

## CANCELLATION OF INSTRUMENTS UNDER THE SPECIFIC RELIEF ACT, 1963

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**Marru Vaaghdevi\***

### ABSTRACT

*The Specific Relief Act, 1963 is an Indian law concerning the enforcement of civil rights and remedies in various types of contractual and extra-contractual disputes. While the act does provide provisions for the cancellation of certain types of instruments, it primarily focuses on granting specific relief, such as injunctions, specific performance, and the rectification of contracts. Under the Specific Relief Act, 1963, the cancellation of instruments is administered by Sections 31, 32 and 33. Section 31 allows a party to a contract, who is either entitled to any legal right or interested in a contract or other instrument, to seek the cancellation of such instrument. The grounds for cancellation include fraud, misrepresentation, coercion, undue influence, mistake, illegality, or any other similar ground. It's important to note that the act does not provide an automatic right to cancel an instrument. The party seeking cancellation must approach the court with a specific case and evidence to support their claim. The court will then consider the circumstances and determine whether cancellation is justified under the given grounds.*

**Keywords:** Instrument, Sec 32, Right In Rem, Right In Personam, Discretionary Relief.

### INTRODUCTION

The Constitution of India granted specific rights and duties to Indian Citizens for their well-being. However, they alone won't be sufficient for the protection of lives and property. To protect human life and property, legal mechanisms are needed to enforce individual rights. As a result, the Government of India has enacted the "Specific Relief Act 1963", which replaces the previous Act of 1877. The Specific Relief Act provides certain remedies to the party upon contract copper may be considered suspicious by law. One of these reliefs is the cancellation of instruments. Sections 31 to 33 of the Specific Relief Act deal with it.

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\*BA LLB, FIRST YEAR, DAMODARAM SANJIVAYYA NATIONAL LAW UNIVERSITY, VISAKHAPATNAM.

## CANCELLATION OF INSTRUMENTS

Cancellation of instruments is understood to mean cancellation of the written evidence of the transaction between the parties concerned. This is an equitable remedy for the court to release both parties to a legal document from their obligations under that document for reasons of fraud, coercion, or otherwise. This instrument is not defined in the 1963 Act but is defined in the Indian Stamp Act, of 1899. Compliant with Section 2(14) of the Indian Stamp Act, 1899, “Instrument includes every document by which any right or liability is or purports to be created, transferred, limited, executed, extinguished or recorded.”<sup>1</sup>

There is no disagreement on the cancellation of a document while it is valid. A decree to set aside a document that is void ab initio is not necessary because it is not a legal precedent. The Specific Relief Act states that the cancellation of an instrument is a safeguard for parties who worry they will suffer harm from the other party as a result of the fulfillment of an agreement to which they are a party.

The plaintiff must demonstrate that if the document is left unquestioned or unresolved, it would seriously harm him to be granted the remedy of cancellation. He must have a stake in the property that would be at risk if the instrument were to remain in place for him to make that claim. The opposite party to the transaction may ask the court to cancel the instrument if it is being utilized by one party in a way that may hurt or is intended to harm the other party. If a third party to an instrument has objections about a void or voidable instrument, they cannot file a lawsuit to have it annulled. To get a judgment establishing his legal possession of the instrument or object in question, the third party must start a lawsuit.<sup>2</sup>

### **SECTION 31 OF SPECIFIC RELIEF ACT,1963:**

The cancellation remedy is explained in Section 31 in the following manner:

31. When cancellation may be ordered. –

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious

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<sup>1</sup>The Indian Stamp Act 1899, s 2(14)

<sup>2</sup> Rajasekharan Advocate K, ‘Cancellation of Void or Voidable Instruments - Lawwatch : Resources for Learners’ (*Lawwatch*, 13 January 2022) accessed 11 May 2023

injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and canceled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.<sup>3</sup>

Section 31 of the Specific Relief Act of 1963 details the circumstances under which a court may order the cancellation of an instrument. According to Section 31(1), anyone who feels they have been treated unfairly as a result of the performance of a certain instrument and believes that it is now void or voidable, or who believes that it could hurt them if the transaction goes forward, may initiate a case in a civil court to have the instrument declared void. After a case of this sort is filed, the Court must determine whether or not to declare such an instrument invalid. In such cases, the Court is given unfettered discretion. As a result, if the circumstances specified above are met, the Court may order that such an instrument be canceled.

