

I. AMBIT EXPANDED FOR WHO CAN FILE SUIT IF DISPOSSESSED OF IMMOVABLE PROPERTY

- The Amendment Act has introduced after the words “*he or any person*” in Section 6(1) of the Act, the words “*through whom he has been in possession or any person*”.
- Under Section 6 of the Act, as it stood prior to the Amendment Act, a person who was removed from actual possession or a person claiming through him, could file a suit in relation to such dispossession. However, the owner or its agent or other appointee could not file a suit for recovery of such property once the tenant etc. in possession of the property was dispossessed. With the foregoing amendment, a title holder of immovable property will have a right to sue for recovery of possession of immovable property as is available to a person who was deriving possession through him, e.g. tenant, mortgagee etc.

Comparison with the Expert Committee's Report

- The Amendment Act partially adopts the recommendations of the Expert Committee.
- The Amendment Act has not defined the word ‘possession’ which was defined in the Report to include physical, legal, or joint possession. This definition was suggested by the Expert Committee to ensure that (i) a remedy is available to one of the many joint possessors (who after being dispossessed) may want to file a suit for recovering possession, while the others choose not to file a suit, and (ii) to address the position of a licensee (in Maharashtra) who is in use and occupation of the property but not in physical or legal possession of the property.
- The Expert Committee also recommended that the limitation period to file a suit under Section 6 should begin from the date of ‘knowledge of’ dispossession. With such an amendment not being introduced in the Act, even the owner of the immovable property or any person claiming through him will have to file a suit within 6 months from the date of dispossession.
- The Report suggested that suits filed in case of dispossession should be decided within 24 months from date of notice being served on the defendants. Since the Amendment Act does not incorporate the recommendation in the Report, the time limit to decide the such suits will be governed by newly introduced Section 20C in the Act i.e. with 12 months from the date of service of summons upon the Respondent.

II. SPECIFIC PERFORMANCE THE RULE; MONETARY COMPENSATION THE EXCEPTION

- Section 10 of the Act has been entirely substituted to now read that “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”.
- Until now, while specific performance was granted as per the discretion of courts, under the amended Act, specific performance will be granted mandatorily, subject to certain exceptions which are elaborated in Sections 11(2), 14, and 16 of the amended Act.
- By an amendment to Section 21 of the Act, compensation can no longer be sought in substitution of specific performance. However, compensation can be sought in addition to specific performance.

III. CONTRACTS IN RELATION TO TRUSTS

- In Section 11 of the Act, the words “*contract may, in the discretion of the court*” have been replaced by the words “*contract shall*”.
- The Amendment Act has mandated specific performance of a contract which is in relation to trusts, except as provided for in the Act.

Comparison with the Expert Committee's Report

- The Amendment Act substantially departs from the Expert Committee's recommendations as per which grant of specific performance in case of trusts was left to the court's discretion.

IV. CONTRACTS NOT SPECIFICALLY ENFORCEABLE

- Section 14 of the Act has been entirely substituted. The Amendment Act now prescribes certain contracts which mandatorily “*cannot be specifically enforced*”.
- Grounds that compensation is an adequate relief in sub-section (a) and that a contract runs into such minute or numerous

details that the court cannot enforce specific performance of its material terms in sub-section (b) of Section 14 of the Act have been deleted by the Amendment Act.

- The Amendment Act provides for four contracts which cannot be specifically enforced. The new ground introduced to refuse specific performance is when a party to the contract has obtained substituted performance under the provisions of the amended Act.

Comparison with the Expert Committee's Report

- The Amendment Act significantly departs from the Expert Committee's recommendations.
- In order to balance the interests of all parties, the Expert Committee had left the decision to refuse specific performance on specific grounds to the court's discretion. This recommendation has not been adopted in the Amendment Act as specific performance of contract is mandatorily to be refused by courts if the grounds listed in the amended Act are satisfied.
- The Amendment Act provide four grounds on which specific performance will be refused. The Amendment Act has not adopted the elaborate and exhaustive grounds listed in the Report.
- Additionally, the Amendment Act has done away with the Expert Committee's recommendation that specific performance may be refused if the party seeking specific performance can reasonably obtain substituted performance from another source on comparable terms.

