

**AN INDISPENSABLE ANALOGY OF SPECIFIC  
PERFORMANCE UNDER THE SPECIFIC RELIEF ACT,  
1877 OF BANGLADESH**

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**Abstract**

This article attempts will be made to identify specific performance, compensations are normally available and specific performance rarely settled, it has met and continuous to assemble with the analysis on a diversity of grounds. As done by various application to perceive its usefulness and effectiveness to locate its assimilation in different Acts and statutes as well as the Specific Relief Act, 1877, and to explain the basic rules to indicate how it can guide the aggrieved and legal knowledge seekers in getting theoretically developed in new permissible legal situations. The topic matter regarding study of this article is confined to the subject matter, history and basic rules, rules regarding statutory interpretation, suit and limitation, and few other significant rules along with little unique conducts of specific performance. The general attempt of writing this article, is to seek the core purpose and collectively comprehend, the law based analogy of specific performance and all the conjoined rules.

**Keywords:**

Specific Performance;  
Role of equity;  
Suit for Specific  
performance;  
Result of Expansion;  
Intention Justification.

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**1. Introduction:** Specific performance is a unique remedial process of the law of equity. As like as the case with other equitable remedies, specific performance is not available unless the legal remedy is “inadequate”. This remedy is discretionary and only used when an individual cannot be compensated by money. The justification of specific performance as a remedy by legal scholars,<sup>1</sup> the courts are in common averse to exercise it as a remedy except in cases that entail the enforcement of a simple exchange, such as money or unique good like real estate or art. The only universal consequence of a legally promise is, that the law makes the promisor pay damages if the promised event does not come to pass,<sup>2</sup> May specific performances have been derived from equity but in the present day and time it comprises with various rules and regulations? The rules and regulations related to specific performance, it involves few rules of law of Limitation Act, Civil Procedure Code, Contract Act and Interpretation of Statutes. The determining factor is whether in equity and good conscience, the court should specifically enforce the specific performance because the legal remedy of monetary damages would inadequately compensate the plaintiff for the loss.

**2. Methodology:** Data utilized in this article have been collected from the secondary sources and constant constructive analogical appliance of research method by balancing antithetic applicable rules in contradistinctive statutes in different countries, *i.e.*, from the books, law journals, Acts, articles, news papers as mentioned in the references. The cases referred to are from current relevant incident which occurred in different places in Bangladesh. This cram has also revealed some effectual recommendations which are considered necessary to avert the misuse of specific performance in manner of a contract and civil proceedings in Bangladesh.

### **3. Objectives of the study:**

Against the milieu of the set statement, the main objectives of the study are as follows:

- (i) To examine how the provisions and principles of specific performance is applied and enforced in Bangladesh.
- (ii) To identify and equate with the various case related to specific performance in Bangladesh.
- (iii) To perceive and detect the reliability and changeability of the application of specific performance in miscellaneous aspect.

- (iv) To signify the outcome of extension and deliberate Justification of Specific performances.
- (v) To become aware of the split application of different Acts and procedures pertaining to the suits of specific performance.

**4. Meaning of Specific Performance:** Specific Performance is a specialized remedy used by courts when no other remedy (Such as Money) will adequately compensate to other party. Specific performance may be ordered instead of a judgment for money if the contract can still be performed and money cannot sufficiently reward the plaintiff.<sup>3</sup> Example: When a defendant was to deliver some unique item such as an art- work and did not, a judge may order the defendant to actually deliver the art work.

According to Halsbury Specific performance is “an equitable relief given by the Courts in cases of breach of contract, in the form of a judgment that the defendants do actually perform the contract according to its terms and stipulation.”The right of a party to a contract to burden that the defendant be ordered in the judgment to perform the contract. According to Pomeroy defines it as containing in the contracting party’s specific fulfillment of obligation which he has assumed in his doing or omitting the very act which he has assumed to do or omit.

According to Equity Law, Specific performance is an order of the court requiring the Defendants to carry out his obligations under an instrument. The general rule is that Specific performance will be granted where the common law remedy of damages is inadequate. Example: A contracts with B to paint a picture for B who agrees to pay therefore 1000 taka. The picture is painted. B is entitled to have delivered to him on payment to tender of 1000 taka.

