

**Bill No. 248 of 2017**

THE SPECIFIC RELIEF (AMENDMENT) BILL, 2017

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BILL

*further to amend the Specific Relief Act, 1963*

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Specific Relief (Amendment) Act, 2017.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

47 of 1963.

2. In section 6 of the Specific Relief Act, 1963 (hereinafter referred to as the principal Act), in sub-section (1), after the words “he or any person”, the words “through whom he has been in possession or any person” shall be inserted.

Amendment of section 6.

3. For section 10 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 10.

“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.”.

Specific performance in respect of contracts.

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Amendment of section 11.	<b>4.</b> In section 11 of the principal Act, in sub-section (I), for the words “contract may, in the discretion of the court”, the words “contract shall” shall be substituted.	5	
Substitution of new sections for section 14.	<b>5.</b> For section 14 of the principal Act, the following sections shall be substituted, namely:—		
Contracts not specifically enforceable.	“14. The following contracts cannot be specifically enforced, namely:—	5	
	(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 is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and	10	
	(d) a contract which is in its nature determinable.		
Power of court to engage experts.	14A. (I) Without prejudice to the generality of the provisions contained in the Code of Civil Procedure, 1908, in any suit under this Act, where the court considers it necessary to get expert opinion to assist it on any specific issue involved in the suit, it may engage one or more experts and direct to report to it on such issue and may secure attendance of the expert for providing evidence, including production of documents on the issue.	15	5 of 1908.
	(2) The court may require or direct any person to give relevant information to the expert or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.	20	
	(3) The opinion or report given by the expert shall form part of the record of the suit; and the court, or with the permission of the court any of the parties to the suit, may examine the expert personally in open court on any of the matters referred to him or mentioned in his opinion or report, or as to his opinion or report, or as to the manner in which he has made the inspection.	25	
	(4) The expert shall be entitled to such fee, cost or expense as the court may fix, which shall be payable by the parties in such proportion, and at such time, as the court may direct.”	30	
Amendment of section 15.	<b>6.</b> In section 15 of the principal Act, after clause (f), the following clause shall be inserted, namely:—		
	“(fa) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.”	35	
Amendment of section 16.	<b>7.</b> In section 16 of the principal Act,—		
	(i) for clause (a), the following clause shall be substituted, namely:—		
	“(a) who has obtained substituted performance of contract under section 20; or”;		
	(ii) in clause (c),—	40	
	(I) for the words “who fails to aver and prove”, the words “who fails to prove” shall be substituted;		
	(II) in the <i>Explanation</i> , in clause (ii), for the words “must aver”, the words “must prove” shall be substituted.		

8. In section 19 of the principal Act, after clause (c), the following clause shall be inserted, namely:— Amendment of section 19.

5 “(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.”.

9. For the sub-heading “*Discretion and powers of Court*” occurring after section 19, the sub-heading “*Substituted performance of contracts, etc.*” shall be substituted. Amendment of sub-heading under Chapter II.

10. For section 20 of the principal Act, the following sections shall be substituted namely:— Substitution of new sections for section 20.

10 “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. Substituted performance of contract.

9 of 1872.

15 (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:

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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.

25 (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.

30 20A. (1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project. Special provisions for contract relating to infrastructure project.

35 *Explanation.*—For the purposes of the section, section 20B and clause (ha) of section 41, the expression “infrastructure clause project” means the Category of projects and infrastructure Sub-Section specified in the Schedule.

40 (2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.

45 (3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

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Special Courts.

20B. The State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette, one or more Civil Courts as Special Courts, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects.

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Expeditious disposal of suits.

20C. Notwithstanding anything contained in the Code of Civil Procedure, 1908, a suit filed under the provisions of this Act shall be disposed of by the court within a period of twelve months from the date of service of summons to the defendant:

5 of 1908.

Provided that the said period may be extended for a further period not exceeding six months in aggregate after recording reasons in writing for such extension by the court.”.

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Amendment of section 21.

11. In section 21 of the principal Act, in sub-section (I), for the words “, either in addition to, or in substitution of,” the words “in addition to” shall be substituted.

Amendment of section 25.

12. In section 25 of the principal Act, for the words and figures “the Arbitration Act, 1940”, the words and figures “the Arbitration and Conciliation Act, 1996” shall be substituted.

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10 of 1940.  
26 of 1996.

Amendment of section 41.

13. In section 41 of the principal Act, after clause (h), the following clause shall be inserted, namely:—

“(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.”

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Insertion of Schedule.

14. After Part III of the principal Act, the following Schedule shall be inserted, namely:—

## ‘THE SCHEDULE

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[See sections 20A and 41 (ha)]

**Category of projects and Infrastructure Sub-Sectors**

Sl. No.	Category	Infrastructure Sub-Sectors	
1	2	3	
1.	Transport	(a) Road and bridges	30
		(b) Ports (including Capital Dredging)	
		(c) Shipyards (including a floating or land-based facility with the essential features of waterfront, turning basin, berthing and docking facility, slipways or ship lifts, and which is self sufficient for carrying on shipbuilding/repair/breaking activities)	35
		(d) Inland Waterways	
		(e) Airports	
		(f) Railway Track, tunnels, viaducts, bridges, terminal infrastructure including stations and adjoining commercial infrastructure	40
		(g) Urban Public Transport (except rolling stock in case of urban road transport)	

