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Specific Relief Act, 1877

1. Nature and Scope of the Act The Specific Relief Act, 1877 provides remedies to enforce individual civil rights where compensation in money is not an adequate relief. It is based on equitable principles and supplements the law of contracts and torts. The Act does not create new rights but only provides remedies for enforcing existing rights. It is divided into two parts: Preventive Relief (injunctions) and Specific Relief proper (recovery of property, specific performance, rectification, rescission, cancellation, declaration).

2. Preventive vs Substantive Relief Substantive relief compels a party to do or refrain from a specific act — such as specific performance, recovery of possession, or cancellation. Preventive relief, granted through injunctions, restrains a party from doing a wrongful act. The Act treats these separately: Chapters I to VI deal with substantive relief, while Chapter VII deals exclusively with injunctions as preventive relief.

3. Recovery of Possession of Immovable Property (Section 9) Section 9 allows a person dispossessed of immovable property without his consent, otherwise than in due course of law, to recover possession by filing a suit within six months of dispossession. Title is irrelevant in such suits — only prior possession and wrongful dispossession need be proved. No suit lies against the government under this section, and no appeal or review lies from the decree.

4. Nature of Section 9 Suit A Section 9 suit is summary in nature, meant to provide quick relief against forcible or wrongful dispossession, without going into complicated questions of title. It protects possession as a fact, discouraging people from taking law into their own hands. Even a trespasser in settled possession can sue a true owner who dispossesses him otherwise than through due legal process.

5. Limitation for Section 9 Suit The limitation period for filing a suit under Section 9 is six months from the date of dispossession. If this period lapses, the aggrieved person must seek recovery of possession on the basis of title through an ordinary suit, which involves a full trial on ownership and is governed by the general law of limitation (12 years).

6. Recovery of Possession of Movable Property (Section 10) Section 10 entitles a person entitled to possession of specific movable property to recover it in the manner prescribed by the Code of Civil Procedure. This applies where the property has a special/unique value that cannot be adequately compensated in money, distinguishing it from an ordinary suit for damages for wrongful detention of goods.

7. Liability of Person in Possession Not as Owner (Section 11) Section 11 allows a person entitled to specific movable property to compel a person, holding it without owning it, to deliver it up. This covers situations like agents, bailees, or trustees who wrongfully retain property that does not belong to them, ensuring the true owner or beneficiary can recover it specifically rather than settle for damages.

8. Specific Performance of Contracts (Section 12) Section 12 lays down that specific performance of a contract is in the discretion of the court, and no party can claim it as a matter of right. It may be granted in cases where there is no standard for ascertaining actual damage from non-performance, or where monetary compensation would not afford adequate relief — most commonly in contracts relating to immovable property.

9. Contracts Specifically Enforceable Contracts relating to immovable property are presumed specifically enforceable because land is considered to have unique value not compensable in damages. Contracts for movable property are enforceable only where the property is rare, has special/sentimental value, or the breaching party is a trustee. Contracts requiring continuous acts, personal skill, or dependent on the volition of parties are generally excluded.

10. Contracts Not Specifically Enforceable (Section 21) Section 21 bars specific performance of contracts where monetary compensation is adequate; contracts that are so uncertain that the court cannot decide what to enforce; contracts terminable by their nature (like revocable agencies); contracts involving personal service or skill; and contracts whose performance the court cannot supervise, such as continuous construction or repair obligations.

11. Discretion of the Court (Section 22) The relief of specific performance is discretionary, though the discretion must be exercised on sound judicial principles and not arbitrarily. Courts may refuse specific performance even if the contract is otherwise valid — for instance, where the contract, though not voidable, would be inequitable to enforce due to changed circumstances, unfairness, or hardship not foreseen by the parties at the time of contracting.

12. Who May Obtain Specific Performance (Section 23) Any party to the contract, the representative-in-interest of a deceased party, a beneficiary under a settlement made in performance of a contract, and in certain marriage-settlement cases, a party who has performed his obligations or is ready and willing to perform them, may sue for specific performance. Readiness and willingness is a continuing obligation that must be proved throughout the litigation.

13. Who Cannot Obtain Specific Performance (Section 24) Specific performance cannot be enforced in favor of a person who has become incapable of performing his part, or who has violated an essential term, or who has acted fraudulently or misrepresented in relation to the contract, or who has already obtained substantial relief for breach of the same contract in another proceeding.

14. Specific Performance with Variation (Section 15) Where a party seeks specific performance and it appears that a variation exists between the terms of the written contract and what was actually agreed, the court may direct performance of the contract as varied, provided the plaintiff has already sought rectification or the variation does not prejudice the defendant, ensuring equity between the parties.

15. Part Performance of a Contract (Sections 16–18) Where a party is unable to perform the whole of his part of a contract, but the part which cannot be performed is small compared to the whole and admits of compensation in money, the court may direct specific performance of the remaining part with compensation for the deficiency. If the unperformed part is substantial, specific performance may be refused altogether.

