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PRACTICE NOTE — CIVIL LAW (REMEDIES)

The Specific Relief Act, 1963 — Key Points

Recovery of possession, specific performance of contracts, rectification/rescission/cancellation of instruments, declaratory decrees and injunctions — as substantially amended in 2018

STRUCTURE

3 Parts, 8 Chapters, 44 Sections

IN FORCE FROM

1 March 1964; 2018 Amendment w.e.f. 1 October 2018

KEY 2018 CHANGE

Specific performance now the rule, not a discretionary remedy (S.10)

POSSESSION SUITS

S.6 (possessory) — within 6 months; S.5 (title) — 12-year limitation

SUBSTITUTED PERFORMANCE

30-day notice required before third-party performance (S.20)

SPECIAL COURTS

Infrastructure contracts — suit to be disposed of in 12 months (+6) (S. 20B)

RECOVERING POSSESSION OF PROPERTY — CHAPTER I (S.5–S.8)

S.5 — SUIT BASED ON TITLE

- A person entitled to possession of specific immovable property may recover it in the manner provided by the CPC — a regular suit for ejectment on the strength of title.
- Whoever proves the **better title** is entitled to possession; governed by the ordinary 12-year limitation for suits for possession based on title.

S.6 — SUMMARY SUIT ON POSSESSION

- A person dispossessed otherwise than in due course of law may recover possession through a summary suit — **no proof of title required**, only prior settled possession and unlawful dispossession.
- Must be filed within **6 months** of dispossession; no appeal or review lies from the decree (S.6(3)) — title question is left open for a regular S.5 suit.

S.7 — RECOVERY OF SPECIFIC MOVABLE PROPERTY

- A person entitled to possession of specific movable property may recover it in the manner provided by the CPC, on proof of a special/general property interest.

S.8 — LIABILITY OF PERSON IN TEMPORARY CUSTODY

- A person having temporary/limited custody of an article (not as owner) may be compelled to deliver it to the person entitled to immediate possession, in specified circumstances (agent, trustee, etc.).

SPECIFIC PERFORMANCE OF CONTRACTS — CHAPTER II (S.10–S.25), AS AMENDED 2018

S.10 — WHEN ENFORCED

- Post-2018, specific performance of a contract **shall** be enforced by the court, subject only to S.11(2) (trust-related contracts), S.14 (non-enforceable contracts), and S.16 (personal bars) — the earlier wide judicial discretion and "inadequacy of damages" test are removed.

S.14 — CONTRACTS NOT SPECIFICALLY ENFORCEABLE

- Where the plaintiff has already obtained substituted performance under S.20 for the same breach.
- Contracts involving a continuous duty the court cannot supervise.
- Contracts so dependent on personal qualifications of a party that the court cannot enforce specific performance.
- Contracts that are, by their nature, determinable (terminable at will).

PROCESS CHART — SUIT FOR SPECIFIC PERFORMANCE

1

Breach of Contract (Cause of Action)

The other party fails or refuses to perform an enforceable obligation — e.g. a vendor refusing to execute a sale deed despite full consideration and a valid agreement to sell.

2

Readiness & Willingness

S.16(c)

Plaintiff must plead and prove **continuous readiness and willingness** to perform his part of the contract from the date of the agreement up to the hearing — pleaded specifically, not as a bare assertion; a critical, frequently contested issue.

3

Filing of Suit

S.15, S.19

Filed by any party to the contract, their representative in interest, or specified third parties under S.15 (e.g. beneficiary of a settlement, reversioner, amalgamated company). Enforceable against the other contracting party and specified categories of successors/transferees under S.19 (not a bona fide transferee for value without notice).

4

Court Examines Bars

S.11(2), S.14, S.16

Court checks: is it a trust-related contract inconsistent with the trust (S.11(2))? Is it a S.14 non-enforceable contract? Has the plaintiff's own conduct/default disentitled relief, or already elected substituted performance (S.16)?

5

Compensation — Addition or Substitution

S.21

Court may award compensation for breach **in addition to** specific performance (e.g. for delay), or, where specific performance is refused, **in substitution** of it — provided compensation is claimed in the plaint (or added by amendment).

6

Decree

S.22

Decree of specific performance granted or refused. Court may also grant possession, partition and separate possession, or refund of earnest money/part-payment as part of the same decree, if specifically prayed for.

7

Appeal

Limitation Act, 1963

Appeal against the decree lies as in ordinary civil suits — 30 days to the first appellate court, 90 days where the appeal lies to a High Court from an original decree.

Alternative Route — Substituted Performance (S.20)

Instead of suing for specific performance, the aggrieved party may get the contract performed by a third party or its own agency, after giving **30 days' written notice** calling on the party in breach to perform. The costs and expenses so incurred (including incidental/consequential costs) are recoverable from the party in breach. **Election is final** — once substituted performance is availed for a breach, specific performance cannot also be sought for that same breach (S.20(4)). Not available where the contract is one the court would not specifically enforce.