1	2	3
5	2. Energy	<ul style="list-style-type: none"> <li>(a) Electricity Generation</li> <li>(b) Electricity Transmission</li> <li>(c) Electricity Distribution</li> <li>(d) Oil pipelines</li> <li>(e) Oil/Gas/Liquefied Natural Gas (LNG) storage facility (including strategic storage of crude oil)</li> <li>(f) Gas pipelines (including city gas distribution network)</li> </ul>
10	3. Water and Sanitation	<ul style="list-style-type: none"> <li>(a) Solid Waste Management</li> <li>(b) Water supply pipelines</li> <li>(c) Water treatment plants</li> <li>(d) Sewage collection, treatment and disposal system</li> <li>(e) Irrigation (dams, channels, embankments, <i>etc.</i>)</li> <li>(f) Storm Water Drainage System</li> <li>(g) Slurry pipelines</li> </ul>
15	4. Communication	<ul style="list-style-type: none"> <li>(a) Telecommunication (Fixed network including optic fibre/wire/cable networks which provide broadband/internet)</li> <li>(b) Telecommunication towers</li> <li>(c) Telecommunications and Telecom Services</li> </ul>
20	5. Social and Commercial Infrastructure	<ul style="list-style-type: none"> <li>(a) Education Institutions (capital stock)</li> <li>(b) Sports infrastructure (including provision of Sports Stadia and Infrastructure for Academies for Training/ Research in Sports and Sports-relating activities)</li> <li>(c) Hospitals (capital stock including Medical Colleges, Para Medical Training Institutes and Diagnostic Centres)</li> <li>(d) Tourism infrastructure <i>viz.</i> (i) three-star or higher category classified hotels located outside cities with population of more than one million; (ii) ropeways and cable cars</li> <li>(e) Common infrastructure for industrial parks and other parks with industrial activity such as food parks, textile parks, Special Economic Zones, tourism facilities and agriculture markets</li> <li>(f) Post-harvest storage infrastructure for agriculture and horticulture produce including cold storage</li> <li>(g) Terminal markets</li> <li>(h) Soil-testing laboratories</li> <li>(i) Cold chain (including cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat)</li> </ul>
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1	2	3
		(j) Affordable Housing (including a housing project using at least 50% of the Floor Area Ratio (FAR)/ Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters 5
		<i>Explanation.</i> —For the purposes of this sub-clause, the term “carpet area” shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).'. 10

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## STATEMENT OF OBJECTS AND REASONS

The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief. It contains provisions, *inter alia*, specific performance of contracts, contracts not specifically enforceable, parties who may obtain and against whom specific performance may be obtained, etc. It also confers wide discretionary powers upon the courts to decree specific performance and to refuse injunction, etc. As a result of wide discretionary powers, the courts in majority of cases award damages as a general rule and grant specific performance as an exception.

2. The tremendous economic development since the enactment of the Act have brought in enormous commercial activities in India including foreign direct investments, public private partnerships, public utilities infrastructure developments, etc.; which have prompted extensive reforms in the related laws to facilitate enforcement of contracts, settlement of disputes in speedy manner. It has been felt that the Act is not in tune with the rapid economic growth happening in our country and the expansion of infrastructure activities that are needed for the overall development of the country.

3. In view of the above, it is proposed to do away with the wider discretion of courts to grant specific performance and to make specific performance of contract a general rule than exception subject to certain limited grounds. Further, it is proposed to provide for substituted performance of contracts, where a contract is broken, the party who suffers would be entitled to get the contract performed by a third party or by his own agency and to recover expenses and costs, including compensation from the party who failed to perform his part of contract. This would be an alternative remedy at the option of the party who suffers the broken contract. It is also proposed to enable the courts to engage experts on specific issues and to secure their attendance, etc.

4. A new section 20A is proposed for infrastructure project contracts which provides that the court shall not grant injunction in any suit, where it appears to it that granting injunction would cause hindrance or delay in the continuance or completion of the infrastructure project. The Department of Economic Affairs is the nodal agency for specifying various categories of projects and infrastructure sub-sectors, which is provided as Schedule to the Bill and it is proposed that the said Department may amend the Schedule relating to any such category or sub-sectors.

5. Special courts are proposed to be designated to try suits in respect of contracts relating to infrastructure projects and to dispose of such suits within a period of twelve months from the date of service of summons to the defendant and also to extend the said period for another six months in aggregate, after recordings reasons therefor.

The Bill seeks to achieve the above objectives.

NEW DELHI;

RAVI SHANKAR PRASAD.

*The 15th December, 2017.*

ANNEXURE

EXTRACTS FROM THE SPECIFIC RELIEF ACT, 1963

(47 OF 1963)

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Suit by person  
dispossessed of  
immovable  
property.

**6.** (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.

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*Contracts which can be specifically enforced*

Cases in which  
specific  
performance of  
contract  
enforceable.

**10.** 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 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.

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

**11.** (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.

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*Contracts, which cannot be specifically enforced*

Contracts not  
specifically  
enforceable.

**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, 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. 10 of 1940.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of subsection (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;

(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.** Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

Who may obtain specific performance.

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

\* \* \* \* \*

**16.** Specific performance of a contract cannot be enforced in favour of a person—

Personal bars to relief.

(a) who would not be entitled to recover compensation for its breach; 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 of the performance of which has been prevented or waived by the defendant.

*Explanation.*— For the purposes of clause (c),—

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

\* \* \* \* \*

**19.** Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

Relief against parties and persons claiming under them by subsequent title.

\* \* \* \* \*

(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;

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*Discretion and powers of court*

Discretion as to decreeing specific performance.

**20.** (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 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.

Power to award compensation in certain cases.

**21.** (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.

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Application of preceding sections, to certain awards and testamentary directions to execute settlements.

**25.** The provisions of this Chapter as to contracts shall apply to awards to which the Arbitration Act, 1940, does not apply and to directions in a will or codicil to execute a particular settlement.

10 of 1940.

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Injunction when refused.

**41.** An injunction cannot be granted—

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(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

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LOK SABHA

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BILL

further to amend the Specific Relief Act, 1963

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*(Shri Ravi Shankar Prasad, Minister of Law and Justice)*