#### **5. Scope and object of specific performance:**

The object is to specify the cases in which specific performance is enforceable and the non-performance of the act or payment of money under a contract. Where the plaintiff is not claiming the performance of a specific act or the delivery of particular articles or of particular things but is merely, claiming money payable to him under a contract, the suit can in no sense be treated as a suit for the specific performance. The court always drew a distinction between the essential and

non-essential terms of a contract and allowed incapacity to perform its non-essential terms to be made the subject of compensation. The scope is look into the conduct of the plaintiff and this is done in the courts discretionary nature of equity. Before an equity court will compel specific performance, however, the contract must be one which can be specifically performed.

## **6. Subject of Specific performance:**

It must be remembered that specific performance is not a matter of right, even when the plaintiff's evidence establishes a contract valid at law and adequate for the recovery of damages. Ordering specific enforcement of a contract is a matter within the sound judicial discretion of the court. The subject of Specific performance is dealt in which may be classified under the following heads:-

- A. Contracts which may be specifically enforced;
- B. Contracts which cannot be specifically enforced;
- C. Parties to an action for specific performance.<sup>4</sup>

In gist, the remedy does exactly what its name implies; it forces the defaulting party to perform his contractual obligations exactly, absolutely, precisely and specifically. Thus specific performance is an equitable rather than legal remedy. By compelling the parties to perform exactly what they had agreed to perform; more complete and perfect justice is achieved than by awarding damages for a breach of contract.

## **7. History of specific performance:**

The law of specific performance is basically founded on equity, considerations such as conduct of the plaintiff, the element of hardship that may be cause to one of the parties, the availability of adequate alternative remedies and such other matters are taken into consideration. The specific performance in its foundation was in the court of chancery and evincing in general, a concern with issues of conscience and justice, and imposed remedies on discretionary basis. The dynamic nature of this part of law, which has undergone significant extension and reformulation in the years 1873:

The distinctive concepts , principles and remedies which were developed and applied by the old court of chancery, as they have been refined and elaborated since.<sup>5</sup> The ecclesiastical natural law

foundations of equity, it concern with standards of conscience, fairness, equality, as well as its discretionary approach to the grant of relief of specific performance , stand in marked contrast to the more rigid formulate applied by the common law. The common law of England is usually considered the basis of history of specific performance in modern law because equity law applies its jurisdiction as a supplement of common law. The specific performance which is percolated form England is applicable to all established courts of Bangladesh.

### **8. Role of Equity in Specific performance:**

The relief of specific performance pertains to the sphere of influence of equity. Discretion of the court has to be exercised in favour of a person who comes to court with clean hands and must himself be prepared to do equity.<sup>6</sup> The two most important cases which have organized the position of promissory estoppel in English Law and The basic elements of the specific performance, it generally does not deal with those agreements that are strictly enforceable by equity law.<sup>7</sup> Fairly, the agreements would be abided in its limitations that would become unconscionable, if it were disregarded. Nevertheless, the promises made must be in free consent and not of duress or coercion. There must have been some sort of action committed by the promisee, depending on a particular promise by which he changed his earlier position.<sup>8</sup> Specific relief Act, 1877 is one of equity law innovations. Although specific performance is a special chapter of specific relief Act, nevertheless equity role is essential and it exists in every part of specific performances. In the precise manner Justice Lush established, “A valuable reflection in the sense of law may consist either, in some right, interest, profit or benefit increasing to one party, or some forbearance, detriment, loss, or responsibility given or undertaken by the other.”<sup>9</sup> From specific performance a lot of specific relief is encountered, and led with civil procedure wherein most of the basic concept is not very clear to people.

The reason for the development of this principle can be traced , if we look into the case of Hughes v. Metropolitan Railway Co .In this case, the plaintiff had leased to the defendant a piece of land for carrying out its business. In between this period, the plaintiff needed to carry out repairs within a period of six months or pay the plaintiff certain compensation. Lord Cairns in his judgment said that: it is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results-certain penalties

of legal forfeiture-afterwards by their own act , or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising out of the contract would not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it could be inequitable , having regard to the dealings which have thus taken place between the parties." The plaintiff was required to show the good faith and equities of its own position, and the trial chancellor, in weighing the equities, was entitled to consider whether a decree of specific performance would work an unconscionable advantage to the plaintiff or would result in injustice.<sup>10</sup>

### **9. Basic rules of Specific performance:**

The plaintiff seeking this remedy must first satisfy the court that the normal remedy of damages is inadequate, the presumption being that in cases of specific performances. Even in these cases specific performance is not always granted, as it is a discretionary remedy. There are few basic rules of Specific performance.

