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# THE EFFECT OF REPEAL AND RECALL: THE 2018 AMENDMENT TO THE SPECIFIC RELIEF ACT, 1963 AND THE SIDDAMSETTY SAGA

Siddharth Srikanth \*

## Abstract

*Ever since the Specific Relief Act, 1963 came to be amended in 2018, thereby culling the discretionary power of the court to decree specific performance, judicial confusion reigned as to its temporal applicability. This seemingly was quelled by the Supreme Court, holding that the amendment would be prospective and would only apply to contracts formed after 01.10.2018. Recently however, the Supreme Court has recalled the said order on merits, without advertent to its ruling on the 2018 Amendment. This article seeks to study the consequence of the said recall, and the existing legal landscape in which it is ensconced. The Karnataka High Court has recently taken the view that the mere recall on facts, would not disturb the postulation of law made prior. This article therefore, seeks to examine the veracity of such a claim. In doing so, the author first examines the fact circumstance in which the decision of the Supreme Court in Katta Sujatha Reddy came to be passed, along with that of the eventual review. The author then, surveils the decisions of various High Courts across India as regards the applicability of the 2018 Amendment. Based on the existing legal framework, the article analyses the consequence of various Supreme Court decisions in light of well settled legal principles, to examine the question as to the applicability of the 2018 amendment to pending legal proceedings that were instituted prior to the amendment.*

**Keywords:** Procedural law; Prospective application; Retrospective application; Specific performance; Substantive law;

## I.

### Introduction

One of the primary sources of litigation in the Indian court system is the relief of specific performance. Countless suits, and appeals remain pending on the file of the courts, wherein the case of the Plaintiff surrounds an alleged agreement, whose obligations are sought to be enforced on the one side, and avoided on the other. The relief of specific performance is therefore, an integral part of the system for enforcement of contracts in India. Equally important therefore, is the law prevailing on the books of the statute that outline the manner and mode of enforcing contracts against persons.

In India, this legislation is called the Specific Relief Act, 1963. The Act *inter alia*, enumerates the types of contracts/agreements that are capable of being specific enforced, the circumstances in which

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specific performance *can* be ordered etc. However, by way of the Specific Relief (Amendment) Act, 2018<sup>1</sup> (*hereinafter* “2018 Amendment”), the above italicized “can” was watered down considerably, by diluting the discretionary powers of the court, when it came to awarding specific performance. This amendment came to be interpreted by the Supreme Court in *Katta Sujatha Reddy*<sup>2</sup>, wherein the Apex Court was of the view that since the amendment was substantive in nature (as it provided substantive rights to the parties), the same ought to be made applicable prospectively i.e. the amendment would only be applicable to agreements that were entered into by parties *after* the coming into force of the said amendment. Subsequently however, the said decision came to be recalled by the Supreme Court in *Siddamsetty*<sup>3</sup> (while both decisions arise out of the same proceedings the latter being a review of the former, distinct reference names have been assigned for the sake of convenience and clarity). Recently, the Karnataka High Court considered the effect of this review, and came to the conclusion that the position of law postulated in *Katta Sujatha Reddy* was not interfered with by *Siddamsetty*. This judgement however is amenable to intellectual attack on multiple fronts. Therefore, the question remains as to should the amendment apply to pending proceedings (in other words, be retroactive) or should it only apply to future contracts (a la *Katta Sujatha Reddy*). Either answer raises crucial questions that have wide ramifications for the court system.

In this paper, the author seeks to analyze the existing literature on the 2018 amendment, to ascertain as to whether the said amendment is applicable retrospectively to pending proceedings. Hence, Part II concerns itself with the basic concepts of specific performance and the features of the 2018 Amendment. Part III thereafter, studies the *Siddamsetty* saga wherein the Supreme Court first held the 2018 Amendment to be prospective, and thereafter, recalled the said order. In light of the judicial vacuum seemingly created by the recall of *Katta Sujatha Reddy*, Part IV studies the legal landscape of the amendment *de hors Siddamsetty*. Part V hence, considers its predecessors and postulates as to the nature of the 2018 Amendment and its applicability, before concluding in Part VI.

## II.

### **Specific Performance: Concepts and Statute**

The concept of specific performance is to compel a person to be perform his obligations under a contract. This judicial relief is to be contrasted with the relief of damages, which occupies the other side of coin. The relief of damages is to compel a person to compensate for any loss caused to a party

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<sup>1</sup> The Specific Relief (Amendment) Act, 2018 (Act 18 of 2018).

