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Circumstances When Property Gets Transferred to Buyer under Sale of Goods Act, 1930

NAEESHA HALAI¹

ABSTRACT

The term passing of goods or property means that there is a transfer of ownership in accordance with the principles of the Sale of Goods Act, 1930. The rights, duties and liabilities of both the seller and the buyer can be understood only through the concept of passing of property. It is a universally accepted principle of law that along with the ownership of the goods or property, the risk is also passed on from the seller to the buyer. This paper deals with the various principles and provisions pertaining to Passing of property in the light of the Sale of Goods Act, 1930.

Keywords: Goods, Ownership, Risks, Sale

I. INTRODUCTION

The Indian Sale of Goods Act, 1930 is a mercantile or commercial law in India. It came into force on 1st July, 1930 during the pre-independence era. It draws its inspiration from the United Kingdom's Sale of Goods Act, 1893. It deals with the terms of contracts where the seller transfers or agrees to transfer the title in the goods to the buyer for consideration. It is applicable all over India. The Act states that goods must be sold at a certain price and at a given point of time. The Act has been amended on 23rd September, 1963.

The Contract for sale of goods are influenced by the general principles of the law relating to the Indian Contract Act. A contract for sale of goods has certain characteristics such as, transfer of ownership of the goods, transfer of risks, delivery of goods, rights and duties of the buyer and seller, remedies for breach of contract, after sales service, conditions and warranties etc. These characteristics form the subject matter of the provisions of the Sale of Goods Act, 1930.

II. PASSING OF PROPERTY

Passing of property implies the transfer of ownership at a predetermined price. The passing of

¹ Author is an International Accredited Civil-Commercial Mediator from ADR-ODR International, London.

property helps to fix the liabilities of both the buyer and the seller. It also grants rights to both the parties. Once a property is passed to the buyer, the risk also passes on to the buyer and relieves the seller. Apparently, this principle is applicable even if the goods are in the possession of the seller. The ownership of property rights should be transferred from the seller to the buyer.

It is pertinent to determine the exact point of passing of property from seller to the buyer as the risk involving the property depends on it. Thus, the following aspect shall be considered:

- i. The exact point of time of passing of the property from the seller to the buyer.
- ii. The point of time of passing of risks from the seller to the buyer.
- iii. The time of passing of right of ownership and possession from the seller to the buyer.

III. SIGNIFICANCE OF TRANSFER OF PROPERTY

The transfer of property in the goods from the seller to the buyer forms the basis of a contract of sale. Therefore, the exact time of passing of the property in goods from the seller to the buyer is important owing to the following reasons:

(i) Ownership:

The moment the property in goods passes, the seller discontinues to be their owner. The buyer acquires the ownership or proprietary rights over the goods. For example, the buyer can even sue the seller for non-delivery of the goods or when the seller has opted for resale.

(ii) Risk prima-facie passes with the property (Sec 24)

As soon as the ownership of goods is transferred, the risk also gets transferred from the seller to the buyer.

Multanual Chempalal vs. C.P. Shah & Co:

In this case, it has been held that risk passes only when the property is passed, but there could be a contract to the contrary. There is a possibility of passing of the risk before the title of the property. Thus, the parties can even enter into such contracts.

Yet another case is the delay in the transfer of goods. If the delivery is delayed due to the fault of the seller or buyer, the party responsible for the delay is responsible for the loss which is the outcome of delay.

In *Demby Hamilton & Co. Ltd. vs. Barden*, the buyer and the seller entered into a contract to sell 30 tons of fruit juice to be delivered the next day of the contract. Barden did not show up

due to which half of the juice was spoiled. Thus, the defendant was liable. It was held that delivery was to be given as per the sample chosen by the defendant. However, it was impossible to select the exact fruit making it impossible for the seller to dispose off the goods. Thus, to meet the terms of the contract he had to keep the 30 tons of juice till the delivery.

(iii) Suit Against Third parties

When the goods are damaged or destroyed by the action of third parties, it is only the owner of the goods who can initiate legal proceedings against them.

(iv) Suit for Price

Whosoever holds the ownership of the good would be liable in case of any mishappening. If the buyer is the owner of the good, the seller can initiate proceedings for price in case of default.

(v) Insolvency

In either the seller or the buyer becomes insolvent then can the goods be taken over by the Official Receiver or Assignee, will depend on whether the property in goods is with the insolvent party.

