

TEXTBOOK ON SALE OF GOODS AND HIRE PURCHASE (2010).
By Madhusudhan Saharay. Universal Law Publishing Co. Pvt. Ltd.,
C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110033.
Pp. xxxiv+197. Price Rs. 195/-

SALE HAS been the fundamental element of business since time immemorial. It is a consensual contract which does not prevent parties from making any bargain they desire. The intention of the parties to the contract is the basis for determining as to when the property in goods passes from seller to the buyer. The present Sale of Goods Act, 1930, dealing with sale of movable property, is based on the English Sale of Goods Act, 1893, which in the words of Lord Parker in *Re Parchim*,¹ “is a very successful and correct codification of this branch of the mercantile law.”

The underlying principle behind the Act is the autonomy of parties' will, particularly in matters such as passing of property in goods and risk. In certain matters, the provisions of the Act specifically lay down fixed rules which cannot be rebutted by evidence or the contrary intention of the parties, e.g. provisions relating to the subject-matter of contract, implied conditions as to quality or fitness, sale by sample and description, transfer of title, rules as to delivery, rights of unpaid seller against the goods, suits for breach of contract, etc. There is a set of other subjects in which the provisions of the Act would be applicable subject to the intention of the parties to be ascertained from the terms of the contract. There is yet another set of provisions which are meant only to assist in ascertaining the intention of the parties and the matter has to be decided only on the basis of the intention of the parties. These provisions relate to the passing of property from seller to the buyer. It may thus be observed that the Act restricts freedom of contract in many matters and, in others, the will of the parties is given due consideration as evident from the terms of contract.

The law relating to sale of goods contained in the Sale of Goods Act, 1930 is not exhaustive and the general principles of law of contract as

1. (1918) AC 157 at 160-61.

embodied in the Contract Act, 1872 will be applicable in case of contracts of sale of goods subject to their consistency with the former (section 3). In addition to the application of the general principles of law of contracts, there are other principles also that govern contracts for the sale of goods

The question whether time for payment should be a material factor in a contract of sale of goods is, as a general rule, subject to the intention of the parties as evident from the terms of the contract. However, if it is not so evident, the stipulation of time of payment is not an essence of a contract of sale. The net result of this rule is that in case of non-payment of price by the buyer on the appointed day, the seller is not entitled to treat the contract as repudiated. But in such a case, the seller can withhold the delivery of goods till the price is paid. Another remedy available to him is to re-sell the goods in certain cases if no payment is made within reasonable time. But the application of this rule is confined to the stipulation of time only for payment. In commercial contracts, time is of essence in the matter of delivery of goods. It may be noted that stipulation as to time, being of essence of a contract of sale, can always be waived by the party in whose favour the stipulation was intended to operate. And where it is so waived, the party waiving it is always entitled to get damages. But once the stipulation is waived, reasonable notice to make time being of essence would be necessary. If the party in whose favour it is to operate rescinds the contract because of the breach of the stipulation, there cannot be a waiver.²

The Act contains detailed provisions relating to conditions and warranties, doctrine of *nemo dat quod non habet* (sale by a person other than the owner, sale by joint owner, sale by mercantile agent, sale under voidable contract, sale by seller or buyer in possession after sale; sale in market overt), duties of seller and buyer; rules relating to delivery of goods, un-paid seller's rights (right of lien, right of stoppage in transit); transfer of goods by buyer and seller, suit for price, non-delivery, non-acceptance, damages for breach of conditions and warranties, repudiation of contract, payment of damages and special damages and auction sale.

The book under review³ is divided into two parts. Part I elaborates the provisions of the Sale of Goods Act, 1930, whereas part II is addenda containing the Hire Purchase Act, 1972. Part I is divided into seven

2. For a more detailed discussion, see S.N. Singh, "The Law of Sale of Goods" in R. Khan (ed.), *Law of International Trade Transactions* 55-66 (1973).

3. Madhusudhan Saharay, *The Textbook on Sale of Goods and Hire Purchase* (2010).

chapters according to the scheme of the Act itself. Chapter I of the book is devoted to the scope, object and applicability of the Act which extends to the whole of India except the State of Jammu & Kashmir. However, matters relating to conflict of laws in respect of sale of goods involve issues like contractual aspect of sale of goods, recognition and enforcement of foreign judgments. The author has endeavored to bring a brief and meaningful discussion on such matters including conflict of laws to online transactions and international trade. Modern and up-to-date approach is found when one goes through for sale of goods by credit card, internet payment, “*force majeure*” clause, payment in overseas sales, *etc.* Therefore, various definitions given under section 2 like ‘buyers’, ‘delivery’, ‘document of title to goods’, ‘goods’, ‘mercantile agent’ ‘price’, ‘seller’, *etc.* have been analyzed by the author. Section 3 provides for the applicability of the Indian Contract Act, 1872 to the Sale of Goods Act, 1930.

The distinction between a sale and an agreement to sell is very necessary to determine the rights and liabilities of the parties to the contract. Chapter II of the book under the heading “Formation of the Contract” focuses on the distinction between “sale” and “agreement to sell” and also discusses other formalities like how a contract of sale is made, subject-matter of the contract, *etc.* Minute details regarding goods of perishable nature, stipulations as to time, distinction between condition and warranty, sale by description and sample, *etc.* are the important features rightly placed and analyzed under this head. However, the doctrine of *caveat emptor* requires more attention. The comparison with the English law and, at the some places, with American law, enriches the quality of the chapter.

The effect of the contract of sale of goods is that it paves the way for passing of the property in goods. Chapter III under heading “Effects of Contract” discusses the above principle in the light of American Uniform Sales Act and the English Sale of Goods Act. In all jurisdictions, the controlling factor in determining where the sale takes place is the intention of the parties. According to section 19 of the Indian Sale of Goods Act, 1930, the property in ascertained goods passes when the parties intended it to pass. The chapter has been written with practical approach as the applicability of the provisions is shown with regard to different kinds of mercantile contract “F.O.B.”, “F.O.R.” and “C.I.F.”, *etc.*

Chapter IV deals with the provisions relating to performance of contract in a systematic order, where the duties of seller and buyer are defined. The principle regarding delivery of goods and its various stages and modes has been analyzed in detailed by the author. Chapter V concern

the rights of unpaid seller against the goods. The definition of unpaid seller, their rights including the right to lien and stoppage in transit are adequately addressed by the author.

Chapter VI discusses the remedial matters, *viz.* suits for breach of contract, while chapter VII deals with miscellaneous provisions of the Act like reasonableness of time, auction sale, *etc.* At the end of part I, the English Sale of Goods Act, 1979 is given as addenda, which will definitely help in a comparative study.

As a whole, the book is a qualitative contribution to the literature on sales of goods. The book is abreast with latest foreign and Indian case law. The provisions have been discussed comparatively in the light of English and American legislations on this subject. The legal issues related to latest developments in technology have been handled well in brief. The approach of the author is novel and practical to help the law students and professionals. The exhaustive headings and sub-headings, subject index at the end of the book and table of cases enhance the quality and usefulness of the book. The table of abbreviations would have been useful. The printing, cover and price of the book are attractive.

Finally, the author deserves the credit for bringing out a qualitative work on the law of sale of goods.

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