<sup>2</sup> *Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd.*, (2023) 1 SCC 355.

<sup>3</sup> *Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy*, 2024 SCC Online SC 3214.

to contract by virtue of its breaking. The contract however, remains broken. Across its history, common law has often turned up its nose towards the notion of compelling performance of contract. Instead, the mantra of common law has been damages.<sup>4</sup> However, there came instances when no adequate standard for assessing damages could be ascertained. In those circumstances, it became equitable for parties to be held to their prior promises. Nonetheless, specific performance, to borrow criminal bail parlance, was the exception, and never the rule.

This common law principle came to be codified by the Indian Parliament, in the Specific Relief Act, 1963<sup>5</sup> (*hereinafter* “SRA”). Section 10 of the SRA as it then stood, provided for cases in which specific performance of a contract could be decreed. It stated that, the specific performance of any contract *may*, in the discretion of the court, be enforced when (1) there is no adequate standard for determining the actual damage caused by the non-performance of the contract and (2) when compensation for breach, would not provide adequate relief. Further, Section 20 encapsulated the above discretion of the court in decreeing specific performance, and provided as under:

*20. Discretion as to decreeing specific performance.*—(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

*Explanation I.*—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

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<sup>4</sup> See L.C. Goyle, *Law of Specific Performance* 1 (Eastern Law House, Calcutta, 1984).

<sup>5</sup> The Specific Relief Act, 1963 (Act 47 of 1963).

*Explanation II.*—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

The upshot of the said provision is that, even if a suit for specific performance is filed within the prescribed limitation, and the plaintiff shows himself to be ready and willing to perform his part of the contract, the court need not decree the suit.<sup>6</sup> The court can always take into consideration various other factors, such as the conduct of the Plaintiff(s), that of the Defendant(s), the timelines stated in the contract sought to be enforced and the time elapsed since the execution of the contract as well as any hardship that would be faced by the Defendants if specific performance were to be decreed.

While this discretion was not arbitrary and was to be guided by reason, courts in India often refrained from decreeing specific performance suits, and instead opted to awarded damages for the breach and loss caused to the Plaintiff, which was often favourable to Defendants. The reason being that in the time that it took for the civil suit to be determined, the value of the property in question would have increased manifold, and the Defendant at the culmination of the suit, would only have to return the advance paid (along with any interest awarded), and would continue to enjoy the much more valuable title over property. This incentivized or rather, failed to deter dishonest actions on the part of sellers, who deliberately avoid performing their obligations under the agreements so executed. Hence, the Indian Parliament proposed an amendment to the Specific Relief Act, 1963 in 2018, seeking to amend various provisions of the Act including Section 10 and 20.<sup>7</sup>

Once the amendment was duly passed, Section 10 of the Act mandated that a contract shall be enforced by the court, subject to Section 11(2), Section 14 and 16. While Section 11 relates to contracts pertaining to trusts, Section 14 which provided for contracts which could not be specifically enforced, was also amended. The bar on specific performance where compensation was adequate relief was done away with. Section 20 which previously ring-fenced the discretionary power of courts, was

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<sup>6</sup> *Saradamani Kandappan v. S Rajalakshmi*, (2011) 12 SCC 18.

<sup>7</sup> *Supra* note 1, Statement of Objects and Reasons.

substituted by the conferring of the power to decree substituted performance. While the intricacies of the 2018 amendment perhaps warrant a whole-hearted discussion elsewhere, the relevant consequence of the amendment was the culling of the discretion previously vested with the courts to decree specific performance. If a Plaintiff met the requirements under Section 10, 14 and 16, the court had no choice, but to decree the suit for specific performance.

### III.

#### **The Siddamsetty Saga: Prospective but not Quite**

Any change in law invariably results in a controversy as to its temporal applicability. While the amendment was to be in force with effect from 01.10.2018, the question was whether it would be applicable to pending proceedings as well. In other words, the question was whether the amendment would be prospective or retrospective. This question was eventually answered by 3-judge bench of the Supreme Court of India (N.V. Ramana C.J., Krishna Murari J., and Hima Kohli J.) in *Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd.*<sup>8</sup>.

