

Sale of Goods Act

Learning Objectives

After reading this chapter, you should be able to:

- Understand the essentials of sales and contract of sales
- Outline the different types of conditions and warranties
- Understand the implied conditions as to quality or fitness
- Understand the effects of the contract
- Outline the concept of the passing of property
- Discuss the consequences of the transfer of title
- Discuss performance of contract
- Outline rights of the unpaid seller against the goods
- Outline the types of suits for breach of contract

Chapter Outline

- Introduction
- Definitions
- Formation of contract
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- Implied conditions as to quality or fitness
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- Performance of the contract
- Instalment deliveries
- Rights of unpaid seller against goods
- Suits for breach of the contract
- Miscellaneous

Introduction

The Sale of Goods Act, 1930, is primarily based on the English Sale of Goods Act, 1893. It is an Act to define and amend the law relating to the sale of goods. It was previously contained in the Indian Contract Act, 1872. Although the provisions of the Sale of Goods Act, 1930, regulate the sale of goods, the unrepealed provisions of the Indian Contract Act continue to apply to contracts for sale of goods. This Act extends to the whole of India.

Definitions

‘Goods’ means every kind of moveable property other than actionable claims and money and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. ‘Specific goods’ means goods identified and agreed upon at the time a contract of sale is made and expressions used but not defined in the Act and defined in the Indian Contract Act, 1872, have the meaning assigned to them in that Act. ‘Future goods’ means goods to be manufactured, produced or acquired by the seller after the making of the contract of sale.

‘Document of title to goods’ includes a bill of lading, dock warrant, warehouse keeper’s certificate, wharfingers’ certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession, control of goods or authorizing or purporting to authorize,

either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

‘Buyer’ means a person who buys or agrees to buy goods. ‘Delivery’ means the voluntary transfer of possession from one person to another. Goods are said to be in a ‘deliverable state’ when they are in a state that the buyer would, under the contract, be bound to take delivery of them. ‘Seller’ means a person who sells or agrees to sell goods. ‘Mercantile agent’ means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods. ‘Price’ means the money consideration for the sale of goods. ‘Property’ means the general property in goods and not merely a special property.

The unrepealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of the Act, continue to apply to contracts for the sale of goods.

State of Madras v. Gannon Dunkerley & Co.

AIR 1958 SC 560, Supreme Court

The respondent company, which was engaged in the construction of buildings, roads and other works, was assessed for sales tax by the sales tax authorities, who sought to include the value of the materials used in the execution of building contracts within the taxable turnover of the respondent. The validity of the assessment was challenged by the respondent, who contended that the power of the Madras Legislature to impose a tax on sales under Entry 48 in List II of Schedule VII, did not extend to imposing a tax on the value of materials used in construction works, as there was no transaction of sale in respect of those goods.

The Sales Tax Appellate Tribunal rejected the respondent's contention but, on revision, the high court took the view that the expression 'sale of goods' had the same meaning in Entry 48 which it has in the Sale of Goods Act, 1930, that the construction contracts of the respondent were agreements to execute works to be paid for according to measurements at the rates specified in the schedule thereto and were not contracts for the sale of the materials used therein, and that further, they were entire and indivisible and could not be broken up into a contract for sale of materials and a contract for payment for work done. On appeal to the Supreme Court, it was held that on the true interpretation of the expression 'sale of goods' there must be an agreement between the parties for the sale of the very goods through which property eventually passes. In a building contract, the agreement between the parties is that the contractor should construct the building according to the specifications contained in the agreement, and in consideration, therefore, receive payment as provided therein, and in such an agreement there is neither a contract to sell the materials used in the construction, nor does property pass therein as movables. The expression 'sale of goods' was, at the time when the Government of India Act, 1935, was enacted, a term of well recognized legal import in the general law relating to the sale of goods and in the legislative practice relating to that topic and must be interpreted in Entry 48 in List II, Schedule VII, of the Act as having the same meaning as in the Sale of Goods Act, 1930. Thus, in a building contract which is one, entire and indivisible, there is no sale of goods, and it is not within the competence of the Provincial Legislature under Entry 48 in List 11 of Schedule VII, of the Government of India Act, 1935, to impose a tax on the supply of the materials used in such a contract, treating it as a sale.

Sunrise Associates v. Govt. of NCT of Delhi & Ors.

(2006) 5 SCC 603, Supreme Court

The Supreme Court observed that Entry 54 of List II of Schedule VII, read in conjunction with Article 246(3) of the Constitution, gives states the power to make laws governing taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92(A) of List I. The meaning of the expression 'sale of goods' was considered by a constitution bench in the Gannon Dunkerley case. The question arose in connection with the assessment of sales tax under the Madras General Sales Tax Act, 1939, on the value of materials used by the respondent-assessee for the execution of a works contract. The Constitution, although it defines 'goods' under Article 366(12) as 'including all materials, commodities and articles', contains no definition of the expression 'sale of goods'. The court held that the expression 'sale of goods' in the entry cannot be construed in its popular sense and must be interpreted in its legal sense. After considering various authorities as well as the provisions of the Sale of Goods Act, 1930, the Court held that the expression 'sale of goods' is what it means in the Sale of Goods Act, 1930. A contract for the sale of goods, according to section 4(1) of the Sale of Goods Act, 1930, is a contract whereby the seller agrees to transfer the property in goods to the buyer for a price.

