



LAW COMMISSION OF INDIA

**ONE HUNDRED AND FORTY SEVENTH
REPORT**

ON

THE SPECIFIC RELIEF ACT, 1963

1993

K. N. SINGH
(Former Chief Justice
of India)



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D. O. No. 6(3) (23)/93-LC(LS)

6th October, 1993.

Dear Prime Minister,

I have great pleasure in forwarding herewith the 147th Report of the Law Commission of India on the subject '*The Specific Relief Act, 1963*'. This is the fourth Report after the constitution of the 13th Law Commission.

2. The problems and difficulties posed in the course of interpretation of various provisions of the Specific Relief Act, 1963 have prompted the Law Commission to consider various issues *suo motu*, with a view to make the law simpler and to avoid litigation on technicalities.

3. The Commission trusts that the recommendations, when accepted and acted upon, will minimise the problems and difficulties arising under the Specific Relief Act, 1963.

With warm regards,

Yours sincerely,

(Sd.)
(K. N. SINGH)

Hon'ble Shri P. V. Narasimha Rao
Prime Minister
&
Minister for Law, Justice & Company Affairs
New Delhi

CONTENTS

	PAGE
CHAPTER 1 : INTRODUCTION	1
CHAPTER 2 : TERRITORIAL COVERAGE	3
CHAPTER 3 : SUIT FOR RECOVERY OF POSSESSION	4
CHAPTER 4 : PERSONS BY WHOM CONTRACTS CAN BE SPECIFICALLY ENFORCED	5
CHAPTER 5 : READINESS AND WILLINGNESS	7
CHAPTER 6 : DOCTRINE OF MUTUALITY	9
CHAPTER 7 : POSSESSION AND PARTITION	10
CHAPTER 8 : RESCISSION OF CONTRACT	11
CHAPTER 9 : CANCELLATION OF DECREES	12
CHAPTER 10 : RECOMMENDATIONS	13
NOTES AND REFERENCES	14

CHAPTER I

INTRODUCTION

1.1. Genesis of the Report

The subject dealt with in this Report has been taken up by the Law Commission of India for consideration *suo motu*.

1.2. History of the Legislation

The Law of Specific Relief in India was originally codified by the Specific Relief Act, 1887. The provisions of this enactment were considered by the Law Commission in its Ninth Report which led to the enactment of the Specific Relief Act, (Act 47 of 1963) in place of the earlier enactment. The Ninth Report of the Commission pointed out valid reasons for the then state of affairs and the new legislation proposed by it was confined to seven forms of specific relief viz.—

- (1) Recovery of possession of property;
- (2) Specific performance of contracts;
- (3) Rectification of instruments;
- (4) Rescission of contracts;
- (5) Cancellation of instruments,
- (6) Declaratory decrees; and
- (7) Injunction.

Compensatory relief of various kinds and certain forms of specific relief specifically mentioned in certain enactments were kept out of the purview of 1963 Act.

1.3. Need for re-consideration

The Specific Relief Act, 1963 has posed several problems and difficulties. Indeed it has given rise to divergence of judicial opinion on some of the provisions. (i) There is a conflict of judicial opinion on the question whether an owner can bring a suit for possession under section 6 when not he but a person deriving title from him is in possession of the property; (ii) Section 15 of the Act is not free from difficulty. Courts in India have often been confronted with a situation where a contract is clearly intended for the benefit of third party but still have been reluctant to enforce the contract at the instance of such third parties. This is despite consideration for the contract may move even from such third party; (iii) The expression 'failed to aver and prove' in Section 16 has given rise to lot of litigation; (iv) The decision of the Supreme Court in *Babulal v. Hazari Lal Kishori Lal*, while analysing the provisions of Section 22(2), emphasised the need for adding after the word "proceeding" in the proviso to section 22(2), the words "including a proceeding in execution"; (iv) There is a divergence of judicial opinion on the question

whether courts can extend the time originally fixed for payment, notwithstanding the terms of the decree under Section 28; (vi) Doubts have also been expressed as to whether decree other than compromise decree will fall within the meaning of the expression "written instruments" under Section 31 and (vii) Section 1 requires reconsideration in order to bring uniformity at national level. These difficulties have prompted the Law Commission to consider these questions *suo motu*, with a view to make the law simpler and to avoid litigation on technicalities.