16. Contracts Connected With Other Contracts (Section 19) Where a contract comprises distinct matters, some of which can be specifically performed and others cannot, the court may direct specific performance of the enforceable part, provided the parts are severable and the plaintiff relinquishes claim to the unenforceable part, along with any abatement of consideration if applicable.

17. Mutual Contracts (Section 20) Where a contract is not binding on one of the parties due to lack of mutuality (e.g., a minor's contract), it cannot be specifically enforced against the other party either, since specific performance requires mutuality of obligation and mutuality of remedy between contracting parties.

18. Rescission of Contracts (Section 35) Rescission means cancelling or setting aside a contract, restoring parties to their original position. Under Section 35, a person interested in a contract may sue to have it rescinded, and such rescission may be adjudged where the contract is voidable or terminable by the plaintiff, or where it is unlawful for reasons not apparent on its face and the defendant is more to blame.

19. When Court May Refuse Rescission (Section 36) The court may refuse rescission where the plaintiff has expressly or impliedly ratified the contract; where circumstances have changed such that the parties cannot be restored to their original position; where third-party rights have intervened for value without notice; or where only part of the contract sought to be rescinded is capable of rescission.

20. Alternative Prayer for Rescission (Section 34) When a plaintiff sues for specific performance of a contract and it becomes impossible to grant, the court may, at the plaintiff's request or otherwise, grant rescission instead, along with any compensation to which the defendant may be entitled for the loss he sustains due to the non-performance.

21. Rectification of Instruments (Section 31) Rectification allows a written instrument to be corrected when, due to fraud or mutual mistake, it does not express the real intention of the parties. Either party (or their representative-in-interest) may sue for rectification so that the instrument reflects the true agreement, and once rectified, it is enforced as rectified.

22. Rescission of Rectified Instrument A party who has obtained rectification of an instrument may, in the same suit, also seek to have it specifically performed as rectified, or may seek rescission if it is inequitable to enforce it even after rectification. This ensures the plaintiff is not compelled to enforce a contract that remains unfair despite correction.

23. Cancellation of Instruments (Section 39) Cancellation applies to written instruments that are void or voidable, and which, if left outstanding, may cause serious injury to a person who has reasonable apprehension that they could be used against him. Such a person may sue to have the instrument adjudged void and delivered up for cancellation, even without proof of actual harm yet occurring.

24. Who May Sue for Cancellation Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that it may cause him serious injury if left outstanding, may institute a suit for cancellation. This protects a party from future litigation risk arising out of a fraudulent, forged, or legally defective document.

25. Partial Cancellation (Section 40) Where an instrument can be severed and only part of it is void or voidable, the court may cancel that part alone, allowing the remainder to stand, provided such partial cancellation does not prejudice the rights of the person seeking relief or unfairly affect the operative remaining terms.

26. Declaratory Decrees (Section 42) Section 42 allows a person entitled to any legal character or right to property to seek a declaration of that right, even without seeking any

further/consequential relief. Courts have discretion whether to make such a declaration, and it is binding on parties and persons claiming through them.

27. Bar to Declaratory Relief The proviso to Section 42 states that no court shall make a declaration where the plaintiff, being able to seek further relief beyond a mere declaration, omits to do so. This prevents multiplicity of suits by requiring a plaintiff to claim consequential relief (like possession) along with the declaration where available.

28. Effect of Declaration (Section 43) A declaration made under Section 42 is binding only on the parties to the suit, persons claiming through them, and, where one of the parties is trustee, on the beneficiaries he represents. It does not create new rights but merely declares existing legal rights or character.

29. Preventive Relief Generally (Section 52) Preventive relief is granted through injunctions, at the discretion of the court, to prevent a party from committing a breach of obligation existing in favor of the applicant, whether express or implied. Injunctions may be temporary or perpetual, and are governed by principles of equity, justice, and good conscience.

30. Temporary and Perpetual Injunctions (Section 53) Temporary injunctions restrain a party for a specified time or until further court orders and may be granted at any stage of a suit, regulated by the Code of Civil Procedure (Order 39). Perpetual injunctions, by contrast, are granted only by a final decree after full hearing on merits, permanently restraining the defendant from an act inconsistent with the plaintiff's rights.

31. When Perpetual Injunction Granted (Section 54) A perpetual injunction may be granted to prevent breach of an obligation existing in favor of the applicant, whether expressly or by implication, including cases involving trust property, invasion of a right to enjoyment of property, breach of contract enforceable against the defendant, wrongful interference, or where the defendant is a trustee of property for the applicant.

32. Mandatory Injunctions (Section 55) Where it is necessary to compel performance of certain acts to prevent breach of an obligation, the court may grant a mandatory injunction, requiring the defendant to actively do something (such as removing an obstruction) rather than merely restraining him from acting, guided by principles applicable to specific performance.

