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## **RIGHTS OF AN UNPAID SELLER WHEN GOODS ARE IN TRANSIT**

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### **Introduction**

A contract of sale of movable goods is governed by the Sale of Goods Act, 1930<sup>1</sup>. A contract of sale is a bilateral contract between two parties, a buyer and a seller. The buyer agrees to pay a set price in return for possessory as well as ownership rights for a particular good or set of goods. The payment may be through simple monetary transaction, or through a negotiable instrument based on a condition, as agreed between the buyer and seller. Section 45<sup>2</sup> of the Act<sup>3</sup>, provides the definition of an unpaid seller. It states that a seller may be primarily considered to be unpaid in two cases. Firstly, when the full amount of payment has not been received by the seller, or secondly, when the condition on which the negotiable instrument was based upon is unfulfilled. An unpaid seller's rights have been defined under section 46<sup>4</sup>, which provides for three rights: Rights of Lien; Rights to stop Goods in Transit; and Right to resell goods. The present paper will focus upon the rights of an unpaid seller, when goods are in transit, which centrally revolve around the right to stop the said goods, when in transit.

### **Objective of Study:**

To research and understand the scope and applicability of the rights of an unpaid seller in respect to stopping goods in transit as provided under section 50 and 51 of the Sale of Goods Act.

### **Research Question:**

- How has the law been shaped with respect of duration of transit of goods, and its effect on the contract thereafter?

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<sup>1</sup> Sale of Goods Act, 1930

<sup>2</sup> "Unpaid seller" defined. —

(1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

(a) when the whole of the price has not been paid or tendered;

(b) 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.

(2) In this Chapter, 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 himself paid, or is directly responsible for, the price.

<sup>3</sup> Sale of Goods Act, 1930

<sup>4</sup> Sec 46, Sale of Goods Act, 1930

### **Research Methodology:**

This research paper has been a result of the use of doctrinal method of research wherein the use of secondary sources such as articles, books, journals etc. was done to gain a deeper understanding of the rights of an unpaid seller when goods are in transit.

### **Chapter I: Situational Analysis of stopping goods in transit**

As stated before, Section 46(b)<sup>5</sup> of the Sale of Goods Act, 1930 provides for the right of a seller to stop goods which are in transit before they are delivered to the buyer in case the buyer is declared insolvent. This is done to resume possession of the goods until payment for the same is completed. Section 46 may be interpreted to derive certain essential elements that are required to be satisfied for a seller to exercise his right of stoppage in transit. These are- unpaid status of seller, insolvent state of buyer and absence of possession of goods with seller as well buyer. The first essential is the actual force for the seller to exercise his right of stopping transit as without it, there prima facie will not be a discrepancy on the part of the buyer.

The second essential of insolvency of buyer may be understood through the definition of 'insolvency' as mentioned in the Act<sup>6</sup>. It states that "*a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.*" In common parlance, it may be understood that when a person becomes incapable of fulfilling his/her payment obligations in the ordinary course of business due to unavailability of funds, he may be considered to be insolvent. It may prima facie, through the bare reading of Section 50<sup>7</sup>, be understood that the buyer must be insolvent at the time of the seller's exercise of his right to stopping goods in transit. However, it may also be understood, that in case of a reasonably certain apprehension of the buyer's insolvency in the near future which may lead to default in payment of goods by the seller, he may call for exercise of this right. The third essential of lack of possession of goods with either buyer and seller is an essential for the good to be in a state of transit, and not in possession of either parties. In the latter case, the right of stoppage of goods would not be exercisable as the goods would not be in transit. This raises the question of when a good may be considered to be in the state of transit?

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<sup>5</sup> in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

<sup>6</sup> Sec 2(8), Sale of Goods Act, 1930

<sup>7</sup> Sec 50, Sale of Goods Act, 1930

Section 51<sup>8</sup> of the Act, provides for various situations when a good may be considered to be in transit. It provides for seven situations when a good may be considered in transit or when will the transit be considered to have ended. The provision fulfills the need for a concise yet robust understanding of the duration of transit. In usual circumstances, the goods would be considered to be in a course of transit post the transfer of possession and from the seller to the independent bailee or carrier, who is responsible for the transfer of the goods, and prior to their delivery to the buyer or his agent acting on behalf of the buyer. However, there still exists a need for a deeper understanding of some of the clauses provided under Section 51 through previous landmark precedent judgements.