With the above object in view, we proceed to examine Sections 1, 6, 15, 16, 20, 22, 28 & 33 of the Specific Relief Act and to analyse the case law giving rise to judicial controversies and deficiencies therein. At the end we have made recommendations in this regard. Since 1963, various other areas calling for specific relief have also opened up.² But, having considered this question afresh, we think that there may be need for different types of solutions to meet those difficulties³ but at present there is no justification to change the arrangement of the 1963 Act in this respect or to make the Act more comprehensive to cover other types of specific reliefs as well.

CHAPTER 2

TERRITORIAL COVERAGE

2.1. Before 1963, the Specific Relief Act as amended from time to time, was not applicable to the State of Jammu & Kashmir as well as to the territories known as 'Scheduled districts'. The removal of the latter of these restrictions was suggested in the Ninth Report. This was accepted and the 1963 Act was made applicable to the whole of India except the State of Jammu & Kashmir. In the opinion of the Commission, there is no reason why this exclusion should now continue. Several Central enactments including the Income Tax Act and Wealth Tax Act (which fall under List I in the Seventh Schedule of the Constitution) have been extended to the State. It is time that enactments such as the Contract Act, the Specific Relief Act and the Partnership Act are also extended to the State of Jammu & Kashmir to take the place of local laws, if any, even though they deal with topics covered by List III of the Seventh Schedule. In our view, All India uniformity is necessary, proper and desirable in respect of statutes like the above which are based on general principles universally recognised the world over. We would, therefore, recommend that the words "except the State of Jammu & Kashmir" in S. 1(2) of the Act be omitted. It is, however, necessary that before this is done, an appropriate Presidential Order is issued under Article 370 of the Constitution to enable such laws, falling under List III of the Seventh Schedule to the Constitution, being extended to the State.

CHAPTER 3

SUIT FOR RECOVERY OF POSSESSION

3.1. S. 9 of the 1877 Act provided a summary relief to a person dispossessed, without his consent, of immovable property, otherwise than in due course of law and enabled him to recover possession immediately, without the need to go into questions of title and other controversies provided he files a suit within six months of his dispossession. Though the Ninth Report¹ had recommended the omission of this provision, the provision has been retained in the 1963 Act as S.6.

3.2. On the interpretation of Section 6, there has been a judicial divergence of opinion on the question whether an owner can bring a suit for possession under the section when not he but a person deriving title from him is in possession of the property. One view is that when the owner confers an interest on a derivative holder which entitles the latter to actual use and possession of the property, it is only the latter and not the former that can maintain an action under section 6.² The other view is that dispossession of the derivative holder by a trespasser is, in reality, the dispossession of the owner himself and entitles even the former to maintain an action under this section.³ It has been suggested that the latter view is the only possible view and that the other line of cases is distinguishable. It is unnecessary to go into the merits of the controversy but it seems desirable to clarify the position legislatively. We are of the opinion that, if Section 6 is to stand, it should be available even to a person in the position of an owner who may be in possession through a derivative holder. A contrary view would make it possible for a person in derivative possession to collude with a third party and deprive the real owner of the possession of the property. We would, therefore, suggest that S.6(f) be amended to read as follows:

“6(f) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or *any person through whom he has been in possession* or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.”

CHAPTER 4

PERSONS BY WHOM CONTRACTS CAN BE SPECIFICALLY ENFORCED

4.1. Section 15 of the 1963 Act reproduces the provisions of Section 23 of 1877 Act. It enumerates persons for or against whom contracts may be specifically enforced. The general rule is that a suit on a contract can be maintained by one of the parties to the contract is enumerated in clause (a). The right of a successor-in-interest of any of the parties to the contract is enunciated in clause (b) Clause (d) to (g) provide for special cases where the cause of action (being assignable) is assigned by, or survives by operation of law on the death or extinction of, one of the parties to the contract. They all indirectly emphasise the rule that a third party to a contract cannot sue which stands established by a long catena of judicial decisions.¹

4.2. In England, the rule is that a third party to a contract cannot sue was inextricably intertwined with the principle that the consideration for a contract can move only from a party to it and not a third person. The courts there have, therefore, consistently insisted on strict adherence to the rule in common law though equity often sought to intervene, on one consideration or another, to give relief in appropriate cases.

