

NATURE OF SPECIFIC RELIEF ALTERED- FROM EXCEPTIONAL RULE TO GENERAL RULE

I. INTRODUCTION:

On 5th September 2023 a Division Bench of Hon’ble Delhi High Court comprising of Hon’ble Mr. Justice Manmohan and Hon’ble Mr. Justice Saurabh Banerjee (“**High Court**”) rendered a Judgment in Global Music Junction Pvt. Ltd. v. Shatrughan Kumar¹, **2023 SCC OnLine Del 5479** (“**Order**”) in an appeal holding as follows:

“86. To conclude, the Amendment Act, 2018 has taken away the discretion of the Courts in granting specific performance. Altering the nature of specific relief from an exceptional rule to a general rule has been done to ensure contractual enforcement and to increase adherence to the sanctity of contracts.”

The Appeal arose out of an order dated 6th January 2023 (“**Impugned Order**”) passed by the Learned Single Judge of the Hon’ble Delhi High Court. The Learned Single Judge observed that the production agreement dated 27th May 2021 entered between the Appellant and Respondent No.1, a renowned artist from Bihar (“**Original Agreement**”) falls under the category of ‘*contract for service*’ and hence such Original Agreement is not specifically enforceable under Section 14(c) of the Specific Relief Act, 1963 (“**Act**”). Being aggrieved by this decision, an appeal was preferred.

In this news alert we have discussed the key observations of the Order and analysed the law in relation to specific performance which has evolved over time.

II. BRIEF FACTS:

1. The Appellant being a music company entered into the Original Agreement with Respondent No.1 for creation and production of two hundred (200) songs within a term of thirty (30) months (i.e. till 30th November, 2023) for a total consideration of Rs. 5,00,00,000/- (*Rupees Five Crores only*). The Appellant was vested with total ownership of the content/ songs created by Respondent No.1 including but not limited to all the intellectual property rights therein. By entering into the Original Agreement Respondent No.1 – specifically agreed to exclusively work with the Appellant for creation and production of content and has explicitly agreed to refrain from working with third

¹ 2023 SCC OnLine Del 5479

parties for creation of any new intellectual property or content of any kind during the term of the Original Agreement, except to the extent as specified in the Original Agreement.

2. Subsequently due to certain disputes that arose between the Appellant and Respondent No.1, both the parties entered into an Addendum dated 3rd March 2022 to the Original Agreement (“**Addendum**”) vide which the Appellant and Respondent No.1 modified certain commercial terms of the Original Agreement.
3. Even thereafter, the Appellant alleged that Respondent No.1 created content which formed the subject matter of the Original Agreement read with the Addendum and allowed third parties i.e., Respondent Nos. 2 to 5 and 7 to 14 to promote/monetize such content by uploading it on Respondent No. 6’s platform. This, infringed the copyright that vested in the Appellant. The Appellant/ Plaintiff thus aggrieved, approached the learned Single Judge by filing a suit and sought urgent interim relief.
4. On 14th October 2022, the learned Single Judge of the Hon’ble Delhi High Court, on being prima facie satisfied about the infringement of the copyright of the Appellant, restrained the Respondents Nos. 2 to 5 and Respondent Nos. 7 to 14 from showing, releasing, launching, airing or monetizing all content created by Respondent No.1, which is in breach of the copyrights and intellectual property rights of the Appellant on platforms like YouTube, Spotify, Jio Saavan, Wynk etc. The Respondent No.1 was further restrained from creating any third-party rights in contravention of the Original Agreement read with the Addendum.
5. However, after hearing the parties at length the learned Single Judge by way of the Impugned Order later vacated the order dated 14th October 2022 in its entirety. The learned Single Judge held that the Original Agreement being a ‘*contract of service*’ was dependent on the personal qualifications of the Respondent No.1 and the Original Agreement fell within the category of contracts which are not specifically enforceable in terms of Section 14(c) of the Act. In holding thus, the learned Single Judge relied upon the following Judgment/Orders:
 - i. Infinity Optimal Solutions Pvt. Ltd. (IOS) vs. Vijender Singh & Ors.², **MANU/DE/2856/2009**
 - ii. Rajasthan Breweries Limited v. The Stroh Brewery Company,³ **2000 SCC OnLine Del 481**

