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Judicial Discretion and Specific Relief Act: In Light of the Haridasan Judgment

SONAM BASU¹

ABSTRACT

Specific Performance was originally envisaged as an equitable relief based on judicial discretion under the Specific Relief Act, 1963 (“SRA”) which was available only when damages in the form of monetary relief were not sufficient. However, after the enactment of the Specific Relief (Amendment) Act, 2018 (“2018 amendment”), the provisions were amended to an extent to make specific performance mandatory unless barred by the provisions of the SRA.

This raises the question whether the grant of decree of specific performance, which has always been a equitable principle dependant on judicial discretion coupled with varying factual circumstances, can be mechanised to such an extent as to make it mandatory and enforceable based on certain limitations. Recently, a two Judge Bench of the Supreme Court in the case of C. Haridasan v. Anappath Parakkattu (“Haridasan”) came up with a split verdict with respect to enforceability of such claims on specific performance where the observations made by the judges are quite significant and raises new points of discussion as to the scope of their judicial discretion vis-a-vis enforcing specific performance.

It is the scope of this discretion which is the point of discussion in this paper. The author has tried to analyse the scope of judicial discretion in granting decrees of specific performance after the 2018 amendment, especially in light of the recent Haridasan judgement. The author briefly discusses the legal position as to obtaining a specific relief under the SRA pre and post the 2018 amendment, followed by a brief discussion on relevant case laws. This is further followed by a portion analysing the advantages and disadvantages of such compulsorily enforceable specific performance reliefs vis-a-vis contractual agreements and disputes relating to its subsequent breach with a concluding remark as to any suggestions which might help improve and further clarify the legal landscape.

Keywords: *Judicial discretion, equitable relief, subjective satisfaction, specific performance, damages.*

I. INTRODUCTION

Contracts are made between parties with mutual consent for carrying out certain obligations. However, more often those obligations are breached by the parties leading to either of them

¹ Author is a Teaching Assistant at the West Bengal National University of Juridical Sciences, Kolkata, India.

suing the other. In such situations, damages would not be the appropriate remedy for the parties; instead the parties may seek for the Specific Performance of the Contracts that they enter into. As a part of this remedy, the party seeks to enforce the exact obligation which was left unfulfilled by the other party.

Specific Performance was originally envisaged as an equitable relief under the Common Law² which was later codified in India under the Specific Relief Act, 1963 (hereinafter referred to as the “SRA”). Under SRA, this relief was initially available only when damages in the form of monetary relief were not sufficient³. The expression “Specific relief” means the relief *in specie*.⁴ However, after the Specific Relief (Amendment) Act, 2018 made this provision mandatory and the discretion was hereinafter removed by the amending Act. The question of granting specific relief under SRA had always been a matter of judicial discretion by allowing the judges to decide the extent of such relief based on facts at hand. Interestingly, the 2018 amendment mechanised the entire process by making grant of specific performance mandatory subject to fulfillment of certain conditions⁵.

In this Article the author tries to analyse whether despite there being an implied bar on the exercise of Judicial discretion, the courts in reality use the same while deciding matters with respect to claim of specific performance. This hypothesis becomes far more interesting in light of the recent two judge bench judgment of the Supreme Court in the case of *C. Haridasan v. Anappath Parakkattu*⁶ (“*Haridasan*”). In this case, the Apex court came up with a split verdict with respect to enforceability of claims of specific performance where the observations made by the judges are quite significant and raises new points of discussion as to the scope of their judicial discretion in the matters of specific performance.

In this paper, the author has tried to analyse the scope of judicial discretion in granting decrees of specific performance after the 2018 amendment, especially in light of the recent *Haridasan* judgment.