- A. Decree of specific performance is discretionary relief.<sup>11</sup>
- B. There should be a valid contract.<sup>12</sup> Specific performance can be granted only by a court in the implement of equity powers, consequent to a determination of whether a valid contract that can be enforced exists and an assessment of the relief sought.
- C. If damages are a sufficient remedy, no specific performance would be ordered.
- D. For the act which requires continued supervision of the court, no specific performance would be ordered.<sup>13</sup>
- E. No specific performance would be ordered for contracts for personal work or service.<sup>14</sup>
- F. 'Equity' will insist on the principle of mutuality.<sup>15</sup> The person against whom the relief is claimed may take plea by way of defence under law relating to a contract.<sup>16</sup> The remedy of specific performance is in disparity with the remedy by way of damages for breach of contract, which gives pecuniary compensation for failure to carry out the terms of the contract. Damages and specific performance are both, remedies accessible upon breach of obligations by a party to the contract; the former is a substantial remedy, and the latter a specific remedy. The remedy of specific performance is granted by way of exception.

**10. Rules of Statutory interpretation in Specific performance:**

In our sub-continent specific performances are ought to be liberally construed. The form of expression and the literal sense is not to be so much regarded as the actual meaning of the parties which the deal discloses.<sup>17</sup> But this does not mean that even those documents which are not contracts may be construed as such.

Thus a document merely reciting the fact that the sale has already been made and BDT 1000 in cash has already been received and that an entry has been made in the Registration regarding the remaining BDT.550 constitutes an actual sale and no suit for specific performance of an agreement to sell would lie. Similarly a report of jury constituted under section 139, Cr.P.C. does not amount to a contract between the parties and cannot be made a basis for a suit for specific performance.

It involves the interpretation agreeing to what the reader believes the author reasonably intended. But, in a specific performance the interpretation does not essentially mean an interpretation that would accomplish a change in former practice. Further, an interpretation does necessarily involve a reasonable interpretation. The court referred to quote in the context of finding that nominal consideration is sufficient to support a contract.<sup>18</sup> If we go through interpretation of statute we can observe that every contract is interpreted by liberal approach and literal rule. As most of the specific performances depend on a contract so generally specific performance is interpreted like this even though every so often it involves theological and logical interpretation.<sup>19</sup>

**11. Suit for Specific performance:**

A party to a contract who is damaged because the contract is breached by another party has the choice to file a suit for specific performance compelling to complete his branch of contract. Where a suit is brought for specific performance, the plaintiff should prove the existence of a concluded contract between himself and the defendant and that he was ready and willing at all material dates to perform his part of the contract or act. The defenses not available in an action for damages should be eliminated or severely restricted in their application to actions for specific performance. Under current law, courts grant specific performance when they perceive that

damages will be inadequate compensation. It must further be proved that the contract was enforceable and the enforceability of the contract must be traced back to the date of agreement and not to the date on which the decree is to be passed.<sup>20</sup> A closely related requirement of an action for specific performance is that the contract be “just and reasonable” as to the party against whom the decree will operate. The purpose of Contract remedies is to place a disappointed promisee in as good a position as he would have enjoyed had his promisor performed.<sup>21</sup> Making Specific performance generally available is unlikely to result in the efficiency losses predicted by other Commentators.<sup>22</sup> The relief must be specifically claimed. When the plaintiff claims specific performance of a particular agreement that could be decreed for specific performance of only that agreement, and where the plaintiff did not discharge the burden of proving the existence of a contract, his suit for the specific performance was dismissed.

## **12. Limitation of a suit for specific Performance:**

A suit for specific performance shall be filed within three years from the date fixed for the purpose or if no such date is fixed, then from the date when the plaintiff has notice that the subject matter is refused.<sup>23</sup> Article 113 of Limitation Act visualizes two situations, one when date for performance is fixed in the contract itself and would remain suspended and the period would start to run only when the promisor refuses to perform his part and such refusal is notified to the promisee. Where agreement to sell in question, did not specify any date for its performance. In such case later part of Art.113, Limitation Act would apply. Limitation starts from the date when plaintiff comes to know that defendant has declined to abide by his commitment. Suit filed within three years of the knowledge of plaintiff that defendant had refused to perform his part of the agreement, would be within limitation. “Rested on party pleading bar of limitation and it failed to discharge it” Therefore, question of bar of limitation did not arise. Where claim in the suit was for specific movable property or for compensation for wrongfully taking or injuring, Article 49 of the Limitation Act, 1908, would be applicable. The prescribed period of limitation for a suit of specific performance is three years from the date fixed performance, or, if no such date is fixed, when the plaintiff has noticed that performance has been refused. A suit for specific performance lies when the document is essential for the completion of the contract has not been



executed and if there is a valid enforceable contract either party is entitled to call upon the other to complete the transaction by the execution and registration of the document of title.