#### **A. Katta Sujatha Reddy: A Prime Facie Reading of the 2018 Amendment**

The facts of the said case, shorn of unnecessary details was that a suit came to be filed in O.S. No. 88/2002 for specific performance of Agreements of Sale dated 26.03.1997 and 27.03.1997 before the District Judge, Ranga Reddy District, LB Nagar, Hyderabad, which was filed on 09.08.2002. The Trial Court *vide* judgement dated 12.12.2010, dismissed the suit on multiple grounds viz. that the suit for specific performance was barred by time as it was instituted beyond the stipulated limitation of three years from the date fixed for performance; that the Plaintiff failed to prove that he was ready and willing to perform the contract; and that the Plaintiff had suppressed material facts before the Trial Court.

This judgement came to be challenged by way of an appeal in Appeal Suit No. 998/2010 before the Telangana High Court, Hyderabad Bench. The High Court *vide* judgement dated 23.04.2021 reversed the decision of the Trial Court, and decreed the suit. In doing so, the High Court held that, the suit was within time and that the Plaintiff had established that he was ready and willing to perform the contract. It is during the pendency of this appeal that the 2018 Amendment came into effect. Hence, an issue was framed by the High Court as to the applicability of the said amendment on the above proceeding. The High Court came to the conclusion that, as Section 10 and 20 had been substituted by the 2018 Amendment, would mean that the court would have to proceed as if the earlier Section 10 and 20 never existed. Hence, the amendment would have retrospective application.

This decision of the High Court came to be challenged by few of the Defendants in the suit, in Civil Appeal No. 5822-24/2022, before the Supreme Court of India. The Apex Court *vide* order dated

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<sup>8</sup> *Supra* note 2.

25.08.2022, allowed the appeal. It held that the Trial Court was right in holding the suit was barred by time, and that the Plaintiff had failed to establish his readiness and willingness. The Apex Court further held that, the 2018 Amendment is substantive in nature, and is not procedural, and as such could only be prospective.

The Apex Court noted that across the history of the common law, specific performance has always been discretionary, and delivery of property ought only to be ordered, when the property is of such special nature that damages would not compensate.<sup>9</sup> In the eyes of the Apex Court, the 2018 amendment sanctified contracts in a manner that was novel to the common law, as well as the law of specific performance in India. This conversion of discretion to mandate by the 2018 amendment, was seen as creation of new rights and obligations which did not exist prior to the amendment. The removal of the factor of “adequacy of damages” under Section 14(1)(a) also emphasized the point for the court, that the amendment was indeed substantive. Hence, once the court came to the conclusion that the amendment was substantive in nature, in the absence of a specific provision in the amending Act to indicate retrospective operation, the Apex Court held the 2018 Amendment to be prospective. Hence, the Apex Court declined to exercise its discretion in decreeing specific performance.

#### **B. Siddamsetty Infra: Review of the Specious**

Aggrieved by the said order, Siddamsetty Infra filed a review petition before the Supreme Court of India in Review Petition (C) No. 1565/2022 under Order XLVII Rule 1 of the Supreme Court Rules, 2013. Since two of the three judges had since retired, by the time the said petition came up for issuance of notice, a new Bench of three judges of D.Y. Chandrachud C.J., Hima Kohli J., and P.S. Narasimha J., was constituted. The Chief issued notice in the said matter and permitted oral hearing of the review. Kohli J., dissented from that view, and passed an order dismissing the review petition. Narasimha J. however, recused from the matter. Hence, a new Bench was once again constituted with Manoj Mishra J., taking the place of his recused brother judge. Mishra J., agreed with the Chief, and issued notice. Before the matter could be heard however, Kohli J., retired and was therefore replaced with J.B. Pardiwala J., in the 3-judge Bench. After hearing the parties, the Supreme Court allowed the review by way of order dated 08.11.2024 in *Siddamsetty Infra Projects (P) Ltd. v. Katta Sujatha Reddy*<sup>10</sup>. The review however, was on the facts of the said case, and the law was left in many ways untouched. The review bench held that, the suit was indeed within time, as until the Defendants refused to convey the subject property, no cause of action arose for the Plaintiff to file the suit. The Bench also held that, the Plaintiff having paid about 75% of the consideration, could not be said to have failed to prove his readiness and willingness.

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<sup>9</sup> *Whiteley Ltd. v. Hilt*, (1918) 2 KB 808 (CA).

