

News

Not all contracts that can be terminated can be determined to resist particular performance:

The Supreme Court makes clear

The KS Manjunath decision from the Supreme Court clarifies the meaning of "determinability" under the Specific Relief Act of 1963, which was highly needed.

Over the past thirty years, the law governing specific performance of contracts that are "in their nature determinable" has undergone significant clarification. Section 14 of the Specific Relief Act, 1963, which contained a broad, text-based exclusion, has given way to a more careful investigation based on contractual structure and the parties' right to terminate "at will" rather than "for cause."

The Supreme Court's ruling in KS Manjunath and Ors. v. Moorasavirappa in Civil Appeal No. 13507-13508 of 2025, which was rendered last year, spells out the criteria in sufficiently explicit words and consolidates and clarifies the law underlying the determinability test that has been upheld by other courts. Contracts that allow for termination are determinable and do not require reference to default, event, or cause. Because they are not inherently determinable, contracts that permit termination solely for cause (or reasons) may be expressly enforced.

According to the Supreme Court's ruling in Indian Oil and the statute's starting point, "a contract which is in its nature determinable" was not covered by specific performance under Section 14(1)(c) of the Specific Relief Act, 1963 (as it existed before the 2018 change). Following the 2018 change, this same clause is still there in Section 14(1)(d) of the Specific Relief Act, 1963. The Supreme Court's ruling in Indian Oil Corporation v. Amritsar Gas Service, (1991) 1 SCC 533, is the traditional source for interpreting whether a contract is

"determinable." In this case, the agreement specifically allowed for termination with 30 days' notice without cause, and the Court determined that the agreement was determinable in nature and therefore not specifically enforceable.

Thus, the Indian Oil ruling establishes an important principle: a court of equity will not award particular performance in cases where the contract itself grants a party the unrestricted right to terminate at any time. It would be pointless to do so because the promisor might instantly use their contractual termination power, making the decree void.

Development of the High Courts' inquiry into the determinability of contracts with regard to specified performance

Following Indian Oil, a number of High Courts have attempted to further simplify the determinability test. In *TO Abraham v. Jose Thomas*, 2017 SCC OnLine Ker 19872, the Kerala High Court decided a case involving specific performance of a share sale agreement. The court held that in order for a contract to be deemed determinable, it must be demonstrated that the terms of the agreement permit either party to terminate the agreement at their own discretion and without giving a reason.

For the purposes of the "determinability" test, the Madras High Court provided an additional classification of contracts in *A Murugan and Ors. v. Rainbow Foundation Ltd. and Ors.*, 2019 SCC OnLine Mad 37961: (i) contracts that are inherently revocable (such as partnerships at will); (ii) contracts that have "without cause" termination clauses; (iii) contracts that terminate immediately "for cause"; (iv) contracts that terminate "for cause" with notice and cure; and (v) contracts that have no termination clause but are terminable for breach of a condition but not a warranty. The Court determined that the agreements in categories (i), (ii), and (iii) could be performed specifically because they were non-determinable.

A unilateral, no-fault termination is once again emphasized as the crucial test of determinability. In a similar vein, the Bombay High Court held in *Narendra Hirawat & Co. v. Sholay Media Entertainment Pvt. Ltd.*, (2020) SCC OnLine Bom 391 that "determinable" means terminable "at the sweet will" of a party, without reference to breach or any external event. In *Kheoni Ventures (P) Ltd. v. Rozeus Airport Retail Ltd.*, 2024 SCC OnLine Bom 773, the Court further reaffirmed this position, noting that in order to determine whether a contract is determinable or not, it must be determined whether the parties have the right to terminate the agreement at any time, without the occurrence of any contingencies, and without assigning any reason.

But in numerous rulings, the Delhi High Court took a distinct, erratic, and contradictory stance. For example, a Division Bench of the Delhi High Court took a strict stance in *Rajasthan Breweries Ltd. v. Stroh Brewery Co.*, 2000 SCC OnLine Del 481, ruling that an agreement was determinable in nature and thus not capable of specific performance when it specified specific events permitting either party to terminate. The High Court went one step further and ruled that, even in cases where an agreement did not contain a termination clause, the nature of the transaction—a private commercial one—permitted termination with a reasonable notice and no explanation. The Court ruled that the only recourse would be to seek compensation rather than specific performance, even in the event that the termination was ultimately determined to be unlawful.

Similarly, in *Turnaround Logistics (P) Ltd. v. Jet Airways (India) Ltd. & Ors.*, 2007 SCC OnLine Del 2085, the Delhi High Court ruled that contracts that are terminable upon the occurrence of a certain event are determinable in nature, in addition to voidable contracts.

More recently, the Delhi High Court ruled in *Ksheeraabd Construction Pvt. Ltd. v. National Highways and Infrastructure Development Corporation Ltd.*, 2023 SCC OnLine Del 3156, and *Inter Ads Exhibition (P) Ltd. v. Busworld International*, 2020 SCC OnLine Del 351, that Section 14(d) of the Specific Relief Act, 1963 does not only apply to agreements that can be terminated at any time without giving a reason.

At the same time, the Delhi High Court has taken a more lenient stance, in line with the Bombay, Madras, and Kerala High Courts, in other decisions like *DLF Home Developers Ltd. v. Shipra Estate Ltd.*, 2021 SCC OnLine Del 4902, and *Affordable Infrastructure & Housings Projects (P) Ltd. v. Segrow Bio Technics India (P) Ltd.*, 2022 SCC OnLine Del 4436. The court held, among other things, that a contract cannot be said to be determinable in nature and can be specifically performed.

The Supreme Court's clarification in the KS Manjunath case

The legal issue of "**determinability**" seems to have been resolved by the Supreme Court's ruling in *KS Manjunath*. The case was a disagreement resulting from a property sale agreement signed in April 2000. The potential buyers had made a down payment and taken significant actions to close the deal, such as securing a land use conversion and setting up the eviction of current residents. Despite these attempts, the vendors allegedly unilaterally ended the arrangement before selling the property to third parties, claiming that they were doing so because of ongoing legal proceedings and the passing of a co-vendor. The original

buyers filed a lawsuit to get particular performance. After extensive litigation, the Karnataka High Court's decision, which had ordered the execution of a sale document in favor of the original buyers and awarded specific performance, was upheld by the Supreme Court.

Whether the sale agreement was "in its nature determinable" for the remedy of particular performance to be denied was the primary question on the Supreme Court's agenda. The Court explained the definition and application of "determinability" as follows, using the many authorities on the subject, including the ones listed above: not all terminable contracts are "determinable." A contract is only determinable if either party may end it whenever they choose, without giving any explanation or justification, even if the other party is prepared and eager to carry out their end of the bargain. Contracts that can be expressly performed but are only terminated upon breach or the occurrence of certain events are not determinable in nature. The Court determined that the sale agreement in this instance was not determinable because it lacked a provision allowing for unilateral termination and could not be terminated as long as the original buyers were still prepared and willing to fulfill their end of the bargain.

In conclusion

The KS Manjunath decision from the Supreme Court clarifies the meaning of "determinability" under the Specific Relief Act of 1963, which was highly needed. The ruling limits a frequent procedural strategy where defendants utilize unilateral termination letters to prematurely dismiss particular performance claims by emphasizing that only contracts that are terminable at will and without cause are covered under Section 14(1)(d). This ruling serves as a reminder to practitioners that contracts, especially those pertaining to sales, that do not grant the power of unilateral termination are nevertheless specifically enforceable.