If an instrument or document has been brought before the court for cancellation and was registered under the Indian Registrations Act of 1908, Section 31(2) states that the officer with whom the instrument or document had been registered must receive a copy of the decree containing information about the cancellation of the instrument. Such a directive is made to make things simpler for the officer and to keep his record up to date. The official is obligated to indicate in his register that the copy of the papers has been "canceled" after obtaining the court's orders or decree.

It provides discretionary relief.

The Civil Courts have the authority to withdraw an instrument at a party's request, but only under certain circumstances. Three crucial requirements are included in the aforementioned clause, upon which the court may issue the remedy.

1. The instrument has to be void or voidable.

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<sup>3</sup>The Specific Relief Act 1963, s 31

2. The plaintiff must reasonably fear suffering severe harm if the instrument is not canceled.

3. Based on the circumstances of the case, the court exercises its discretion and orders the delivery and revocation of the instrument.

Cancellation of an instrument is found on **Quia time** which means he fears or apprehends. It is applied in the cases where defendant may injuriously use the instrument against Plaintiff.

A complaint to cancel an instrument must be brought within three years of the date the plaintiff first learns of the occurrence of giving birth to his right to have the instrument canceled, per Article 59 of the Limitation Act of 1963.

An instrument may be termed voidable if it is obtained by fraud or coercion or misrepresentation or illegal or against public policy.

In the instance of **Vellayya Konar (Died) And Anr. vs Ramaswami Konar And Anr<sup>4</sup>**, it was decided that only parties to the transaction may bring a lawsuit to cancel an instrument, and the court may decide to cancel the lawsuit at its discretion. A third party cannot record a claim to have an agreement canceled in case they have true blue concerns almost an exchange or instrument, or in case they accept they have been treated unreasonably as a result of the parties to the understanding satisfying their commitments beneath the understanding. The court ruled that in this circumstance, the interested third party would need to record a claim for a declaration decree instead of cancellation of the instrument.

The case of **Jeka Dula v. Bai Jivi<sup>5</sup>** clarifies the centrality of legal activity concerning the cancellation of an instrument as well as the thinking for such cancellations. The verdict stresses how crucial it is for the court to uphold justice. An instrument ought to be canceled at the court's caution to maintain equity in case it is being treacherously utilized by one or more of the parties to an exchange and is hurting or is planning to harm the party who has recorded a complaint.

Under the specific relief act 1963, the cancellation of an instrument is a protection for parties who fear hurt from the other party as a result of the execution of an instrument to which they are a party.

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<sup>4</sup>Vellayya Konar (Died) And Anr. vs Ramaswami Konar And Anr(1939) 2 MLJ 400

<sup>5</sup> Jeka Dula v. Bai Jivi (1937) 39 BOMLR 1072

### **Prem Singh & Ors v. Birbal & Ors<sup>6</sup>**

The Specific Relief Act of 1963's Section 31 has been brought up by the Honorable Supreme Court in this instance. The Honorable Court accepted that cancellation of an instrument may be dependent upon where it was either invalid or voidable.

Concurring to the Hon. Court, an individual who feels abused may not be fundamental to bring a claim beneath Section 31 of the Specific Relief Act, 1963, to have a record announced invalid. In any case, when a comparable complaint is brought up concerning a voidable report or instrument, a claim must be propelled beneath Section 31 of the Specific Relief Act of 1963 to have the instrument canceled.

In the case of **Kattiya Pillai v. Ramaswamia Pillai<sup>7</sup>**, the Court held that it is the work of the court to send a duplicate of its decree to the registrar, and the offended party requires not to implore it.