The paradigm cases in which the specific performance remedy is currently granted include sales of "unique goods,"<sup>24</sup> in which alternative damages are difficult to compute; sales of land, because land is presumed unique;<sup>25</sup> and, more recently, long-term requirements contracts, for which damages from breach are hard to calculate.<sup>26</sup> Suit filed before the date of contract merely, because the suit was brought before the contract date would not merit of dismissal or afford a ground for refusing specific performance. However, courts will not enforce such clauses; liquidated damage clauses are enforced only if they reflect a "reasonable" forecast of "actual" damages-the damages courts would grant if there were no liquidated damage clauses in the contracts.<sup>27</sup>

### **13. Result of expansion and the theory of "Intention Justification" in Specific performance:**

There are two principal ways in which efficiency might suffer as the result of expanding or expansion of specific performance. First, many parties might prefer to have the specific performance remedy accessible only in those cases in which the law presently grants it. If the remedy's ease of use were really extended, these parties would settle contract provisions restricting its use. Second, if specific performance were characteristically available, promisors who wanted to breach would often be obligated to "bribe" promisees to release them from their obligations.<sup>28</sup> The negotiations required might be more intricate and costly than the post-breach negotiations that occur when breaching promisors have merely to pay promisees their damages. On the other hand, "Intention justification" theories for restricting specific performance argue that the division of cases in which the parties now can obtain the remedy, and the class of cases in which the parties would want the remedy to be accessible, are coextensive. There are two difficulties with this position. First, there is no ground to assume that the parties' preferences are similar with current law.<sup>29</sup> Second, it is excessively hard to obtain from parties' preferences general legal rules respecting when either remedy should be used.

### **14. Defences available under the Law of Contract:**

According to law of contract and Specific Relief Act, 1877 there are some defences in specific performances that cause most of the specific performances in defence in the contract. Whether

contract law recognizes defences depends on how the concept of a defence is understood.<sup>30</sup> The law of contract an agreement can be binding on and can only be enforced against the parties to it. Section 11 of the contract Act is indicating towards the capacity of the parties and the capacity of the parties is determined by their national law. And it has been mentioned that the agreement is not assured or someone tries to create a certainty to the agreement, then this agreement will be void. An agreement, the meaning of which is not certain or capable of being made certain is void. Law requires parties to make their own contract. If the words used by the parties are vague or indefinite, the Law cannot lend its help to the parties. Agreements void for uncertainty Contracts, the meaning of which is not certain, or capable of being made certain, are void. Agreements, the meaning of which is not certain, or capable of being made certain, are void.<sup>31</sup> like as: - A agrees to sell B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. A agrees to sell B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty."

If there is such contract whereby, the performance has not come to an end then according to the law of contract, we call it absence of concluded contract. Certain problems can arise when both parties agree that a certain statement was made, although they disagree on whether that statement was part of a contract and therefore intended to be binding. The contract shall be regarded as concluded, if an agreement has been achieved between the parties on all its essential terms, in the form proper for the similar kind of contracts and the contract shall be concluded by way of forwarding the offer (the proposal to conclude the contract) by one of the parties and of its acceptance (the acceptance of the offer) by the other party.<sup>32</sup> A misrepresentation means an inexact statement pertaining to any material fact in the contract. A contract where the assent is attained by misrepresentation is voidable at the choice of the aggrieved party. Where by fraud or mistake of fact the contract is in terms differ from that which the defendant supposed it to be when he entered into it and the defendant entered into the contract under reasonable misapprehension as to its effect as between himself and the plaintiff.<sup>33</sup> Any party who has entered into a contract by misrepresentation may, avoid the agreement or insist that the contract be performed by putting him in a position in which he would have actually been had the representation be true.<sup>34</sup>