4.3. The summary of the position in England on this aspect can be seen in Cheshire & Fifoot (11th Edition), pp. 430-455 and Anson (23rd Edition), Chapter X. Cheshire observes (p. 441):

“Thus the doctrine of privity, while not an irrational inference from the nature of contract in general and of English contract in particular, has in its incidence worked injustice and proved inadequate to modern needs. Parliament, when it has intervened, has offered only spasmodic and occasional relief. In these circumstances, it is not surprising that many and various attempts have been made to induce the courts to sanction evasions of the doctrine. These have, indeed, met with a considerable measure of success.”

Arson has this to say (p. 398):

“The doctrine of privity of contract has been the subject of considerable criticism both in the courts and among the writers of text books on the law of contract. It is said that it seems only to defeat the legitimate expectations of the third party, that it undermines the social interest of the community in the security of bargains, and that it is absent from the law of Scotland, and generally from the legal systems of the United States. In their Sixth Interim Report² the Law Revision Committee recommended the abolition of the doctrine. The actual terms of their recommendations read:

where a contract by its express terms purports to confer a benefit directly on a third party, the third party shall be entitled to enforce the provision in his own name, provided that the promisor shall be entitled to raise as against the third party any defence that would have been valid against the promisee. The rights of the third party shall be subject to

cancellation of the contract by the mutual consent of the contracting parties at any time before the third party had adopted it either expressly or by conduct".³

It is seen that Lord Denning was a persistent critic of the rule but his attempt to treat it as a nineteenth century innovation irrelevant to present modern times were unsuccessful.⁴ But though the House of Lords has reiterated the rule as one firmly entrenched in the law of England, there is no doubt that it does call for revision and relaxation.⁵

4.4. There is no reason why such an inequitable rule should prevail in India particularly when, under the Indian Contract Act, the consideration for the promise need not move from the promisee but can move from any other person as well.⁶

4.5. Indian courts have been frequently faced with situations where a contract is clearly intended for the benefit of a third party but still have been reluctant to enforce the contract at the instance of such third parties,⁷ although in India, unlike under the English Law, consideration for a contract may move even from a third party.⁸ Some relief has been granted in a very few cases by straining the law and importing some doctrine of equity or some special consideration of agency, trust, assignment or statute.⁹

4.6. It is clear that there is no justification to continue this type of limitation on action in India. In the U.S.A., after much debate and controversy, it is now settled that third persons can sue on contracts made by others for their benefit.¹⁰ In Australia also the position is that while a person who is not a party to a contract may not sue on it so as to directly enforce its obligations, it is possible for that person to obtain the benefit "by steps other than enforcement by himself in his own right."¹¹ As already pointed out, the Law Revision Committee in England recommended a revision of the law to provide "that when a contract by its express terms purports to confer a benefit directly on a third party, it shall be enforceable by a third party in his own name."¹²

4.7. On the same lines, it is recommended that S. 15 of the 1963 Act be amended by inserting a clause (i) to the following effect:—

"(i) any person, where the contract by its express terms purports to confer a benefit directly on such person."

CHAPTER 5

READINESS AND WILLINGNESS

5.1. S.16(c) of the Act, which was inserted primarily to give effect to the principle that he who seeks the aid of equity must himself do equity has created certain difficulties and given rise to certain problems of interpretation. The clause runs thus:—

“Specific performance of a contract cannot be enforced in favour of a person—

- (a) * * * *
- (b) * * * *

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms, the performance of which has been prevented or waived by the defendant.”

5.2. Two difficulties caused by the words “fails to aver and prove”, have come to the fore. The first is that they obviously refer to an averment *in the-plaint* and, where the averment is traversed, proof *in the course of the trial* by the plaintiff that he is so ready and willing.¹ By some mistake, in the headnote to the Privy Council ruling in *Ardeshir Mama's Case*,² an impression has been created to the effect that there should be readiness and willingness on the part of the plaintiff to perform the contract right up to the date of the decree.³ The second is the nature and form of the averment that has to be made by the plaintiff.

5.3. So far as the first of these difficulties is concerned, no remedial measures are necessary. The court can adjudicate the readiness and willingness of the plaintiff only on the basis of the averment in the plaint and the evidence at the trial. There is no way by which his readiness and willingness beyond these dates and up to the date of the decree can be ascertained or adjudged nor is it called for.⁴ Moreover, it will be appreciated that, if the plaintiff after the trial develops an unwillingness or lack of readiness to perform his obligations under the contract, he will either not press for a decree for specific performance, or if he has obtained one, will refrain from putting it into execution.

