

JUDICIAL ATTITUDES TOWARDS THE IMPLIMENTATION OF THE SALE OF GOODS ACT, 1930

Written by *Jiwanjot Kaur*

Research Scholar, Department of Law, Punjabi University, Patiala (Punjab)

I. INTRODUCTION

The Judiciary plays the important role of interpreting and applying the law and adjudicating upon controversies between one citizen and another and between a citizen and the state. It is the function of the courts to maintain rule of law in the country and to assure that the government runs according to law. In a country with a written constitution, courts have the additional function of safeguarding the supremacy of the Constitution by interpreting and applying its provisions and keeping all authorities within the constitutional framework. In a federation, the Judiciary has another meaningful assignment, namely, to decide controversies between the constituent States inter Se, as well as between the Centre and the States. A Federal Government is a legalistic government, a characteristic feature of which is the allocation of powers between the Centre and the constituent units relating to distribution of powers and functions between them. An arbitrator is, therefore, required to scrutinize laws to see whether they fall within the allotted legislative domain of the enacting legislature and this function is, usually left to the Judiciary.¹

In India, in addition to the above, the judiciary also has the significant function of protecting and enforcing the Fundamental Rights of the people guaranteed to them by the Constitution. Justice Untwalia has compared the Judiciary to a watching tower above all the big structures of the other limbs of the state from which it keeps a watch like a sentinel on the functions of the other limbs of the state as to whether they are working in accordance with the law and the Constitution, the Constitution being supreme. India has a unified judicial system with the Supreme Court standing at the apex. There are High Courts below the Supreme Court; under each High Court there exists a system of subordinate courts. The Supreme Court thus enjoys

the topmost position in the judicial hierarchy of the country. It is the supreme interpreter of the Constitution and the guardian of the people's Fundamental Rights. It is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of the land, and thus helps in maintaining a uniformity of law throughout the country.ⁱⁱ Judiciary plays a crucial role in sale of goods through the various golden judgments of the Courts.

II. TIME OF PAYMENT AND DELIVERY OF GOODS

Section 11 of the Act lays down that ordinarily time is not of essence to the contract of sale, but it depends upon the terms of a contract whether any stipulation is of essence to the contract of sale or not. Accordingly, in a transaction, if the buyer fails to pay in time, the seller would not be entitled to repudiate the contract unless he unequivocally states so in the contract. In *Sundara Bayamma v. Venkateswara & Co.*,ⁱⁱⁱ the court has held that if the parties treat the payment of advance as a vital element to the contract and the actual payment of the advance takes place only after the offer has been revoked, no enforceable contract would be there. If the seller acquiesces the delay in payment the time of payment cannot remain of essence to the contract. Same is the case if the buyer accepts the delayed supply of goods without protest. In *Burn & Co. Ltd. v. Morvi State*,^{iv} there was a contract about supply of wagons and the payment of the price was to be made in three stages. The buyer made a default at the second stage, but the supplier still supplied the part of the wagons. After such a conduct of the supplier, the delay in payment was not accepted as a ground for rescission of the contract. In *Hind Techno Machines (P) Ltd. v. Jaipur Wire Industries (P) Ltd.*,^v there was delay in deliveries of the goods but the buyer continued to accept them without protest at the appropriate time. The buyer was, therefore, deemed to have waived his right to sue for delay and thereby repudiate the contract.

III. TREATING BREACH OF CONDITION AS BREACH OF WARRANTY

According to section 13 of the Act, if a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may, at its discretion, 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. Similarly, if 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.' However, this must not be in any way contrary to the express or implied terms of the contract. Regarding enforcement of conditions and warranties, it has been made clear under the Act that where fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise, the sellers can validly rely upon the ground of impossibility of performance in any action by the buyer.^{vi}

This was explained by the Calcutta High Court in *Jitendera Banerjee v. Murlidhar*^{vii} a case of purchase of black Italian cloth by sample, observing that if the buyer after taking delivery exercises ownership rights (like resale) over the goods, he cannot claim a refund of the purchase money on the ground that the goods were damaged and not saleable. He may, however, be entitled to damages. In *Nagardas Mathurdas v. N.V. Velmahomed*,^{viii} the defendants purchased from the plaintiffs *konda* (rice bran) and received the supply in certain bags. The bags were unloaded and the buyer's marks were put on them. They were then taken for shipping to another place. At this stage the buyer found that the bags contained ground paddy husks and not rice bran. On finding this the buyer rejected the goods while the seller sued for the price. The court held that the proper place of inspection and rejection of the goods was the place of delivery. Since, at that time, the goods were marked in the name of the buyer and carried to the dock, he could not take the plea of breach of condition.

