

Unit - 4

Unpaid Seller

* Unpaid Seller:

1. The whole price has not been paid or tendered and the seller has an immediate right of action for the price.

2. When a bill or exchange or other negotiable instrument has been received as conditional payment and it has dishonoured.

Example: Unpaid Seller

1. "A" sold certain goods to "B" for Rs. 50,000 and B pays Rs. 40,000 and fails to pay balance amount.

2. P sold goods to R for Rs. 60,000 and received a cheque. On presentation the cheque was dishonoured in bank.

* Rights of Unpaid seller against the goods:

⇒ Property in goods has passed to the buyer:-

- Lien
- Stoppage in transit
- Resale

⇒ Property in goods has not passed to the buyer:-

- Withholding Delivery
- Lien
- Stoppage in transit
- Resale

* Rights of Unpaid Seller against the buyer:

1. Suit for price (even if property not passed)
2. Suit for damages
3. Suit for interest
4. Repudiation of Contract before due date

* Seller's Lien:

⇒ Right to retain possession until payment:

- a) Where goods sold without stipulation as to credit (Cash Sales).
- b) Goods sold on credit, but terms of credit expired.
- c) Buyer becomes insolvent (ceases to pay debt in the ordinary course of business).

* Seller's Lien example: A (Unpaid Seller)

=> A sold goods to B for Rs. 50,000 and allowed him one month credit but within that he became insolvent.

=> A sold car to B for Rs. 1,00,000 and delivered the railway receipt to B. Here Lien cannot be exercised.

* Seller's Lien - Part Delivery:

- Seller can exercise his right of lien on remaining goods if part delivery already made... unless, part delivery implies waive of lien.

* Seller's Lien - Termination of Lien

a) Delivers goods to carrier or bailee

b) Buyer or agent lawfully obtains the goods

c) By waiver

d) By Estoppel (by conduct or behaviour)

=> Note: The Unpaid Seller does not lose his right of lien if he has obtained a decree for the price.

* Right of Stoppage in transit:

Meaning: The right of stopping the goods while in transit, to regain possession and retain until the full price is paid.

⇒ Conditions:

1. Seller must be unpaid

2. Parted with the possession

3. Goods in transit

4. Buyer has become insolvent

* How stoppage is effected:

- By taking actual possession or

- Giving notice of his claim to the carrier or bailee.

- Expenses of re-deliver to be borne by the seller.

* Duration of transit/transit comes to an end:

⇒ Duration of transit: Goods in the course of transit.

• When they are delivered to a carrier or other bailee for transmission until delivery taken.

• Transit end irrespective of the fact that a further destination is indicated by the buyer.

• If goods rejected by the buyer transit is not deemed to end.

• Where the carrier or bailee wrongfully refuses to deliver the goods, the transit comes to an end.

• When goods delivered to a ship chartered by buyer, the transit comes to an end.

• Where part delivery, remaining goods may be stopped.

* Effects of sub-sale or pledge by buyer:

⇒ A entered into a contract to sell goods in possession of a wharfinger to B. Then B sold the goods to C and C paid the price.

⇒ B now fails to make payment to A. Here, A wanted to exercise his right of lien and ordered the wharfinger not to give delivery to C.

=> Solution: Seller has assented to the resale of the goods by the buyer to sale further to the sub buyers. As a result, A's right of lien is defeated.

* Legal Provisions:

- The right of lien or stoppage in transit is not affected by the seller further selling or pledging the goods unless the seller has assented.

- The right of stoppage is defeated if the buyer has transferred the document of title or pledges the goods to a sub-buyer in good faith and consideration subject to the rights of the pledgee.

* Right of Re-Sale - Conditions:

- Where goods are of perishable nature: Need NOT inform the intention to re-sell.

- Other cases:

=> Notice to be given to the buyer and if he fails within reasonable time to pay then the seller can: (a) recover the difference between contract price and resale price (b) retain profits if sold for higher price.

* Continued :-

■ Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods: the subsequent buyer obtains good title.

■ Where resale is expressly reserved, the seller may resell the goods on buyer's default.

■ Where property in goods not passed to the buyer.

* Rights of buyer :

1. Damages for non delivery

2. Suit for Specific Performance

3. Suit for breach of Warranty

4. Repudiation of contract before due date

5. Suit for interest.