One of the first cases to provide a clear understanding of the duration of transit was the English case of *James v. Griffin*<sup>9</sup>, where it was noted that “*The actual delivery to the vendee or his agent, which puts an end to the transit or state of passage, maybe at the vendee’s own warehouse, or at a place which he uses as his own , though belonging to another, for the deposit of the goods, or at a place where he means the goods to remain until a fresh destination is communicated to them by orders from himself*”. Therefore, the point at which the buyer takes possession of goods through storage at a place on his own discretion, the state of passage would be considered to have ended. Without the positive act of actual possession of goods, the transit would be considered to be continuing and not at an end. Furthermore, in the case of *Whitehead v. Anderson*<sup>10</sup> it was noted that simple communication to the carrier about the request to transfer possession of the goods cannot be considered as actual possession, and there the seller’s right may still be exercised.

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<sup>8</sup> Duration of transit. —

(1) 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 his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his 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.

(4) 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.

(5) 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 agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in 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.

<sup>9</sup> (1837) 2 M&W 623, 42 RR 243

<sup>10</sup> 9 M&W 534, 60 RR 833



Sub clause 5<sup>11</sup> of the section, provides for situations when the ships delivering the goods are chartered by the buyer himself. It raises the question of whether the transit of goods would be considered to be at end at the point they are stored in the ship, and whether the carrier would be considered to be acting on behalf of the buyer himself? The provision provides for the subjective analysis of each case. In the case of *Schotmans v. Lancashire & Yorkshire Railway CO.*<sup>12</sup>, the goods were transported on a ship that was owned by the buyer himself. The question arose before the court, that whether the carrier was a middleman and the transit still continuing while the goods were on the ship. It was concluded that even though the ship was a carrier, and the captain was the master of the ship, he was still a servant of the buyer himself. And hence, it could be assumed that he was acting on the buyer's behalf and the goods were not in transit after they were stored in the ship. However, in the case of *Rosevear China Clay Company*<sup>13</sup>, the buyer charters a ship for the delivery of clay to Glasgow. However, on realizing the insolvent status of the buyer, the seller tries to invoke his right to stop goods in transit. Here, it was vitally noted that even though the ship was chartered by the buyer himself, the master of the ship was acting in the capacity of a carrier and not an agent, and the transit cannot be considered to have ended. Also, in the case of *Lyons v. Hoffnung*<sup>14</sup>, it was noted that even though the buyer accompanied the goods in the ship to the final destination, he cannot be considered to be in possession of the goods, as the possessory rights are present with the carrier. Furthermore, it was duly noted by the court that the understanding of possession was subjective to each circumstance and cannot be subjected to an objective test.

The after effects of an exercise of the right to transit have been discussed in Section 54<sup>15</sup> of the Act. It provides for further rights of an unpaid seller apart from the right to stop the transit of

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<sup>11</sup> 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 agent of the buyer.

<sup>12</sup> LR 2 CH App 332

<sup>13</sup> 11 Ch D 560

<sup>14</sup> 15 App Cas 391 (PC)

<sup>15</sup> Sale not generally rescinded by lien or stoppage in transit. —

(1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. 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 re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.



goods and retain possession. It states that the direct effect of a stoppage of transit of goods is not the repudiation of the sale, but quiet simply, the repossession of the goods by the seller. As provided under Section 11<sup>16</sup> of the Act, the stipulations regarding the time of payment are not a part of the core essence of the contract, therefore, a default in payment for goods cannot be considered a ground to rescind the contract itself. It depends upon the further understanding between the buyer and the seller to declare the contract as still valid on additional amended terms, or simply discharged. In case, the buyer agrees, the seller may enforce his right to lien against the goods until the full payment of the goods is obtained. However, if the buyer repudiates himself from the contract, the seller may consider the contract to be discharged and thus, may choose to sue, not for the price of the goods, but the damages suffered due to the said breach in contract by the buyer. It was noted in the case of *Martindale v. Smith*<sup>17</sup>, the seller, on agreement with the buyer, uphold the contract “by payment or tender of the price within a reasonable period of time”. In case the contract is rescinded, the buyer may exercise his right of reselling the goods, as mentioned in section 46 of the Act, and subject to further limitation of the Act itself.