IV. PASSAGE OF PROPERTY AND ITS RULES (SECTION 18 TO SECTION 25)

i. Ascertained goods (Section 18)

The goods must be certain for the transfer of property in goods

ii. Parties Intent [Section 19 (1)]

Property in goods is given to the buyer when both parties have the intention to do so

iii. Specific Goods (Section 20 to Section 22)

As per Section 2(14) of the Sale of Goods Act, 1930, specific goods are specifically identified by the buyer. He also intends to buy at the time when the contract of sale is made.

Rules relating to transfer of property in specific goods are provided under sections 20 to 22 which are as follows:

a) Goods which are Deliverable (Section 20):

A state in which a buyer is obliged to take delivery of goods²

For example:

² Transfer of property under the Sale of Goods Act, 1930 by Vishwas Chitwar

Peter goes to an electronics store and buys a television set. He tells the shopkeeper to promptly deliver the TV set at his home. The shopkeeper agreed. Television immediately becomes Peter's property.

b) To keep the goods in a deliverable condition (Section 21):

Here, the seller is has to do something with the goods so that they can be placed in the deliverable condition.

For example:

Peter buys a personal computer (PC) from Croma electronics and asks for home delivery. The salesman agreed to it. However, the PC does not have the Windows iOS. The salesman promises to set it up and calls Peter before making the delivery. Thus, the property is transferred to Peter only after the salesman has done the needful.

c) Price of goods determined by means of weights (Section 22):

Where the price of the specific goods in the contract of sale is to be measured or weighed, property in the goods is not said to be passed unless the weighing, measurement is used to determine the price and is informed to the buyer.

ii. **Unascertained Goods (Section 23)**

Unascertained goods are those goods which are not specifically identified by the buyer at at the time of the contract for sale.

In *Rhodes vs. Thwaites*, A entered into a contract with B to provide him log of wood at a particular date in future. B accepted the offer provided he would collect the goods after measuring them. Thus, appropriation by A and assent by B is to be considered in this assent.

iii. **Goods sent on approval or sale or return basis**

The following conditions must be fulfilled in case of goods sent on approval or sale or return basis:

The buyer must accept the good. Any act of approval by buyer must take place. The buyer shall possess the good beyond the specified time limit, if the contract is silent about the time limit.

iv. **Right to Dispose (Section 25)**

If a seller reserves the right to dispose of the goods until certain conditions are met, the property in the goods cannot be transferred to the buyer until such conditions are fulfilled.

Reservation of Right to Disposal (Section 25)

It deals with the conditional appropriation of goods and is bifurcated into the following subsections:

Section 25(1):

The seller of goods reserves the right of disposal of the goods in a situation where the sale of specific goods is concerned. In spite of the delivery of the goods, the goods will not get transferred from the seller to the buyer unless the subsequent terms of the contract aren't appropriated or fulfilled.

V. CASE LAWS PERTAINING TO TRANSFER OF PROPERTY

a) Badri Prasad vs. State of Madhya Pradesh

In this case, the appellant entered into a contract pertaining to specific forests in Madhya Pradesh. He was supposed to cut teak trees with girth above 12-inch. After the passing of the Abolition of Proprietary Rights, the appellant was prohibited from cutting trees. This was in the exercise of his rights under the contract. He filed a suit demanding specific performance of the contract on the grounds:

- (i) The forest and trees did not come in the State under the Act;
- (ii) Even if they came in the State as per the Act, the standing timber already sold to the appellant, did not come in the State;
- (iii) A new contract was completed on 5 February 1955, so the appellant was supposed to specifically perform.

The court held:

The forest and trees come under the State as per the Act. The plaintiff was supposed to cut teak trees of more than 12-inch girth. However, it had to be ascertained which trees would meet that description. Until this was decided upon, they will be categorized as unascertained goods as per Section 9 of the Sale of Goods Act.

b) Hoogly Chinsurah Municipality vs. Spence Ltd

In this case, Hoogly Chinsurah Municipality entered into a contract with Spence Ltd to buy a tractor. The condition was that if the municipality is dissatisfied then it can reject the tractor. The municipality took possession of the tractor, utilized it for 1.5 months and subsequently rejected it. The suit was filed upon the breach of contract by Spence Ltd. The Court turned down the appeal and held that the municipality had utilized the tractor well enough and even

crossed the reasonable time limit. Hence, the property had passed to the municipality and they were prohibited from rejecting it.

VI. CONCLUSION

The Sale of Goods Act, 1930 deals with the transfer of property during a contract pertaining to the sale of goods. Section 18 to 25 of the Sale of Goods Act, 1930 discusses the rights and liabilities of the buyer and seller. Passing of the goods from the seller to the buyer involves several aspects that cannot be ignored. The transfer of ownership from one party to another is undoubtedly a different concept from that of the possession of goods as possession only involves custody of goods.

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