IV. GOODS SHOULD BE TRUE TO THEIR DESCRIPTION

Section 15 of the Act provides that in a contract for the sale of goods by description, there is an implied condition that the goods should correspond with the description. If the sale is by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. This implies that there is an implied term that the goods should correspond with their description and the seller should comply with express terms. In view of the consumer interest, section 15 requires that if the

description of the goods does not, according to ordinary principles, amount to a term of the contract but is merely a representation, such description should be treated as a term of the contract. It, therefore, converts the 'description' into a 'term of the contract' and obliterates the distinction between terms of the contract and representations in contracts of sale of goods.^{ix}

In *Varley v. Whipp*,^x to the advantage of the consumer, this principle has been applied even though the goods were not sold by a person dealing in goods of that description. *Steels and Busks, Ltd. v. Bleecker Bik & Co. Ltd.*,^{xi} a part of goods was supplied to the buyer as per the description. The goods supplied later contained some new chemicals, not present in the original deliveries, which rendered the goods unfit for the buyer's purposes. In spite of the presence of such a chemical, the goods were held to be in accordance with the description. This was a case of confusing quality with description. The fact is that even if the goods in this case might have been of perfectly good quality but it was difficult to say that how they could be held to comply with their description.

In *Grenfell v. E.B.Meyrowitz, Ltd.*,^{xii} the defendants were held not to be in breach of description when they supplied goggles of "safety-glass" to the plaintiff which subsequently splintered in an accident, as it was proved that "safety-glass" had acquired a technical trade meaning and the goggles in fact conformed to the normal design. In another case, *Peter Darlington Partners, Ltd. v. Gosho Co., Ltd.*,^{xiii} there was a contract for the sale of seeds on a "pure basis". Buyers refused to accept goods as they were not 100 per cent pure. They were held to be at fault for not accepting the goods as it was found that the highest standards of purity in case of seeds was 98 per cent and in trade there was no such thing as 100 per cent pure.

In *Robert A. Munro & Co., Ltd. v. Meyer*,^{xiv} is the defendant agreed to buy goods "with all faults", but this clause was held by Justice Wright not to exclude the requirement of the goods to conform to their description. The clause only protected the sellers from the obligation to supply merchantable goods because the seller could not have contracted himself out of the requirements of the description of goods. It thus becomes clear that the seller in a contract of sale of goods by description is duty bound to supply the goods which correspond to the description, and any clause which purports to exempt the seller from this obligation goes against the main spirit of the legislation and hence void. The instant case serves a good example of adopting a pro-consumer approach by a judge in cases of sale by description.

V. RULE OF CAVEAT EMPTOR

The common law rule *caveat emptor* means "buyer beware". It implies that the buyer should himself be careful while purchasing goods; he should himself ascertain that the goods suit his purpose, and if found unsuitable, he cannot blame the seller. The implied terms as to quality and fitness laid down in section 16 of the Act provide a protective measure against this common law rule of *caveat emptor*. This section makes the seller liable for all the defects in the goods supplied to the buyer, whether he is a manufacturer or producer of goods or not. The buyer should make known to the seller the purpose for which the goods are required, relying upon his skill or judgment and they should of a description in the course of his business to supply. If the buyer purchases goods under a patent or trademark, the question of implied condition does not arise. Section 16 further lays down that if the goods are purchased by description and seller deals in the goods of that description, the goods should be of merchantable quality. In such a situation, if the buyer examines the goods, there exists no implied condition as regards the defects which could have been pointed out by such examination. However, latent defects are not covered under this provision. To widen the scope of implied condition or warranties, section 16 expressly provides that an implied condition or warranty as to quality or fitness for a particular purpose can also be established by the usage of any trade.^{xv}

The section applies whether the purpose for which the goods are required is made known to the seller either expressly or by implication. In *Grant v. Australian Knitting Mills, Ltd.*^{xvi} it has been observed in this respect that "the reliance on the seller is seldom express. It is usually by implication from the circumstances. It, however, needs to be noted that such inferences cannot be drawn in the case of raw material or material manufactured in bulk and capable of being used for a large variety of purposes". In *Cammel Laird & Co. Ltd. v. Manganese Bronze & Brass Co., Ltd.*^{xvii} where two propellers were to be constructed for two ships regarding which certain specifications were given by the plaintiffs, but certain other matters had been left to the defendants. One of the propellers was found defective in some matter other than the specifications. The House of Lords held that "there was a substantial area outside the specifications which was, therefore, necessarily left to the skill and judgment of the seller". In *Wren v. Holt*,^{xviii} the plaintiff had bought the beer in a public house 'which he knew to be tied', the Court of Appeal held the buyer not having relied on the seller's skill or judgment. However,

in case of a mere suspicion that a seller could supply only a particular kind of goods, the buyer may claim benefit under the implied condition that the goods should be suited to the purpose.