² MANU/DE/2856/2009

³ 2000 SCC OnLine Del 481

6. It was observed that the contract entered between two parties was not for mutual gain and benefit and can be terminated by Respondent No.1 without giving reason or reasonable notice even in the absence of a specific termination right. The Single Judge further relied on the Judgment of Percept D'Mark (India) (P) Ltd. v. Zaheer Khan and Anr.⁴ (2006)4 SCC 227, inferring that the Original Agreement having '*the right to refusal*' under the Addendum in favour of the Plaintiff, restrained Respondent No.1 from exercising his right to do business, which was in teeth of Section 27 of the Indian Contract Act, 1872. The learned Single Judge thus denied injunction to the Appellant.

ARGUMENTS ADVANCED ON BEHALF OF THE APPELLANT:

- Respondent No.1 is a singer, dancer and actor in the Bhojpuri Film Industry, who also appears on various reality TV shows. The Original Agreement was negotiated during the Covid-19 pandemic when there was no work particularly for artists such as Respondent No.1. The breach of the Original Agreement was conducted by Respondent No.1 pursuant to execution of the Addendum between the parties.
- Respondent No.1 was allowed to create songs and was paid consideration for the same along with 10% share in profits. The Respondent No.1 was also allowed to engage with third parties subject to 'the right of first refusal'. Respondent No.1's contractual term is till 30th September, 2025 and the Appellant is seeking to enforce the negative covenant in the Addendum until the completion of the said contractual period i.e. till 30th September, 2025 and not beyond it.
- Section 14 of the Act is not applicable to the present case since the Appellant was not seeking specific performance of the contract but an injunction to perform a negative covenant. Nothing prevents the court from granting an injunction to enforce a negative covenant in a contract of personal service, which restrains a party from working elsewhere. The counsel for the Appellant in support of his arguments relied upon the following judgments:

- i. Lumley V. Wagner⁵ (1852) 1 De G.M. & G.604,
- ii. Warner Brothers Pictures V. Nelson⁶ 1937 (1) KB 209,

⁴ (2006)4 SCC 227

⁵ (1852) 1 De G.M. & G.604

⁶ 1937 (1) KB 209

- iii. Niranjan Shankar Golikari Vs. Century Spinning and Manufacturing Co. Ltd⁷.
(1967) 2 SCR 378,
- iv. Gujarat Bottling Co. Ltd. & Ors. V. Coca Cola Co. & Ors.⁸ **(1995) 5 SCC 545,**
- v. Percept D' Mark (India) (P) Ltd. V. Zaheer Khan & Anr. (supra), and,
- vi. Makhanlal Natta V. Tridib Ghosh & Anr. **AIR 1993 Cal 289⁹**

It is pertinent to note that in the cases mentioned hereinabove, the respective courts granted injunctions restraining the defendants/respondents therein from engaging with third parties during their subsisting contracts with the original parties.

- The learned Single Judge incorrectly applied Section 27 of the Indian Contract Act, 1872 by equating “*unilateral termination of contract*” with “*end of contract*”, which applies to restrictions for the post contractual period. There were several instances wherein the Hon’ble Supreme Court of India and the Hon’ble High Courts have enjoined parties from joining/performing other parties/contracts in breach of their agreements with aggrieved parties during the original tenure of those particular agreements. The reliance of the Impugned Order on the judgment in *Percept D’ Mark (India) (P) Ltd. V. Zaheer Khan & Anr.*, was misplaced and the judgment was distinguishable basis the differing facts in the aforesaid case where the contract had expired by efflux of time after its due performance from the facts of the present case where the contract had been unilaterally terminated during the subsistence of the contractual term.
- The Impugned Order erred in holding that the Appellant can be compensated for termination of the contract. In support of this reliance was placed on the Addendum, which provided for a mechanism for consideration payable to the Appellant for the songs created by Respondent No.1. The Appellant’s consideration was to be generated from the revenue generated by the number of views the songs created by the Respondent received, which would necessarily vary from song to song and platform to platform, leading to a high degree of uncertainty in ascertaining the exact damages or compensation. Section 38(3) of the Act enables the Court to grant injunction where no standard exists for ascertaining the actual damage caused, or likely to be caused.

