is not granted to interfere with the public duties of the Union or State Govt. or with foreign Govt. (Sovereign) functions.

e) It is not granted to prevent proceedings in any criminal matter.

f) It is not granted to prevent a Nuisance which is not reasonably clear (contingent nuisance).

g) It is not granted to prevent a breach of contract which is specifically un-enforceable.

h) It is not granted when other remedies equally powerful are available.

i) It is not granted to prevent a continuing breach.

j) It is not granted in circumstances which come under 'He who seeks equity must do equity' i.e., the plaintiff must go with clean hands. He himself should not be in the wrong. Add Ch. 5-1.

k) It is not granted when the plaintiff has no personal interest in the subject matter.

## CHAPTER -5

### EQUITY

#### Ch.5.1. 'He who wants equity, must do equity'

This rule is also stated as '**He who comes to court, should come with clean hands**'.

Sn. 41(i) of the Specific Relief Act provides that an injunction cannot be granted. When the conduct of the plaintiff or his agent is such as to disentitle him to the assistance of the court.

The court may refuse to grant an injunction when it finds that the plaintiff's actions were not fair and equitable. 'A' cannot obtain an injunction against B who to a rival dealer on the ground that he is infringing the trade mark rights.

In the 'Mexican Balm' case, one B was selling the Maxican Balm stating that it contained rare essences and medicinal qualities, but in reality it was a scented stuff. The description was dishonest. Hence the court refused to grant an injunction against B who was making and selling in the same name. If the plaintiff has made dishonest representations, he loses the assistance of the court. To assist him would amount to aiding or sanctioning an exclusive privilege.

The conduct of the plaintiff may be

i) inequitable

ii) dishonest or

iii) likely to cause loss' to the defendant

1) A and B were joint owners of a site. A built structures without B's permission. B knew but waited until the structures was almost complete, then sued A for an injunction. Held, there was unreasonable delay and the court refused to grant an injunction.

ii) A, B had two lands abutting each other. There was a well in B's land. The well dried up and fell into decay. A kept silent for over three years. Later he claimed that he had a right of way. Held, A had not come with clean hands. Hence, no injunction was granted.

iii) A was a partner of a firm having custody of all books of account of the firm. He refused access to his partner B. A sued for an injunction to restrain B from receiving the firms effects and collections. Court refused.

#### **Ch. 5-2. Injunction to perform negative agreements.**

A contract may contain affirmative agreements to do certain acts, and it may also contain negative agreement (expressed or implied) not to do certain acts

. In such a case, if the court is unable to compel specific performance of the affirmative agreement, then it may grant an injunction to perform to negative agreement. Of course, the plaintiff should not be at fault.

1) A sells to B the good will of his business for Rs.10,000/-without selling the business premises, he (A) undertakes not to compete in the same line of business in Calcutta for 2 years. After 3 months A carries on the same business in Calcutta.

**The court cannot send the customers of 'A' to B, but, it can prevent B from doing business in Calcutta by granting an injunction.**

2) **Lumley V. Wagner:** A under a contract, agreed to sing for 6 months at B's theatre (on fixed days), and also not to sing anywhere in public during this period. A, may ask the court for an injunction to restrain A form singing elsewhere for this period of 6 months. But, **the court-cannot issue an injunction to 'A' to sing for 6 months.**

THE END

# REFERENCE SECTION

## SELECTED SECTIONS

### Specific Relief Act 1963

#### CHAPTER I

#### RECOVERING POSSESSION OF PROPERTY

Sn **5. Recovery of specific immovable property.**- A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908 ).

**6. Suit by person dispossessed of immovable property.-**

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought-

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

**7. Recovery of specific movable property.**- A person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908 ). Explanation 1.- A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.- A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

**8. Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession.**- Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:-

(a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;

(b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Explanation.- Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (b) or clause (c) of this section, presume-

(a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;

(b) that it would be extremely difficult to ascertain the actual damage caused by its loss. .

## CONTRACTS WHICH CAN BE SPECIFICALLY ENFORCED

**10. Cases in which specific performance of contract enforceable.-** Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced-

(a) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non- performance would not afford adequate relief. Explanation.- Unless and until the contrary is proved, the court shall presume-

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:-

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff.

**11. Cases in which specific performance of contracts connected with trusts enforceable.-**

(1) Except as otherwise provided in this Act, specific performance of a contract may, in the discretion of the court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

(2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

**12. Specific performance of part of contract.-**

(1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either-

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party-

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), [pays or has paid] the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part. Explanation.- For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject- matter existing at the date of the contract has ceased to exist at the time of its performance.