Where both the parties to an agreement are under a mistake as to a matter of fact necessary to the agreement, the agreement is void."Mistake of Law is based on the principle of '*Ignorantia Juris Non Excusat*' which means ignorance of law is no excuse. Mistake in untrue belief about something may be termed as a mistake. A party is not entitled to any relief on the plea that an act has been done in ignorance of the law.<sup>35</sup> Illegality or want of authority to enter into a contract is also a defence to specific performance in a contract. Fraud in a contract occurs when one party in a contract presents information to another that is incorrect, or mean to confuse the other party. There are two main types of contract fraud: fraud in the inducement and fraud in the factum. For example:, Contracts fraud may be found when a person claims that a contract is for sale a house, when in fact the terms of the contract specify that it is for sale of car. Specific performance of a contract could be enforced when no standard existed for ascertaining actual damage cause by non performance of the act agreed to be done or when the act agreed to be done was such that pecuniary compensation for its non performance would not afford adequate relief or when it is probable that pecuniary compensation could not be got for non-performance of the act agreed to be done.The rules concerning the measure of damages in assumes it produced a result which was indistinguishable in practical effect from specific relief: It was resolved, that the plaintiff in this action on the case on assumes it should not recover only damages for the special loss (if any be) which he had, but also for the whole debt.<sup>36</sup> Which therein includes defence upon specific performances, and that is proper.

### **15. Crosspiece and bars in specific performance:**

Where the plaintiff cannot attain compensation for the breach of a contract, he cannot be granted relief of its specific performances. In a suit for specific performance the plaintiff must show readiness and willingness to perform his part of the contract. Specific performance of a contract cannot be enforced in favour of a person- who violates any essential term of the contract that on his part remains to be performed and who fails to declare and prove that he has performed or lacks in preparation and fail to operate the major terms of the contract implemented by him.<sup>37</sup> His failure also demonstrated want of a bona fide on his part, despite having agreed to balance the consideration while matter is ex-facie debarred from seeking specific performance of a contract. Where a contract involves the payment of money, it is not essential for the plaintiff to actually fond to the defendant or to deposit in court any money except, when so directed by the

court and the plaintiff must affirm his or her performance along with his or her willingness to act by the contract according to its genuine construction.

#### **16. The specific performance can be enforced:**

There are numerous rules regarding necessitation and exaction of specific performance so lay concrete on If there exists no standard for ascertaining the actual damage caused by the non performance of the act which agreed to be done, here the amount awarded to a complainant in compensation for actual and real loss or injury is the result of a failure of a party to abide by or fulfill the terms of a contract, a failure which may lead to a breach of contract. A contract can be specifically enforced against either party to it. The non performance of contract would not afford adequate relief and it is probable that compensation cannot be got for the non performance of the act agreed to be done.<sup>38</sup> A contract may be enforced not only against a party to it but also against any person claiming under him by title arising subsequently to the contract. But there are some exceptional rules of enforcement of specific performance like, specific performance of a contract to sell immovable property can be obtained against a subsequent mortgagee with notice of contract.

#### **17. Specific performance cannot be enforced:**

The relief of specific performance will not be refused unless sound and reasonable principles justify the same. Where there are sound reasons, if a contract does not fall under section 21 the court may refuse its specific performance.<sup>39</sup> A contract although not illegal, if detrimental to public welfare is unenforceable in equity. To be specifically enforceable, a bilateral contract must be mutual. It is based on the principle of equity that the law will not permit a party a contract which the other party could not have enforced against him.<sup>40</sup> Therefore the court will not pass a decree for specific performance of contract unless the plaintiff also could be compelled to specifically perform his part of the obligation. In such a case the party seeking to enforce the promise has already performed his obligation and no question of enforcement against him can arise. The minor cannot obtain specific performance of the contract and the contract cannot be specifically enforced against the minor or even against a subsequent purchaser subject to such contract. The contract with uncertain terms and which are not valid in the eye of law cannot attain specific performance. Contracts involving constant supervision of the court and if its

nature is determinable in it cannot therefore be specifically enforceable. A contract for the non performance of which compensation in money is adequate relief cannot be specifically enforced. Here, adequate appearing to the court for some reason found as a fact. Like specific performance of a building contract cannot be granted. And a court will not make an order, the effect of which is to enforce specifically any contract of personal service.

