

Law of Contract and Specific Relief by Avtar Singh, 8th Edition, Eastern Book Company, Lucknow, 2002, Pp. CXXXVIII + 784. Price Rs. 280/-.

Soumya Rao*

Professor Avtar Singh is no stranger to the legal profession. He has written numerous books in various fields of law, including commercial laws, company law, family law and contracts. All his publications are well received and form an important part of the curriculum in any law course. Worthy of special mention is his book on the Law of Contracts.

The leading textbook on the *Indian Contract Act, 1872* is in its eighth edition, first issued in 1973, with updated editions being published every three or four years. This edition continues to provide a clear and comprehensive statement of the law of contract, the most essential and basic of all commercial laws. The book is in three parts; the first part discusses the general principles of contract; the second part deals with specific contracts and the third part discusses the law of specific relief. The third part is what is unique to this edition of the book, and is a much needed addition to the book, as the law of specific relief forms an important corollary to the Law of Contract, stating as it does the civil remedies available to the parties to a contract apart from damages and restitution as provided for under the *Indian Contract Act*.

Prof. Avtar Singh's book focuses on the doctrine of the contract law as well as the law of specific relief in India as manifested in judicial decisions and the statutes. The author provides limited treatment of the general theories of contract. He usually steers clear of the broader political, economic or social context of rules. In other words, the theoretical aspects of the subject are not completely explored. Instead, the book very closely follows the statutory rules and provisions. Notwithstanding this, the book provides much evidence of the developments that have occurred over the last few years in the law of contract via judicial decisions, since the law in itself has remained unchanged since the time it was legislated by the Indian Parliament. The author has also discussed the English decisions on the subject. This edition has been updated on the judicial growth that has occurred in the law in India from the year 1999 to 2002.

Since the only development in the law has occurred through judicial decisions, it would be pertinent to mention the important principles laid down in

* Associate, Amarchand Mangaldas & Suresh A. Shroff, New Delhi.

some recent rulings of the Supreme Court and as discussed by the author.

In the area of statutory contracts, the court has held that a contract made for the construction of a public utility that is awarded by a statutory body does not make it a statutory contract¹. As regards the general principles of stipulations in a contract, the court held that the power to vary the terms of the contract according to the quantum of work could not be unlimited. Further, giving an absolute power to anyone to be able to modify the terms or cancel the contract when he wants is as good as negating the contract².

The Supreme Court has refused to recognize the status of lotteries as a trade or profession and has stated that imposing a tax on it does not automatically grant it such a status³. This decision was followed by the Madhya Pradesh High Court⁴, which characterised lotteries as wagering contracts. The Court stated that neither the provisions of a State Act nor a Central Act controlling the activities of a lottery would change the basic nature of the transaction.

With regard to the privileges of the Central Government, the Court held that where the Central Government had assigned a piece of land to its own corporate undertaking with certain rights and privileges, including exemption from payment of land revenue, the assignee of this land became entitled to the same exemption as a successor⁵.

Considering the principle of novation under Section 62, the Court⁶ held that one of the essential requirements of novation is that there should be complete substitution of a new contract in the place of the old one, and it should rescind or extinguish the previous contract. In that situation the original contract need not be performed. But in the event that the two contracts are inconsistent with each other, the latter one cannot be said to have substituted the former.

Restitution is the only remedy under the Contract Act apart from a suit for damages. Following this principle, an order for the recovery of securities in a case was not upheld.⁷ Further the court has also held⁸ that damages for mental pain and anguish cannot be awarded in case where there is a breach by the

¹ *Kerala State Electricity Board v. Kurien E. Kalathil*, AIR 2000 SC 2573.

² *National Fertilisers v. Puran Chand Nangia*, (2000) 8 SCC 343.

³ *B.R. Enterprises v. State of Uttar Pradesh*, AIR 1999 SC 867.

⁴ *Subhash Kumar Manwani v. State of Madhya Pradesh*, AIR 2000 MP 109.