### **SECTION 32 OF SPECIFIC RELIEF ACT,1963:**

There are two methods for canceling Instruments. They are as follows:

1. Total cancellation
2. Partial Cancellation

Complete/total cancellation refers to the court's cancellation of the entire instrument. In contrast, partial cancellation refers to the court's cancellation of a portion of an instrument. The partial cancellation of the instrument is covered by Section 32 of the Specific Relief Act of 1963.

Sec 32 states that

32. What instruments may be partially canceled. - Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.<sup>8</sup>

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<sup>6</sup>Prem Singh & Ors v. Birbal & Ors (2006) 5 SCC 353

<sup>7</sup>Kattiya Pillai v. Ramaswamia Pillai 56 MLJ 394

<sup>8</sup>The Specific Relief Act 1963, s 32

Any inconsistent, voidable, or voidable portion of an agreement may be partially canceled by the court; such partial cancellation shall not affect the performance of the remaining rights and obligations under the agreement.

In **Ram Chander v. Ganga Saran**<sup>9</sup>, the court determined that the plaintiff had asserted that an endorsement on a document was a forgery, untrue, and hence subject to cancellation.

The court gave an affirmative response and only partially annulled the endorsement since it is a different document from the remainder of the document.

### **SECTION 33 OF SPECIFIC RELIEF ACT,1963:**

The provisions relating to the Court's ability to order the restoration of benefits received and the fair compensation that must be paid when an instrument is canceled are found in Section 33 of the Specific Relief Act of 1963. The primary objective of this section is to ensure that, if a document or contract is canceled by the court, the parties to it are treated fairly.

"He who seeks equity must do equity," is the maxim that drives Section 33 of the 1963 Act. It places a duty on the person who receives the relief of cancellation to pay any reparation that justice may require and to make good on whatever advantage they may have received from the other party. In a situation where the plaintiff has not expressly requested the remedy of cancellation and the defendant has successfully contested the enforcement of the instrument against him because the instrument is void or voidable, this clause would apply.

Section 33 states that

33. Power to require benefit to be restored or compensation to be made when an instrument is canceled or is successfully resisted as being void or voidable.

(1) On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require.

(2) Where a defendant successfully resists any suit on the ground

(a) that the instrument sought to be enforced against him in the suit is voidable, the Court may, if the defendant has received any benefit under the instrument from the

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<sup>9</sup>Ram Chander v. Ganga Saran<sup>37</sup> Ind Cas 89

other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;

- (b) that the agreement sought to be enforced against him in the suit is void because of his not having been competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872), the Court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.<sup>10</sup>

This Section further specifies the conditions under which a defendant in a lawsuit challenging the performance of a document or contract may ask for the cancellation of that document or contract. The conditions mentioned in Section 33 are as follows:

1. When a defendant is sued by a plaintiff to enforce a contract, the defendant attempts to nullify the agreement by claiming that it is voidable. If the court decides that the contract or other instrument in question is also voidable in this circumstance, the court may order its cancellation.
2. When a defendant tries to throw out a contract by claiming that the plaintiff has the legal authority to enter into a contract under Indian law after the plaintiff files a lawsuit to enforce the agreement. Who is competent to enter into a contract is specified in Section 11 of the Indian Contracts Act of 1872. A person's ability to enter into a contract might be judged based on their age, mental capability, and other considerations. In this case, the court will void the instrument or contract.

### **CANCELLATION OF INSTRUMENT: RIGHT IN REM OR RIGHT IN PERSONAM**

In the case of **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd**<sup>11</sup>, according to S.C., all problems concerning rights in personam are arbitrable, while all conflicts involving rights in rem must be resolved by courts and other public tribunals.

In the recent case of **Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties & Ors**<sup>12</sup>, The Booz Allen case decision was revisited by the Supreme Court to see if a new exception to the categories of non-arbitrable cases might be carved out. This was done to

<sup>10</sup>The Specific Relief Act 1963, s 33

<sup>11</sup>Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd(2011) 5 SCC 532

<sup>12</sup> Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties (2021) 4 SCC 786

establish the arbitrability or unarbitrability of a written instrument cancellation action brought under Section 31 of the Specific Relief Act ("SRA"), 1963. The cancellation of an instrument must be right in rem or right in personam to be decided. On this, there is a lively debate.