II. EVOLUTION OF SPECIFIC RELIEF

Courts under Common Law initially provided only damages as relief to parties suffering from

² Steven J. Burton, ‘Breach of Contract and the Common Law Duty to Perform in Good Faith’ (1980) 94 (2) Harvard Law Review 369

³ Specific Relief Act 1963, Section 10 (unamended)

⁴ Justice Rajesh Tandon, *Tandon’s Principles of Equity with Trusts & Specific Relief*, (Allahabad Law Agency, 2021)

⁵ Ran Chakrabarti, Sandeep Grover, Kshitij Parashar, ‘The Specific Relief (Amendment) Act, 2018: Overview & Implications’ (Mondaq, 17 September 2018) <https://www.mondaq.com/india/contracts-and-commercial-law/736966/the-specific-relief-amendment-act-2018-overview--implications> (last visited: 19th December, 2023)

⁶ *C. Haridasan v. Anappath Parakkattu*, CIVIL APPEAL NO. 4072 OF 2022

breach of contract⁷. Over time, such awarding of damages proved to be inadequate in light of the harm and loss suffered by the party through such breach and the parties felt the need of going beyond the common law concept of damages⁸. This issue was addressed with the establishment of equity courts which went beyond the black and white letters of law to provide reliefs to the party based on the core principles of equity, just and good conscience. The equity courts gradually came up with various such subsidiary principles based on those core principles. Equity courts used these principles to grant the parties equitable relief in the form of decrees of specific nature to aid the loss suffered by the parties from contractual breach⁹. Through this, the practice of specifically addressing the harm suffered through arose, which were again a massive shift from the traditional practice of granting mere monetary compensatory damages as under the common law courts. One of such specific reliefs is the relief of *Specific Performance*¹⁰. As a part of this relief, the party suffering the breach seeks to enforce the exact obligation which was left unfulfilled by the other party¹¹.

It was based on this background and emerging from this practice of equity and equitable remedies in common law, that the principles relating to specific relief were codified in India with the introduction of Specific Relief Act, 1877. The act was based on the same equitable principles of equity, justice and good conscience developed by Common Law providing certain specific remedies which the substantive law failed to give¹². This Act which was later replaced by the Specific Relief Act, 1963 after the 9th Law Commission Report addressed the then existent problems in the 1877 Act¹³.

This act was further amended in 2018 with the introduction of the Specific Relief (Amendment) Act, 2018 (“**2018 amendment**”) which brought in significant changes to the nature of remedies provided under the Specific Relief Act and also removed the Judicial discretion of the judges in granting of remedy of Specific Relief.

III. A SHIFT POST 2018 AMENDMENT

The 2018 amendment brought in quite a few changes to the SRA which were mostly aimed at minimising unnecessary latches by making the entire process of granting and enforcing specific

⁷B.M. Gandhi, *Equity, Trust & Specific Relief* (4th edn, Eastern Book Company, 2019)

⁸Stephen N. Subrin, ‘How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective’ (1987) 135(4) *University of Pennsylvania Law Review* 909

⁹ Id.

¹⁰ Anthony T. Kronman, ‘Specific Performance’ (1978) 45(2) *The University of Chicago Law Review* 351

¹¹ Thomas S. Ulen, ‘The Efficiency of Specific Performance: Toward a Unified Theory of Contract Remedies’ (1984) 83(2) *Michigan Law Review* 341

¹² Anand & Iyer, *Commentary on The Specific Relief Act, 1963* (15th edn, Delhi Law House 2021); B.M. Gandhi, *Equity, Trust & Specific Relief* (4th edn, Eastern Book Company 2019)

¹³ Law Commission of India, *Specific Relief Act, 1877* (Law Com No 9, 1958)

relief time-bound. One of such changes introduced also reflected in claims of specific performance¹⁴.