<sup>10</sup> *Supra* note 3.

On the question of the 2018 Amendment however, the review bench remained curiously silent. Instead, in ¶32 of the review decision, this court observed as under:

This Court held that the 2008 amendment to Section 10 of the Specific Relief Act does not apply retrospectively and decided the matter based on Section 10 before the amendment. Section 10, before the amendment, conferred courts with the discretion to provide a decree for specific performance. In exercise of review jurisdiction, we must not disturb a finding unless there is an error apparent on the face of record. *Even assuming that the grant of relief of specific performance continued to be discretionary to a suit instituted before the date of the amendment,* we are of the opinion that this Court committed a grave error in its analysis of whether the Court ought to use its discretionary power in this matter. (emphasis supplied)

The Court therefore, was conscious of the postulation of law by the 3-judge Bench regarding the prospective application of the 2018 Amendment. Despite having noticed the said postulation, the Bench proceeded on the basis that the relief was indeed discretionary. Based on the above assumption, the Apex Court in ¶42 proceeded to hold that, it is fit case of exercise of the court's discretionary power to direct specific performance. Hence, the Apex Court recalled the judgement dated 25.08.2022, and restored the judgement of the High Court.

#### IV.

##### **Applicability of the 2018 Amendment De Hors Siddamsetty**

Before one begins to consider the effect and impact of the review order, it is apposite to surveil the jurisprudence surrounding the 2018 amendment (*de hors Siddamsetty*) adopted by the Supreme Court in other contexts, as well as by other High Courts. The tenor of various Supreme Court decisions seems to be in favour of retrospective application of the amendment. Various High Courts have taken conflicting views on the applicability of the amendment.

##### **A. Inter-State Concurrence of Retrospective Application**

Before delving into the decisions of the various High Courts in favour of retrospective application, it would be relevant to study the approach of the Supreme Court vis-à-vis the nature of the Specific Relief Act, 1963, as well as the 2018 Amendment.

##### **a. Decisions of the Supreme Court of India**

The first decision which warrants a look, is one which finds extensive mention in *Katta Sujatha Reddy viz. Adhunik Steels Ltd. v. Orissa Manganese & Minerals Pvt. Ltd.*<sup>11</sup> In this case, the question

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<sup>11</sup> (2007) 7 SCC 125.

that arose for consideration of the Supreme Court was regarding the scope of powers of the civil court under Section 9 of the Arbitration and Conciliation Act, 1996, which provided for interim relief to be granted to parties prior to, during or after arbitration. In analyzing the powers of the Section 9 court, the Supreme Court traversed the law on injunctions including the Specific Relief Act, 1963. In doing so the court held that, the law of specific performance essentially formed a party of the law of procedure as specific relief is form of judicial redress. This hence, assists in the present analysis of the nature of SRA as being procedural in nature, as opposed to substantive. This reliance on *Adhunik Steels* for analyzing the 2018 Amendment, has its share of problems.

As the Supreme Court in *Katta Sujatha Reddy* noted, the Apex Court in *Adhunik Steels* was not concerned with the issue of retrospectivity of any provision of the SRA, or even with the nature of SRA. The controversy before the court pertained to Section 9 of the Arbitration and Conciliation Act, 1996. A judgement which relies on a principle *sub silentio* cannot be taken to be binding as a precedent. A judgement delivered *sub silentio* while not being binding on the court (unlike in case of the author), cannot be ignored without assigning reasons thereof.<sup>12</sup> While on the technical ground of *sub silentio*, one can indeed ignore *Adhunik Steels*, the said judgement is immensely illuminative on the general understanding of SRA and its procedural nature.

A better decision for the case of retrospectivity of the 2018 Amendment, is *Sughar Singh v. Hari Singh*<sup>13</sup>. In this case, a suit for specific performance was instituted for enforcement of an agreement to sell which was executed on 10.10.1976 in the year 1984. The said suit came to be decreed by the Trial Court, after finding that the Plaintiff was ready and willing to perform the terms of the contract. The first appellate court thereafter, dismissed the resultant appeal filed by the Defendant in the year 1998. A second appeal came to be filed before the High Court of Allahabad. The High Court set aside the decision of the First Appellate Court and remanded the matter for fresh consideration on the question of readiness and willingness. The First Appellate Court once again held in favour of the Plaintiff, holding that the Plaintiff had established his readiness and willingness to perform the contract. The resultant second appeal to the High Court, came to be allowed by the Allahabad High Court, and the suit was dismissed, on the ground that no specific averments were made in the plaint as required under Section 16(c) of the SRA, and further held that, as the power to decree specific performance is discretionary in nature, suit was liable to be dismissed. Hence, after two rounds of litigation, the matter reached the Supreme Court. While the discussion of the court on Section 16(c) is not strictly relevant for the purpose of the present analysis, the court dedicates a portion of its judgement on the un-amended Section 20 of the SRA. The Apex Court held that, the discretion under Section 20 was to