⁷ (1967) 2 SCR 378

⁸ (1995) 5 SCC 545

⁹ AIR 1993 Cal 289

- The counsel for the Appellant emphasized that Section 14 of the Act did not apply to the present case, or the reliefs sought thereunder and that the interim order dated 14th October 2022 was passed to protect the Appellant's copyright under the Original Agreement and the Addendum and did not direct Respondent No.1 to perform the agreement i.e., to provide songs as per the said agreement. Hence the question of specific performance of the said agreement or the same being barred by Section 14 of the Act does not arise. The relief granted by the Impugned Order was only a consequential and a necessary relief to protect the Appellant's copyright.
- Lastly it was contended that Respondent No.1 had entered into similar agreements with Respondent No.2 and Respondent No.5 which were not disputed by Respondent No.1 before the learned Single Judge. In fact, Respondent No.2 and Respondent No.5 had also filed applications for vacation of order dated 14th October, 2022 on the ground that they had similar agreements with Respondent No.1 which were not filed with the applications. It was contended that Respondent No.1 in collusion with Respondent No.2 and Respondent No.5 had perpetrated fraud upon this Court in order to defeat the rights of the Appellant.

III. ARGUMENT ADVANCED ON BEHALF OF RESPONDENT NO.1:

- The reliefs claimed in the suit by the Appellant were barred as the Original Agreement is a contract of service on work for hire basis, and hence Appellant cannot seek specific performance of either the Original Agreement or the Addendum in terms of Section 14(c) of the Act. It was argued that the Original Agreement and the Addendum were determinable contracts, i.e. they can be compensated monetarily, in fact the agreement itself quantifies the damages in case of any breach; hence at best the Appellant has a claim in damages. Therefore, according to Respondent No.1, the relief sought by the Appellant/ Plaintiff is barred under Section 14(d) of the Act. Certain preliminary objections to the jurisdiction of the Hon'ble Court to entertain such a suit were also raised.
- Respondent No.1 has no knowledge of reading or writing English. Respondent No.1 signed the Original Agreement in only good faith and honesty and was not aware about the terms of the contract and the liabilities which could have arisen. The Respondent therefore contended that he was fraudulently trapped by the Appellant in bondage. Moreover, there was complete

mistrust between the parties since inception of the Original Agreement and the Addendum had never been acted upon by Respondent No.1.

- On a bare reading of the text of the Original Agreement and the Addendum it is apparent that they were one-sided contracts and cast no obligation on the Appellant while at the same time imposed an unreasonable restraint on the Respondent No.1's right to carry on any lawful profession, business or trade of any kind. The Original Agreement and the Addendum imposed 'bondage' on the Respondent No.1 as the exclusivity clause restrained Respondent No.1 from working with third parties. Any relief granted to the Appellant, would render Respondent No.1 idle, a situation which the Act does not countenance. Therefore, both the Original Agreement and the Addendum are in clear violation of Section 27 of the Indian Contract Act, 1872. In support of its argument the counsel for Respondent No.1 relied upon the following judgments:
 - i. ABP Network Private Limited vs. Malika Malhotra,¹⁰ **2021 (6) R.A.J. 628 (Del)**,
 - ii. Simran Music Company vs. Prit Brar & Ors.¹¹, **MANU/DE/9846/2007**,
 - iii. Infinity Optimal Solutions Pvt. Ltd. (IOS) vs. Vijender Singh & Ors., (supra) and Warren vs. Mendy and Anr.¹² [**1989**] **1 W.L.R. 853**

