

(iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods :->

The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iv) of re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale :->

Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of price, that seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.

\* Rights of unpaid seller against the buyer (Sec. 55-61) :->

Rights of unpaid seller against the buyer personally :->

unpaid seller can enforce certain rights against the goods as well as against the buyer personally.

The right against the buyer are as follows :->

## 1. Suit for Price (Section 55)

(a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Sec 55(1)].

(b) Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Sec 55(2)].

## 2. Suit for damages for non-acceptance (Sec 56):→

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. As regards measure of damages Section 73 of the Indian Contract Act 1872 applies in this case.

## 3. Repudiation of contract before due date (Sec 60):→

Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract

as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.

#### 1. Suit for interest [Sec 61]:

Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. It, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

⇒ Remedies of buyer against the ~~buyer~~ seller

#### Breach of contract by seller

Breach of contract by seller, where he - fails to deliver the goods at the time or in manner prescribed.

Breach of contract by seller where he - Repudiates the contract.

Breach of contract by seller, where he - Delivers non-conforming goods and buyer rejects and rescues acceptance.

## \* Rights of buyer

### 1. Damages for non-delivery [Sec 51]:

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

### 2. Suit for specific performance (Sec 52):

Where the seller commits a breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.

This remedy is allowed by the court subject to these conditions:

- (a) The contract must be for the sale of specific and ascertained goods.
- (b) The power of the court to order specific performance is subject to provisions of specific Relief Act of 1963.
- (c) It empowers the court to order specific performance where damages would not be an adequate remedy.

(d) It will be granted as remedy if goods are of special nature or are unique.

### 3. Suit for breach of warranty (Section 59):

Where there is a breach of contract warranty on the part of the seller or where the buyer elects to treat breach of conditions as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may-

(i) Set up against the seller the breach of warranty in diminution or extinction of the price; or

(ii) sue the seller for damages for breach of warranty.

### 4. Repudiation of contract before due date (Sec 60):

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and sue for damages for the breach.

### 5. Suit for interest:

(1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special

damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

- (2) In the absence of a contract to the contrary, the court may ~~be~~ award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

### \* Auction sale. (Section 64):→

An 'auction sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder.

An auctioneer is an agent governed by the law of agency. When he sells, he is only the agent of the seller. He may, however, sell his own property as the principal and need not disclose the fact that he is so selling.

### Legal Rules of auction sale:→

Section 64 of the sale of Goods Act 1930 provides following rules to regulate the sale by auction.

(a) Where goods are sold in lots :-

Where goods are put up for sale in lots, each lot is *prima facie* deemed to be subject of a separate contract of sale.

(b) Completion of the contract of sale :-

The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.

(c) Right to bid may be reserved :-

Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

(d) Where the sale is not notified by the seller :-

Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person and any sale contravening this rule may be treated as fraudulent by the buyer.

Subject \_\_\_\_\_

(e) Reserved Price :->

The sale may be notified to be subject to a reserve or upset price; and

(f) Pretended Biddings :->

If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.