The Supreme Court in *Skill Lotto Solutions Pvt Ltd v. Union of India*, 2020 SCC OnLine 990, discussing the right which a lottery ticket represents, held that there can be no doubt that on purchasing a lottery ticket, the purchaser would have a claim to a conditional interest in the prize money which is not in the purchaser's possession. The right would fall squarely within the definition of an actionable claim and would therefore be excluded from the definition of

'goods' under the Sale of Goods Act and the sales tax statutes. This was also accepted in *H. Anraj*, wherein the Supreme Court said that to the extent that the sale of a lottery ticket involved a transfer of the right to claim a prize depending on chance, it was an assignment of an actionable claim. In *B. R. Enterprises v. State of UP & Ors.* (1999) 2 SCC 700, construing *H. Anraj*, the Supreme Court held that there are three ingredients in the sale of lottery tickets, namely prize, chance and consideration. So when one purchases a lottery ticket, one is purchasing a prize that is determined by chance, and the consideration is the price of the ticket.

Sale and Agreement to Sell

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another. A contract of sale may be absolute or conditional. Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

The Kerala High Court in *Jamaludeen v. Ganga, MACA. No. 3325 of 2015*, decided on 23 March 2021, observed that even though the third respondent filed a written statement contending that he had sold the vehicle to one Sunil Kumar, undisputedly the ownership was not transferred in the registration book of the offending vehicle. The receipt produced by the third respondent was not sufficient to prove the alleged transfer, even though the transaction

was governed by the Sale of Goods Act, 1930. Nonetheless, in view of the mandate under Section 50 of the Motor Vehicles Act, 1988, the third respondent was obliged to inform the registering authority about the alleged transfer. So long as the same was not done, the third respondent could not be permitted to contend that he had sold the vehicle much prior to the accident and that the alleged transferee had not affected the transfer of ownership in the registration book.

A hires certain furniture from B, with the price to be paid in two instalments, and B has the right to take back the furniture if an instalment is not paid. Before the last instalment is paid, A sells the furniture to C. C acquires a good title, A being in possession of the furniture under an agreement to buy. A did not have an option to return and was compellable to buy.

Formalities of the Contract

A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such an offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both; for the delivery or payment by instalments; or that the delivery or payment, or both, shall be postponed. Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

***M/s Arora Industries & Ors v. Punjab State Agri.
Marketing,***

***CWP-4145-2018, decided on 20 May 2022, Punjab-
Haryana High Court***

In the instant case, petitioners were asked to deposit market fees and rural development fees as per the Punjab State Agricultural Produce Markets Act, 1961. Paddy was purchased, weighed at Lucknow/Rajasthan and brought into Punjab. Other than the written statement filed that the agricultural produce was weighed within the market area, there was nothing available on the record. The judgment in the *M/s Guru Nanak Industries v. State of Punjab* case has clearly held that Section 23 of the Punjab State Agricultural Produce Markets Act, 1961, provides for the levy of a fee on agricultural produce bought or sold within the market area. However, in Rule 29 (7) of the Rules, a deeming section has been added providing for certain eventualities which, in turn, would lead to the conclusion that the agricultural produce was bought or sold within the market area. Hence, market fee will be leviable. Any one of those eventualities in isolation may not itself lead to a conclusion regarding the agricultural produce being bought or sold in the market area, if these parameters are considered in the light of the principles as laid down in the Sale of Goods Act, 1930. The Supreme Court in *Agricultural Market Committee v. Shalimar Chemical Works Limited, AIR 1997 SC 2502*, opined a similar presumption raised to be rebuttable. The legal fiction so created was held to be beyond legislative policy. In the case of *M/s Arihant Udhyog v. State of Rajasthan and Others, AIR 2017 SC 3074*, the Supreme Court opined that the factum of purchase or sale of goods in a market area will depend on their title to the agricultural produce passes. If the entire transaction takes place outside the state, the market fee will not be payable.

In the instant case, the petitioner's case was that the paddy was purchased and weighed outside the market area, thereby no fee was leviable; whereas, on the other hand, except for the assertions in the written statement, there was nothing on record to establish that the purchase/weightment was made within the market area. Hence, the impugned demand notices were set aside and the matter remitted back to the secretary of the market committee concerned for determination afresh to be examined in the light of the material already placed on record or which may be placed on record by the petitioner to establish that the sale or purchase of the agricultural produce had not taken place within the market area.