- Respondent No.1 had already given notice of termination of the Original Agreement much before the alleged copyright infringement suit was filed by the Appellant. The Appellant has not challenged the termination of the Original Agreement and thus the negative covenant cannot be enforced post the termination of the contract. In support of the above argument the following judgments were relied upon by the counsel for Respondent No1:
 - i. **Infinity Optimal Solution Pvt. Ltd. (IOS) v. Vijender Singh & Ors. (supra)**
 - ii. **Rajasthan Breweries Limited v. The Stroh Brewery Company. (supra)**

- In the aforesaid cases, the respective courts held that even though the power to terminate the contract has not been mentioned in the agreement, any commercial transaction can be terminated by giving a reasonable notice and once the parties have lost mutual trust and confidence in each other, the Court by virtue of Section 14(d) of the Act cannot grant an injunction compelling the Respondent No.1 to continue its contractual obligations. It was emphasised that the Courts have wide powers when dealing with cases of specific

¹⁰ 2021 (6) R.A.J. 628 (Del)

¹¹ MANU/DE/9846/2007

¹² [1989] 1 W.L.R. 853

performance thus asserting the general rule of awarding damages with specific performance of a contract being the exception.

IV. GENERAL FINDINGS OF THE HON'BLE COURT:

1. Specific relief is an equitable relief which the court grants to force a party to perform its part of the duties agreed upon in the contract, which it ought to have performed in normal circumstances. This Relief emerged from the Equity Courts in England. Sir Edward Fry, in his work "*A Treatise on the Specific Performance of Contracts*" 6th Edn., noted that the common law originally relied solely on damages as a remedy for contract non-performance. The common law's fundamental belief was that money could compensate for any loss, but this idea was not always true. Consequently, the Courts of Equity intervened to address the limitations of the common law, enabling them to compel specific performance in certain cases.
2. The Specific Relief Act of 1877 was based on the New York Civil Code of 1862, and for decades it was left open to judicial interpretation. The Ninth Law Commission recommendations brought into force the Act i.e., Specific Relief Act of 1963 which gave wide discretionary powers to the court, which led to the Court awarding damages in the majority of cases as a general rule and granting specific performance as an exception. With rapid economic growth and expansion of infrastructure activities in India an amendment to the current provision was felt necessary. Moreover, in the year 2018 India had fared poorly in "*Ease of Doing Business*" and "*Enforcement of Contract*" according to the World Bank.
3. Therefore, a committee under the Chairmanship of Mr. Anand Desai was appointed to provide effective remedies to parties suffering from breach or non-fulfilment of contract. Subsequently, the Government brought the amendment to the Act prospectively which was reflected in the *Katta Sujatha Reddy and Another Vs. Siddamsetty Infra Projects Private Limited and Others* , (2023) 1 SCC 355. It is apparent that the primary intent behind the Amendment Act, 2018 is to introduce greater certainty in the enforcement of contracts and consequently improve India's ranking in '*Enforcement of Contracts*' and '*Ease of Doing Business*'.

4. The Amendment Act, 2018 introduces a paradigm shift in the law relating to contractual enforcement in India. A glaring instance of the legislative shift is the amendment of Section 14 of the Act which deletes the earlier sub-clause (a) which prescribed that the contracts for the non-performance of which compensation in money was an adequate relief would not be specifically enforced, meaning thereby that the plea that a party could be compensated in monetary terms as damages for breach of contract and the resultant refusal of interim injunction on the said ground, is no longer a ground to refuse specific performance of such contract.
5. The Court therefore took the view that the Amendment Act, 2018 will enforce the specific performance of the contract unless it is barred under the limited grounds prescribed within the statute. The Amendment Act, 2018 has also brought the Indian Specific Performance Act in line with the UNIDROIT Principles of International Commercial Contracts, as it aspires to achieve harmonization in international law governing commercial contracts.
6. Consequently, it was observed that the Amendment Act, 2018 has changed the nature of specific relief from an equitable, discretionary remedy to a statutory remedy. It has made specific performance of a contract the general rule rather than an exception.

