

## **Unit-3**

### **Rights of Unpaid Seller against the buyer personally**

The unpaid seller, in addition to his rights against the goods, has the following three rights of action against the buyer personally:

1. Suit for price (S. 55):

It is the duty of the buyer to accept the goods and pay for them.<sup>1</sup> Apart from exercising rights against the goods, if the buyer does not pay for them, the seller may sue the buyer to recover the price. Where the property in the goods has passed to the buyer and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. For an action for price it is necessary that the property in the goods must have passed to the buyer and then there must have been a wrongful neglect or refusal on the part of the buyer to pay the price. When the seller has performed or offered to perform all conditions precedent to the payment of the price but the buyer does not pay the price, he is deemed to have wrongfully neglected or refused to pay the price. The right of the seller to recover the price, after the property has passed to the buyer can be exercised irrespective of the fact that no delivery of the goods has yet been made to the buyer. In *Dunlop v Groat*,<sup>2</sup> there was a contract for the sale of a certain quantity of iron and the delivery was to be made, if the buyer so required, between 3<sup>rd</sup> March and 30<sup>th</sup> April. The price was agreed to be paid by 30<sup>th</sup> April. By 30<sup>th</sup> April delivery of only a portion of the iron was made as the buyer did not require the delivery of the remainder. It was held that the seller was entitled to recover the price of the whole of the iron and he was not required to show that he had appropriated any specific iron to the contract for completing the delivery of the remaining iron. When the buyer has obtained the possession of the goods, the seller's sole remedy is an action for price. On the other hand, if the goods have not yet reached the possession of the buyer, the seller has, in addition to the right of recovery of price under section 55, certain rights against the goods as already discussed.

2. Suit for damages

It is the duty of the buyer to accept the goods and pay for them.<sup>3</sup> According to section 56, where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. Such a suit generally arises when the property in the goods has not yet passed to the buyer. The seller being still the owner of the goods can dispose them of and recover from the buyer damages for the loss accruing to him in accordance with the rules regarding damages in section 73 of the Indian Contract Act. In *Bungo Steel Furniture v Union of India*<sup>4</sup> there was a contract for the supply of steel bins to the Govt. of India by the appellants. The Government wrongfully terminated the contract before the bins had been actually manufactured. It was held that, in this case, since the property in the goods has not yet passed to the buyer (Government), the case was not covered by section 55 and an action for the recovery of the price could not lie but appellants were entitled to recover damages from the Govt. for wrongfully refusing to accept the goods.

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<sup>1</sup> S. 31.

<sup>2</sup> (1845) 2 C&K 153.

<sup>3</sup> S. 31.

<sup>4</sup> AIR 1967 SC 378.

Measure of damages: The parties may fix the amount of damages payable by the contract itself. If the parties have fixed the amount of damages payable on the breach of the contract by either of the parties, the case will be governed by the provisions of section 72 of the Indian Contract Act. In that case the party complaining of the breach of contract will be entitled to receive from the party who has broken the contract, reasonable compensation not exceeding the amount of compensation agreed to between the parties. In case no compensation has been agreed between the parties, the damages are to be assessed in accordance with the provisions of section 73 of the Contract Act. According to that provision, the injured party is entitled to receive from the party making a breach of contract compensation for the loss or damages to him, which naturally arose in the usual course of things as a result of the breach. In a contract of sale of goods, therefore, the damages would be assessed on the basis of the difference between the contract price and the market price prevailing on the date of the breach of the contract. For example, a buyer having made a contract for the purchase of a certain radio set for Rs. 500/- wrongfully neglects or refuses to accept and pay for the radio set. In case the market price of the radio set on the date of the breach of the contract is Rs. 400/-, the seller can recover from the buyer damages amounting to Rs. 100/- as that is the difference between the contract price and the market price on the date of the breach of the contract and that is the loss which naturally arose in the usual course of things. In *Suresh Kumar v M. Assan Koya & Sons*,<sup>5</sup> on the buyer's wrongful refusal to take delivery, the seller sold the goods and there was nothing to show either that the sale was not for market price or it was conducted in an improper manner, the seller was held entitled to claim difference in contract price and the price fetched on sale of goods, as damages.

### **Interest by way of damages**

Section 73, Indian Contract Act, not only allows damages for the loss "which naturally arose in usual course of things" but also special damages for such loss "which the parties knew when they made the contract to be likely to result from the breach of it." Section 61 preserves the right of the parties to a contract of sale to recover special damages, and also recognises the well-established right of the parties to recover interest by way of damages.

Seller's right of interest on price: The parties may agree as to when the price is payable. The buyer is bound to accept the goods and pay for them in accordance with the contract. If there is no contract to the contrary, the delivery of the goods and the payment of the price are concurrent conditions, i.e., in such a case the buyer is bound to pay the price when the goods are delivered to him. If the buyer does not pay the price in time and wrongfully delays the payment of the same, the Court may award interest on price. Interest is to be paid on the amount of the price from the date when the price was payable, at such rate as the court thinks just. Thus, the Court may order interest on the price from the date of tender of the goods if no date of payment of price has been decided, or from the date when the price was payable in terms of the

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<sup>5</sup> AIR 1990 Ker. 20.

contract.<sup>6</sup> Under section 61 (2), the court has a very wide discretion to award interest as it thinks fit on the amount of the price from the date when payment was to be made. The seller would be entitled to interest from the date of delivery of goods upto the date of payment even in the absence of the contract for the payment of interest. Section 61 (2) (a) gives discretion to the court to award interest in the absence of contract to the contrary. Such payment of interest can be made in asuit for recovery of price or damages, and not otherwise. In MKM Moosa Bhai Amin v Rajasthan Textile Mills,<sup>7</sup> the buyer delayed the payment of price by one year. Even though the contract did not stipulate payment of interest on delay, it was held that the buyer was bound to pay interest at the rate of 6% p.a. for the period of delay.

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<sup>6</sup> S. 61 (1) (a).

<sup>7</sup> AIR 1974 Raj. 194.