### **18. Probability of attainment in specific performance:**

A contractual right without limitation is assignable, transferable and thus enforceable, by the transferor or his representative in-interest. The specific performance can be enforced by either parties to the contract or their legal representatives, the only bar that has been contemplated that the contract is of such a personal nature which could not otherwise enforced.<sup>41</sup> But where a person has only personal interest which he cannot assign, his assignee can in no sense be regarded as his representative so as to be entitles to obtain specific performance. The representative-in-interest, thereto excepting where the personal quality is material ingredient in the court. All contracts capable of specific performance excepting those of the class prohibited are assignable and the words 'representative-in-interest' includes an assignee of an interest. Benefit arising out of a contract of repurchase is assignable the right that accrues to a vendor of immovable property on the basis of an agreement to retransfer by the vendee at the time of sale is assignable.<sup>42</sup> But there are few exceptions to the rule that third party to a contract cannot sue on it. Where there was an agreement between sons of a deceased that one of them should take the whole of the property of their father and also pay his debts, such brother does not become personally liable for debts of the father since the creditors cannot enforce an agreement between brothers, and therefore cannot apply to adjudicate him an insolvent. Where there is an agreement in anticipation of marriage between parents of bride and bridegroom by which an annuity is settled on the wife. She has a right to sue thereon though she is not a party to the contract. A contract of sale entered into by the promoters of a company which subsequently comes into existence and enters into possession of the property on the faith of the contract. Where a public company has entered into a contract and subsequently becomes amalgamated with another public company the contract may be enforced against the new company which arises out of amalgamation. A decree for specific performance of an agreement operates in favour of both

parties. The defendant in a suit for specific performance is as much entitled to enforce the decree as the plaintiff.

### **19. Setback Study of the unique Suits for specific Performances in court jurisdiction:**

The court consider to adjudge the readiness and willingness of plaintiff in suit for specific performance if it is To adjudge whether the plaintiff is ready to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other focusing situations and to prove desire to perform plaintiff must enter witness box. Right from the date of the execution till date of the decree, he must prove that he is ready and has always been willing to perform his part of the contract.<sup>43</sup> If the purchaser is failed to to pay his due amount within due time thereby prevented the vendor from purchasing another property and shifting to such premises, the vendor will not be able to perform his obligation to deliver vacant possession. If so, such contract is valid.<sup>44</sup> A purchaser from a co-purchaser can enforce specific performance of his contract against the other co-purchaser.<sup>45</sup> If the plaintiff suffers losses in consequence of a contract, specific performance of contract is maintainable. The court can properly exercise its discretion to decree a suit for specific performance in any case where the plaintiff has suffered losses in consequences of a contract.<sup>46</sup> A Contract, otherwise proper to be specifically enforced, may be enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.<sup>47</sup> Where a party to a contract is unable to perform the whole of his part of it, and the part which be left unperformed forms a considerable portion of whole, or does not admit of compensation in money, he is not entitled to attain a decree for specific performance. even if there is no provision in the contract for specific performance, the court can direct specific performance by the vendor, if breach is established. But the court has the option, to award damages, if it comes to the conclusion that it is not a fit case for granting specific performance.<sup>48</sup>

### **20. Conclusion:**

Even though it can be quite hard to describe the entire specific performance, rules and regulations in a short form. I still tried to express it in easier language, so that people are able to understand the true meaning of specific performance. Undeniably, if the buyer could compel the seller to perform the original contract by suing for specific performance, or if the buyer could

attain rightly compensatory damages in case the seller breaches the original contract, then she would never agree to any price increase. However, often the effective legal remedy available to the buyer is significantly under compensatory in such cases; the buyer may have a preference to ensure performance by granting to a price increase, rather than opting for the extended and imperfect litigation process.<sup>49</sup> Despite the fact that specific performance is essentially an exceedingly magnificent remedial process, by which if you had known the proper use, and if you had utilized it in a legal manner, you would have been avert from an assortment of massive aggravations. If a legal remedy will set the injured party in the position he or she would have enjoyed had the contract been fully performed, then the court exploit that alternative instead.