V. **FINDINGS ON MERITS OF THE CASE:**

1. It was observed by the Hon'ble Court that the agreements in question are not determinable, as there exists a negative covenant in the agreement and Respondent No.1 has no right to terminate them. Distinguishing the judgment in *Rajasthan Breweries Limited v. The Stroh Brewery Company (supra)*, the Court observed that the termination of the agreement was upheld primarily due to the absence of a negative covenant in that agreement. Similarly, the Court observed that the judgment in *Infinity Optimal Solution Pvt. Ltd. (IOS) v. Vijender Singh (supra)*, also emanated from the absence of a negative covenant, where the court held that where there exists no negative covenant a commercial contract can be terminated by giving reasonable notice, for which compensation is the adequate relief for non-performance.
2. Sections 14 and 41 of the Act prescribe contracts that are not specifically enforceable while Section 42 of the Act provides for enforcement of a negative covenant. Section 42 explicitly state that when the court cannot enforce a decision of specific performance on the other party,

shall not be precluded from granting an injunction to perform the negative agreement. Therefore, there is a distinction between a relief of specific performance of an agreement and an injunction to perform a negative covenant in the agreement. The Hon'ble Court observed that the Appellant need not and rightly has not challenged the termination of the Original Agreement by Respondent No.1. Considering the existence of a negative covenant in the Original Agreement read with the Addendum, and by way of the Appeal the Appellant was only seeking enforcement of that negative covenant. Accordingly, the applicability of Section 14 of the Act is not relevant as the Appellant was not seeking specific performance.

THE UNIFORM AND CONSISTENT PRACTICE OF COURTS HAS BEEN TO ENFORCE A NEGATIVE COVENANT IN AN AGREEMENT.

3. Courts in India and England have been actively enforcing negative covenants in an agreement. In **Lumley Vs. Wagner**, the Defendant entered into a contract with Lumley to sing two nights a week for a period of 3 months, and agreed to sing nowhere else. Later, the singer chose to sing at another place for larger payments for those three months and abandoned the agreement with Lumley. Lord St. Leonards L.C. granted an injunction to the defendant restraining the singer from singing at another place, and observed that;

“It is true that she can't be compelled to sing at choice of others, but she can be abstained from performing at another place, having no recourse of complaint which she has bound herself not to do.”

In **Warner Bros vs. Nelson**, a similar principle was applied when it was held that the breach of a negative stipulation against performing services as an actor for anyone except the employer may be remedied by an injunction. Grant of an Injunction compels to perform positive obligation, but it also indirectly compels the person against whom the injunction is granted to perform for the work agreed upon between the parties.

4. Further the judgment in Warner Bros was applied In **Niranjan Shankar Golikari vs. Century Spinning and Manufacturing Co. Ltd.** (*supra*), which has consistently been followed in **Gujarat Bottling Co. Ltd. & Ors. V. Coca Cola Co. & Ors.** (*supra*) and **Percept D' Mark (India) (P) Ltd. V. Zaheer Khan & Anr.** (*supra*).

SECTION 27 APPLIES ONLY TO RESTRICTIONS IN POST CONTRACT PERIOD.

