

Unit 4 Unpaid Seller

* Unpaid Seller [Sec. 45(1)]

- When whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
- Bill of Exchange / Negotiable Instrument has been received as unconditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

* Rights of an Unpaid Seller [Sec. 46]

- (i) a lien on the goods for the price while he is in possession of them.
- (ii) In case of insolvency of buyer, a right of stopping the goods in transit after he has parted with the possession of them.
- (iii) a right of re-sale

* Rights of unpaid seller against the Goods :-

1. > Seller's lien [Sec. 47]

- Unpaid seller of goods who is in possession of them is entitled to retain possession until payment or tender of price in following case :-
 - Goods sold without stipulation of credit
 - Credit given but expired
 - Buyer becomes insolvent. The seller may exercise his right

of lien notwithstanding that he is in possession of the goods as agent or bailee of the buyer.

• Part Delivery [Sec. 48]

→ He may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

• Termination of Lien [Sec. 49]

→ Unpaid seller loses lien when

- delivers the goods to a carrier for purpose of transmission to buyer without reserving right of disposal of goods.
- when buyer or his agent lawfully obtains possession of good.
- by waiver

→ The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

2) Right of Stoppage in transit

→ When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has right of stopping them in transit.

→ He may resume possession of the goods as long as they are in course of transit and may retain them until paid or tendered price of the goods.

• Duration of Transit [Sec. 51]

- (i) Goods deemed to be in transit - Delivered to carrier for the purpose of transmission to buyer until buyer or his agent in the behalf takes delivery of them.
- (ii) If goods are rejected by buyer & the carrier or other-bailee continues in possession of them, the transit is not deemed to be at an end, even if seller has refused to receive them back.
- (iii) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of particular case, whether they are in possession of master as carrier or as agent of the buyer.
- (iv) Where part delivery of goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of goods.

• How stoppage in transit is effected [Sec. 52]

- (i) By taking actual possession of goods.
- (ii) By giving notice not to deliver goods.

→ Where notice of stoppage in transit is given by seller to carrier or other bailee in possession of goods, he shall re-deliver the goods to, or according to the directions of, the seller.

→ The expenses of such re-delivery shall be borne by seller.

* Effects of sub-sale or pledge by Buyer [Sec. 53]

→ The right of lien or stoppage in transit is not affected by the ~~seller~~ buyer selling or pledging the goods unless the seller has assented to it.

• Exceptions where unpaid seller's right of lien and stoppage in transit are defeated:-

(i) When the seller has assented to sale, mortgage or other disposition of the goods made by the buyer.

(ii) When document of title to goods has been transferred to the buyer and buyer transfers the document to a person who has bought goods in good faith and for value.

• Effect of Stoppage

→ The effect of stoppage is such that the contract of sale is not rescinded when the seller exercises his right of stoppage in transit,

→ The contract still remains in force and buyer can ask for delivery of goods on payment of price.

• Right of Re-sale [Sec. 54]

→ In absence of this right, the unpaid seller's other rights against the goods that is lien and stoppage in transit would not have been of much use.

→ because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

• Unpaid seller can re-sell goods in following conditions:-

- (i) When goods are of perishable nature
- (ii) When property in goods has not passed to buyer
- (iii) When an unpaid seller who has exercised his right of lien or stoppage acquires good title even if notice is not given.
- (iv) Where a right of re-sale is reserved
- (v) Where he gives notice to buyer of his intention to re-sell the goods if buyer fails to pay or tender price within reasonable time.

* Rights of Unpaid Seller against the Buyer

(i) Suit for price [Sec. 55]

- the property in the goods has passed to the buyer and buyer refuses to pay as per terms.
- the price is payable on certain day irrespective of delivery and buyer wrongfully neglects or refuses to pay such price.

(ii) Suit for damages for non-acceptance [Sec. 56]

- Where buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue for damages for non-acceptance.

(iii) Repudiation of contract before due date [Sec. 60]

- the seller may treat the contract as rescinded and sue damages for the breach - Anticipatory Breach of Contract.

(iv) Sue for Interest [Sec. 61]

- can be recovered only if specific agreement is there.
- If no specific agreement → Seller may change interest on the price when it becomes due from such day as he may notify to the buyer.

* Remedies of Buyer against the Seller:-

(i) Suit for specific performance [Sec. 58]

- The court can order for specific performance when goods are ascertained or specific.
- These remedy is allowed by court subject to these conditions:-
 - must be for the sale of specific and ascertained goods
 - power of the court to order specific performance
 - Court will order only when specific damages is not adequate remedy.
 - if goods are of special nature or unique.

(ii) Damages for Non-delivery [Sec. 57]

- where the seller wrongfully neglects (or refuses) to deliver the goods to the buyer.

(iii) Suit for breach of contract [Sec. 59]

- where there is breach of contract on part of seller, or where buyer elects to treat breach of condition 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:-

- Set up against the seller the breach of warranty in diminution or extinction of price.
- Sue the seller for damages for breach of warranty.

(iv) Repudiation of contract before due date [Sec. 60]

- other party may treat contract as valid and wait for delivery or
- treat as rescinded and sue for damages for breach.

(v) Suit for Interest

- Nothing in this act shall affect the right of buyer or seller to recover interest or special damages, in case where by law, interest may be recoverable.
- In absence of a contract to contrary, the court may award interest at such rate as it thinks fit on the amount of price.

* Auction Sale [Sec. 64]

- An 'Auction Sale' is a mode of selling property by inviting bids publicly and property is sold to the highest bidder.
- 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 that he is so selling.

* Legal rules of Auction Sale :-

(i) Where the goods are sold in lots

→ each lot is prima facie deemed to be subject of a separate contract of sale.

(ii) Completion of contract of sale

→ It is complete when auctioneer announces the completion by fall of hammer or in any other customary manner.

→ Until such announcement is made, any bidder may retract from his bid.

(iii) Right to bid may be reserved

→ expressly or on behalf of the seller where such a right is expressly reserved, but not otherwise,

→ the seller or any person on his behalf may bid at the auction.

(iv) Where the sale is not notified by the seller

→ It should not be lawful for the seller to bid himself or to employ any person to bid at such sale,

→ or for an auctioneer knowingly to take any bid from the seller or any such person

→ and any sale contravening this rule may be treated as fraudulent to the buyer.

(v) Reserved price

→ The sale may be notified to be subject to a reserve or upset price.

(vi) Pretended Bidding

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

* Inclusion of increased or decreased taxes in contract of sale [Sec: 64A]

→ The buyer would have to pay the increased price where the tax increases and may derive the benefit of reduction if taxes are curtailed.

→ It's upon the parties to make a contract to the contrary.