Subject Matter of the Contract

The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller or future goods. There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. Whereby a contract of sale, the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods. Where there is a contract for the sale of specific goods, the contract is void if the goods, without the knowledge of the seller, have, at the time the contract was made, perished or become so damaged as no longer to correspond to their description in the contract. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to correspond to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

Price

The price in a contract of sale may be fixed by the contract; may be left to be fixed in manner thereby agreed; or may be determined by the course of dealing between the parties. Otherwise,

the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided. Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, they shall pay a reasonable price therefor. Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

***Maa Harsiddhi Infra Developers v. Mahavir
Transmission Ltd, O. M. P. (COMM) 187/2022,
decided on 5 May 2022, Delhi High Court***

The opening words, ‘unless a different intention appears from the terms of the contract’, indicate that stipulations as to the time of payment are not deemed to be essence of the contract, unless a different intention is borne out from the terms of the contract. The contract terms have been analysed and the arbitrator noted that the petitioner was in breach of the payment obligations for the quantity supplied. This term was vital for the reciprocal performance obligations of the contract. Since this condition was breached by the petitioner, the respondent, being the innocent party, was entitled to repudiate the contract. The petitioner was in huge default and payment of ₹71,238,214 was overdue. While a small or solitary

delay or non-payment may not be a repudiatory breach if viewed independently, if there are multiple breaches of the payment obligations, it would amount to repudiatory conduct. The petitioner had clearly received the goods and was not making payment. The respondent had the option to either ignore the wrongful failure of the petitioners' performance obligations and keep the contract alive for the benefit of the petitioner as well as its own or treat the petitioner's failure as wrongful repudiation and put the contract to an end. The respondent, therefore, was entitled to withhold supplies.

Condition and Warranty

A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though it is called a warranty in the contract.

Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated. Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that, in the case of a sale, they have a right to sell the goods and, in the case of an agreement to sell, they will have a right to sell the goods at the time when the property is to pass; an implied warranty that the buyer shall have and enjoy quiet possession of the goods; and an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by Description

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description, and if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

Implied Conditions as to Quality or Fitness

Subject to the provisions of the Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. But there are certain exceptions, such as where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description which it is in the course of the seller's business to supply (whether they are the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose. It is provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose. Also, where goods are bought by description from a seller who deals in goods of that description (whether they are the manufacturer or producer or not),

there is an implied condition that the goods shall be of merchantable quality. It is provided that if the buyer has examined the goods, there shall be no implied condition as to defects that such examination should have revealed.

Certain animals are sold 'with all faults'. Those animals are suffering from a particular disease, and as a consequence, a few of them die. The seller is not liable for the loss to the buyer.

Ranbirsingh S. Thakur v. Hindusthan General Electric Company, AIR 1971 Bom 97, Bombay High Court

In this case, a radio set was purchased under a hire-purchase agreement by the plaintiff in 1962, and the plaintiff ultimately paid the balance amount after certain defaults on 16 July 1963. The defendants had also waived their right to forfeit under the forfeiture clause under the agreement. Therefore, the radio was sold by the defendants to the plaintiff on 16 July 1963. The claim of the plaintiff could thus be considered under the Sale of Goods Act, 1930.

The high court observed that the section deals with the implied conditions as to quality or fitness of goods for a particular purpose. No distinction appears to have been drawn in the section between contracts for the sale of specific goods as distinguished from those for the sale of unascertained goods. Exception 1 applies where the buyer requires the goods for a particular purpose, where the buyer expressly or by implication makes known to the seller that particular purpose, where it is shown that the buyer relies on the seller's skill or judgment and where the seller's usual course of business is to sell such goods, whether they are the actual producer or not. Where all these essential facts exist, there is an implied condition that the goods shall be reasonably fit for such a purpose. The buyer in this case did rely on the skill or judgement of the seller. This is not a case where they had inspected the goods and

bought them on their own judgement. In this case, the buyer purchased the radio set for some specific purpose. It could easily be said that the vendor sold this radio set for that specified purpose. It has, therefore, to be of a certain quality. If it is not of that quality and if it is not fit for such a purpose, then the law implies a promise from the vendor that they will supply to the purchaser an article of that quality and reasonably fit for the purpose for which it is required. The seller's liability in such cases to supply goods that are reasonably fit is an absolute one.

It is not necessary that the buyer should expressly or by implication make known to the seller a particular purpose. The words 'by implication' clearly indicate that the communication of the purpose to the seller need not be expressed in words. It may be inferred from the description of the goods given by the buyer to the seller or from the circumstances of the case. The buyer, however, must rely on the seller's skill or judgement. In the present case, the plaintiff naturally relied on the radio set which they had purchased from the defendants. The defendant was a firm which was supplying radios in the ordinary course of its business. Therefore, the buyer naturally should have expected goods that were fit for the purpose for which they were buying.

It could also come within the purview of an exception recognized at common law to the maxim 'caveat emptor'. If a dealer deals in goods of a particular description and if the buyer purchases the same, then there is an implied condition that the goods shall be of merchantable quality. If, however, the buyer had examined the goods, then there would be no implied condition as regards defects which such examination ought to have revealed. In other words, in the case of goods sold of a particular description by a seller who deals in such goods, they are always, in the absence of agreement to the contrary, responsible for the latent defects in the goods which render them unmerchantable, whether the buyer examined them or not, and

for all such defects, whether latent or discoverable, on examination in cases where the buyer has not in fact examined the goods. Where the buyer, however, gets an opportunity of inspection but examines the goods superficially, they cannot complain of defects which a reasonable and more thorough examination ought to have revealed.

In the present case, the plaintiff had neither inspected the goods nor even superficially examined them. Therefore, even if the goods are sold under a patent or a trade name or otherwise, but if they are of a particular description and if they are sold by a seller who deals in goods of that description, then there is an implied condition as to the merchantability of the goods.

