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CHAPTER - I

INTRODUCTION

Sale of Goods Act, 1930 is an Act to define and amend the law relating to the sale of goods. Section 1, says that it extends to the whole of India including the State of Jammu and Kashmir. It came into force on 1st July, 1930.

Sale of goods is one of the specific forms of contract recognized and regulated by law in India. Sale is a bargain between the buyer and the seller. The Sale of Goods Act, 1930 permits the parties to modify the provisions of the law by their express stipulations. However, in some places this freedom is restricted.

In this act we are describing topics like characteristics of a contract of sale of goods, existence of goods, price, transfer of ownership, essentials of a valid contract, distinction between sale and agreement to sell, meaning and definition of unpaid seller, rights of unpaid seller etc.

OBJECT OF SALE OF GOODS ACT, 1930

The law related to sale of goods was originally contained under section 76 to 123 of Indian Contract Act. But contract act was found to be inadequate to meet all the complexities which were growing in mercantile transactions. Hence Sale of Goods Act was enacted in 1930 for removal of those commercial difficulties.

Sale of Goods Act, 1930 applies only to movable properties other than money and actionable claim because Transfer of Property Act deals with immovable properties, money and actionable claim.

DEFINITIONS

The Sale of Goods Act, 1930 defines many terms which have been frequently used in the Act, such terms are as follows –

Section 2(1): - Buyer and Seller:

‘Buyer’ means a person who buys or agrees to buy goods. On the other hand ‘Seller’ means a person who sells or agrees to sell goods Section 2(13). The two terms, ‘buyer’ and ‘seller’ are complementary and represent the two parties to a contract of sale of goods.

Section 2(2): - "delivery" means voluntary transfer of possession from one person to another;

Section 2(3): - "deliverable state" goods are said to be in a "deliverable state" when they are in such state where the buyer would be bound to take delivery of them under the contract;

Section 2(4): "document of title to goods" includes a bill of lading, dock warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, [multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

There is a difference between 'document showing title' and 'document of title'.

A share certificate is a document showing title but not a document of title. It merely shows that the person named in the share certificate is entitled to the share represented by it, but it does not allow that person to transfer the share mentioned therein only on the basis of endorsement on the back of the certificate. On the other hand document of title is a legal document which proves that someone owns property, goods and he has the right to take control of it. He is allowed to transfer property, goods or share to another person on the basis of document of title.

Section 2(7): "Goods" means every kind of movable property other than actionable claims and money as defined in General Clause Act, 1897 and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. This is a wider definition than contained in the English law, which does not consider 'stock' and 'shares' as goods.

(A Unit of Divine Group of Institutions)

Classification of goods

1. EXISTING GOODS

Existing goods are such goods which are in existence at the time of the contract of sale, i.e., those goods which are owned or possessed by the seller at the time of contract of sale (Section 6). The existing goods may be of following kinds:

A. SPECIFIC GOODS

B. UNACERTAINED GOODS

C. ACERTAINED GOODS

Specific goods means goods identified and agreed upon at the time a contract of sale is made [Section 2(14)].

For example: - 'A' had five cars of different models. He agreed to sell his 'fiat' car to 'B' and 'B' agreed to purchase the same car. In this case, the sale is for specific goods as the car has been identified and agreed at the time of the contract of sale.

Unascertained goods are the goods which are not specifically identified or ascertained at the time of making of the contract. They are indicated or defined only by description or sample.

For example: - If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered. As soon as a particular packet is separated from the lot, it becomes ascertained or specific goods.

Ascertained Goods are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but has been judicially interpreted. In actual practice the term ‘ascertained goods’ is used in the same sense as ‘specific goods.’

For Example: A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection the goods become ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract. It may be noted that before the ascertainment of the goods, the contract was for the sale of unascertained goods.

2. FUTURE GOODS:-

Means goods to be manufactured or produced or acquired by the seller after making the contract of sale [Section 2 (6)].

For Example: - 1,000 quintals of potatoes to be grown on A's field, is not illegal, though the actual sale of future goods is not possible. This is an example of agreement to sell.

3. CONTINGENT GOODS: The acquisition of which by the seller depends upon an uncertain contingency (uncertain event) are called ‘contingent goods’ [Section 6(2)].

For Example: A agrees to sell to B a Picasso painting provided he is able to purchase it from its present owner. This is a contract for the sale of contingent goods.