5.4. In regard to the second question, the difficulty is caused by the *pro formas* prescribed by the Code of Civil Procedure, 1908 for plaints in respect of suits for specific performance (Sch. I, forms 47 & 48). Questions have been raised (1) as to whether the averment in the plaint should be in exactly the same terms as prescribed in the *pro forma* or whether a substantial compliance therewith will suffice, and (2) whether an initial omission to make such an averment in the plaint is fatal or can be permitted to be amended subsequently.

5.5. The first question is well settled by the decision of the Supreme Court in *Premraj v. D.L.F. Housing & Construction (P) Ltd.*,⁵ *Ouseph Verghese v. Joseph Aley*⁶ and *Abdul Khader Rowther v. Sarabai*⁷ laying down the proposition that in absence of averment *in the prescribed form*, the suit should stand

dismissed.⁸ This would be so even though there is a close nexus between the provisions of the Specific Relief Act and the formats of the suit prescribed under C.P.C., as pointed out in the Ninth Report of the Law Commission. Once an averment is made in the plaint on the lines of the section, courts have invariably applied the rule of substantial compliance and declined to dismiss the suit on a mere technicality as to its form. But Indian courts seem to have almost unanimously⁹ taken a view, following the dicta of the Supreme Court in the *Gomathinayagam case* (supra)¹⁰, that the complete absence of an averment in the plaint will be fatal to the suit.¹¹ If this is so, the question would arise whether it would be open to the court to permit the plaintiff in such a suit, either at his request or even *suo motu* by the court, to amend the plaint, either at the trial or at the appellate stage, so as to include an averment originally omitted to be included.

5.6. In the above state of the authorities, one view may be that the above difficulties may be left to be sorted out by judicial determination in each case and that the rule in the statute, properly interpreted, does not involve any irremediable hardships. It may be said that it is always open to a plaintiff to withdraw such a defective plaint in terms of Order 23, Rule 1(2) of the Code of Civil Procedure with liberty to file a fresh suit, if possible, within the period of limitation,¹² or alternatively, that it is open to him to seek an amendment of the plaint.¹³

5.7. We do not think that this course is advisable. Real difficulties will continue to arise and suits may continue to run the danger of dismissal on a technical plea if the section is left as it is. As pointed out above, courts will insist that the pleadings must contain a formal plea of readiness and willingness and Supreme Court decisions¹⁴ have sometimes been understood as insisting also on a rigid conformity with the requirements of Forms Nos 47 and 48 in the First Schedule. Although, the state of pleadings being what it is in India, a liberal judicial attitude towards amendment of pleadings is desirable and is also in general, adopted by Courts, it does not appear to be a satisfactory solution to leave issues for the Court's determination in individual cases. Defective pleadings sometimes give rise to frivolous issues.¹⁵ The filing of defective pleadings, the subsequent submission of an application, often belatedly, for amendment and the hearing thereon are all steps which clog the speedy disposal of the case. Also occasionally courts do not grant an amendment¹⁶ and, sometimes feel constrained to do so in view of certain Supreme Court decisions.¹⁷ It is, therefore, better that the reference to a specific averment in the plaint regarding readiness and willingness is omitted from the statute, though such readiness and willingness will have to be established on the evidence before a favourable decree can be obtained. We, therefore, recommend, in order to avoid unnecessary litigation, that the words "aver and" in Section 16(c) be deleted.

CHAPTER 6

DOCTRINE OF MUTUALITY

6.1. Section 20 (4) of the Act provides:

“The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the option of the other party.”

This sub-section was inserted on the recommendations of the Ninth Report which, after a detailed discussion of the principles involved,¹ felt that, in the absence of a specific provision to this effect, “there would still be scope for the application of the rule in *Mir Sarwarjan's case*² in the case of contracts for the purchase of property on behalf of a minor which cannot be said to be for the benefit of the minor.” Mulla observes that it is difficult to appreciate the necessity for this sub-section³ for two reasons: one is that s. 12 has clearly discarded the doctrine of mutuality and secondly, that the language of sub-section (4) will not be of any relevance in cases of the type envisaged by the Commission as it applies only to the enforcement of contracts and, in cases like *Mir Sarwarjan* there was no valid contract at all of which specific performance could be sought. The only situation in which doctrine of mutuality can be sought to be availed of is where one of the parties to a contract cannot seek specific performance thereof while the other will be able to do so and that situation has been amply provided for in S. 12 of the Act. There seems to be some force in this criticism of the provision as an unnecessary superfluity. However, we do not think it necessary to suggest the omission of S. 20(4) from the Act. It has remained in the statute for thirty years and given rise to no difficulties. It only reiterates a principle, well settled in several jurisdictions, as pointed out in the Ninth Report, that want of mutuality should be no ground for denial of a decree for specific performance.