In R. T. Grant v. Australian Knitting Mills (AIR 1936 PC 34), the Privy Council was considering Section 14 of the South Australian Sale of Goods Act, which is equivalent to Section 16 of the Indian Sale of Goods Act. A brought an action against B and C claiming damages on the ground that they had contracted dermatitis by reason of the improper condition of underwear purchased by them from B company and manufactured by C company. A alleged that the disease was caused by the presence in the cuffs or ankle ends of the underpants which they purchased and were of an irritating chemical, namely free sulphite, the presence of which was due to negligence in manufacturing by C and also involved, on the part of B, a breach of implied conditions. The disease was external, and A's skin was normal. Free sulphite was present in the garment in quantities which could not be described as small. The disease contracted and the damage suffered by A were caused by the defective condition of the garments which B sold to them and which C manufactured and put forth for sale. When B company was held liable in a contract, their liability was made out under Exceptions (1) and (2) to Section 14, which are equivalent to Exceptions (1) and

(2) to Section 16 of the Indian Sale of Goods Act. The underpants were not merchantable in the statutory sense because their defects rendered them unfit to be worn next to the skin. The term 'merchantable' means that the article sold, if only meant for one particular use in the ordinary course, is fit for that use. It does not mean that the item is saleable in market simply because it looks alright; it is not merchantable if it has defects that prevent it from being used for its intended purpose but are not visible upon ordinary examination.

Sale by Sample

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. In the case of a contract for sale by sample, there is an implied condition that the bulk shall correspond with the sample in quality, that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Effects of the Contract

Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. Where there is a contract for the sale of specific or ascertained goods, the property in those goods is transferred to the buyer at such time as the parties to the contract intend for it to be transferred. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial

whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

JSW Steel Ltd v. Delta Iron & Steel Company Pvt., IA No. 93 of 2019 in Comm Arbitration Petition No. 1558 of 2019, decided on 5 April 2022, Bombay High Court

The section attempts to give effect to the elementary principle of the law of contract that the parties may fix the time when the property in the goods shall be treated to have passed. It may be the time of delivery, the time of payment of the price or even the time of the making of the contract. It all depends upon the intention of the parties. It is the duty of the court to ascertain the intention of the parties, and in doing so, they have to be guided by the principles laid down which provide that for ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Section 19 indicates that in the case of an unconditional contract to sale in respect of specified goods in a deliverable state, the property in the goods passes to the buyer at such time as the parties intend it to be transferred. Section 19(3) provides that Sections 20 to 24 contain the rules for ascertaining the intention of the parties as to the time at which the property in the goods shall be treated to have passed to the buyer.

Section 20, which contains the first rule for ascertaining the intention of the parties, provides that where there is an unconditional contract for the sale of 'specific goods' in a 'deliverable state', the property in the goods passes to the buyer when the contract is made. This indicates that as soon as a contract is made in respect of specific goods which are in a deliverable state, the title to the goods passes to the purchaser. The passing of the title is not dependent upon the payment of the price or the time of delivery of the goods. If the time for payment of price or the time for delivery of goods, or both, is postponed, it would not affect the passing of the title to the goods so purchased.

In order that Section 20 is attracted, two conditions have to be fulfilled: (a) the contract of sale is for specific goods which are in a deliverable state and (b) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable immediately and it is at this stage that it has to be seen whether there is anything either in the terms of the contract or in the conduct of the parties or in the circumstances of the case which indicates a contrary intention. This exercise has to be done to give effect to the opening words, namely 'unless a different intention appears', occurring in Section 19(3).

Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied and may be given either before or after the appropriation is made. Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer and does not reserve the right of disposal, they are deemed to have unconditionally appropriated the goods to the contract.

When goods are delivered to the buyer on approval or 'on sale or return' or other similar terms, the property therein passes to the buyer when they signify their approval or acceptance to the seller or do any other act adopting the transaction or if they do not signify their approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

Reservation of Right of the Disposal

Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case, notwithstanding the delivery of the goods to a buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or their agent, the seller is prima facie deemed to reserve the right of disposal.

Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if they do not honour the bill of exchange; and, if they wrongfully retain the bill of lading or the railway receipt, the property in the goods does not pass to them.

Risk Prima Facie Passes with Property

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are

at the buyer's risk whether delivery has been made or not. But where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault. But nothing here will affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

***Vijai Shree Pvt. Ltd vs Union of India and Ors, APD
101 of 2017 with CS No. 145 of 2006, decided on 7
September 2021, Calcutta High Court***

On a true and proper construction of the section, it speaks of the legal proposition that, unless otherwise agreed, the goods are at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk, whether the delivery has been made or not. Thus, the plaintiff was required to deliver the goods on board on rail in the present case. It was an admitted position by the parties that for transportation of the consignment, it was agreed that the same would be transported from Howrah Station to Sangrur, Punjab, through railway wagons on a freight on road basis. Hence, the plaintiff, being the seller, was responsible to bear the shipment of goods and board the same on the wagon on behalf of the buyer in perfect condition as per the contractual specifications and no further or thereafter. In the instant case, it was already proved from the documentary and also oral evidence that the consignment was despatched and boarded on the railway wagon without any water damage, and the defendant could not prove anything to the contrary or could not dislodge the case of the plaintiff to this extent.