- **Lottery tickets-** Ordinarily Lottery tickets are movable property and so “goods” under Sale of Goods Act. As per Black's Law Dictionary, ‘lottery’ is defined as ‘a chance for a prize for a price’.

In the Supreme Court case of *H. Anraj v. Government of T.N* (1986) 1 SCC 414.

It was held that a lottery ticket primarily involved two rights: (1) the right to participate in the draw and (2) the right to win the prize, depending on chance. In that case it was held that the former right was a “transfer of a beneficial interest in movable goods” and hence was a sale within the meaning of Art 366 (29-A)(d) of the Constitution whereas the latter right was a chose in action and thus not “goods” for the purpose of levy of sales tax.

However, the ruling of this decision was challenged in a later Supreme Court verdict of *Sunrise Associates v. Government of NCT of Delhi (2006) 5 SCC 603*.

It was held that sale of a lottery ticket amounts to a sale of an actionable claim. The conclusion of the Court was based on the reasoning that there was no difference between right to win and right to participate in a lottery draw, as no purchaser pays the consideration for a right to participate in the draw, instead he pays it for the right to win.

Thus, the classification by *H. Anraj case* of the right to participate as right in present and the right to win as a right in futuro, was incorrect as both these rights are in futuro. As a result the earlier judgment was overruled to that extent and “lottery tickets” were excluded from the definition of “goods”.

- **Shares-** Goods specifically includes stocks and shares.
- **Electricity-** Electricity does not come under the definition of “goods” as per English law. There has been no judicial decision which includes electricity within the definition of ‘goods’ for the purpose of Sale of Goods Act. On the other hand In India the situation is quite different. Calcutta High Court in case of *Associated Power Co. v. R.T. Roy* it was held that electricity comes under the ambit of ‘goods’ under the article 366 (12) of the Constitution as well as S. 2 (7) of the ‘Act’.

Supreme Court while discussing about the definition of ‘goods’ as mentioned in the Madhya Pradesh Sales Tax Act (2 of 1959), found that the definition included all kinds of movable property. The court further held that: The term “movable property” when considered with reference to “goods” as defined for the purposes of sales tax cannot be taken in a narrow sense and merely because electric energy is not tangible or cannot be moved or touched like, for instance, a piece of wood or a book it cannot cease to be movable property when it has all the attributes of such property.....It can be transmitted, transferred, delivered, stored, possessed etc., in the same way as any other movable property.”

➤ **Software programs**

In the case of *TCS v. State of Andhra Pradesh (2005) 1 SCC 308*.

The Supreme Court held that a software program on a CD or a floppy drive would be a “good” for the purposes of levy of sales tax.

One other landmark cases in this regard was the case of *St Albans City and District Council v. International Computers Ltd [1995] FSR 686*. Where Sir Iain Glidewell observed that a hardware device has no use of its own unless it is supplemented with a software and it was only because of necessity that software was contained in a physical medium like a disk or a floppy furthermore, in case the disk is sold and there is a defect with the program, then there would be a prima facie liability against the disk manufacturer.

Thus, he held that the tangible disk and the software program both will be included within the definition of “goods”.

- **Things attached to movable property-** The words “growing crops, grass and things attached to or forming part of land which are agreed to be severed before sale” are intended to show that the things attached to immovable property would be movable property where they are agreed to be severed from the land or immovable property before sale. Thus, “standing timber” on land agreed to be severed from the land before the sale was held to fall under this definition.
- **Interest of partners-** Similarly interest of the partners in the partnership assets consisting of immovable property has been held to be movable property.

Section 2(8):“ **insolvent**” 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;

Section 2(9):“**mercantile agent**” mercantile agent is a person who in the customary course of business has an agent's authority either to sell or consign the goods for the purpose of sale or to buy goods or to raise money on the security of goods.

Section 2(10):“**price**” means the money consideration for a sale of goods;

Section 2(11):“**property**” means the general property in goods, and not merely a special property;

Section 2(12):“**quality of goods**” includes their state or condition;

Section 2(13):“**seller**” defined above with buyer.

Section 2(14):“**specific goods**” means the goods that are specifically identified and agreed upon to be transferred at the time of the formation of the contract are called specific goods.

Section 2(15): expressions used but not defined in this Act and defined in the Indian Contract Act, 1872 (9 of 1872), have the meaning assigned to them in that Act.

SECTION 3, Application of provisions of Act IX of 1872- The un-repealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts for the sale of goods.