

Powers Under Section 12(3) Of The Specific Relief Act Are Discretionary And May Be Exercised Only When The Terms Of The Contract Permit Segregation Of The Rights And Interests Of Parties In The Subject Matter Property

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Introduction

In a recent decision, in ***Vijay Prabhu v. S. T. Lajapathie*** [2025 INSC 52], the Supreme Court of India extensively examined the applicability of Section 12(3) of the Specific Relief Act, 1963 which deals with the specific performance of contracts in part. In this article, we navigate through the facts, and the findings of the Supreme Court in the present case.

Facts

In November 2005, the petitioner – Vijay Prabhu, had entered into an agreement with the respondents for the sale of an immovable property. In furtherance of the said agreement, the petitioner paid the respondents an amount of INR 20,00,000 as the earnest money. Admittedly, upon the payment of INR 20,00,000, a sum of INR 64,00,000 was still outstanding as balance contractual consideration.

Owing to some disagreements amongst the parties, in 2008, the petitioner, instituted a suit for delivery of possession of suit property. In the alternative, the petitioner, in his suit had prayed for grant of an amount of INR 60,00,000 (INR 20,00,000 paid towards earnest money, and damages to a tune of INR 40,00,000) with an interest computed at 12% per annum from the date of filing of the suit.

The Trial Court rejected the prayer for specific performance and directed for the refund of the earnest money of INR 20,00,000 paid by the petitioners to the defendants with interest computed at 12% per annum. The Trial Court's rejection of the prayer for specific performance was based on a finding that the petitioner was not ready and willing to perform his part of the bargain under the contract. Besides, the petitioner had failed to plead and establish that he had suffered damages to the tune of INR 40,00,000.

Aggrieved by the decision of the Trial Court, the petitioner approached the High Court of Madras ("**High Court**"). The High Court while upholding the Trial Court's decision opined that it was not open to the petitioner to seek shelter under Section 12 of the Specific Relief Act, 1963 ("**the Act**") and claim specific performance of only the part of the agreement which was in his favour. The High Court observed that the relief under Section 12(3) was only discretionary in nature and could not be invoked where the terms of the contract were not capable of being segregated.

The High Court reiterated that the petitioner had only paid a sum of INR 20,00,000 and a sum of INR 64,00,000 was still outstanding under the contract. Unless the petitioner paid the remainder of the contractual consideration, *i.e.*, INR 64,00,000, he was not justified in seeking "*part performance*" of the contract.

Feeling dissatisfied with the decision of the High Court, the petitioner approached the Supreme Court.

Petitioner's Arguments

On Invocation of Section 12(3) of the Act: The petitioner argued that under Section 12(3) of the Act, he was entitled to specific performance of the portion of the agreement that could be performed. He offered to waive claims against the unperformed part of the contract.

On Readiness to Relinquish Claims: The Petitioner submitted that he was willing to relinquish all claims to compensation for the remaining obligations of the respondents, as required under Section 12(3) of the Act.

On High Court's Misinterpretation: The petitioner contended that the High Court erred in failing to appreciate the discretionary nature of Section 12 of the Act and his entitlement to partial specific performance.

Respondents' Arguments

Ineligibility Under Section 12(3): The respondents argued that the petitioner did not satisfy the conditions of Section 12(3) of the Act, as the terms of the contract were inseparable. They pointed out that partial performance would be inequitable and impractical.

Lack of Readiness and Willingness: The Respondents emphasised that the petitioner failed to demonstrate consistent readiness and willingness to fulfil his contractual obligations which was a prerequisite for specific performance under Section 16(c) of the Act.

Inconsistent Claims: The respondents argued that the petitioner's alternative prayer for damages reflected a lack of unequivocal commitment to the contract, undermining his plea for specific performance.

Analysis of the Supreme Court

The Supreme Court carefully examined the facts, and the rulings of the Trial Court and the High Court. The Apex Court's analysis and reasoning is summarised below.

On Scope and Discretion of Section 12 of the Act: Section 12(3) of the Act allows specific performance of part of a contract if certain conditions are met. In this regard, the Supreme Court observed that the words "*unable to perform*" suggest that the Section 12(3) is applicable only when a party cannot for any reason perform the whole of what was promised in the contract. The inability may arise by any cause including: (i) deficiency in quantity and/ or quality of subject matter; (ii) variance in title; and (iii) legal prohibitions or other similar causes.

The Supreme Court clarified that the powers under Section 12(3) are discretionary and cannot be exercised mechanically. The ultimate relief depends on the facts of each case and the nature of the contractual obligations. In this regard, the Supreme Court referred to its decisions in ***Jaswinder Kaur (Now Deceased) Through LRs v. Gurmeet Singh*** [(2017) 12 SCC 810] and ***Abdul Haq v. Mohd. Yehia Khan*** [AIR 1924 Pat 81].

Inseparability of the Contract: The Supreme Court held that Section 12(3) of the Act can be invoked only where the terms of the contract permit segregation of the rights and interests of parties in the property. The Supreme Court observed that the terms of the agreement, in this case, were inseparable, making partial performance impractical. The sale of property

involved obligations that could not be compartmentalised or segregated without affecting the contract's essence.

Readiness and Willingness: Citing established precedents, the Supreme Court reiterated that readiness and willingness are fundamental requirements for specific performance. Both the Trial Court and the High Court had concluded that the petitioner failed to demonstrate consistent readiness to fulfil his part of the contract, including the payment of the balance consideration of ₹64,00,000.

Alternative Claim for Damages: The petitioner's simultaneous claim for damages undermined his reliance on Section 12(3) of the Act. The Supreme Court noted that the provision requires the plaintiff to relinquish all claims to compensation for the unperformed part of the contract, which the petitioner had not done.

Relinquishment at Appellate Stage: The petitioner argued that his willingness to relinquish claims could be considered even at the appellate stage. The Supreme Court agreed that such relinquishment is permissible at any stage of litigation. In this regard, the Apex Court referred to the decisions in ***Kalyanpur Lime Works v. State of Bihar*** [AIR 1954 SC 165], and ***Waryam Singh v. Gopi Chand*** [AIR 1930 Lah 34].

However, it held that this alone could not cure other deficiencies in the petitioner's case, including his lack of readiness and the inseparability of the contract.

Final Findings of the Supreme Court

The Supreme Court dismissed the appeal, upholding the decisions of the Trial Court and the High Court. The key takeaways from the judgment are:

- (i) The petitioner was not entitled to specific performance due to his failure to demonstrate readiness and willingness.
- (ii) Section 12(3) of the Act could not be invoked as the contract was inseparable, and the petitioner had not relinquished all claims to compensation.
- (iii) The Supreme Court directed for the refund of earnest money of INR 20,00,000 with accumulated interest to the petitioner within four weeks.

Comment

The judgment reinforces the discretionary nature of specific performance under the Act, particularly in terms of the provisions contained in Section 12(3). Parties who wish to seek relief under the provisions contained in Section 12(3) of the Act are required to demonstrate through their pleadings: (i) the readiness and willingness to perform their contractual obligations; (ii) the willingness to forego/ relinquish all other claims other than those pertaining to specific performance, and (iii) that the contractual rights and obligations can be segmented in a manner that part performance of the contract is possible.

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