⁵ *Steel Authority of India Limited v. State of Madhya Pradesh*, (1999) 4 SCC 76.

⁶ *Lata Constructions v. Dr. Ramachandra Ramniklal Shah*, AIR 2000 SC 380.

⁷ *State Bank of Saurashtra v. Punjab National Bank*, AIR 2001 SC 2412.

⁸ *Ghaziabad Development Authority v. Union of India*, AIR 2000 SC 2003.

development authority when they failed to complete a scheme on time, as this did not fall under a head of damages in ordinary commercial contracts.

The Court also held in a case that was with regard to a power purchase agreement that a statutory contract is one where generally provisions are contained which determine the tariff applicable, such as Section 43-A (2) of the *Electricity Supply Act, 1948*⁹.

The author has discussed the principle of unjust enrichment that has been evolved by the courts in relation to mistake with regard to over-payment of taxes. The Court reiterated the judgment of *Mafatal Industries*¹⁰ yet again in a recent case¹¹.

In the section on Specific Contracts, the author discusses a recent case where the court categorically held¹² that when shares and securities are pledged with a bank, and there are some bonus shares and dividends received on the same, the bank is not under any obligation to give the same to the pledge, unless the pledged securities are redeemed.

Further, there was a conflict in the decisions of various High Courts regarding the liability of a lawyer concerning the papers and files of a client. Resolving the dilemma, the Court held that the refusal of an advocate to return the papers and files of a client amounts to professional misconduct irrespective of whether his fee has been paid by the client or not. Lawyers have no right of lien of the files, and besides, files and papers do not amount to goods bailed as defined under the Contract Act¹³.

Discussing maritime lien, the author referred to a case where the Court has explained the concept cogently¹⁴. The Court has held that such lien attaches to a property in the event of the cause of action arising and it remains attached, but it has little value unless it is enforced. This is a right that stems from general maritime law and is based on the principle that if the ship has caused the damage, it should itself make good the loss.

The author has also clarified the position of Section 171 in relation to the provisions of Chapter VI of the *Major Ports Act*. The author explained this by

⁹ *Indian Thermal Power Limited v. State of Madhya Pradesh*, AIR 2000 SC 1005.

¹⁰ *Mafatal Industries v. Union of India* (1997) 5 SCC 536.

¹¹ *Deputy Commissioner, Andaman v. Consumer Cooperative Stores Limited*, AIR 1999 SC 696.

¹² *Standard Chartered Bank v. Custodian*, AIR 2000 SC 1488.

¹³ *R.D. Saxena v. Balram Prasad Sharma*, AIR 2000 SC 2912.

¹⁴ *MV Al Quamar v. Tsavitris Salvage (International) Limited*, AIR 2000 SC 2826.

way of a case¹⁵ where it was held that even though general lien is not covered by the above mentioned Act, the Act does not state anywhere that general lien as under Section 171 would not be available to wharfingers in a case where relief under the *Major Ports Act* is simultaneously available.

In the final section on the *Specific Relief Act, 1963*, the author follows the same pattern as set by the rest of the book. He discusses the Act by following the provisions of the statute. He substantiates the commentary with the latest case law. The author has made a thorough exploration of the content of the law and the kind of reliefs available under it, the discretion and powers of the Court, and the kinds of injunctions.

This book is an excellent referencer for law students, especially those who are adapted to the case-law method of teaching. It provides a ready guide to the plethora of case law that is available on the subject, so one acquires an overall and complete perspective on the law. It also has the benefit of having summarized a vast amount of material in a simple and lucid manner.

It is however suggested that the author should devote some more attention to the theoretical base of the subject. An update of the attending English case law is also required for a complete elaboration of the recent developments in the area of contract and specific relief law.

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¹⁵ *Board of Trustees of the Port of Bombay v. Sriyanesh Knitters*, (1999) 7 SCC 359.