33. Cases Where Injunction Cannot Be Granted (Section 56) Section 56 lists exceptions where an injunction cannot be granted: to restrain judicial proceedings, proceedings in criminal matters, to prevent breach of a contract not specifically enforceable, to prevent a continuing breach where the applicant acquiesced, where equally efficacious relief is available by other means, and where the conduct of the applicant disentitles him to the court's assistance.

34. Injunction to Perform Negative Agreement (Section 57) Where a contract has both affirmative and negative terms and the affirmative part cannot be specifically enforced, the court may still grant an injunction to restrain breach of the negative covenant, provided the plaintiff has performed his own obligations under the contract, even though it cannot compel the positive performance.

35. Damages in Lieu of or in Addition to Injunction The court may award damages either instead of or in addition to an injunction, if the plaintiff claims such damages in the plaint. This

ensures that where an injunction alone would not fully compensate the wronged party, monetary relief can be combined with the preventive remedy.

36. Interim/Temporary Injunction under CPC Order 39 Though procedurally under the CPC, temporary injunctions relate closely to Section 53 of the Act. A plaintiff must show a prima facie case, balance of convenience in his favor, and that he will suffer irreparable harm if the injunction is refused. These three conditions must coexist for grant of interim relief.

37. Specific Relief vs Damages Specific relief compels actual performance of an obligation or restrains its breach, whereas damages compensate the injured party financially. Courts prefer specific relief where the subject matter (e.g., land, unique goods) cannot be adequately substituted by money, and damages where the loss is easily quantifiable and compensable.

38. Declaration vs Injunction A declaration merely pronounces upon existing legal rights without ordering any act, while an injunction actively restrains (or compels) conduct. A declaratory suit protects a status or title; an injunction protects against actual or apprehended infringement of that right through positive judicial command.

39. Specific Performance vs Rescission Specific performance seeks to enforce a contract as agreed, whereas rescission seeks to set it aside and restore the parties to their pre-contract position. They can be pleaded as alternative reliefs — where specific performance is refused or becomes impossible, courts may grant rescission with appropriate compensation instead.

40. Readiness and Willingness to Perform A plaintiff seeking specific performance of a contract must plead and prove that he has performed, or has always been ready and willing to perform, the essential terms of the contract on his part. Failure to establish continuous readiness and willingness throughout the proceedings is fatal to the suit.

41. Burden of Proof in Specific Performance Suits The burden lies on the plaintiff to prove the existence of a valid, concluded contract, his own readiness and willingness to perform, and that the contract falls within the class of contracts specifically enforceable under the Act. Mere execution of an agreement to sell does not automatically entitle a party to specific performance.

42. Equitable Nature of the Act The remedies under the Specific Relief Act are equitable in nature and are governed by principles like "he who seeks equity must do equity" and "delay defeats equity." Courts weigh conduct, fairness, hardship, and public interest before granting discretionary relief such as specific performance or injunction.

43. Limitation for Specific Performance Suits Under the Limitation Act, a suit for specific performance of a contract must ordinarily be filed within three years from the date fixed for performance, or if no date is fixed, from the date the plaintiff has notice that performance is refused. Delay beyond this bars the remedy, though equitable considerations may sometimes be pleaded.

44. Relationship with the Contract Act The Specific Relief Act supplements the Contract Act, 1872. While the Contract Act deals with formation, validity, and breach of contracts and provides for damages as the ordinary remedy, the Specific Relief Act provides the extraordinary remedy of specific performance where damages would be inadequate.

45. Relationship with Transfer of Property Act The Transfer of Property Act, 1882 governs substantive rights relating to transfer of immovable property, including part performance under Section 53-A, while the Specific Relief Act provides the procedural/remedial mechanism to enforce agreements to transfer such property through specific performance suits.

46. Injunction Against Government/Public Officers Courts are generally cautious in granting injunctions against government functionaries acting in their official capacity, particularly regarding sovereign or policy functions, though injunctions can be granted against public officers acting without lawful authority or in violation of statutory duty, subject to Section 56 restrictions.

47. Suit for Possession Based on Title vs Section 9 A suit under Section 9 is based purely on possession, decided summarily without inquiry into title, while an ordinary suit for possession based on title requires the plaintiff to prove ownership and is subject to the general limitation period. A decree under Section 9 does not bar a subsequent title suit.

48. Compensation in Addition to Specific Performance Section 19 empowers the court, in a suit for specific performance, to award compensation for the breach in addition to enforcing performance, where the plaintiff has claimed such compensation in the plaint or the court considers it necessary to do complete justice between the parties.

49. Injunction to Restrain Multiplicity of Suits Courts may grant injunctions to prevent a person from instituting multiple suits on the same cause of action or from re-litigating settled issues, protecting the doctrine of res judicata and preventing abuse of the judicial process through vexatious litigation.

50. Repeal and Present Status in Pakistan The Specific Relief Act, 1877 continues to be in force in Pakistan, having been retained after independence and applied uniformly, including in Sindh, subject to amendments made from time to time by provincial and federal legislatures. It remains the primary statute governing equitable remedies alongside the CPC and the Contract Act.