

# Chapter- 18

## Sale of goods act, 1930 Unpaid Seller and his Rights

### Who is unpaid seller?

He is the seller to whom:-

1. Whole of the price is not paid
2. Conditional payment

Bill of exchange/ promissory note/ cheque has been received by seller but it dishonours. Till the time bill of exchange/ promissory note/ cheque is with the seller so, till that time he is only called as seller but when any of the mentioned instruments dishonours then after this seller is called unpaid seller.

### Features of an unpaid seller

1. Seller must sell the goods on cash basis and must be unpaid (in cash transactions payment becomes due instantly)
2. Seller must be unpaid either wholly or party
3. The decided period has expired and the price has not been paid to seller
4. Seller must not refuse to accept the payment
5. Where the price paid through negotiable instrument (bill of exchange/ promissory note/ cheque) and the same has been dishonoured

Example: A sells his bike to B for Rs. 60,000 and receives a cheque for the price. Till this time seller will only be called as seller. But when subsequently, the cheque is dishonoured due to insufficiency of funds in B's bank account, then only A becomes an unpaid seller.

## **Rights (Remedies) of Unpaid Seller**

(The unpaid seller has the rights/ remedies against goods and buyer both)



### **Rights of unpaid seller against goods**

- 1.Right of possession/ lien
- 2.Right of stoppage of goods in transit
- 3.Right of resale



### **Rights of unpaid seller against buyer**

- 1.Suit for price
- 2.Suit for interest and special damages
- 3.Suit for damages for non-acceptance
- 4.Suit for breach of contract

## **A. Rights of unpaid seller against goods**

### **1. Right of possession/ lien**

If the buyer fails to pay the price within the decided time, then unpaid seller has the right to keep the goods in his possession and he can refuse to deliver the goods until the due payment is paid.

#### **When right of possession can be exercised:-**

- When goods are sold on cash basis, but payment is unpaid
- When goods have been sold on credit basis and the term of credit has expired
- When the buyer becomes insolvent even within the decided period for payment
- So, far as the goods are in the possession of unpaid seller, he can exercise this right. If goods are lost/ given up then right of possession/ lien is also lost/ given up

#### **Termination of Right of Possession**

- By delivery of goods to the buyer/ his agent
- By delivery of goods to the carrier/ courier company
- By waiver

This means that it's specifically mentioned in the contract that seller can't retain the possession of the goods even if the price has not been paid

- When buyer has obtained the possession of goods lawfully

## **2.Right of stoppage of goods in transit**

If a buyer fails to pay the price within the decided time, then unpaid seller has the right to stop the goods in transit.

### **Conditions for stoppage of goods:-**

- When seller is unpaid either wholly or partially
- When the buyer becomes insolvent
- Goods must be in the course of transit- This means that goods must not be in the possession of the seller and have not reached the buyer's possession as well

### **Termination of Transit**

- By delivery to the buyer/ his agent
- Interception by the buyer (Interception means the act of catching/ receiving)

When buyer or his agent obtains the delivery of the goods before their arrival at the appointed destination hence, the transit comes to an end

- Acknowledgement to the buyer by the carrier/ courier company that they are holding the goods on buyer's behalf, then also transit comes to an end
- Part delivery of goods

If part of the goods are delivered to the buyer then the transit comes to an end for the remainder of the goods as well

### **3.Right of resale**

The unpaid seller has the right to resell the goods.

#### **Conditions for resale:**

→ When goods are of perishable nature- Then unpaid seller can resell them immediately without the notice to the buyer. But in case of non-perishable items unpaid seller needs to send notice to the buyer for reselling them

→ Where unpaid seller gives the notice to buyer and buyer still don't pay for it

→ Where the right of resale is reserved/ mentioned in the contract

If contract clearly specifies that reselling can't be done or vice versa

→ Buyer becomes insolvent

→ Buyer fails to pay the price of the goods

## **B. Rights of unpaid seller against buyer**

1.Suit for price

2.Suit for interest and special damages

Here, suit can be filed for interest and special damages.

Where, interest will be paid on the amount of the deal between seller and buyer on the choice/ discretion of the court.

3.Suit for damages for non-acceptance

Suit can be filed against the buyer if the buyer wrongfully refuses to accept the goods.

4.Suit for breach of contract

## **Rights (Remedies) of Buyer against Seller**

1. Suit for damages for non-delivery
2. Suit for interest and special damages
3. Suit for specific performance
4. Suit for breach of contract