UNIT – IV

Performance of contract of sale – rules as to delivery of goods – acceptance – rights and duties of buyer and seller. Unpaid seller – definition – rights of unpaid seller.

Performance of a Contract:

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale. Sec. 31, The Sale of Goods Act, 1930. The performance of a contract is a simple transaction where the seller delivers the goods and the buyer pays.

Delivery of Goods:

The rules regarding the delivery of goods are contained in Sec. 33 to Sec. 39 of the Sale of Goods Act.Delivery of goods may be defined as a voluntary transfer of possession of goods from the seller to the buyer.

Delivery means voluntary transfer of possession of goods from one person to another

Seller: Delivers goods and receives consideration.

Buyer: Accepts and pays for the goods.

Terms: Contract can have terms of delivery and payment.

Types of Delivery:

1.Actual Delivery

2.Constructive or Delivery by Attornment

3.Symbolic Delivery

1.Actual Delivery - The goods are handed over by the seller to the buyer or to his authorized agent; it has the effect of putting the goods in the possession of the buyer: Sec. 33. Example: Amar sold 10 tins of oil to Akbar and delivered the same to him. In this case, there is the actual delivery of oil from Amar to Akbar.

2.Constructive or Delivery by Attornment - A third party (bailee) who is in possession of the goods of the seller at the time of sale acknowledges to the buyer that he holds the goods on his behalf: Sec. 36(3).

Example: A sells to B 10 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods to B. C assents to such order and transfer the goods in his books to B. this is delivery by attornment.

3.Symbolic Delivery - The goods are too bulky and unwieldy such as large machinery, where a symbolic passing of documents or keys and the like demonstrate the transfer of goods.

Rules for Delivery of Goods:

1. Part delivery of goods – Sec 34 -Goods being delivered as part of the whole; if the part is severed from the whole then the transfer is not of the whole but only partial.

2. Apply for delivery of goods – Sec 35 -Unless the buyer places his demand there is no sale of goods, unless there is a contract to that effect. It is a logical impossibility to supply you something that you have not asked for.

3. Place for the delivery of goods – Sec 36 - The place for the delivery of goods may be specified in the contract itself. And where the place is so specified, the goods must be delivered at the specified place during the business hours and on a working day.Where there is no specific agreement as to the place of delivery, it shall be determined as per Sec. 36(1)

4. Time for the delivery of goods – Sec 36 (2) -The transfer of goods happens in time The contract of delivery has terms, e.g., forthwith, as soon as possible directly, immediately, reasonable time,etc Depending on your order you get the supply of cement: as you have a particular schedule that is agreed upon.

5. Goods in the possession of the third party – Sec 36 (3) - Sometimes, at the time of sale, the goods are in the possession of a third person. In such cases, the effective delivery takes place only when such a person acknowledges to the buyer, that he holds the goods on his (buyer's) behalf.

6. Cost of delivery of goods – Sec 36 (5) - Seller pays till it is made deliverable; buyer pays for obtaining delivery unless there is a specific agreement about delivery. Example: Your company forwards coal as an export with the agreement of FOB, that is, you pay until it is put on board; it implies that the buyer will pay for rest .

7. Delivery of wrong quantity – Sec 34 - Seller is liable to deliver agreed quantity.Wrong quantity is of three kinds:

i)Short delivery: quantity delivered less than what is agreed.Example: Short delivery is when you get 50 bags of cement instead of 100.

ii) Excess delivery: the delivered quantity is more than ordered .Example: Excess delivery is when you get 120 bags of cement while your order is just for 100.

iii) Delivery of mixed goods: apart from the goods of contracted description other types too are included in the delivery. Example: Mixed delivery is when along with your order for conventional cement of 100 bags, you get also white cement.

8. Delivery of goods by instalments – Sec 38 -delivery of goods by instalments is not considered as a proper delivery and the buyer is not bound to accept the goods delivered to him by instalments unless otherwise agreed. The pattern of delivery shall be determined by the contract.

9. Delivery to carrier or wharfinger – Sec 39 - The seller is authorised or obliged as per the contract to deliver goods to the carrier— surface, sea, or air transporter; there may also exist a third person -wharfinger, for the safe custody goods. Example: Your iron ore is loaded on board of a sea carrier by the seller and is also insured for its safety.