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<sup>12</sup> *State of Punjab v. Devans Modern Breweries Ltd.*, (2004) 11 SCC 26.

<sup>13</sup> (2021) 17 SCC 705.

be exercised judiciously and reasonably. In its opinion, not to grant specific performance despite the proving of the agreement of sale, payment of part consideration, and establishing of readiness and willingness would punish the Plaintiff and would encourage dishonesty on the part of the person who received the money pursuant to the agreement. The Court in this light, took note of the 2018 Amendment made to the SRA, and held that, although the same may not be retrospectively applicable, the same could be used as a guide for courts to decide suits instituted prior to the amendment. Further, the Apex Court specifically kept the question, as to whether the said provision would be applicable retrospectively or to pending proceedings, open. Hence, the Apex Court allowed the appeal, set aside the order of the High Court, and decreed the suit.

The obvious pitfall in using this decision for determining the applicability of the 2018 Amendment, is that that very question was kept open. Therefore, no reliance perhaps can be placed on the said judgement. Nonetheless, if one were to meaningfully interpret the said judgment, it is clear that while the 2018 Amendment would not *stricto sensu* apply to pending proceedings, the shift in approach of the court, towards favouring specific performance, would indeed apply. This shift, is in essence, the thrust of the 2018 Amendment.

#### ***b. Decisions of the High Courts across India***

Various High Courts across India have followed *Katta Sujatha Reddy*, prior to its recall in *Siddamsetty*. However, even before *Katta Sujatha Reddy*, there have been concurrent views of various High Courts, agreeing as to the retrospective nature of the 2018 Amendment. The Delhi High Court in *Jindal Saws Ltd. v. Aperam Stainless Services Solutions Precision Sas*<sup>14</sup>, using *Adhunik Steels* came to the conclusion that, as SRA is a procedural law, the same would be applicable to pending proceedings.

A couple of months prior to the Delhi High Court decision, the Calcutta High Court in *Church of North India v. Rt. Reverend Ashoke Biswas*<sup>15</sup>, came to a similar conclusion that the 2018 Amendment could be applied to pending proceedings. However, the ratio was decidedly distinct from that of *Jindal Saws*. The Calcutta High Court was of the view that, the question of specific enforcement, is in essence, a question of relief to be granted by court. Therefore, the relevant date to decide the applicability of the 2018 Amendment ought to be the date on which the decree is passed, and not the date of initiating the suit. The slippery consequence of this is that, the 2018 Amendment can be held applicable to situations wherein, the decree has been challenged in appeal. The appeal, as is trite, is a continuation of the suit proceeding.<sup>16</sup> Moreover, whenever a decision is made by the appellate court,

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<sup>14</sup> 2019 SCC Online Del 9163.

<sup>15</sup> 2019 SCC Online Cal 3842.

<sup>16</sup> *Union of India v. West Coast Paper Mills Ltd.*, (2004) 2 SCC 747.