Freight Bridge Logistics Pvt. Ltd vs AI Arsath Enterprises, O. P. No. 208 of 2018, decided on 26 October 2021, Madras High Court

Prima facie risk passes only with the property, and the section also permits the parties to enter into an agreement that though the property does not pass, the risk passes and they may fix the point of time when they may so pass. The arbitrator had taken note of various documents, and one such document was the letter sent by the consignor, declining to pay the amount for the value in view of their delivery. The bill of lading indicated the value and weight of the packages. Although it was the contention of the petitioner that the goods were stuffed as per the declaration given by the claimant, the arbitrator recorded a factual finding after analysing the oral and documentary evidence of the parties, holding that 283 packages of cargo were taken into possession by the respondent at the time of loading. The survey report issued by the agent of the shipping and gate passes of delivery prove the fact that before transport to Muniswaran Transport, there were 283 bales available, but only 175 bales were lost during transport, and it was also held that the goods were transported through an unknown third-party transporter. The arbitrator factually recorded a finding that the respondent was aware of the details of the packages, and now it could not be said that the goods were stuffed only on the basis of the declaration given by the claimant. The arbitrator also held that the first respondent was the first transferee and also held that to effect a valid transfer of a commodity, it was not necessary that the transfer in question should be followed up by actual delivery of the goods to the transferee. Even if the goods were delivered to the original consignee, the first transfer also will be a valid transfer of commodity and also held that Section 26 of the Sale of Goods Act was not applicable to the facts of the case. It is to be noted that the Multimodal Transportation of Goods Act was enacted to deal with the

transportation of goods from any place in India to any place of delivery of the goods outside India. The provisions of Section 8 of the Act indicate that every consignee named in the negotiable or non-negotiable multimodal transport document shall have all the rights and liabilities of the consignor. As per Subclause 2 of Section 8, the operator's right to claim freight from the consignor or the consignee or endorsee is retained. Section 10 of the Act makes it very clear that it is the duty of the multimodal transport operator to verify the goods and make entries in the document specifying the inaccuracies. Therefore, the Act itself makes it mandatory that it is the duty of the transporter to verify the goods and make entries to the inaccuracies of the document. The operator could not contend that the goods were stuffed only on the basis of the declaration given by the claimant. Although Section 1 of the Indian Bills of Lading Act, 1856, gives the right to the consignee to enforce all the rights and liabilities as if the contract contained in the bill of lading had been made with themselves. That itself cannot be a ground to avoid the liability by the operator when there is a specific contract by themselves to make the loss good, and as already mentioned, the consignee has in fact refused to pay the value of the goods due to their delivery. Therefore, it could not be said that the claim made by the claimant was not maintainable.

Transfer of Title

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, unless the owner of the goods is by their conduct precluded from denying the seller's authority to sell. But where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by them, when acting in the ordinary course of business of a mercantile agent, shall be as valid as

if they were expressly authorized by the owner of the goods to do the same, provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

An agent is entrusted with a car by its owner to sell it, subject to a reserve price.

But contrary to the authorities, the agent sold that car below the reserve price to a bona fide purchaser and misappropriated the proceeds. Since the buyer had purchased the car from the mercantile agent in good faith, they had a good title.

Sale by One of the Joint Owners

If one of several joint owners of goods has the sole possession of them by the permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or Section 19A of the Indian Contract Act, 1872, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided they buys them in good faith and without notice of the seller's defect of title.

Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for them, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent

acting for them, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

Morvi Mercantile Bank Ltd v. Union of India

1965 AIR 1954, Supreme Court

A firm doing business in Bombay entrusted goods worth ₹35,500 to the railway for delivery in Delhi. The goods were consigned to 'self' and the firm endorsed the railway receipts to a bank against an advance of ₹20,000 made by the bank to the firm. The firm also executed a promissory note in favour of the bank for that amount. When the goods reached the destination, the bank refused to take delivery, on the ground that they were not the goods consigned by the firm. The bank thereafter filed a suit for the recovery of the value of the goods. The trial court dismissed the suit. On appeal by the bank, the high court allowed the appeal and decreed the claim for ₹20,000 on the ground that, as pledgee of the goods, the bank suffered loss only to the extent of the loss of its security. Both the bank and the railway appealed to the court, and it was contended on behalf of the railway that the endorsement of the railway receipt in favour of the bank did not constitute a pledge of the goods covered by the receipt and that the bank had no right to sue for compensation.