V. POWER OF COURTS TO ENGAGE EXPERTS

- The newly inserted Section 14A in the Act entitles courts to engage experts to assist on any particular issue in a suit under the Act, by providing evidence or for production of documents etc.
- Further, post the amendment, courts may direct parties to provide the expert with all information or access to relevant documents, goods, property etc.
- The opinion or report given by the expert is to form part of the suit's record. Examination of the expert witness by courts, and with permission of the courts, by parties.

Comparison with the Expert Committee's Report

- The Amendment Act has partially incorporated the recommendations of the Expert Committee. However, it has failed to incorporate recommendations relating to (a) parties right to agree to opt out of Section 14A and (b) court's request to parties to nominate an expert.
- Further, the Amendment Act does not incorporate the Expert Committee's recommendation that *"An expert witness shall not be appointed by the Court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the Court in writing."*

VI. AVER READINESS AND WILLINGNESS TO PERFORM

- The Amendment Act does away with the requirement for a party seeking specific performance to aver readiness and willingness to perform its part of the contract.

VII. LIMITED LIABILITY PARTNERSHIPS (LLPs) EQUATED TO COMPANIES

- Previously, the Act provided for the following rights and liabilities for a new company formed from an amalgamation of 2 companies, provided that, the contract from which such right or liability arose was entered into by one of the constituent companies: (i) it could seek specific performance, or (ii) it could have specific performance sought against it. By virtue of amendments to Sections 15 and 19, the same rights and liabilities have now been extended to LLPs.

VIII. SUBSTITUTED PERFORMANCE OF CONTRACT

- In cases of breach of contract by the promisor, the promisee can have the contract performed through a third party or on his own, and recover the expenses and costs actually incurred from the promisor.
- Mandatory 30 days' notice to be given by the promisee to the promisor for rectifying the breach. If the promisor fails to do so, the promisee may proceed to obtain substituted performance.
- Notably, substituted performance must actually be obtained prior to promisee recovering expenses of substituted performance from the promisor.
- By amending Sections 14 (a) and 16 (a) of the Act, the Amendment Act bars grant of specific performance to a person by whom, or for a contract in respect of which, substituted performance has been obtained;

- A party who suffered the breach can in addition to substituted performance claim compensation.
- Pertinently, the Amendment Act allows parties to contractually opt-out of the provisions of substituted performance.

Comparison with the Expert Committee's Report

- The Amendment Act substantially incorporated the recommendations of the Expert Committee. However, it does not include the *proviso* recommended by the Expert Committee that the substituted performance shall be obtained within “reasonable time after giving notice” to the promisor and the its “expenses or additional costs is reasonable”.
- Further, the Amendment Act does not include an explanation to the section by which there is a presumption that, the costs and expenses incurred in obtaining substitute performance, to the extent that such costs and expenses were included in the notice given to the promisor, are reasonable.

IX. AMENDMENTS IN RELATION TO INFRASTRUCTURE PROJECTS

- The newly inserted Section 20A in the Act, bars courts from granting injunction in a suit where the contract involved is related to infrastructure projects listed in the newly inserted Schedule to the Act, if “granting injunction would cause impediment or delay in the progress or completion of such infrastructure project”
- The Amendment Act has introduced a new category of projects which are ‘infrastructure projects’ which are listed in the Schedule to the Act. The Amendment Act confers power on the Central Government to amend the Schedule, “depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so”.
- The Amendment Act introduces Special Courts for trying suits relating to infrastructure projects contracts. These Special Courts will be Civil Courts which the State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette.

Comparison with the Expert Committee's Report

- The Amendment Act has broadly incorporated the recommendations of the Expert Committee which sought to introduce the concept of ‘public works contracts’ and ensure that the progress and completion of public works is not impeded due to injunctions.
- However, the Amendment Act has failed to incorporate the definition of “public works contracts” which was recommended in the Report. Instead, the Schedule lists the projects and infrastructure sub-categories which may be revised by the Central Government from time to time.

X. EXPEDITIOUS DISPOSAL OF SUITS FOR SPECIFIC PERFORMANCE

- Section 20C as introduced by the Amendment Act provides that suits filed under the Act must be disposed within 12 months from the date of service of summons to the defendant. Such a period is extendable by a further 6 months, with the reasons for extension to be recorded in writing.

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