the same merges with the trial court judgement, and it is the High Court judgement that is enforced.<sup>17</sup> Finally, the Allahabad High Court in *Mukesh Singh v. Saurabh Chaudhary*<sup>18</sup>, held that the 2018 amendment was retrospective in nature, as it was a repeal of the previous regime. In the view of the court, the 2018 Amendment showed a completely different intent to that of the previous regime, and as such, Section 6 of the General Clauses Act, 1897 (*hereinafter* “GCA”) would not be applicable. The case also surrounded the defense of undue hardship, which permitted the court not to decree specific performance, if doing so would cause undue hardship to the Defendant. This defense finds no mention in the post-2018 SRA. Hence, the High Court held that, the amended Act would be applicable, and the defense of undue hardship would not be available to the Defendants. This judgement however, perhaps errs in its interpretation of Section 6 of the General Clauses Act, 1897. The section provides that “*unless a different intention appears*”<sup>19</sup>, any repeal shall not affect any right, obligation etc. and shall not affect any proceeding initiated thereto. The High Court seems to have come to the conclusion in ¶37 that, as the amendment displayed a different intention to that of the previous Section 20, Section 6 of the GCA would not apply. Such a reading of Section 6 would render each and every shift in philosophy by the legislature, to be retrospective. The more workable meaning assignable to Section 6 would be that the term “*unless a different intention appears*” refers not to the provisions being amended, but to the effect of the amendment on the rights, obligations etc. of parties, and the applicability of the amendment to any pending proceedings. If the true meaning of Section 6 were to be applied, it could be argued that the 2018 Amendment would not apply to pending proceedings. Much reliance therefore, cannot be placed on *Mukesh Singh*.

### **B. The Discordant Insistence of the Prospective Application**

As every head of a coin has its tail, every contentious decision of a High Court has its counter-part in a sister court (or sometimes from a sister Bench). For instance, the Delhi High Court in *Shon Randhawa v. Ramesh Vangal*<sup>20</sup>, came to the conclusion that a Section 34 court considering an arbitral award, cannot take into account the subsequent 2018 Amendment, as the scope of its jurisdiction is quite limited. The Delhi High Court therefore, distinguished this decision from *Jindal Saws*, which arose from a suit. In any event, strictly speaking, *Shon Randhawa* cannot be said to have ruled on the prospective application of the 2018 Amendment as regards regular suits for specific performance, or even pending arbitral proceedings. However, the tenor of the judgement would indicate that the 2018 Amendment could be made applicable to pending arbitral proceedings, as the court found that “*the test to be applied under Section 34 i.e. whether the arbitral award is in conflict with the public policy*

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<sup>17</sup> *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359.

<sup>18</sup> 2019 SCC Online All 5523.

<sup>19</sup> The General Clauses Act, 1897 (Act 10 of 1987), s. 6.

<sup>20</sup> 2020 SCC Online Del 2548.

of India, is of the date of the making the award and cannot be of the changes if any in the public policy after the date of making of the award.” (emphasis supplied). While some have interpreted this decision to imply solely the prospective application of the 2018 Amendment, the same may not be entirely correct. This is for the simple reason that at a Section 34 stage, the arbitral proceeding has in fact concluded. A Section 34 proceeding is not a continuation of the arbitral proceedings, unlike an appeal to a suit. Hence, all that the court has held is that, concluded proceedings cannot be re-opened in challenge proceedings, based on subsequent changes in law. This judgement therefore, offers no shelter to those who insist on the prospective application of the 2018 Amendment.

The impetus of the votaries of prospective application, perhaps arises from the decisions of the High Court of Karnataka. In *M. Suresh v. Mahadevamma*<sup>21</sup>, the Karnataka High Court while considering the 2018 Amendment, also considered the decision in *Mukesh Singh*. The Karnataka High Court held that Section 6 of the GCA would be applicable as no explicit affect was caused to the rights and obligations of persons under the previous regime. Further, the court noted that, the Amendment was to come into force from the date on which it was to be notified by the Central Government. Hence, the question of retrospective application would not arise. The High Court also undertook the substantive-procedural analysis of the 2018 Amendment, and came to the conclusion that “*the sea change brought by amendment to Section 20, would be substantive in nature. Though the remedy of specific performance was not available to the party as a matter of right under the unamended provisions that was dependent on the discretion of the Court, the same was indeed a right or privilege enjoyed by the defendants.*”<sup>22</sup> Kaustav Saha quite rightly points out that, this holding of the court, conflates rights with remedies.<sup>23</sup> Apart from this, after *Katta Sujatha Reddy*, the Karnataka High Court in *T. Susheelamma v. R. Krishna*<sup>24</sup> once again refrained from decreeing specific performance, *inter alia*, on the ground that the 2018 Amendment was prospective in nature and the courts retained a modicum of discretion.

Recently, the Karnataka High Court had occasion to consider the review and recall of *Katta Sujatha Reddy*, in *M/s. Sun Rama Exports Pvt. Ltd. v. Smt. Shantha Srinivas*<sup>25</sup>. In this case, the question once again arose as to the applicability of the 2018 Amendment, and whether the court in matters which preceded the 2018 Amendment, continued to be vested with discretion to decree specific performance. This is a rare circumstance where the court did indeed decree specific performance, but came to the conclusion that the 2018 Amendment was prospective in nature. The Court noted the

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<sup>21</sup> 2020 SCC Online Kar 3425.

