

Unpaid Seller
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- ACCORDING to sec45(1) of sale of goods act, seller of the goods is deemed to be unpaid seller:

(A) WHEN whole of the price has not been tendered or paid, or

(B) WHEN bill of exchange or negotiable instrument has been received as a conditional payment.

- section45(2) says The term seller include any person who is in position of seller ,agent who himself pay
- or is directly responsible for the price Or an agent of the seller to whom bill of
- lading has been endorsed, or a consignor or agent who himself paid or is directly responsible for the price

AND the seller of goods can be deemed to be an unpaid seller:

1. if the price became due but they are not paid. HE Must have an immediate right of action for the price.

2. A BIL of exchange or negotiable instrument was received but was

- RIGHTS OF UNPAID SELLER

- UNPAID Seller has RIGHT:

1. RIGHTS against the goods

2. RIGHTS against the buyer personally

- Rights against the goods: can be discussed under two heads:

1. WHEN property in goods has passed

2. when property in goods has not passed

- When property in goods has passed:

following 3 rights are available to the unpaid seller if property in goods has passed to the buyer;

- (a) RIGHT OF LIEN

- (b) RIGHT OF STOPPAGE IN TRANSIT

- (c) RIGHT OF RESALE

- **RIGHT OF LIEN:**
- Right of lien : is the right to retain the goods until whole of the price of goods is paid or tendered. Right of
- lien can be exercised:
- where goods have been sold without any stipulation to credit.
- WHERE goods have been sold on credit but period of credit has expired.
- Where buyer has become insolvent, even though the period of credit has not yet expired

- RULES regarding lien:
- 1 lien can be exercised if the seller is in possession of goods. unpaid seller can exercise the right of lien even if the documents of title or property in goods have been transferred. if part delivery of goods is made, the seller can exercise the right of lien on the remainder. however if the seller has delivered part of goods so as to show an intention to waive the lien.
- 2. THE UNPAID SELLER can exercise the right of lien only for price and not for any other charges
- 3. right of lien can be exercised by seller only
- 4. UNPAID seller can exercise the right of lien even if he is in possession of goods as bailee or agent

- 5. UNPAID seller cannot exercise the right of lien if he has expressly waived his right of lien.
- 6. UNPAID seller does not lose the right of lien even where unpaid seller has obtained decree for the price of goods
- 2 RIGHT OF STOPPAGE IN TRANSIT:
- Right of stoppage in transit is a right of stopping the goods in transit after the unpaid seller has parted with the goods. If the goods are in transit he has a right to resume the possession of goods as long as they are in the course of transit. This right is available to the unpaid seller only when the buyer becomes insolvent and when the goods are in transit.

- UNPAID seller can exercise the right of lien either-
By taking actual possession of goods.

By giving notice of claim to the carrier or other bailee in possession of goods and notice can be given either to the principal or to the person in possession of goods.

DURATION OF TRANSIT: Goods are deemed to be in course of transit from the time they are delivered to carrier or other bailee for the purpose of transmission to the buyer. the carrier may hold the goods as Buyer's agent, Seller's agent and independently he can exercise the right of stoppage in transit.

- **RIGHT OF RESALE:**

unpaid seller can resell the goods

- if the goods are of perishable nature

if seller give the notice to buyer of his intention to resell and the buyer does not pay within the resonable time

- if on resale there is loss to seller he can recover from the buyer and if he earns profit, it must be handed over to the buyer.

- **RIGHTS OF WITHHOLDING DELIVERY:**

When property in goods has not been passed to the buyer, unpaid seller in addition to other remedies has a right of withholding delivery.

- **RIGHTS OF AN UNPAID SELLER AGAINST THE BUYER PERSONALLY**

SUIT FOR PRICES: Where property has been passed, the seller can sue for the price.

SUIT FOR DAMAGES FOR NON ACCEPTANCE: Where the buyer wrongfully refuses to accept and pay for goods

- Repudiation of the contract on the due date by buyer

The seller can treat the contract as subsisting and wait till delivery or he may treat the contract as rescinded and sue for damages

- suit for interest

where there is a specific agreement between seller and buyer as to interest on the price of the goods from the date, the payment become due ,seller can recover the interest from the buyer.