RECTIFICATION, RESCISSION & CANCELLATION OF INSTRUMENTS

REMEDY	GROUND	WHO MAY SUE	SECTION
Rectification	Instrument fails to express real intention due to fraud or mutual mistake (not unilateral)	Either party or representative in interest; may also be raised as a defence	S.26
Rescission	Contract is voidable/terminable by plaintiff; or unlawful for reasons not apparent on its face and defendant more to blame	Any person interested in the contract, as a party or otherwise affected by it	S.27–S.30
Cancellation	A written instrument is void or voidable against the plaintiff and its continued existence may cause serious injury/apprehension of injury	Person against whom the instrument is void/voidable	S.31–S.33

Rescission is an **equitable, discretionary** remedy — court may refuse it where the plaintiff has expressly/impliedly ratified the contract, or where third parties have acquired rights in good faith for value during the interim, or where only part of the contract is sought to be rescinded and it cannot be severed.

DECLARATORY DECREES — S.34 & S.35

SECTION 34 — DISCRETION TO DECLARE

- A person entitled to any legal character, or right as to property, may sue for a declaration and the court **may, in its discretion**, make the declaration.
- Proviso:** where the plaintiff is able to seek further/consequential relief beyond a mere declaration but omits to do so, the court shall not grant the declaration alone — a bare declaratory suit is not maintainable if further relief is available and not claimed.

SECTION 35 — EFFECT OF DECLARATION

- A declaration under S.34 is binding only on the parties to the suit, persons claiming through them, and (where a trustee sues/is sued) on the beneficiaries — it operates **in personam**, not in rem, i.e. it does not bind the whole world.

INJUNCTIONS — GENERAL SCHEME (CHAPTERS VII–VIII)

TEMPORARY VS. PERPETUAL (S.36–S.37)

- **Temporary injunctions** continue until a specified time or further court order — granted at any stage of a suit, governed by Order XXXIX, CPC (not by this Act).
- **Perpetual injunctions** can only be granted by a decree made at the hearing, on the merits of the suit, finally restraining the defendant.

WHEN PERPETUAL INJUNCTION GRANTED (S.38)

- To prevent breach of an obligation existing in the plaintiff's favour, whether express or implied.
- Where the defendant invades/threatens to invade the plaintiff's right to, or enjoyment of, property, in specified circumstances (trustee relationship, no standard for ascertaining actual damage, injury cannot be adequately compensated in money, or to avoid multiplicity of judicial proceedings).

MANDATORY INJUNCTIONS, DAMAGES & WHEN REFUSED

MANDATORY INJUNCTIONS — S.39

- Where necessary to compel performance of a positive act, to prevent the breach of an obligation, the court may grant an injunction to compel performance of the necessary acts.
- Commonly used to compel removal of illegal construction, restoration of altered structures, etc.

DAMAGES IN ADDITION/SUBSTITUTION — S.40

- Plaintiff seeking a perpetual/mandatory injunction may also claim damages, either in addition to or in substitution for the injunction — must be specifically claimed in the plaint (or added by amendment).

WHEN INJUNCTION IS REFUSED — S.41 (KEY CLAUSES)

PROCEDURAL BARS

- To restrain a person from prosecuting a judicial proceeding already pending at the suit's institution, unless necessary to prevent multiplicity.
- To restrain proceedings in a court not subordinate to the one from which the injunction is sought.
- To restrain a person from applying to any legislative body, or from instituting/prosecuting proceedings in a criminal matter.

SUBSTANTIVE BARS

- To prevent breach of a contract the performance of which would not itself be specifically enforced.
- Where equally efficacious relief can be obtained by other usual mode of proceeding, except in breach of trust.
- Where the plaintiff's conduct/acquiescence disentitles them to the assistance of the court, or where they have no personal interest in the matter.

PRACTICE NOTES

Election Between S.10 and S.20 Is Final

Advise clients in writing before opting for substituted performance — once availed, specific performance for that breach is permanently barred (S. 20(4)); the choice cannot be reversed if the third-party performance proves unsatisfactory.

Readiness & Willingness — Plead Precisely

Courts routinely dismiss specific performance suits for vague or inconsistent pleading on S.16(c) — set out dates, funds arranged, and steps taken to perform, in the plaint itself.

Declaratory Suits — Claim Further Relief

Where consequential relief (possession, injunction, etc.) is available in addition to a declaration, claim it expressly — omitting it risks dismissal under the S.34 proviso.

Infrastructure Contracts — Special Regime

S.20A bars injunctions that would impede or delay scheduled infrastructure projects; S.20B mandates disposal of such suits within 12 months (extendable by up to 6 months) before designated Special Courts.

For internal practice reference only — this note highlights select, frequently used provisions and does not cover every section or proviso. Cross-check exact section text, the Specific Relief (Amendment) Act, 2018, and the latest High Court/Supreme Court rulings (including on prospective/retrospective application of the 2018 Amendment) before relying in proceedings. Prepared 28 July 2026.

Primary sources: Specific Relief Act, 1963, and Specific Relief (Amendment) Act, 2018 (indiacode.nic.in); PRS Legislative Research Bill Summary; Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd. (2022) (2018 Amendment — prospective application).