<sup>22</sup> *Id.* at para 34.

<sup>23</sup> Kaustav Saha, “Rights, Remedies and Retrospectivity: The Curious Case of The Specific Relief (Amendment) Act, 2018” 17 *NUJS Law Review* 3 (2024).

<sup>24</sup> 2023 SCC Online Kar 234.

<sup>25</sup> R.F.A. No. 178/2015 decided on 04.04.2025 (Karnataka High Court at Bangalore).

review of *Katta Sujatha Reddy* in *Siddamsetty* and held that merely because an order came to be recalled, does not mean that the law laid down in the said order came to be interfered with. In the opinion of the court, as the Apex Court did not explicitly overrule *Katta Sujatha Reddy*, and further assumed that it had discretion to decree specific performance, it implicitly affirmed the position of law that the 2018 Amendment applied only to contracts entered into after 01.10.2018. While this finding of the High Court did not meaningfully impact the outcome of the case, the said finding of the High Court in *Sun Rama* warrants significant consideration.

## V.

### **Applicability of the 2018 Amendment: Consequence of Siddamsetty**

Before one begins to understand the current state of affairs, one would do well to dwell on the concept of review and the consequences thereof. It is well settled now that, the effect of allowing review of an order, is that, the order subsequent passed, overrides and supersedes the original order.<sup>26</sup> But in *Siddamsetty*, while the court was indeed deciding a review petition under order XLVII Rule 1 of the Supreme Court Rules, 2013, the Supreme Court in the operative portion of the judgment, has “recalled”<sup>27</sup> the judgment dated 25.08.2022 in *Katta Sujatha Reddy*. As regards recall of an order, the judicial position is that the recall of an order, results in the complete abrogation of the order which has been recalled. Hence, it is as if the recalled order, never existed.<sup>28</sup>

The consequence hence, of the recall of *Katta Sujatha Reddy*, is that one must proceed to consider the 2018 Amendment as though *Katta Sujatha Reddy* never existed. In the absence of *Katta Sujatha Reddy*, it would seem that *Sugar Singh* would hold the field as to the application of the 2018 Amendment towards pending disputes. This would mean that, the civil court must have a bent towards enforcing contracts through specific performance, but at the same time consider other factors such, as undue hardship as well as redressal through adequate compensation. Such a minimal change in the perceived attitude of the civil court may not be of much help in order to achieve the lofty goals of the 2018 Amendment. Hence, a few other aspects warrant consideration.

In *Siddamsetty*, the Supreme Court after recalling its judgement, has restored the judgment of Telangana High Court dated 23.04.2021. As stated in Part III above, the Telangana High Court came to the conclusion that, specific performance was to be decreed. However, the Telangana High Court in doing so, extensively analyzed, the nature of SRA as being procedural in nature; the concept of retrospective operation of procedural laws; and the decisions of various High Courts in *Mukesh Singh*, *M Suresh*, *Shon Randhawa*, *Church of North India*, and *Jindal Saws*. After considerable discussion, the Telangana High Court found that “*substituted Section 3 of act of 2018 (which Section 10 in*

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<sup>26</sup> *Sushil Kumar Sen v. State of Bihar*, (1975) 1 SCC 774.

<sup>27</sup> *Supra* note 3, at para 52.

<sup>28</sup> *Giridharilal v. Pratap Rai Mehta*, 1989 SCC Online Kar 165.

*principal Act) is retrospective in nature and applies to pending proceedings*”<sup>29</sup>. This decision therefore, was affirmed by way of a speaking order, by the Supreme Court in appeal in *Siddamsetty (Katta Sujatha Reddy)* having been recalled). The doctrine of merger dictates that when the Supreme Court by way of a speaking order, affirms the decision of a lower court, the latter decision merges with that of the Supreme Court.<sup>30</sup> Therefore, in effect, with the restoration of the High Court decision in *Siddamsetty*, the Supreme Court has in effect held the 2018 Amendment to be retrospective insofar as it would apply to pending proceedings. It must also be kept in mind that one cannot read too much into a judgement of the Apex Court for much of the analysis above is deduced *sub silentio*.