CHAPTER 7

POSSESSION AND PARTITION

7.1. The object of Section 22, newly introduced in 1963, was to enable parties to sue in one suit for specific performance as well as possession, etc. This provision was considered necessary because, under the 1877 Act, some High Courts had taken the view that since title would pass only after specific performance is decreed, possession could be claimed only thereafter in a separate suit. Other High Courts, however, favoured the view that possession could be asked for in the same suit. Some courts¹ went to the extent of saying that even if there was no prayer for possession in the suit, it could be claimed in execution proceedings in the suit after the deed is got executed in pursuance of the decree. In *Babu Lal v. Hazarilal Kishorilal*² the Supreme Court, analysing the provisions of Section 22(2), observed:—

“The word ‘proceeding’ is not defined in the Act. Shorter Oxford Dictionary defines it as carrying on of an action at law, a legal action or process; any act done by authority of a court of law; any step taken in a cause by either party”. The term ‘proceeding’ is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word ‘proceeding’ in Sec. 22 includes execution proceedings also. In *Rameshwar Nath v. Uttar Pradesh Union Bank Ltd.*³, such a view was taken. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. *Execution is a stage in the legal proceedings.* It is a step in the judicial process. It marks a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution,

Section 22, read with the above decision, gives legislative recognition to the latter of the two views set out earlier. It, however, appears desirable to clarify the position and incorporate the effect of the decision of the Supreme Court by adding, after the word ‘proceeding’ in the proviso to Section 22(2), the words ‘including a proceeding in execution’. We recommend accordingly.

CHAPTER 8

RESCISSION OF CONTRACT

8.1. Section 28(1) of the Act provides for rescission of certain contracts of sale or lease of immovable property where the purchase or lease money is not paid within a specified period. Sometimes, the Court may pass a "self-operative" final decree: that is to say, one that provides that, if the payment is not made within the time fixed by the decree, the suit shall stand dismissed. On the question whether, in such cases also, the Court can extend the time originally fixed for payment notwithstanding the terms of the decree, there is a difference of judicial opinion.¹ Strictly speaking, it appears, such a "self-operative" decree would be against the law and in any event, would clearly run contrary to the express provisions of Section 28. Whatever that might be, we think that it should be clarified that Section 28 would be applicable even in such cases. We therefore, recommend that a new sub-section (1A) be inserted, after sub-section (1), in Section 28 as follows:

"(1A) An application under sub-section (1) for the extension of the period within which the purchase money or other sum was payable under the decree or for the rescission of the contract may be made by vendor or lessor at any time and may be made notwithstanding that the decree may have provided that certain consequences should follow automatically on the default of the purchaser or lessee to pay the said sums within the period specified in the decree or otherwise allowed by the Court."

CHAPTER 9

CANCELLATION OF DECREES

9.1. Section 31 provides for the cancellation of "written instruments". This expression is not confined to contracts and is wide enough to cover unilateral documents such as receipts, acknowledgements, gifts and wills. It has also been held to cover awards and compromise decrees. There is, however, a doubt as to whether decrees other than compromise decrees will fall within the meaning of the expression.¹

We are mentioning this in passing. We do not recommend any statutory amendment for the present and we would leave the matter open for judicial clarification, if and when an occasion should arise.

CHAPTER 10
RECOMMENDATIONS

101. To sum up, we recommend the following amendments to the Act:—

1. **Sec. 1(2)**.—The words “except the State of Jammu & Kashmir” in S. 1(2) may be omitted. A Presidential Order under Art. 370 of the Constitution to make this amendment effective may also be issued.

2. **Sec. 6**.—S. 6(1) of the Act may be amended to read as follows:

“6(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or *any person through whom he has been in possession* or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.”

3. **Sec. 15**.—In Sec. 15, the following may be inserted as clause (i):

“(i) by any person, where the contract by its express terms purports to confer some benefit directly on such person.”

