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SALE & PURCHASE OF GOODS: RIGHTS AND LIABILITIES OF PARTIES- Abhinav Singh¹**Abstract**

It is the general principal, that the responsibility of the loss (damage) of movable property occurred always lies with the owner of the goods. The legal maxim “res perit domino” signifies that the liability of the goods lost lies with the owner of the goods. If we use our common sense, then it would be very difficult and ambiguous situation for both the parties to understand the responsibility of the parties regarding the loss occurred and its liability. One thing we need to understand that this principal is only applicable regarding the sale and purchase of movable property. The movable property could be shares, or any showpiece etc. Section 26 of the sale of the goods Act 1930, talks about the ownership of the property and the responsibility of the parties accordingly, but if the contract have any provisions which mentions otherwise regarding the liability then both the parties need to follow that. This principle had made easy and reduced uncertainty as to who will be responsible for the sale or purchase of goods by third person.

PERFORMANCE OF CONTRACT

A contract of sale of goods is a contract when the seller transfers or agrees to transfer the property in goods to the buyer for the accepted price of both the parties. Parties entering into a contract had to follow the rules and regulations agreed into by both the parties. So there are rights for both buyer and seller in a contract and both the parties have the liability.

RIGHTS OF THE BUYER**1. Right to claim damages for non-delivery of goods:**

So if at any point of time, the seller breaches he contract in any way then the buyer may avail following remedies, if some contrary provision is not mention in the contract.

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- The buyer has the right to sue the seller for the breach of contract either at the place of the parties belong or decided upon the parties in contract. The buyer may sue for the damages for non-delivery under section 57 of the Sales of Goods Act. As in case if the money has been paid by the buyer the buyer can recover the same in the suit for money.
 - According to section 61(2) (b), the buyer is also entitled of the interest on the amount of price from the date of payment of price till the date of the refund of the same. But in order to claim this money the buyer need to serve the notice under section 55 of the Indian Contract Act.
2. **Right to examine the goods**- Section 42 of the sales of goods act provides that it is the seller duty to provide the opportunity to the buyer of the goods to inspect the goods fully and ensure that the goods are in the condition and like the buyer wants. But if the contract specifies contrary the buyer can also take the delivery of the goods even without examining the goods. If after taking delivery the buyer does not reject the goods and conveys the same to the seller within reasonable time as defined under sec 63 of the Act, then the seller will assume that the buyer has accepted the goods.
 3. **Remedy for the Breach of warranty** – The section 59 of the Act states that a breach of warranty does not entitle the buyer the goods to directly reject the goods but instead the buyer can sue the seller if there is a breach of warranty from the seller part. It can also happen that the buyer takes the breach of any condition in a contract as breach of warranty in this the buyer is bound to give notice to the seller. For the same. Section 73 of the Indian Contract act (ICA) defines the provisions for the damages for breach of warranty.
 4. **Right to sue the seller for specific kinds of damages**- In some cases when the seller refuses to deliver the goods agreed by both the parties, then sec 58 provides power to sue seller. Te court can pass an order stating seller to deliver the goods instead of providing compensation the buyer. This right can only be maintained when there is delivery of specific or ascertained goods.
 5. **To sue for anticipatory breach of contract**- It means breach of contract before due date of the contact, in this the party has two options, either the party can bring the suit against the party, before the due date of the performance of contract or the party can wait for the due date of the contract and then sue the party for the same.

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DUTIES/LIABILITIES UPON THE BUYER

Duty to accept the goods: The section 31 of the Act specifies that the buyer is bound to accept the goods if they have been properly delivered as specified by the buyer. The buyer is not bound to accept the delivery of the goods if the goods delivered is less in quantity or the goods are of not the demanded quality or if has not been delivered in place or time specified but he buyer in the contract or if the goods are in installments and not as whole. This section specifies that the buyer is not bound to take delivery of the part goods, or in installments. Also section 43 provides that if buyer does not to receive the goods, then buyer just need to inform the seller and need not to return the goods.

In the case of *Hamilton & Co. V. Barden*², the buyer wrongfully refuses to take the delivery of the goods or take very long time to take delivery, the buyer will be liable. In this case, the buyer wrongfully refused to take the delivery of the apple juice, and the court held that the buyer is liable for the deterioration of the product as it happen because of the late acceptance of goods.

Also after the delivery of the goods if after some time the buyer had consumed some part or sold or both and then found out that the goods are of different quality, then he cannot complain or return the goods as his act of consuming and selling the goods will be deemed as proper acceptance of that kind of goods.

In the case of *Humur v. Groves*, when the buyer realizes that the delivered flour is not the same demanded but he had already sold one sack and consumed two sack of flour then this amounts to the acceptance of the goods and the buyer does not have any right to reject the goods.

Section 41 states that in cases where the buyer does not have the opportunity to inspect the goods, it could be taken as acceptance if he acted inconsistent with the ownership of the seller.

In the case of *Kailah Sharma v. Patna Municipal Corporation*, (Civil Writ Jurisdiction Case No.14958 of 2013) the petitioner supplied the machines to the respondent according to the contract between them. The machines were accepted by the municipal and have been used by them for a long time, then after that the corporation wanted to repudiate the sale contract with the plaintiff and refused to pay for the same. The court did not accepted this argument and held that the goods have been used for the long time and this demand is not in consonance with the law, as under section 42, once the goods have been accepted, then the buyer is obliged to pay for the same.

