

## Amendment to Section 14

### Original Act

### Amendment Bill

14. (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 qualification 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 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;

14. The following contracts cannot be specifically enforced, namely:—

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

**(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;**

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

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

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(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.

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 (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;  
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Amendment to Section 16:

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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

16. Personal bars to relief. — Specific performance of a contract cannot be enforced in favour of a person—  
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**(a) who has obtained substituted performance of contract under section 20; 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

willing to perform the essential terms of the contract which are to be performed by him, other than terms of 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.

(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 of the performance of which has been prevented or waived by the defendant.

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- (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;
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### Amendment to Section 10

#### Original Act

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 in 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

#### Amendment Bill

10. **The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of Section 11, section 14 and section 16.** ~~Cases in which specific performance of contract enforceable.—~~

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- ~~(a) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or~~
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~~Explanation.— Unless and until the contrary is proved, the court shall presume—~~

- ~~(i) that the breach of a contract to transfer immovable property~~

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.

~~cannot be adequately relieved by compensation in money; and 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.~~

### Amendment to Section 20

#### Original Act

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; or

(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

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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.

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20. (1) Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872, and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.

(2) No substituted performance of contract under sub-section (1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency:

Provided that the party who suffers such breach shall not be entitled to recover the

expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency.

(3) Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under sub-section (1), he shall not be entitled to claim relief of specific performance against the party in breach.

(4) Nothing in this section shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.