4. **Sec. 16(c)**.—The words “aver and” may be deleted.

5. **Sec. 22**.—In the proviso to sub-section (2) of Sec. 22 the words “including a proceeding in execution” may be inserted after the word “proceeding”.

6. **Sec. 28**.—In Sec. 28, after sub-section (1) a sub-section (1A) may be inserted in the following terms:

“(1A) An application under sub-section (1) for the extension of the period within which the purchase money or other sum was payable under the decree or for the rescission of the contract may be made by the vendor or lessor at any time and may be made notwithstanding that the decree may have provided that certain consequences should follow automatically on the default of the purchaser or lessee to pay the said sums within the period specified in the decree or otherwise allowed by the Court.”

No other changes in the Act are considered necessary.

(Sd.)
(K. N. SINGH)
Chairman

(Sd.)
(S. RANGANATHAN)
Member

(Sd.)
(D. N. SANDANSHIV)
Member

(Sd.)
(P. M. BAKSHI)
Member (Part-Time)

(Sd.)
(M. MARCUS)
Member (Part-Time)

(Sd.)
(CH. PRABHAKARA RAO)
Member-Secretary

New Delhi, The 06th October, 1993.

NOTES AND REFERENCES

Chapter 1

1. A.I.R. 1982 S.C. 818.
2. For example compensatory relief in respect of death or personal injury in various kinds of situations including those while in police custody.
3. The Commission is proposing to consider the wider issues and to cover them in a later report.

Chapter 2

Nil.

Chapter 3

1. Para 16 of the Ninth Report.
2. *Veeraswami v. Venkatachala*, AIR 1926 Madras 18;
Ramchandra v. Sambashiv, AIR 1928 Nagpur 313;
3. *Raghuvir Dayal v. Har Govind*, AIR 1953 Raj. 287;
Gobind Ram v. Mewa AIR 1953 Pepsu 188;
Sailesh Kumar v. Rama Devi, AIR 1952 A.P. 339;
Jadhunath v. Bishunath, ILR 1951-2 All, 16;
Ratanlal v. Amar Singh, AIR 1929 Bom. 467;
Bindubasini v. Jaharvi, (1901) ILR 24 Cal. 260;
Virjivanns v. Mohamed Ali (1881) ILR 5 Bom. 208.

Chapter 4

1. *Dunlop Pneumatic Tyre Co. v. Selfridge & Co.* 1915 AC 847;
Scruttons Ltd. v. Midland Silicones Ltd. 1962 AC 446;
Beswick v. Beswick 1967-2 AER 1197 (H.L.).
Clause (c) is perhaps the only real exception to this rule, very limited in its scope.
2. 1937 (Cmnd. 5449), para 48.
3. The recommendation of the Committee has not been implemented in England.
4. *Beswick v. Beswick* (1968 AC 58) disapproving of Lord Denning's observations in *Same v. Same* (1966) Ch. 538. (See also *Jackson v. Horizon Holidays Ltd.* 1975-3 All ER 92 which represented another attempt by Lord Denning to water down the strictness of the rule).
5. In *Wodar Investment Development Ltd. v. Wimpey Construction (UK) Ltd.* 1980-1 All, E.R. 571 at 591 also Lord Denning's view in *Jackson* was criticised but Lord Scarman has forcefully urged the desirability of the House of Lords reconsidering the rule.
6. S. 2(d) of the Indian Contract Act.
7. See, for example, *Shiv Dayal v. Union* AIR 1963 Pun. 538. But there are also some dissenting voices as in *Kshirode Bihari v. Man Govinda*, AIR 1934 Cal. 682, *Debnarayan Dutt v. Chunilal Ghose*, AIR 1941 Cal. 129 and *Dwarika Nath v. Priya Nath*, (1917) 22 C. W. No. 279. See in this context *Pollock & Mulla*, Indian Contract Act (10th Edition) pp. 28-37.