### **13. Rights of purchaser or lessee against person with no title or imperfect title.**

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:-

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of

the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject- matter of the contract. y

### **14. Contracts not specifically enforceable.-**

(1) The following contracts cannot be specifically enforced, namely:--

(a) a contract for the non- performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940 ), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub- section (1), the court may enforce specific performance in the following cases:-

(a) **where the suit is for the enforcement of a contract,-**

(i) to execute a mortgage or furnish any other security for security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of

the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for,-

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm,

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land: Provided that the following conditions are fulfilled, namely:-

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non- performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

#### **PERSONS FOR OR AGAINST WHOM CONTRACTS MAY BE SPECIFICALLY ENFORCED**

**15.** Who may obtain specific performance.- Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto: Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest of his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

**16. Personal bars to relief.- Specific performance of a contract cannot be enforced in favour of a person-**

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on 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

(c) 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 which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. Explanation.- For the purposes of clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) **the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.**

### **17. Contract to sell or let property by one who has no title, not specifically enforceable.-**

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor-

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

18. Non- enforcement except with variation.- Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely:-

(a) where by fraud, mistake of fact or mis- representation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract;

(b) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce;

(c) where the parties have, subsequently to the execution of the contract, varied its terms.

19. Relief against parties and persons claiming under them by subsequent title.- Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the

company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

### **DISCRETION AND POWERS OF COURT**

**20.** Discretion as to decreeing specific performance.-

(1) 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; but 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.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance-

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.- Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Explanation 2.-

The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

**21. Power to award compensation in certain cases.-**

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872 ).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.- The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

**22. Power to grant relief for possession, partition, refund of earnest money, etc.-**

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908 ), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1[ made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub- section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub- section (1) shall be without prejudice to its powers to award compensation under section 21.

**23. Liquidation of damages not a bar to specific performance.-**

(1) A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

(2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

24. Bar of suit for compensation for breach after dismissal of suit for specific performance.- The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

**RECTIFICATION OF INSTRUMENTS**

**26. When instrument may be rectified.-**

(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956 ), applies) does not express their real intention, then-

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

#### **CHAPTER IV RESCISSION OF CONTRACTS**

**27.** When rescission may be adjudged or refused.-

(1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely:-

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

(2) Notwithstanding anything contained in sub- section (1), the court may refuse to rescind the contract-

(a) where the plaintiff has expressly or impliedly ratified the contract; or

(b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or

(c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or

(d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract. Explanation.- In this section "contract", in relation to the territories to which the Transfer of Property Act, 1882 (4 of 1882 ), does not extend, means a contract in writing.

**28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-**

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub- section (1), the court-

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub- section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:-

- (a) the execution of a proper conveyance or lease by the vendor or lessor;
- (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.
- (4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.
- (5) The costs of any proceedings under this section shall be in the discretion of the court.
- 29. Alternative prayer for rescission in suit for specific performance.- A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.
- 30. Court may require parties rescinding to do equity.- On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.

#### **CHAPTER V CANCELLATION OF INSTRUMENTS**

- 31. When cancellation may be ordered.-

  - (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.
  - (2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908 ), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.
- 32. What instruments may be partially cancelled.- Where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.
- 33. Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable.-

  - (1) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require.
  - (2) Where a defendant successfully resists any suit on the ground-

    - (a) that the instrument sought to be enforced against him in the suit is voidable, the court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;
    - (b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872 ), the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.

#### **CHAPTER VI DECLARATORY DECREES**

- 34. Discretion of court as to declaration of status or right.- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make

therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation.- A trustee of property is a " person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

35. Effect of declaration.- A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

#### **CHAPTER VII INJUNCTIONS GENERALLY**

36. Preventive relief how granted.- Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

37. Temporary and perpetual injunctions.-

(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908 ).

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff. CHAP

#### **CHAPTER VIII PERPETUAL INJUNCTIONS**

38. Perpetual injunction when granted.-

(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff' s right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

39. Mandatory injunctions.- When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

#### **40. Damages in lieu of, or in addition to, injunction.-**

(1) The plaintiff in a suit for perpetual injunction under section 38, or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.

(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint: Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

(3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

**41. Injunction when refused.-**

An injunction cannot be granted-

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.

**42. Injunction to perform negative agreement.-** Notwithstanding anything contained in clause (e) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a **negative agreement**, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

**THE END**