The Supreme Court held that the firm, by endorsing the railway receipts in favour of the bank, for consideration pledged the goods covered by the said receipts to the bank, and the bank, being the pledgee, could maintain the suit for the recovery of the full value of the consignment amounting to ₹35,500. It observed that, on a reasonable construction of Section 178 of the Contract Act, 1872, Sections 4 and 137 of the Transfer of Property Act, 1882, and

Sections 30 and 53 of the Indian Sale of Goods Act, 1930, an owner of goods can make a valid pledge of them by transferring the railway receipt representing the said goods. To the general rule expressed by the maxim *nemo dat quod non habet* (no one can convey a better title than what they had), to facilitate mercantile transactions. Indian law has grafted some exceptions in favour of bona fide pledgees by transfer of documents of title from persons, whether owners of goods who do not possess the full bundle of rights of ownership at the time the pledges are made or their mercantile agents. To confer a right to affect a valid pledge by transfer of a document of title relating to goods on persons with defects in their title to the goods and on mercantile agents, and to deny it to the full owners thereof, is to introduce an incongruity into the Act. On the other hand, the real intention of the legislature will be carried out if the said right is conceded to the full owner of goods and extended by construction to persons with defects in their title to the goods or to mercantile agents. A pledge being a bailment of goods under Section 172 of the Contract Act, the pledgee, as a bailee, will have the same remedies as the owner of the goods would have against a third person for deprivation of the said goods or injury to them under Section 180 of the Act.

Performance of the 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. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions. That is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Delivery

Delivery of goods sold may be made by doing anything which the parties agree should be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on their behalf. A delivery of part of goods, in progress of the delivery of the whole, has the same effect for the purpose of passing the property in such goods as a delivery of the whole, but a delivery of part of the goods, with the intention of severing it from the whole, does not operate as a delivery of the remainder. Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Rules As to Delivery

Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question that depends in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or, if they are not then in existence, at the place at which they are manufactured or produced. Where under the contract of sale the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time. Where the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until such third person acknowledges to the buyer that they hold the goods on their behalf. However, nothing shall affect the operation of any document of title to goods issued or transferred. Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact. Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

Where the seller delivers to the buyer a quantity of goods less than they contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered, they shall pay for them at the contract rate. Where the seller delivers to the buyer a quantity of goods larger than they contracted to sell, the buyer may accept the goods included in the contract and reject the rest or they may reject the whole. If the buyer accepts the whole of the goods so delivered, they shall pay for them at the contract rate. Where the seller delivers to the buyer the goods they contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole. These provisions are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment Deliveries

Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments. Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case, depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

***Maa Harsiddhi Infra Developers v. Mahavir
Transmission Ltd, O. M. P. (COMM) 187/2022,
decided on 5 May 2022, Delhi High Court***

The language clearly specifies that the question relating to instalment deliveries is a question to be determined in each case depending on the terms of the contract and the circumstances of the case. Whether there was a repudiation of the whole agreement or whether it was a severable breach giving rise only to compensation has to be determined on a case-to-case basis. This critical aspect is to be taken into consideration while adjudicating a dispute relating to a short supply or non-supply of the balance quantity. The fact that there has been a default on the part of the petitioner is not in dispute. The respondent had tendered the goods but was then entitled to treat the contract as discharged in view of the petitioner's conduct. The petitioner has cited adverse economic conditions on account of the COVID-19 pandemic as the reason for the delay in payment, which cannot be a justifiable ground for non-payment to compel the respondent to keep the contract alive.

***Vishnu Sugar Mills Ltd v. Rameshwar Jute Mills Ltd.,
AIR1970Pat323, Patna High Court***

Rameshwar Jute Mills Limited, the plaintiff, respondent in the appeal, entered into two contracts of sale with Vishnu Sugar Mills Limited, the defendant appellant, through different brokers, for the supply of 60,000 gunny bags. The first contract was entered into on 13 August 1957. It was for the supply of 30,000 bags, with 10,000 to be supplied and paid for in each of the three months of October, November and December, 1957. The other contract

was entered into on 28 August 1957. It was also for the supply of 30,000 bags, with 10,000 to be supplied and paid for in each of the three months: October, November and December, 1957. The rate in both the contracts was ₹139 per 100 bags. The appellant accepted the contract through its letters and thereafter sent despatch instructions to the respondent. In pursuance of the despatch instructions, the respondent despatched on 5 October 1957, 20,000 bags and sent the despatch advice in its letter dated 9 October 1957. The consignment of 20,000 bags was taken delivery of and, as the railway receipt had been sent through the bank, the payment had also been made by the appellant. A dispute was, however, raised by the appellant with regard to the quality of the bags supplied by the respondent. There was correspondence between the parties, and ultimately the appellant refused to accept any supply for the balance of the quantity of bags contracted to be sold by the respondent, that is, 40,000 bags. The respondent, thereupon, after giving a formal notice to the appellant, instituted the suit.

The question in the appeal was whether the breach of contract on the part of the respondent was a repudiation of the whole contract or whether it was a severable breach giving rise to a claim for compensation only. No hard and fast rule had been laid down and can be laid down. But there are certain guiding principles that can be found in some of the cases and some of the standard textbooks.

In Halsbury's Laws of England, with reference to a case of *Maple Flock Co., Ltd v. Universal Furniture Products (Wembley) Ltd.*, (1934) 1 KB 148, it has been stated that

The main tests for determining as to whether a breach is vital where it renders the performance of the rest of the contract something substantially different from what the party not in fault contracted for are (1) the quantitative ratio of the faulty

instalments to the whole contract, and (2) the degree of probability of a repetition of the breach.