The buyer’s status of insolvency is another factor that raises issues on the implementation of a contract. Section 38<sup>18</sup> of the Act, provides for payment in installment for the goods purchased. It is the duty of the court to attempt to not break contractual relations between party but attempt to find a way to keep the contract intact. As noted in the case of *Jaffer Meher Ali v. Budge Budge Jute Mills Co.*<sup>19</sup> that it may still be considered for a contract to be enforced, for the “benefit of the creditors”, which in stated context would be the buyer. It is necessary for seller to be certain about the insolvency of the buyer, as noted in the case of *Pheonix Bessemer Steel Co.*<sup>20</sup>, and not base assumptions on temporary circumstances surrounding the buyer. But, notice by the buyer, either through express communication, or through conduct, to his creditors that he does not intend to perform his agreed contracts, or fulfill any existing debts, can be

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<sup>16</sup> Stipulations as to time. — 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.

<sup>17</sup> *Martindale v. Smith* (1841) 1 QB 389, 55 RR 285

<sup>18</sup> Instalment deliveries. —

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) 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.

<sup>19</sup> *Jaffer Meher Ali v. Budge Budge Jute Mills Co.* (1906) 34 Cal 289

<sup>20</sup> *Pheonix Bessemer Steel Co.* (1876) 4 Ch D 108(CA)

concluded to be the repudiation of the contract by the buyer as mentioned in Section 39<sup>21</sup> of the Indian Contract Act, 1872. Thus, it depends on the parties to the contract, whether the contract stands repudiated, or whether they would prefer to continue their relationship on amended terms and uphold their ends of the bargain.

### **CONCLUSION**

The right of a seller, who is left unpaid either for the full amount of the goods, or partly, to stop the goods when in transit and regain possession has been subjected to a number of vital judicial interpretation, both in English as well as Indian courts. Nonetheless, the need for greater interpretation in the infinite number of situations that may be possible is not irrelevant and would help a more robust and clear understanding of the said right. Furthermore, the effect of exercise of the right to stop goods in transit, is also subjective to the understanding between the buyer and the seller and cannot lead to the direct repudiation of the contract. It would depend upon the further communication and conduct of both the buyer and seller, that the fate of the contract would be decided.

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<sup>21</sup> Effect of refusal of party to perform promise wholly. —When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance. —When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."

## **BIBLIOGRAPHY**

### **Acts/ Regulations/ Rules Referred**

1. *The Sale of Goods Act, 1930*
2. *The Indian Contract Act, 1872*

### **Books**

1. *Pollock and Mulla, The Sale of Goods Act, 10<sup>th</sup> Edition*
2. *Pollock and Mulla, the Indian Contract Act, 10<sup>th</sup> Edition*
3. *Law of Contract by Avtar Singh*
4. *Yale Law Journal, Vol.44*
5. *Oxford's Advanced Learner Dictionary*

### **Websites Referred:**

- <https://indiankanoon.org/>
- <https://www.toppr.com/guides/business-laws/the-sale-goods-act-1930/rights-of-unpaid-seller-against-goods/>
- <http://www.mondaq.com/india/x/519392/Contract+Law/Unpaid+Sellers+Lien>
- <https://blog.ipleaders.in/rights-of-an-unpaid-seller/>
- [jandkicai.org/pdf/16821UnpaidSeller.pdf](http://jandkicai.org/pdf/16821UnpaidSeller.pdf)
- <https://accountlearning.com/rights-unpaid-seller-goods-lien-stoppage-transit-re-sale/>