8. S. 2(d) of the Indian Contract Act. See also *Subbu Chetti v. Arunachalam Chetty*, AIR 1930 Mad. 382; *Krishna Lal Sandhu v. Pramila Bala*, AIR 1928 Cal. 518 and *Kepong Prospecting Co. Ltd. v. Schmidt* (1968) 2 WLR 55. a Privy Council decision on a Malayan Ordinance which contains a provision identical with S. 2(d).
9. *Khwaja Muhammad Khan v. Hussaini Begum*, (1910) 37 I.A. 152 (P.C.); *Shuppu Ammal v. Subramania*, I.L.R. (1910) 33 Mad. 238; *Sundararaja v. Lakshmi*, I.L.R. (1915) 38 Mad. 788.
10. See *Pollock & Mulla*, Indian Contract Act, Tenth Edn. p. 35.
11. *Coulls v. Bagot's Executor & Trustee Co. Ltd.* (1967) 40 A.L.J.R. 47.
12. Cmd. 5449 (p. 31) referred to in *Beswick v. Beswick* (1967) 2 AER 1197.

Chapter 5

1. *Gomathinayagam Pillai v. Palaniswamy Nadar*, AIR 1967 SC 868. In *Pakhar Singh v. Krishan Singh*, AIR 1947 Raj. 112, it has been mentioned that the readiness and willingness should cover the period from the date of the contract to the date of filing the suit.
2. *Ardeshir Mama v. Flora Sasson*, AIR 1928 P.C. 208 which was applied in *Gomathinayagam* (supra).
3. See Mulla, Specific Relief Act, 10th Edition p. 997.
4. *Gomathinayagam Pillai v. Palaniswami Nadar*, AIR 1967 SC 228.
5. AIR 1968 SC 1355.
6. 1969 (2) SCC 539.
7. AIR 1990 SC 682.
8. See *Dhirm Singh v. Tara Chand* (AIR 1984 All. 5) and *Kamdev Nath Choudhary v. Devendar Kumar Nath* (AIR 1979 Gau. 65).
9. *Idris Ali v. Abdul Samad*, AIR 1973 Gau. 132 and *Kamdevnath v. Devendra Kumar Nath*, AIR 1979 Gau. 65, however, voiced exceptions to be rule.
10. AIR 1967 SC 228; See also *Prem Raj v. DLF Ltd.*, AIR 1968 SC 1355.
11. See *Madan v. Kamaluddin* (AIR 1930 Pat. 121), referred to in the Ninth Report and the later cases cited in f.n. (77) to (84) of Mulla Specific Relief Act (10th Ed.) on p. 998. The Supreme Court of Pakistan, however, seems to have taken a different view; Mulla, Specific Relief Act 10th Edn., p. 998 f.n. (89).
12. *Thankamma Mathew v. Azamatulla Khan* J.T. 1991-1 SC 35.
13. Code of Civil Procedure, Or. 6, R. 17. If he fails to do so, he cannot blame the law or the court and will have to thank himself and face the consequence of the suit's dismissal.
14. *Ouseph Verghese v. Joseph Aley* 1969(2) SCC 439; *A.K. Rowther v P.K. Sarabhai*, AIR 1990 SC 680.

15. See *Sambasiva Rao v. Bangaru Raju*, AIR 1985 A.P. 392; *Marakkair v. Thavalaparabil Appu*, AIR 1991 Ker. 1.
16. See *Mahmood Khan v. Ayob Khan*, AIR 1978 All. 463; *Ram Sighasan v. Sudama Prasad*, AIR 1982 Pat. 200.
17. *Ganesh Trading Co. v. Moji Ram*, AIR 1978 SC 484.

Chapter 6

1. See para 51 of the Report.
2. *Mir Sarwarjan v. Fakiruddin Mohammad* (1912) 39 I.A. 1.
3. Mulla, Specific Relief Act, 10th Ed. p. 1025.

Chapter 7

1. *Arjun v. Sahu*, AIR 1950 All. 415; *Karrik v. Dibaker*, AIR 1952 Cal. 362; *Shyama v. Duli Chand* (1987) All. L.J. 148.
2. AIR 1982 SC 818.
3. AIR 1956 All. 586.

Chapter 8

1. *Bhujangrao Ganpat v. Seshrao Rajaram*, AIR 1974 Bom. 101 and *Saryanarayana v. Sydich* 1972 1 An. W. R. 367; *contra: Saraswathy v. Somasundaram* 1977 2 MLJ 68 and *Chalapathi v. Subba Reddy* (1989) 3 Current Civil Cases 431 (A.P.) at pp. 433, 435.

Chapter 9

1. *Shanti Prasad v. Kunj Lal*, AIR 1953 Pepsu 151. *contra: Dunia Lal v. Nagendra Nath*, AIR 1953 Cal. 163.