Rights of the Buyer:

1. To have delivery of the goods as per contract. (Sec. 31 & 32)

2. To reject the goods when they are not of the description, quality or quantity as specified in the contract (Sec 37).

3. To repudiate the contract when goods are delivered in installments without any agreement to that effects [Sec. 38 (1)]

4. To be informed by the seller, when the goods are to be sent by sea route, so that he may arrange for their insurance [Sec 39 (30)]

5. To have a reasonable opportunity to examine the goods for ascertaining whether they are in conformity with the contract. (Sec. 41)

6. To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods.

7. To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the gods to the buyer (Sec 57)

8. To sue the seller for specific performance

9. To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59)

10. To sue the seller the damages for anticipatory breach of contract (Sec 60)

11. To sue the seller for interest where there is a breach of contract on the part of the seller and price has to be refunded to the buyer (Sec 61)

Duties of the Buyer:

1. To accept the delivery of goods, when the seller is willing to make the delivery as per the contract.

2. To pay the price in exchange for possession of the goods.

3. To apply for delivery of the goods.

4. To demand delivery of the goods at a reasonable hour .

5. To accept delivery of the goods in installments and pay for them, in accordance with the contract.

6. To bear the risk of deterioration in the course of transit, when the goods are to be delivered at a place other than where they are sold .

7. To inform the seller in case the buyer refuses to accept or rejects the goods .

8. To take the delivery of the goods within a reasonable time after the seller tenders the delivery .

9. To pay the price, where the property in the goods are passed to the buyer, in accordance with the terms of the contract.

10. To pay damages for non-acceptance of goods.

Rights of the Seller:

1. To reserve the right of disposal of the goods until certain conditions are fulfilled.

2. To assume that the buyer has accepted the goods ,

3. To deliver the goods only when applied for by the buyer

A) Conveys his acceptance;

B) Does an act adopting the sale; or

C) Retains the goods without giving a notice of rejection, beyond a specified date (or reasonable time), in a sale on approval.

4. To make delivery of the goods in instalments, when so agreed

5. To exercise lien and retain possession of the goods, until payment of the price

6. To stop the goods in transit and resume possession of the goods, until payment of the price

7. To resell the goods under certain circumstances

8. To withhold delivery of the goods when the property in the goods has not passed to the buyer.

9. To sue the buyer for price when the property in the goods has passed to the buyer or when the price is payment on a certain day, in terms of the contract, and the buyer fails to make the payment .

Duties of the Seller:

1. To make the arrangement for transfer of property in the goods to the buyer.

2. To ascertain and appropriate the goods to the contract of sale

3. To pass an absolute and effective title to the goods, to the buyer.

4. To deliver the goods in accordance with the terms of the contract .

5. To ensure that the goods supplied conform to the implied / express conditions and warranties.

6. To put the goods in a deliverable state and to deliver the goods as and when applied for by the buyer .

7. To deliver the goods within the time specified in the contract or within a reasonable time and a reasonable hour.

8. To bear all expenses of and incidental to making a delivery (i.e. up to the stage of putting the goods into a deliverable sate .

9. To deliver the goods in the agreed quantity.

10. To deliver the goods in instalments only when so desired by the buyer.

11. To arrange for insurance of the goods while they are in transmission or custody of the carrier.

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UNPAID SELLER:

According to sec 45(1) of Sale of Goods Act, seller of the goods is deemed to be unpaid seller :

(A) When whole of the price has not been tendered or paid, or

(B) When bill of exchange or negotiable instrument has been received as a conditional payment.

AND the seller of goods can be deemed to be an unpaid seller:

1.if the price become due but they are not paid. He must have an immediate right of action for the price.

2.A Bill of Exchange or negotiable instrument was received but was dishonoured.

RIGHTS OF UNPAID SELLER:

I .Rights against the goods: can be discussed under two heads:

a. When property in goods has passed

b. When property in goods has not passed

1.When property in goods has passed :The following 3 rights are available

a).Right of lien : is the right to retain the goods until whole of the price of goods is paid or tendered. Right of lien can be exercised: where goods have been sold without any stipulation to credit. Where goods have been sold on credit but period of credit has expired. Where buyer has become insolvent, even though the period of credit has not yet expired

b). Right of stoppage in transit: is a right of stopping the goods in transit after the unpaid seller has parted with the goods. If the goods are in transit he has a right to resume the possession of goods as long as they are in the course of transit .this right is available to the unpaid seller only when the buyer become insolvent and when the goods are in transit.

c).Right of Resale: unpaid seller can resell the goods if the goods are of perishable nature if seller give the notice to buyer of his intention to resell and the buyer does not pay within the reasonable time if on resale there is loss to seller he can recover from the buyer and if profit must handover to the buyer

II .Rights against the buyer personally

1.Suit for Prices: Where property has passed, the seller can sue for the price

2.Suit for damages for non acceptance: Where The buyer wrongfully refuse to accept and pay for goods, seller may sue him for non acceptance

3 Repudiation of the contract before due date by buyer: the seller can treat the contract as subsisting and wait till delivery or he may treat the contract as rescinded and sue for damages

4 Suit for interest: where there is a specific agreement between seller and buyer as to interest on the price of the goods from the date the payment become due ,seller can recover the interest from the buyer.

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