In contracts for the sale of goods where delivery is to be made by instalments to be separately paid for, the consideration is not entire; it has been divided, and consequently a breach as regards one or more instalment of the goods is not necessarily the breach of a condition precedent to the liability of the other party to accept or deliver the remainder. In such a case each delivery is really like a delivery under a separate contract, to be paid for separately, and in respect of the non-delivery of which the parties may well be assumed to have contemplated a payment in damages rather than a rescission of the whole contract. The party therefore who commits a breach which is merely partial is allowed by law to aver that they are ready and willing to perform the rest of the contract, subject to compensation by the other party for the partial breach.

On the facts and in the circumstances of the case, the breach of contract on the part of the respondent company, assuming it was a breach in regard to the supply of the 20,000 bags, was not a repudiation of the whole contract. It was a severable breach which could have given rise to a claim for compensation only but did not give rise to a right to treat the whole contract as repudiated. That being so, the courts below had rightly held that the appellant did commit breach of contract in respect of the balance of 40,000 bags which were to be supplied in November and December 1957. The suit for damages to the tune of Rs. 3,100 had rightly been decreed by the courts. No counter claim on any account had been made by the appellant in regard to the severable breach in relation to the supply of 20,000 bags in the first instalment.

Delivery to Carrier or Wharfinger

Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer. Unless otherwise authorized by the buyer, the seller shall make such a contract with the carrier or wharfinger on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in the course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to themselves or may hold the seller responsible in the damages. Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable them to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at their risk during such sea transit.

Where the seller of goods agrees to deliver them at their own risk to a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's Right to Examine the Goods

When goods are delivered to the buyer that they have not previously examined, they are not deemed to have accepted them unless and until they have had a reasonable opportunity to examine them for the purpose of ascertaining whether they are in conformity with the contract. Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, they are bound,

on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

The buyer is deemed to have accepted the goods when they intimate to the seller that they have accepted them or when the goods have been delivered to them and they do any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, they retain the goods without intimating to the seller that they have rejected them. Unless otherwise agreed, where goods are delivered to the buyer and they refuse to accept them, having the right so to do, they are not bound to return them to the seller, but it is sufficient if they intimate to the seller that they refuse to accept them.

A particular quantity of grain arrives on cost, insurance and freight terms. The buyers, without making proper inspection, resell various parcels to sub-buyers. Five days later, the buyer finds that the grain was not of contract quality and then tries to reject it. But it has lost the right of rejection.

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, they are liable to the seller for any loss occasioned by their neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods. It is provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Rights of the Unpaid Seller against the Goods

The seller of goods is deemed to be an 'unpaid seller' when the whole of the price has not been paid or tendered, when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise. The term 'seller' includes any person

who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has themselves paid, or is directly responsible for, the price.

Unpaid Seller's Rights

Notwithstanding that the property in the goods has passed to the buyer, the unpaid seller of goods has, by implication of law, a lien on the goods for the price while they are in possession of them; in case of the insolvency, of the buyer a right of stopping the goods in transit after they are parted with the possession of them; and a right of resale as limited by the Act. Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to their other remedies, a right of withholding delivery similar to and co-extensive with their rights of lien and stoppage in transit where the property has passed to the buyer.

The unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in certain cases, like where the goods have been sold without any stipulation as to credit or where the goods have been sold on credit, but the term of credit has expired or where the buyer becomes insolvent. The seller may exercise their right of lien notwithstanding that they are in possession of the goods as agent or bailee for the buyer. Where an unpaid seller has made part delivery of the goods, they may exercise their 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.

The unpaid seller of goods loses their lien thereon when they deliver the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods or when the buyer or their agent lawfully obtains possession of the goods or by waiver thereof. The unpaid seller of goods, having a lien thereon, does not lose their lien by reason only that they have obtained a decree for the price of the goods.

Right of Stoppage in Transit

When the buyer of goods becomes insolvent, the unpaid seller who has parted with possession of the goods has the right to stop them in transit. That is to say, they may resume possession of the goods as long as they are in the course of transit and may retain them until payment or tender of the price.

Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or their agent on that behalf takes delivery of them from such carrier or other bailee. If the buyer or their agent on that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end. If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or their agent that they hold the goods on their behalf and continues in possession of them as bailee for the buyer or their agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer. If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back. When goods are delivered to a ship chartered by the buyer, it is a question, depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as an agent of the buyer. Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or their agent on that behalf, the transit is deemed to be at an end. Where part delivery of the goods has been made to the buyer or their agent on 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 the goods.

The unpaid seller may exercise their right of stoppage in transit either by taking actual possession of the goods or by giving notice of their claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to their principal. In the latter case, the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to their servant or agent in time to prevent its delivery to the buyer. When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, they shall re-deliver the goods to, or according to the directions of, the seller. The expense of such re-delivery has to be borne by the seller.