In *Manchester Liners, Ltd. v. Rear*,^{xix} a case related to coal supply; it was held that even if the consumer could suspect that due to railways strike, the seller could not supply the coal of a type other than the supplied, the seller could not claim exclusion of liability from implied conditions. In *Priest v. Last*,^{xx} the plaintiff wanted to purchase a hot water bottle from a chemist. The plaintiff sold him an American rubber bottle, saying that it would stand hot but not boiling water. The plaintiff purchased the bottle for his wife and while she was using it burst and scolded. The seller was held liable to compensate for breach of implied condition because the hot-water bottle was not fit for the particular purpose for which it had been purchased. Where the goods have only one particular use, there is no need to specify that because it is the only purpose for which anyone would ordinarily want the goods. In *Raghava Menon's case*^{xxi} the plaintiff purchased a wrist watch from the defendant, the watch turned out to be defective. It was observed that the plaintiff makes known to the seller, by implication, the purpose for which he purchases the watch and relied on seller's skill and judgment. Thus, seller bound to replace the watch or refund price. In *Chaproniere v Mason*,^{xxii} the buyer purchased a bun from a bakery and as he tried to bite it, his teeth struck on a stone in the bun, due to which one of his teeth was broken. Such a bun was held to be unsuitable for the purpose of eating, i.e. the purpose for which the buyer had purchased the same.

VI. RIGHTS & DUTIES OF SELLER

According to section 31 of Sale of Goods Act, 1930 it is the duty of seller to deliver the goods and of the buyer to accept and pay for them in accordance with the term of the contract of the sale. Section 33 of the same Act, provides that delivery of goods sold may be made doing anything which the parties agree shall be treated as delivery or putting the goods in the possessions of the buyer. The delivery may be either actual, symbolic and constructive. The seller is bound to deliver the goods in accordance with the term of the contract. The contract may provide about the time, place and manner of delivery of goods, the seller is bound to observe the same. Apart from any express contract, the seller of the goods is not bound to

deliver them until the buyer applies for delivery. Thus, the buyer cannot blame the seller for non-delivery of goods unless he made a demand. However, if the contract between the parties provides that the seller is to dispatch the goods when they are ready the buyer is not to apply for delivery. This is so because the buyer's duty to demand delivery is subject to any express contract.^{xxiii} 'Unless otherwise agreed delivery of the goods and payment of price are concurrent, i.e. 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'.^{xxiv} Section 34 of Sale of Goods Act, 1930 provides that the delivery of a part of the goods amounts to a delivery of the whole for the purpose of passing the property provided that a part of the goods are delivered in progress of the delivery of the whole. Seller's duty includes a duty to deliver goods of the same quality, in the required quantity and in accordance with their description given in the contract. When the seller delivers a smaller or a larger quantity of goods than was ordered under an entire contract, such delivery amounts to a proposal by the seller for a new contract.^{xxv}

VII. RIGHT & DUTIES OF BUYER

If the goods are being properly tendered, the buyer is bound to accept them. The buyer has the right to reject the goods. He is not bound to return the rejected goods. It is sufficient that he intimates the seller that he refuses to accept the goods. This is subject to an agreement to the contrary^{xxvi}. 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 goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for reasonable charge for the care and custody of goods.^{xxvii}

Conversely, if the seller delays delivery and the buyer notwithstanding the delay accept delivery, the seller is liable for any loss occasioned by the delay. According to Section 41(2) of Sale of Goods Act, 1930 unless otherwise agreed, the seller has a duty to afford an opportunity to the buyer to examine the goods to ascertain that they are in conformity with the contract. Sometimes the buyer may have taken the delivery of goods before he had examined

them. Taking delivery of the goods by the buyer does not necessarily imply that he has accepted those goods. He is not deemed to have accepted them unless and until after taking the delivery of goods he had a reasonable opportunity of examining them for the purpose of ascertaining that they are in conformity with the contract^{xxviii}.

The buyer's duty is to pay the price in accordance with the contract. If the price remains unpaid, apart from the right to sue the buyer for the price, the seller has also got certain rights against the goods. In case there is delay in the payment of the price the seller may either treat the contract as repudiated or sue the buyer for damages, depending on whether the time of payment of the price is a condition or a warranty.^{xxix}

VIII. RULE AS TO TITLE

Generally, a person who is the owner of the goods or who is owner's agent may sell the goods. If a person has no title to the goods or otherwise does not have a right to dispose of certain goods, the buyer of such goods has a right to reject them and to claim back the price. "In every contract of sale, unless the circumstances are such as to show a different intention, there is an implied condition on the part of the seller that in the case of sale, he has a right to sell the goods and in the case of an agreement to sell, he will have a right to sell the goods at the time when the property in them is to pass."^{xxx}

In Niblett v. Confectioners' Materials Co.^{xxxi} held that the seller sold to the buyers tins of condensed milk from New York to London. Some of the tins were bearing the labels marked "Nessly Brand" which was the trade mark of a third person, *Nestle Co.* At the instance of *Nestle Co.*, the commissioner of custom detained the goods. The buyers had to remove those labels before taking delivery of those tins of condensed milk. Having suffered a loss, by selling the tins of condensed milk without paper labels at a lower price, the buyers sued the sellers to claim compensation. The court of appeal held that the sellers had made a breach of condition that they had a right to sell the goods and as such they were bound to pay damages for the loss suffered by the buyers.