### References

- [1] Schwartz (1979) and Ulen (1984) when parties to a contract performed in a require way and when process prefer payment of money as damages for breach but a simple contradiction between contracts may bring into being of goods and contracts to put into words related to property may shaped.
- [2] Oliver Wendell Holmes, JR. *The Common Law* 301 (Boston, little Brown 1881).
- [3] Khan, Raja Said Akber, *The Specific Relief Act*, 7th edition at page ii-iii.
- [4] Part III, Chapter IX of the Specific Relief Act, 1963.
- [5] Sir Anthony Mason, "The place of equity and Equitable remedies in the contemporary Common Law World, (1994)110 *Law quarterly review* 238,239.
- [6] Shah Mohammad Omer Faruqe Jubaer, *Guiding Principles of Equity and Trust*, 1<sup>st</sup> ed (2013) at page-15-17
- [7] *Hughes v Metropolitan Railway Co* [1877]
- [8] *Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 130
- [9] *Currie v Misa* (1875) LR 10 Ex 153.
- [10] *Public Water Supply Dist. v. Fowlkes*, 407 S.W.2d 642, 647 (1966); accord, *Green, Inc. v. Smith*, 40 Ohio App. 2d 30, 39, 317 N.E.2d 227, 233 (1974).
- [11] *Sukumar vs Susheel*, 76 C.W.N 116.
- [12] *Ambica Prasad vs Naziran Bibi*, AIR, 1939 All 64
- [13] Section-14(1) (d) of the Specific relief Act 1963.
- [14] *Vaish Degree College, Shamli vs Lakshmi Narayan*, AIR 1976 SC 888



- [15] Edwin H. Greenebaum, Indian Law Journal, Vol-45 (1969)
- [16] Sec-9 of the Specific Relief Act 1963.
- [17] Salena Akter, the Specific Relief Act, Published by Hira Publication (2013).
- [18] Antons Trawling Co Ltd v Smith (2003) 2 NZLR 23 at [93].
- [19] Talukder Mahmood, Rules of Interpretation of Statutes at page 270-276( 2016).
- [20] Mahmood, shaukat, Specific Relief Act, Published by Legal Research Centre, p-51.
- [21] Restatement of Contracts, 329 (1932).
- [22] R. Posner, Economic Analysis of Law. Page 88-89 (2nd ed.1977).
- [23] Mohammad Saiful Alom, The Specific Relief Act (Bangla Edition) at page 40-49.
- [24] Leasco Corp. v. Taussig, 473 F.2d 777, 786 (2d Cir. 1972).
- [25] Henderson v. Fisher, 236 Cal. App. 2d 468, 473, 46 Cal. Rptr. 173, 177 (1965).
- [26] Laclede Gas Co. v. Amoco Oil Co., 522 F.2d 33, 40 (8th Cir. 1975)
- [27] Wise v. United States, 249 U.S. 361 (1919)
- [28] Barry Nicholas French Law of Contract (Butterworths, London,1982),at 118.
- [29] Gerry Maher Unilateral Obligations and Private International Law”2002 317 at 312-318 JR
- [30] Generally D Chalmers, Verbal Disputes (2011) 120 Philosophical Review 515.
- [31] Section-29 of the Contract Act 1872
- [32] Chapter 28. The Conclusion of the Contract, The Civil Code of the Russian Federation, the Additions and Amendments of February 20, August 12, 1996
- [33] Khan, Raja Sajid Akbar, the specific relief Act, 7th edt. Page vii.
- [34] Section-18, the Contract Act, 1872.
- [35] Section-20 of the Contract Act, 1872.
- [36] Slade’s Case (1602) 4 Co. Rep. 91a, 94b
- [37] Section-23 of the Specific relief Act 1967.
- [38] Section-10 of the Specific Relief Act 1967.
- [39] Shahana Sultana Shammi, Textbook on Law of Contract, Sufi Publications 2<sup>nd</sup> ed (2014) at page-33-57.
- [40] Sonia Parvin, The Law of Contract 2<sup>nd</sup> ed2012 at page 36-30.
- [41] Nur Nesa Khatun v Saleha Rahman, 26 DLR 347.
- [42] Ratish Chandra Mridha vs Krishna Golam, 15 DLR 634.
- [43] Man Kaur by LRS. Vs Hartar Singh Sangha, (2010) 10 SCC 512.



[44] Section 53 of the Contract Act, 1872.

[45] T. Rangayya Reddy vs. Subramanya Aiyar and org. case 429 on 16 January 1917.

[46] Implicit application of Section 20 of the Specific Relief Act, 1977(1920 A.D).

[47] Manzoor Ahmed Margary Vs. Gulam Hassan Aram and org, 2003 (6) ALT 15 (SC).

[48] Liberal construction of section 21 of the Specific Relief Act, 1877.

[49] Schwartz (1979) , Bar-Gill and Shahr (2002a), Austin Instrument, Inc. v. Loral Corp., 272 N.E.2d 533, 535 (NY, 1971).