Therefore, from first principles, if one considers the issue of the applicability of the 2018 Amendment, one must necessarily wade into the murky waters of the substantive-procedural dichotomy. Some have advocated for a right-remedy analysis as opposed to a substantive-procedural analysis.<sup>31</sup> The right-remedy analysis is a necessary concomitant of Section 6 of the GCA, as it specifies that unless a contrary intention is evident, any right or obligation pre-existing the repeal, will not be impacted. But the substantive-procedural analysis goes slightly further, to say that if one has procedural rights, and if a repeal changes the same, the change would have retrospective effect. Therefore, the question is whether the 2018 Amendment confers procedural rights or substantive rights. As regards the Plaintiff, the 2018 Amendment does not impact any of his rights and obligations. His entitlement to specific performance remains the same. It is only the manner or ease in which he obtains specific performance is changed. The obligation to prove the elements of specific performance continue to remain the same. It is only as against the Defendant, that the 2018 Amendment takes away defenses that could have been otherwise alleged. Defenses such as undue hardship as well as adequate compensation through damages, have been done away with. But these defenses cannot be said to have been rights of the Defendant. These are merely appeals to be made by the Defendant to the discretion of the court, seeking favourable exercise thereof. Therefore, it would seem that the majority of the High Courts across India are right, insofar as they have held that the 2018 Amendment only concerns itself procedural rights.

Even otherwise, it is matter of common logic and practice that any change in law would apply to contracts under performance. Rights and obligations brought about by change in law, would bind the parties thereafter, despite the same not having been enacted on the date of execution of the contract. Even as regards court proceedings, it is increasingly settled law that, a change in law would be applicable to pending proceedings, unless a specific prohibition is made out in the amendment. For

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<sup>29</sup> *Hyderabad Potteries (P) Ltd. v. Debbad Viweswara Rao*, 2021 SCC OnLine TS 3590, at para 100.

<sup>30</sup> *Supra* note 17.

<sup>31</sup> *Supra* note 23.

instance, in *R.S. Madireddy v. Union of India*<sup>32</sup>, the Apex Court held that, if during the pendency of a writ petition, a public entity undergoes privatization, then the said petition would no longer be maintainable, as the writ court exercises jurisdiction on the date it issues the writ i.e. decides the petition, and the date of filing of the proceeding would be irrelevant. A similar rationale was used by the Calcutta High Court in *Church of North India* to hold that, the relevant date for determining the applicability of the 2018 Amendment is the date on which the decree is being passed. Even otherwise, the Apex Court has consistently held that, developments in law apply to pending proceedings.<sup>33</sup> Hence, even *de hors Siddamsetty*, the position of the law seemingly enables the 2018 Amendment, to apply to pending proceedings.

## VI.

### Conclusion

The endeavor of the above analysis has been to showcase that out of rampant confusion in the judicial systems, arises at times, harmony. The general consensus prior to *Katta Sujatha Reddy* was that the 2018 Amendment was indeed applicable to pending proceedings, and as such, would be retrospective. *Katta Sujatha Reddy* struck a discordant note when it insisted that no contract before 01.10.2018 could take benefit of the said amendment. Such a reading, would also render the *sententia legis* obsolete, for the amendment was brought with the aim of harmonizing the provisions of SRA, in light of the rapid economic growth experienced in India. Hence, the amendment was brought in to improve enforcement of contracts, and settling of disputes in a speedy manner.<sup>34</sup> To read the 2018 Amendment to be solely prospective, would be to defeat the intention of the legislature. A retrospective reading would also ensure that those who have intentionally failed to perform the contract, are penalized for stringing along the Plaintiff, while enjoying the fruits of their labour (or lack thereof). Such a reading would also go a long way in reducing the burden on the courts of India, and reducing case pendency. However, because the specter of *Katta Sujatha Reddy* continues to haunt the Indian courts, it may perhaps be necessary for the Supreme Court to finally lay the matter to rest in an appropriate case. One would hope, it would do so, in a direction distant from its now-deceased, and would-be predecessor.

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<sup>32</sup> 2024 INSC 425; 2024 SCC Online SC 965.

<sup>33</sup> See *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1; *Ganduri Koteswaramma v. Chakiri Yanadi & Anr.*(2011) 9 SCC 788.

<sup>34</sup> *Supra* note 7.