Therefore, in the most recent case, to ascertain whether the proceedings under Section 31 of the SRA, 1963 is one in rem or personam, the SC set out to examine the accuracy of the law established by a division bench of the Hon'ble Delhi High Court in the case of **Alien Developers Pvt. Ltd. Vs. M. Jamardhan Reddy**<sup>13</sup>, which held that the action under Section 31 of the SRA, 1963 is an action in rem and, therefore, not arbitrable. After carefully examining the law, the Apex Court determined that the ruling in the Alien Developers case was invalid and overturned it. SC looked at many factors before deciding that Section 31 of the SRA action is not an action in rem. They are

SC noted that Section 31 (1) refers to "any person against whom a written instrument is void or voidable.....". The judgment of the Madras High Court's entire bench, **Muppudathi Pillai v. Krishnaswami Pillai**<sup>14</sup>, respecting the interpretation of the pari materia clauses of SRA 1877, was then cited by the SC with approval. The Hon'ble Madras High Court stated in the aforementioned judgment that Section 39 of the SRA 1877, which is a pari materia provision to Section 31 of the SRA 1963, has protective or preventive power. The Supreme Court further decided that reading the Madras High Court's full-bench ruling shows that the term "any person" pertains solely to a party and excludes third parties.

After reading Section 31 SRA, 1963, the court also decided that a written document may be ordered delivered over to the plaintiff and canceled in the same way as an action for rescinding a contract under Section 29 SRA, 1963. According to the Supreme Court, a Section 31(1) action must be between parties; this is an action in personam.<sup>15</sup>

The three-judge bench of RF Nariman, Navin Sinha, and Indira Banerjee, JJ, ruled that the process under Section 31 is limited to specific individuals rather than everybody who may be interested in the property underlying the instrument, or "the entire world." Because the canceled instrument is to be submitted to the plaintiff in the cancellation suit, the cancellation of the instrument is between the parties to the action and their privies rather than against all

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<sup>13</sup>Alien Developers Pvt. Ltd. Vs. M. Jamardhan Reddy (2016) 1 ALT 194 (DB)

<sup>14</sup>Muppudathi Pillai v. Krishnaswami Pillai (1959) 2 MLJ 225

<sup>15</sup> Goel V and Gupta H Cancellation of written instruments under Section 31 of Specific Relief Act- whether an action in rem and hence not arbitrable accessed 12 May 2023



individuals generally. A judgment rendered under Section 31 does not bind all parties claiming an interest in the property in conflict with the judgment, even if rendered in their absence."

The Court defined the phrase "any person against whom a written instrument is void or voidable" in Section 31(1), stating that the term "any person" is restricted to the party to the written instrument or any person who can bind that party. Importantly, relief under Section 39 of the Specific Relief Act of 1877 would not be granted in the case of a document performed by a stranger to the plaintiff's title, but only in the case of an instrument likely to harm that title. The phrase "any person" as used in this paragraph includes a buyer of a derivative title.

"The section's underlying principle is to protect a party or a person with a derivative title to property from such party from a potential misuse of an instrument against him."<sup>16</sup>

## CONCLUSION

To give justice to the parties that fear or experience harm from the other party as a result of the fulfillment of such a contract or other agreement, the courts in India revoke contracts and other agreements under the Specific Relief Act of 1963. By declaring the document or contract void in certain situations, the court enforces justice. In light of this, it is reasonable to conclude that the Specific Relief Act of 1963's provisions governing the cancellation of instruments is excellent and consistent with the aim of courts to uphold the rule of law. Furthermore, the highest court ruled that Section 31 of the Specific Relief Act is valid under Right in personam rather than Right in Rem.

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<sup>16</sup>Bhardwaj P, 'Action Instituted under Section 31 of the Specific Relief Act, 1963 Not an Action in Rem: SC... <https://www.Seconline.Com/Blog/Post/2020/08/20/Action-Instituted-under-Section-31-of-the-Specific-Relief-Act-1963-Is-Not-an-Action-in-Rem-Sc/> accessed 14 May 2023