

# UNPAID SELLER

## Definition

The seller of goods is deemed to be an unpaid seller:

1. When whole of the price has not been paid or tendered, or
2. When a bill of exchange or other negotiable instrument has been received as a conditional payment and it has been dishonored.

The term seller includes any person who is in the position of a seller, e.g. an agent of the seller. [Sec. 45]

## Features

The following are features of unpaid seller:

1. If he sells goods on cash basis and price is due but not paid, he is an unpaid seller.
2. If he sells goods on credit, he is not an unpaid seller during the period of credit.
3. If the term of credit has expired and the price has not been paid, he is an unpaid seller.
4. If he has been paid some amount and rest remains unpaid, even then he is an unpaid seller.
5. When price was paid in the form of negotiable instrument like cheque or bill of exchange and the same has dishonored, he is an unpaid seller.
6. If he obtains a decree for the price of the goods, he will be an unpaid seller if the decree has not been satisfied.
7. Where the full price was offered by the buyer and the seller refused to accept it, the seller cannot be called an unpaid seller.

## EXAMPLES

- a. A sells goods to B on 5 months credit. A is not an unpaid seller. But if B becomes insolvent after 2 months, A becomes an unpaid seller.
- b. A sells goods to B for Rs. 5,000. B has paid Rs 3,000 and the remaining are to be paid. A is an unpaid seller.
- c. A sells 50 books to B. A gets a cheque for payment. The cheque is dishonored. A is an unpaid seller.
- d. A sells a car to B. B offers the payment. A refuses to accept payment. A is not an unpaid seller.

## **Rights of Unpaid Seller**

An unpaid seller has the following rights:

### **1. Rights against Goods**

An unpaid seller has the following rights:

#### **a. Right of Lien**

The right of lien means the right to retain the possession of goods until the full price is received. An unpaid seller can exercise his right of lien in the following cases: [Sec. 47-49]

- i. When goods are sold on cash
- ii. When goods are sold on credit but the term of credit has expired
- iii. When buyer becomes insolvent, even if the period of credit has not expired
- iv. When goods are in possession of seller as agent or bailee of the buyer
- v. For price and not for other expenses
- vi. Where goods have been delivered to the buyer partially, he can exercise lien on the remainder
- vii. Even if he has obtained a decree from court for price of the goods

The unpaid seller loses his right of lien in the following cases:

- i. When he delivers the goods to a carrier or other bailee for transmission to the buyer.
- ii. When buyer or his agent lawfully obtains possession of the goods.
- iii. When seller waives his right of lien on goods in a contract.
- iv. The right of lien once lost will not restore even if the buyer delivers the goods to the seller for any particular purpose.
- v. When buyer resells the goods to a third person with the consent of the seller.

### **EXAMPLE**

E sold and delivered a refrigerator to J. It was not functioning properly so J delivered it back to E for repairs. It was held that E could not exercise his lien over the refrigerator. (Eduljee vs. John Bros.)

#### **b. Right of Stoppage of Goods in Transit**

The right of stoppage in transit means the right of stopping the goods while they are in transit and to take possession until the price is paid. The unpaid seller can stop the goods in transit in the following cases: [Sec. 50-52]

- i. When buyer becomes insolvent.
- ii. When goods are still in transit.
- iii. When seller has the right of stopping the goods in the contract.

The seller cannot stop the goods in transit in the following cases:

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- i. When buyer or his agent obtains delivery of the goods before the goods have reached at the destination.
  - ii. When buyer or his agent obtains delivery of the goods after the goods have reached at the destination.
  - iii. When buyer requests the carrier to carry the goods to a new destination after the goods have reached at the original destination.
  - iv. When carrier or bailee wrongfully refuses to deliver the goods to the buyer or his agent.
  - v. When some of the goods have been delivered to the buyer or his agent under the circumstances which show that there is an agreement to give up possession of the whole of the goods.
  - vi. When goods have been resold by the buyer with the consent of the seller.

### **EXAMPLE**

A sells 20 bags of cement to B. A delivers the cement to a carrier to carry them to B. Later, A gets news that B has become insolvent. A can stop delivery.

### **c. Right of Resale**

The unpaid seller can resell the goods in following cases: [Sec. 46-54]

- i. When goods are of perishable nature.
- ii. Where seller has the right of resale in a contract if the buyer commits default in making the payment.
- iii. When seller gives a notice to the buyer of his intention to resell and the buyer does not pay within a reasonable time, he can:
  - Recover loss on resale of the goods.
  - Retain any surplus on resale of goods.

If seller resells without giving notice to the buyer, he cannot:

- Recover any loss on resale of the goods.
- Retain any surplus on the resale of the goods.

### **EXAMPLES**

- a. X sells vegetables to Y on credit. Y does not pay. X can resell to any other person.
- b. M sells 100 blankets to N and gives him one week for payment. N does not pay. M can resell those blankets to any other person.

## **2. Rights against Buyer**

The unpaid seller has the following rights against the buyer:

### **a. Price**

When the ownership in goods has passed to the buyer and the buyer refuses to pay the price according to the terms of the contract, the seller can sue

the buyer for price irrespective of the delivery of goods. [Sec. 55]

**EXAMPLE**

A sells the goods to B. B refuses to pay. A can sue for the price.

**b. Damages for Non-acceptance**

When the buyer refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The seller can recover damages only. He cannot recover the full price. [Sec. 56]

**EXAMPLE**

A sells the goods to B. B refuses to take the goods and pay the price. A can sue B to compel him to take the goods.

**c. Special Damages and Interest**

The seller can sue the buyer for special damages when the parties are aware of such damages at the time of contract. The unpaid seller can recover interest at a reasonable rate on the total unpaid price of goods from the time it was due until it is paid. [Sec. 61]

**EXAMPLE**

X sells some goods to Y. Y does not pay the price. X can sue for damages and interest if the parties are aware of such circumstances.