A major change was brought in Section 10 SRA dealing with specific performance which was completely substituted. Previously, the provision allowed such claims of specific performance to be enforced at the discretion of the courts subject to conditions like when actual damage is not determinable and monetary relief will be inadequate¹⁵. However, after the amendment the section reads as follows:

“Specific performance in respect of contracts- 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.”¹⁶

While pre-amendment section 10 used phrases like *“...specific performance of any contract may, in the discretion of the court, be enforced...”¹⁷*, the substituted section uses words like *“..shall be enforced by the court...”¹⁸*. Therefore, enforcing specific performance, which previously used to lie at the discretion of courts, is now made mandatory except when such claims are specifically barred. Although a brief perusal of this new section 10 SRA would reveal that exercise of Judicial Discretion is completely removed but the recent trends in the judgments have reflected a different angle wherein the Courts have also looked into other factors when enforcing claims of specific relief. There also arises a presumption under law by a bare reading of Section 10 SRA that unless and until the contrary is proved, the Court shall presume that compensation in money cannot adequately relieve a breach of contract to transfer immovable property.

IV. AN ANALYSIS OF JUDICIAL DISCRETION: LOOKING THROUGH THE LENS OF THE HARIDASAN JUDGMENT

In every legal system there are certain situations wherein results cannot be achieved by applying the formal legal principles of law. Therefore the situation demands judges to find solutions for the same and thus to exercise judicial discretion.¹⁹ The legal provisions are thereby equipped with phrases allowing the courts to venture beyond the strict letters of law by applying judicial

¹⁴Sahil Narang and Saransh Kumar, ‘Recent Amendments to The Specific Relief Act, 1963: An Analysis’ (Mondaq, 16 October 2019) <<https://www.mondaq.com/india/contracts-and-commercial-law/854362/recent-amendments-to-the-specific-relief-act-1963-an-analysis>>accessed 27 August 2023

¹⁵ Specific Relief Act 1963, s 10 (unamended)

¹⁶ Specific Relief Act 1963, s 10 (amended)

¹⁷ Specific Relief Act 1963, s 10 (unamended)

¹⁸ Id.

¹⁹The Journal of Philosophy , Oct. 10, 1963, Vol. 60, No. 21, American Philosophical Association, Eastern Division, Sixtieth Annual Meeting (Oct. 10, 1963), pp. 624-638 available at jstor.com (last visited: 03.01.2023)

wisdom. The courts do not merely look into the claims of the parties in light of the legal provisions but rather a holistic approach is undertaken whereby the context, background, surrounding circumstances and conditions of the parties are taken into account²⁰.

Therefore, the question that arises is that after the 2018 amendment removed judicial discretion from section 10 SRA and made specific performance compulsory remedy, whether judicial discretion would still have a role in deciding the cases.

The case of *C. Haridasan v. Anappath Parakkattu*²¹ (“*Haridasan*”) contextualises this discussion further in light of the split judgement pronounced by the apex court where apparently the judges seemed to have disagreed on whether there should be a mechanical application of the SRA or whether there should still be some amount of judicial discretion coming into play.

In *Haridasan*, the subject matter of the case was regarding claims of specific performance with respect to a sale of a property. The terms of the agreement required the plaintiff/appellant purchaser to pay the remaining sale consideration within six months from the date of taking measurements of the property. However, this was subject to the condition of the respondent seller providing adequate documents relating to the title of the property as required under relevant state land laws. Thereafter, the plaintiff wanted the defendant respondent to execute the agreement of sale which the defendant refused to and cancelled the sale agreement. The plaintiff/appellant filed a suit for specific performance of the sale agreement. The Trial Court allowed the claim of specific performance but directed the plaintiff/buyer to pay some amount over and above the consideration. Against this judgment, the sellers went in appeal before the Kerala High Court where the bench after considering unamended section 20 SRA reversed the Trial court’s decree of specific performance.

