

LAW ON SUITS FOR SPECIFIC PERFORMANCE OF AGREEMENTS

S.S. Upadhyay

*Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in*

1. **Conduct of plaintiff important while exercising discretionary jurisdiction to order specific performance of contract:** Interpreting the provisions of Sec. 45 of the Indian Contract Act & the Sections 15 & 20 of the Specific Relief Act, 1963, the Supreme Court has held that a person cannot be compelled to bring an action at law if he does not want to do so and at the same time he cannot be prevented from bringing an action by any rule of law or practice merely because he is a joint promisee and the other promisee refuses to join as a co-plaintiff. Suit for specific performance of contract should be filed at the first instance. Plaintiff's conduct plays an important role in the matter of exercise of discretionary jurisdiction by the courts. However, some delay may not be a bar in granting a relief of specific performance. See:
 1. **G. Jayashree vs. Bhagwandas S. Patel, 2009(1) Supreme 302**
 2. **Mohammadia Cooperative Building Society Limited vs. Lakshmi Srinivasa Cooperative Building Society Limited, (2008) 7 SCC 310**

provisions of Sections 16(c), 20, 21, 22 & 23 of the Specific Relief Act, 1963 and Forms 47 & 48 of Appendix A to C of the CPC. See: **Kamal Kumar Vs. Premlata Joshi, AIR 2019 SC 459.**

3. **When specific performance of the terms of contract has not been done, the question of time being essence of contract does not arise:** Unless the vendor got the subject land measured and demarcated within three months, it would be impossible for the purchaser (Respondent No. 1 herein/Plaintiff) to get a sale deed executed, and as such, the question of paying the balance sale consideration does not arise. This was also observed by the High Court while placing reliance on the recitals in the sale agreement coupled with the evidence of PW1 and PW2. Moreover, as has been held above, it is clear that the vendor (deceased G. Venugopala Rao) failed to perform his part of the obligations by getting the subject land measured and demarcated, while the purchaser (Respondent No. 1 herein/Plaintiff) was ever ready and willing to pay the balance consideration. As such, **when specific performance of the terms of the contract has not been done, the question of time being the essence does not arise. See: Gaddipati Divija Vs. Pathuri Samrajyam (2023) SCC Online SC 442**