5. The Hon'ble Court further observed that neither the Original Agreement nor the Addendum thereto is hit by Section 27 of the Indian Contract Act, 1872 as the said restriction only applies

to restrictions in the post contract period. Further Section 42 of the Act will be rendered nugatory if it is held that the Courts cannot enforce a negative covenant where a contract is unilaterally terminated prematurely. Reliance was placed by the learned Single Judge on *Percept D' Mark (India) (P) Ltd. V. Zaheer Khan & Anr*, where the cricketer's agreement with the Company (plaintiff) for availing services had expired by efflux of time, and an injunction was sought against the cricketer. In this case, the Apex Court held the contract of the company was infructuous under Section 27 of the Indian Contract Act, 1872 and hence, did not compel the cricketer to work for the company or restrain him from working with different companies. However, the distinguishing factor that set this case apart from the facts of the present case was that the agreement in this case had already expired by efflux of time. In the present case, Respondent No.1 without performing the terms of the Addendum, had started creating third-party rights during the term of the Addendum, which continues to subsist till 30th September 2025. Consequently, the Court held that the Single Judge had erred in holding that since the Respondent had terminated the contract, the negative covenant could not be enforced.

DAMAGES ARE NOT AN ADEQUATE REMEDY

6. The Hon'ble Court observed that no definite amount could be ascertained in the form of damages given that while one song could be a hit another may not do as well. Thus, rendering it impossible for the Court to ascertain the quantum of damages.
7. Consequently, the Court held that both the Original Agreement and the Addendum preclude the Respondent No.1 from contending that damages would be an adequate remedy.

THE AGREEMENTS BETWEEN THE PARTIES ARE NEITHER 'EXCESSIVELY ONE SIDED' NOR DO THEY IMPOSE A 'BONDAGE'.

8. The Hon'ble Court observed that the fact that under the Addendum the consideration payable to Respondent No.1 was substantially enhanced to a profit-sharing arrangement where the Respondent would receive 10% of the profits from the songs sung by the Respondent No.1, further strengthens the Appellant's argument that the Addendum was executed with equal involvement and representation of Respondent No.1. The Court therefore held that the Original Agreement and the Addendum were neither '*excessively one sided*' nor did they impose a '*bondage*' on Respondent No.1.

NEGATIVE COVENANT AND ITS EFFECT

9. While dealing with the Respondent's contention that the enforcement of the negative covenant would cause Respondent No.1 to sit idle, the Court opined that Respondent No.1 has been an actor, singer, and dancer in the Bhojpuri Film Industry for the past ten (10) years and is performing in films as well as on national TV channels, social media platforms, and on stages, therefore, has developed good streams of revenue. Having stated thus, the Court observed that enforcing the negative covenant in the Addendum would neither compel him to work exclusively with the Appellant, nor result in 'benching' him or rendering him 'idle' or preventing him from practising his trade or profession.
10. The Hon'ble Court further rejected the contention raised by the Respondent No.1 that the Addendum was not acted upon and observed that certain monies were already provided to Respondent No.1 under the Addendum.

VI. CONCLUSION:

The Order thoroughly analyses the amendment to the Specific Relief Act and its implications. A reading of the Order will make it evident that the Court has proceeded to strike a balance between the commercial aspects of a transaction and the law applicable to it. The Court held that as the Amendment Act, 2018 has taken away the discretion of the Courts in granting specific performance, altering the nature of specific relief from an exceptional rule to a general rule has been done to ensure contractual enforcement and to increase adherence to the sanctity of contracts. Thus, the Courts are not precluded from granting an injunction to perform a negative covenant and the same is in no manner controlled/ affected by Section 14 of the Act. The Court has been mindful of the mischief which the amendment of 2018 sought to cure and applied the legal provisions in that landscape. This is evident from the observation at paragraph 86 of the Order:

“86. To conclude, the Amendment Act, 2018 has taken away the discretion of the Courts in granting specific performance. Altering the nature of specific relief from an exceptional rule to a general rule has been done to ensure contractual enforcement and to increase adherence to the sanctity of contracts.”

The 2018 amendment to the Specific Relief Act in India marked a significant step towards modernizing and streamlining the country's contract law framework and simplifying and modernizing contract law. With an aim to provide more effective remedies, reduce litigation, and

promote confidence in contractual agreements across various sectors, the 2018 amendment will go a long way in improving India's global position vis-a-vis contract enforcement and ease of doing business.

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