In the case of Rowland v. Divall,^{xxxii} the plaintiff purchased a motor car from the defendants and used the same for several months. The defendant had no title to the car and therefore, the plaintiff was compelled to give it up to the true owner. The plaintiff sued the defendant to recover back the price which he had already paid. It was held that even though the buyer had used the car for someone, he was entitled to recover back the whole of the price paid by him as consideration had totally failed. *In Venkateswar v. Rampratap*,^{xxxiii} Rajasthan High Court has held that the defendant, after getting document registered in his favor, sold a stolen vehicle to the plaintiff. In the document, the defendant clearly stated that the vehicle in question was his absolute property, free from all the encumbrance and those taxes were paid up to date. There was nothing on record to show that the plaintiff purchaser had any doubt about title or that the plaintiff was aware that was a stolen vehicle. In sued for recovery of consideration amount, the plaintiff was held entitled to get back the amount of consideration from the defendant.

IX. PERFORMANCE OF CONTRACT

The parties are bound to perform their obligations under the contract. The parties are free to provide in their contract as to how the performance of the contract by each party is made. e.g. delivery by installments, payments of price in advance.^{xxxiv} A contract of sale, when wholly executory, is a bilateral contract, the primary promise on the part of the seller being to transfer the property in the goods and that of the buyer to pay for them. However, these are not the only obligations. For instance; The seller may be subject to certain warranties or conditions or; He must permit examination of them, in certain cases or; He must deliver the goods or; The buyer must make such examination at the desires and the law allows or; He must accept delivery. A contract of sale may be no longer executory when the property in the goods has passed to the buyer, that is when it has matured into a sale. Even after a sale, some unperformed promise may continue to exist on each side. For, though the property has passed, the seller may still be subject to the subsidiary obligations to afford reasonable opportunity for inspection of the goods, to deliver the goods, and to fulfill any condition or make good any warranties to which he is subject and on the other side the promises of the buyer may still be unperformed.^{xxxv} In *M.P.Laghu Udhyog Nigam v. Gwalior Steel Sales Branch*,^{xxxvi} the Court has held that the duty

to pay the price can be enforced by auction for the price provided that all the ingredients of sale are pleaded and proved. The seller's duty to deliver the goods can be enforced by specific performance if the property in the goods has passed to the buyer. Otherwise, the only possible remedy is action for breach of contract.

X. AUCTION SALE

An auction sale is a sale by competitive bidding, normally held in public at which prospective purchasers are invited to make successively increasing bids for the property, which is then usually sold to the highest bidder. The seller himself does not have the right to bid at the auction. He cannot also employ any person to bid on his behalf. It is also not proper for the auctioneer knowingly to take a bid from the seller or his agent. Any contravention of these rules renders the sale fraudulent. If the seller makes use of pretended bidding for the purpose of raising the price, the sale is voidable at the option of the buyer.^{xxxvii} In *Payne v Cave*,^{xxxviii} the Court has held that an auction sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until then the bidder has right to retract his bid. Property passes on the fall of the hammer. In *Thornett v Haines*,^{xxxix} The seller may, however, expressly reserve the right to bid at the auction and in that case bidding by him or on his behalf does not render the sale fraudulent or voidable, provided that he employs only one bidder. If he employs more than one, then the intention is not to protect his interest, but to enhance the price and that is fraudulent. The seller has the right to make the sale subject to a reserve or upset price. In such a case he is not bound to accept the highest bid. Even when he has not reserved any price, he may, it is believed, refuse to knock down the goods to the highest bidder.

CONCLUSION

The Judiciary forms an integral part of the organization of the state. Its chief importance lies in the fact that it is specially charged with the duty of preserving and protecting those liberties, privileges and rights which the state itself confers upon its individual citizens. It is the function of the judiciary to study the law, to interpret it and to see that it is correctly applied. Judicial

commands must effectively prevail even against the highest authority of the state of the most wealthy classes of its citizens, it is proved that they are guilty of illegal action. Such a guarantee constitutes one of the best safeguard for the preservation of a democratic society. Every effort has been made by the British administrators to form a highly efficient judiciary. Judiciary proves as a valuable instrument for safeguarding the rights and privileges of the people against encroachment from any quarters.

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