Being aggrieved with the Judgment passed by the High Court, Kerala the original plaintiff filed an appeal before the Hon’ble Apex Court. There was a split verdict passed by the Hon’ble Apex Court. While Justice MR Shah restored the Trial Court’s judgement by stating that the High Court had erred in law while deciding the case by an incorrect interpretation of unamended section 20 SRA and further that when the plaintiff had performed his part by paying half consideration and the defendant having received the payment of consideration and when the plaintiff is always ready and willing to perform his part of the contract, the High Court had erred in reversing the judgment of the Learned Trial Court. He had further directed to pay the original plaintiff a sum of Rs. 10 lakhs above and over the sale consideration in view of the principles

²⁰ Doug Rendleman, ‘The Triumph Of Equity Revisited: The Stages Of Equitable Discretion’ (2015) 15 Nevada Law Journal 1399

²¹ C. Haridasan v. Anappath Parakkattu, CIVIL APPEAL NO. 4072 OF 2022

of equity and fair play. Whereas, Justice Nagarathna after relying on various judgments dealing with the issue did not agree with the reasoning and conclusion of Justice MR Shah and passed a separate judgment. His Lordship was of the view that although the specific performance is a not a discretionary remedy but the party seeking specific performance cannot claim it as of a right. It is always subject to the provisions of Section 16 SRA and Section 16 has to be mandatorily complied with by the parties before they can claim the relief of Specific Performance. And in the facts of the present case His Lordship had arrived at a conclusion that the buyers were never ready and willing to perform their part of the agreement and the same was never pleaded in their averments. It is also a settled principle of law that no evidence can be brought of facts which were never pleaded before the Courts and thus the suit for specific performance cannot be granted. Also, the plaintiff could not prove his readiness and willingness to perform his obligations in terms of the contract and hence the relief of Specific Performance cannot be granted in his favour.

The observations made by Justice Nagarathna vis-a-vis judicial discretion pre and post 2018 amendment becomes an important subject matter of analysis. It was observed that the 2018 amendment substituted the wordings of section 10 and 20 SRA thereby making specific performance no longer contingent on judicial discretion but rather subject to a few provisions as mentioned under section 10 SRA itself. However, one of the sections which carried forward the contingency was section 16 SRA. Section 16 SRA talks about ready and willingness to perform obligations under an agreement and further elaborates to state that when such ready and willingness cannot be proven by the party seeking to enforce specific performance, the claim for the same cannot be granted by the court. Interestingly, while the 2018 amendment mechanises the entire process of specific performance by removing judicial discretion, the provisions on which such reliance has been placed to remove judicial direction with respect to specific performance are again subject matter of judicial discretion.

Thus, it is evident that the scope for exercise of judicial discretion still remains, although in a circular and roundabout way, as the overall scheme of relief under SRA is contingent on numerous factors which cannot be objectively judged through any mechanised systematic process but rather would serve the interest of the parties best if left to the wisdom of the courts coupled with subjective satisfaction of the judges with respect to peculiar facts and circumstances of each case. It can therefore be very rightly argued by the author that the view taken by Justice MR Shah is not in consonance of the SRA because the consequences of completely eradicating judicial discretion in a legislation for the sake of proliferating procedural efficiency can detrimentally affect the parties involved and seeking relief under such law as it

is not always possible for the lawmakers to apprehend every contingency, and some amount of judicial discretion will always be required for flexibility and smooth functioning of such law and in cases where Specific Relief is an equitable relief which later came to be codified into legislation, requires certain degree of judicial discretion as justice and fairness would also be involved in the process.

V. CONCLUSION

The author had started the paper with the initial hypothesis that post 2018 amendment to SRA the judicial discretion is not completely removed and despite the changes in provisions the courts still use judicial discretion in deciding cases. It has to be noted that the 2018 amendment primarily aimed at removing latches and delay in deciding matters related to specific relief and it tried to achieve the same through changing the nature of the relief of specific performance by making it mandatory in nature. However, as observed by Justice Nagarathna, changing the same does not make specific performance a matter of right but it is still dependent on complete satisfaction of the other conditions on which it is based. The author puts forth the view that there still exists some scope for exercise of discretion by the courts when it comes to satisfactorily proving the conditions which could negate the mandatory claim of specific performance u/s 10 SRA.

Therefore, post amendment specific performance, although no more a concept in equity but rather one embedded in law and legal principles, still gives the courts enough leeway to exercise discretion in order to satisfactorily grant the claim after considering all relevant circumstances beyond the black and white letters of all.
