

Textbook on
**LAW OF
CONTRACT &
SPECIFIC RELIEF**

Avtar Singh

Sixth Edition



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Textbook on
Law of Contract
and Specific Relief

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Preface to Sixth Edition

The Contract Act of 1872 and the original Specific Relief Act of 1877 belonged to the same period of legislative enactments. The purpose of one is to lay down principles for formation of contractual relations and to provide the remedial measure of recovery of damages in the event of one party's failure to keep his contractual commitments. The Specific Relief Act of 1963, which replaced the earlier Act of 1877, provides the remedial measures for forcing parties to perform their actual contractual commitments and not to get rid of them by just paying compensation for their acts. The present work provides a summary version in a combined manner of all the statutory provisions and judicial pronouncements on them. The presentation has been shaped as a text material. During the period between the present and preceding editions, there have been no statutory changes. New trends in the subjects have emerged only through the medium of judicial decisions. To what extent are technical persons and artists free to use their accumulated knowledge and experience acquired while working under one employer and then going away to another employer, presented to the courts a very difficult task of balancing interests in the context of restraint of trade and compensation for breach of confidence and for misuse of trade secrets.

The Supreme Court deliveries on the subject have been something like this: The terms of a voluntary retirement scheme prevail over the provisions of the Contract Act. Purposive interpretation has to be given to a contract because in many cases, particularly those based upon pre-printed form of contract and which are pushed into service regardless of the fact whether they are suited to the type of contract in hand. Tickets which are delivered through electronic mode and which do not show the terms and conditions of journey, are nevertheless binding on passengers. There is very little chance of questioning validity of statutory contracts on the touchstone of fairness, for example, a power purchase agreement under a Regulatory Scheme. A Lok Adalat is not a court. Any provision in a contract touching jurisdiction of courts is not to apply to Lok Adalats. Contracts are not to be readily declared invalid because of vagueness or uncertainty. If their business efficacy can be ascertained they should be spared. Increasing value of immovable property requires a revision of earlier rulings that time is not of the essence in property transactions. Accordingly, in the sale of a house, urgent need of money was considered of essence for time of payment. Where the terms of

the old contract are kept alive in the making of the new contract, it is not to be regarded as a novation. But where there was total revision of the bridge plan, it was considered to be a new contract enabling the contractor to get his payment for the work he had already done and not to make him responsible for the expenses of fashioning a new contract. Wrongfully paid salary or pension is recoverable. Where losses were made good by the Authority otherwise, it was not allowed to encash the bank guarantee or to forfeit the security amount. Confusion continues to prevail whether the surety can be made to pay the amount under the guarantee even before the principal debtor is touched at all. But this fact has been judicially acknowledged that the surety can protect himself by a clause that he would be liable only after recovery has been launched against the principal debtor and that the surety would be liable only for the amount in default.

In the sphere of specific performance, such performance has been allowed in favour of a person who has purchased a share in an unpartitioned property and also of a part of a contract, a contract with uncertain clauses, contract involving personal, confidential and fiduciary service, pre-incorporation purchase of property on behalf of a proposed company. The basic contract is not extinguished by the fact that a decree of specific performance has been passed. The nature of jurisdiction under the Act has also been examined.

Only the donor can seek rectification of the gift deed. Cancellation of a registered sale deed can be effected either under agreement of parties or by a court order and not unilaterally. A petition for declaratory relief of title must also claim accompanying reliefs and not mere declaratory relief. A proceeding for an interim relief can be allowed only when the underlying suit is maintainable and the interim relief can also be a final relief.

Some additional topics as they developed because of the widening embrace of the subject are a new feature in this Edition.

Ghaziabad
September 20, 2015

—Dr Avtar Singh

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