² 1949 1 AII ER 435.

DUTY TO PAY THE REQUIRED PRICE

It is the buyer's duty to pay the price as ascertained between the parties in the contract. If the buyer refuses or fails to follow the same and the price of the goods is due, then the seller has the responsibility to sue him for the same. If the buyer has not paid yet, and the seller has not yet filed a suit the seller can also sell, lease or Re-sell the goods.

It is also important to pay for the goods in time bound manner in accordance with the contract. In case of nonpayment the seller has the right to sue the buyer or end the contract. Section 61(2) (a) of the Act states that if there is delay in the payment of money, the court may order interest on the price from the date of the tender of goods, and if no date is provided then for the date on which the price is payable.

As in the case of *M.K.M. Mossa Bhai Amin v. Rajasthan textile mills*³, as in this case there was delay in payment of price by one year, but there was no mention of the payment of interest in the contract, in the case of delay payment then the court awarded interest rate of 6% p.a, and held it the reasonable interest rate and should be paid by the buyer.

TRANSFER OF TITLE

In a contract of sales of goods there is a transfer of title and goods from seller to the buyer in exchange of money, termed as contract of sales. "The seller cannot transfer to the buyer of things a greater title than he possesses," is the usual rule of title transfer on sale. So if the seller is not the real owner of the goods and he sells the goods to someone else then the purchaser also does not possess the legal right of the goods. Section 27 of sales of goods act lays down to the same effect and provides that "where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had"⁴

This rule is expressed by the maxim "*nemo dat quod non habet*" which means that no one can give what he has not got. So if you purchase agreement from the non owner then you will also be termed as non owner.

A problem occurs when the vendor is neither the owner nor has any license to sell the products from the owner. **For example**, a person discovers items on the side of the road and sells them,

³ AIR 1974 Raj. 194.

⁴ The Sales of Goods Act, section 27, p.no 9, 1930

or a robber sells goods after robbing them, or a person buys goods on credit or hire-purchase and sells them, or a person keeps possession of goods he has previously sold and resells them. The question that arises in such cases is whether the rights of the owner of the goods should be protected and he be entitled to reclaim possession of the goods from the person to whom they were sold, or whether the buyer, who may have bought the goods, should be entitled to reclaim possession of the goods from the person to whom they were sold.

So if we look into the section 27 of the sales of goods act it states- Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had.⁵ If you decipher the meaning then you can identify that this section have provide safety to the real owner of the property or goods as it mentions in second last line that the buyer acquire no better title than the seller, and we know that the seller does not have any title. So this section puts responsibility upon the buyer to fully cross-check the ownership of the property and after getting assured that the goods is not stolen, obtained through robbing, is being misrepresented, or have been obtained through any unsolicited means and the seller is not the real owner and also not the agent or any person upon which owner have given power to sell the property.

Cundy v Lindsay (1878) 3 App. Cas. 459 is an English Contract Law case concerning the matter of the mistake to identity. A in this case the Lindsay and Co. were the manufacturer of the linen handkerchiefs. The company received an order from Blenkard, who was residing in the rented room at 37 wood streets. Pretending to belong to the high profile company which resided at 123 wood street. Believing the fraudulent from the company, the manufacturer delivered the goods to him.

After the fraudulent sold the goods to third party Cundy, when Lindsay and Co didn't receive the payment from blenkarn, the manufacturer sued Cundy for the payment.

The court held that the manufacturer intended to contract and sell the goods to blenkarn and company and not with blenkarn, so there was no contract between them and frauder, and the frauder does not possess any right of ownership nor he has the right to sell property and hence the purchaser also does not have any right of the goods and he is not the owner.

The language of section 27 states that is "subject to the provisions of this Act and of any other law for the time being in force." Indicates that various exceptions to this rule have been mention

⁵ The Sales of Goods Act, section 27, p.no 9, 1930

in the Act itself and in the Indian Contract Act, and in those conditions it can happen that the seller of the goods is not the real owner of the goods, yet the buyer of the goods get the whole title of the goods.

Section 27, which talks about the implied authority of the owner or transfer of title by estoppels till section 30(2) and then section 169, Indian Contract Act which talks about sale by the finder of goods and section 176 which mention sale by a Pawnee when the pawner makes a default in payment have provided various condition regarding the transferring of the ownership of the goods to the buyer.

CONCLUSION

The problem which was aroused before the researcher is that what the responsibility of the buyer and seller towards each other on which researcher found put that the responsibility of buyer is less than that of the seller as seller have to follow more rules and keep in various thinks when enter into the contract. The seller has a lot of thinks making him binding from warranty of goods to proper deliver of goods and if seller failed in its duty, then the seller need to compensate the buyer. The research have find out that it will be the responsibility of the buyer to cross check before or at the time of purchasing to find out the real ownership of the property or goods. If the buyer fails to do the same and have used the goods in whole or part or have sell some part of the goods then the buyer cannot claim any defectiveness or asked the seller to return, replace the goods. Researcher also found that of the seller is not the real seller but someone have obtained the goods by fraud, misrepresentation or by any solicited means then the seller is not the real owner and hence he cannot pass the ownership to the buyer and the buyer of the goods will not get ownership on the contrary the plaintiff may charge the buyer with the conversion of the goods. Third chapter is all about explaining various conditions and situation arising out of the interference of third party and its affects.