



Intra Legem

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Determinable Contracts V/S Specific Performance: Discretion of Court

Introduction

Whilst trade and barter have existed since early times, the modern practice of forming business relationships through the means of contract has come into existence only since the industrial revolution in the West. In today's world, individuals as well as corporate entities enter different forms of contracts on a daily basis thereby creating a legally binding business relationship with another and explicitly recording the framework for carrying out arrangement agreed with another party. Such contracts provide not only the rights and obligations of the parties but also the manner in which the arrangement can be terminated.





The law relating to contracts in India is contained in Indian Contract Act, 1872. It determines the circumstances in which promises made by the parties to a contract would be legally binding on them. Under the Indian Contract Act, 1872, a contract is defined as *an agreement enforceable by law*.

Termination

A contract is incomplete without a termination notice. Every Contract enshrines the circumstances in which a contract may be terminated. Generally a contract may be terminated in any of the following ways: (a) at the option of either parties without assigning any reason and/or (b) at the option of the non-defaulting party on the occurrence of certain specified event and/or (c) upon expiration of the term of the contract. Contracts that can be voided in any way fall within the ambit of '*determinable contracts*'. Hence, by inserting a termination clause in a Contract, the parties can establish a definite mechanism to be followed for putting an end to the Contract and avoid arbitrary termination.

The question whether or not a contract is determinable in nature gains importance when its termination is claimed to be wrongful and there is breach of the contract. On breach of the contract, the parties can either claim damages (*Section 73 of the Indian Contract Act, 1872*) wherein the non-defaulting party is entitled to claim, from the defaulting party, compensation for loss or damage sustained by it due to breach of contract and/ or claim specific performance of the Contract (*Section 10 of the Specific Relief Act, 1963*) i.e. compelling the defaulting party to perform its side of the bargain. Under common law as well under the Indian law, claiming damages for breach of contract is the presumptive remedy and the remedy of specific performance of contract is a form of specific relief which is granted by way of exception.

Specific Performance

In India, the Specific Relief Act, 1963 ("**Act**") provides the legal background that governs the specific performance of a Contract. As a rule, the relief of specific performance is allowed only when there is no other relief that will meet the



circumstances of the case.¹

Section 10 of the Act lays down that the relief of specific performance is available only in the following cases (a) when there is no standard for ascertaining the actual damage caused by non-performance of the contract, or (b) when compensation in money would not be an adequate relief for non-performance. However, even in such cases the relief is, subject the provisions of the Act and is not available as a matter of right, but is subject to the discretion of the Court. Section 14 of the Act lays down the circumstance when specific performance cannot be granted i.e. mainly when:

(a) a contract for the non-performance of which compensation is an adequate relief; (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms; (c) a contract which is in its nature determinable; (d) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise.

Upon a conjoint reading of Section 10 and Section 14 (1) (c) of the Act, it can be concluded that when a Contract is by its nature determinable, the Courts have more reasons to not order specific performance of a contract, unless it falls under any of the exceptions provided in sub-section 3 of Section 14 of the Act and the conditions specified in the proviso to sub-section 3 are fulfilled.

The below mentioned judgments analyse the issue of how a determinable contract can restrict the right of the claimant to claim specific performance of the contract.

The Supreme Court of India vide its decision in the landmark case *Indian Oil Corporation Ltd. v. Amritsar Gas Service and Ors*² held that a distributorship agreement containing a clause that entitled either party to terminate the

1. [Abdul Rahim v. Ma Budima, AIR 1933 Rang 149](#)

2. [Citation: \(1991\)1SCC533](#)



agreement by giving a prior notice and without assigning any reason to be determinable in nature was not capable of specific enforcement. The Supreme Court stated that the only remedy available was compensation for the loss of earnings for the notice period. This decision of the Supreme Court is considered to be landmark and has settled the position of law as regards specific enforceability of a Contract determinable without cause is concerned.

In *Rajasthan Breweries v. Stroh Breweries*³ the Delhi High Court has held that even in the absence of a specific clause enabling either party to terminate the agreement on the happening of the events specified therein, as the nature of the Contract is a private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice and that if such termination is found bad in law or contrary to the terms of the agreement, the remedy available to the non-terminating party would be to seek compensation for wrongful termination, but not a claim for specific performance.

The Delhi High Court has in *Turnaround Logistics (P) Ltd v. Jet Airways (India) Ltd.* defined the term 'determinable' to mean *a contract which can be put to an end.*

Thus all revocable deeds and voidable contracts will fall within determinable contracts and the principle on which a specific performance of an agreement would not be granted is that the Court shall not go through the ideal ceremony of ordering the execution of deed or instrument which is revocable and ultimately cannot be enforced as specific performance.

In the case of *Gujarat Chemical Port Terminal Co. Ltd. v. Indian Oil Corporation of India*⁴ the Bombay High Court on May 06, 2016 held the Terminalling Service Agreement entered into between the parties and providing for termination of the agreement, amongst other things, on substantial breach or failure to comply in any material respect with any provision of the agreement and such failure continuing for more than 90 days following written notice thereof to be determinable in nature and hence not capable of specific performance.

3. Citation: AIR 2000 Delhi 452.

4. MANU/MH/0666/2016.



Conclusion

By adopting the view point enshrined in various judicial precedents it can be concluded that, where the parties to a Contract have, in the contract itself, provided for termination, revocation, determination of the Contract in one way or another, the most likely remedy to be granted by the Courts is damages and rarely will specific performance be directed. Therefore it is vital that due consideration and deliberation is given whilst drafting the termination provisions in any Contract and all and any possible outcome upon termination of the Contract must be taken into account.

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