Transfer by Buyer and Seller

The unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto. But where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of a sale, the unpaid seller's right of lien or stoppage in transit is defeated and if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee. Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

A contract of sale is not rescinded by the mere exercise by an unpaid seller of their right of lien or stoppage in transit. Where the goods are of a perishable nature, or where the unpaid seller who has exercised their right of lien or stoppage in transit gives notice to the buyer of

their intention to resell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, resell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by their breach of contract, but the buyer shall not be entitled to any profit which may occur on the resale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the resale. Where an unpaid seller who has exercised their right of lien or stoppage in transit resells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the resale has been given to the original buyer. Where the seller expressly reserves the right of resale in case the buyer should make default and, on the buyer's making default, resells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

Suits for Breach of the Contract

Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue them for the price of the goods. Where under a contract of sale, the price is payable on a certain day irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may sue them for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue them for damages for non-acceptance. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific Performance

Subject to the provisions of Chapter II of the Specific Relief Act, 1877, in any suit for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the

application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Remedy for Breach of Warranty

Where there is a breach of warranty by the seller or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not, by reason only of such breach of warranty, entitled to reject the goods, but they may set up against the seller the breach of warranty in diminution or extinction of the price or sue the seller for damages for breach of warranty. The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent them from suing for the same breach of warranty if they have suffered further damage.

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or they may treat the contract as rescinded and sue for damages for the breach.

M/s Venoos Furniture v. SICOP and Others, OWP
No.792/2016, decided on 24 September 2021, Jammu
& Kashmir High Court (Srinagar Bench)

The petitioner filed a writ petition seeking a Mandamus against the respondents to release the payment of ₹8,300,180 in its favour for providing and fixing of wooden frames and shutters. The high court observed that it was clear that the transaction between the parties was a contract in the realm of private law. The same is governed by the provisions of the

Contract Act and also by the Sale of Goods Act. A dispute relating to the interpretation and terms of such a contract cannot be the subject matter of writ proceedings.

The high court relied on the Supreme Court judgment in *State of UP v. Bridge & Roof Co (India) Ltd (1996) 6 SCC 22*, wherein it was observed that

The very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties. Firstly, the contract between the parties is a contract in the realm of private law. It is governed by the provisions of the Contract Act or may be, also by certain provisions of Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for civil court as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting particular amount from the writ petitioner's bill was not a prayer which could be granted by the High court under Article 226.

It was thus held by the Jammu & Kashmir High Court that the petitioner, by approaching the high court by way of a writ petition, had not chosen the appropriate remedy. The issues involved in the petition arise out of the contract between the parties, and the same can be determined only in a civil suit after a full trial and not in the writ proceedings. Thus, the writ petition was held to be not maintainable.

Miscellaneous

Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

Auction

In the case of a sale by auction where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale. The sale is considered complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and until such announcement is made, any bidder may retract their bid. A right to bid may be expressly reserved by or on behalf of the seller and, where such a right is expressly so reserved, but not otherwise, the seller or any one person acting on their behalf may, subject to the provisions hereinafter contained, bid at the auction. Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid themselves or to employ any person to bid at such a sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer. The sale may be notified to be subject to a reserved or upset price. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Nothing in the Act or any repeal effected thereby shall affect or be deemed to affect any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of the Act or any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of the Act or any enactment relating to the sale of goods which is not expressly repealed by the Act or any rule of law not inconsistent with the Act. The provisions of the Act relating to

contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

Jogendra Lal Saha v. State of Bihar & Others

AIR 1991 SC 1148, 1991 Supp (2) SCC 654

In clear terms, Section 83 of the Indian Forest Act, 1927, makes the liability of government the first charge on the forest produce sold. Sub-section (2) authorizes the forest officer to sell the produce by public auction and the proceeds of such sale to be applied first to satisfy the debt for which the charge is provided. Sub-section (3) makes clear stipulation that if there is a higher amount obtained in the public auction, that would be payable to the contractor. If the scheme under Sections 82 and 83 of the Act is put together and kept in view, it clearly follows that the entire situation has been provided for by special legislation and there is no need to fall back upon the provisions of the Sale of Goods Act, 1930, to deal with the claim. There is no quarrel that a special provision would keep away the application of the general law and contracts for the sale of forest produce have, therefore, to be covered by the provisions contained in the two sections.

Conclusion

Till the enactment of the Sale of Goods Act in the year 1930, the sale of goods was regulated by the Contract Act of 1872. With the passing of the Sale of Goods Act, Sections 76 to 123 of the Contract Act were repealed. This Act runs into 66 sections and deals with various facets of the sale of goods. Chapter I deals with the definitions and application of the Contract Act. Chapter II deals with the formation of a contract and includes sales and agreements to sell, provisions relating to conditions and warranties, as well as implied undertakings as to title and

the principle of *caveat emptor*. Chapters III and IV deal with the effects of the contract and the performance of the contract, respectively. The rights of the unpaid seller against the goods are enumerated in Chapter V, and Chapter VI deals with suits for breach of the contract. Thus, almost all aspects pertaining to the sale of movable property are included in the Act.

Review Questions

1. A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. Discuss.
2. Describe the formalities of a contract as envisaged under the Sale of Goods Act.
3. Discuss the implied conditions as to quality or fitness.
4. Explain the concept 'risk prima facie passes with property'.
5. The buyer of goods is not bound to accept delivery thereof by instalments. Do you agree with this statement? Discuss.
6. Discuss in detail the concept of 'unpaid seller'.
7. Explain the rights of the unpaid seller against the goods.
8. Discuss the right of stoppage in transit.
9. Discuss the remedy for breach of warranty.
10. There can be no sale by a person who is not the owner. Do you agree with the statement? Elucidate.