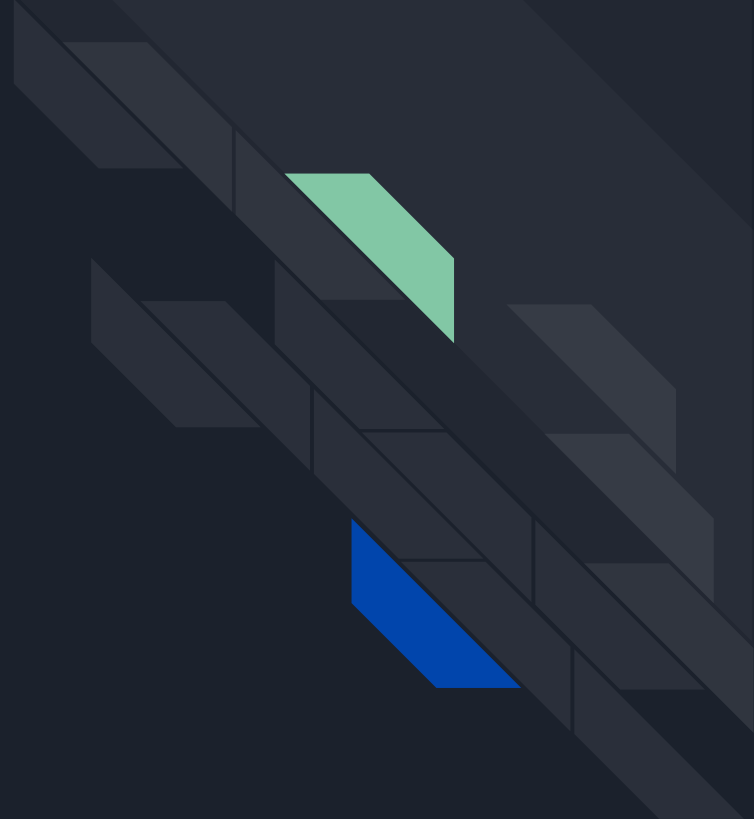




Substituted Performance under Specific Relief Act, 1963

By Kuldeep Narayan, Civil Judge, Ramnagar, Nainital

**SECTION 20 OF SRA
PROVIDES SPECIFIC
PERFORMANCE.**



Section 20 of the Specific Relief Act, 1963(as it stood before amendment) provided that the court has the discretion to grant specific performance of contract and it is not bound to grant such relief solely because it is lawful to do so.



Effect of Amendment of 2018

- However, Specific Relief Amendment Act, 2018 has substituted section 20 with new provision and introduced the concept of “Substituted performance”. Substituted performance of contracts means , 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.

Sub-section (2) of Section 20 puts a mandate upon the opposite party to serve a notice of not less than 30 days to the party in breach. It is also provided that the party who suffered such breach would be entitled to receive such expenses and costs only if the contract has been performed through a third party or by its own agency.

Sub-section(3) of Section 20 does equity with the opposite party and provides that once substituted performance has been opted, the party suffering breach would not be entitled to claim relief of specific performance against the party in breach. The provision akin to section 20(3) is provided under section 41 of the Indian Contract Act, 1882 where a promisee accepts performance of the promise from a third person, he is barred from enforcing the same from promisor.

Further, it is provided that the provision of section 20 does not prevent the party who has suffered breach of contract from claiming compensation from the party in breach. By providing the remedy of 'substituted performance', the Amendment Act seeks to restore an innocent party to the position in which it would have been if the contract had not been breached.

Origin of Concept of Substituted Performance

A six-member Expert Committee (“Committee”) was constituted to review the current working of the Act and address issues relating to enforcement of contracts in India. Their recommendations highlighted that the need to expressly introduce the concept of “substituted performance” or “right to cover” is a significant consideration under Indian law. A party to a contract must have the right to complete performance by himself or through a third party at the cost of the promisor, and to claim the amount he spends for this purpose.



Object of Substituted Performance

Furthermore, and perhaps most importantly, this introduction is well in line with the agenda of the Bill which is to increase ease of doing business in India and to ensure enforceability of contracts with greater effectiveness. In addition to the fact that damages are often an inadequate remedy in terms of the quantum of compensation, it is also well understood that damages do not fulfil the end purpose of the contract and do not effectively provide the parties what they sought out to achieve in the first place.



Discretion of Courts limited: Conclusion

The new concept of Substituted Performance has limited the scope of discretion of the Court. The new concept is more focused on the *Cover of damages* incurred to the parties affected.

In *B. Santoshamma vs. D. Sarala and Anr.*, (2020) 19 SCC 80 this Court, while examining the amendment made to Section 10 of the Act observed that after the amendment to Section 10, the words "specific performance of any contract may, in the discretion of the Court, be enforced" have been substituted with the words "specific performance of a contract shall be enforced subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16". It was concluded that although the relief of specific performance of a contract is no longer discretionary, after the amendment, the same would still be subject to Section 11, Section 14 and Section 16 of the Act.

HARI RAM NAGAR & OTHER VS. DDA & OTHERS, 2019, DHC The Court held that the counsel for the plaintiff, in an attempt to take away the suit from the category of infrastructure suit, has contended that the acquisition and the use of land is not for the hospital but for a road. However, the said submission was made without realizing that even then the suit would fall in the category of infrastructure suits.

It was also held that Section 20A has to be given purposive interpretation, though Section 20A makes provision for a suit "...involving a contract..." but does not require the relationship between the plaintiff and defendant to be contractual. The words "involving a contract relating to an infrastructure project" are of wide magnitude and would also cover a suit under the Specific Relief Act to stall an infrastructure project, but by a plaintiff who has no contractual relationship with the defendants. Such stalling of an infrastructure project would also involve a contract. Any stalling of an infrastructure project at the behest of anyone would certainly affect the contract under which the said infrastructure project is being executed.

Thank You

