CHAPTER VI SUITS FOR BREACH OF THE CONTRACT

55. Suit for price

56. Damages for non-acceptance:

57. Damages for non-delivery:

58. Specific performance:

59. Remedy for breach of warranty:

60. Repudiation of contract before due date:

61. Interest by way of damages and special damages:

55. Suit for price

55.1 Where property in the goods has passed to the buyer and the buyer wrongfully fails to pay, the seller may sue for the price.

Section 55(1) of the Sale of Goods Act, 1930 gives the unpaid seller a remedy against the buyer personally: an action for the agreed price of the goods. Two conditions must be met. First, property in the goods must have passed to the buyer, which is decided under ss. 18 to 24, so the buyer is already owner and the seller is claiming the price of goods that belong to the buyer. Second, the buyer must have wrongfully neglected or refused to pay according to the terms of the contract, meaning the price has become due and there is no lawful excuse for non-payment, such as the seller's own breach or a valid rejection of the goods. The seller then recovers the contract price itself, not compensation measured by loss, and need not prove damage or resell the goods. Where property has not passed, the seller generally cannot sue for the price, and must instead sue for damages for non-acceptance under s. 56, unless s. 55(2) applies, which allows a suit for the price where it is payable on a fixed day regardless of delivery, even if property has not passed. For example, J sells 100 bags of fertiliser to K for ₹1 lakh, payable within 15 days of delivery. The bags are delivered to K's shed and property passes to K. When 15 days pass and K refuses to pay without any valid reason, J may sue K for the full ₹1 lakh, since property has passed and K has wrongfully refused to pay. But if the fertiliser had never been set aside or delivered, and no fixed payment date applied, property would not have passed, and J's remedy would lie in damages under s. 56 rather than a suit for the price.

55.2 Where the price is payable on a fixed day irrespective of delivery, the seller may sue for the price on the buyer's wrongful failure to pay, even though property in the goods has not passed.

Section 55(2) of the Sale of Goods Act, 1930 is an exception to the ordinary rule in s. 55(1), under which the seller can sue for the price only after property in the goods has passed to the buyer. Normally, if property has not passed, the seller's remedy against a defaulting buyer is a suit for damages for non-acceptance under s. 56, where the seller must prove his actual loss, usually the difference between the contract price and the market price. Section 55(2) allows a suit for the full price itself, without waiting for property to pass and even though the goods have not been appropriated to the contract, if three conditions are met: the contract fixes a definite date for payment; payment on that date is independent of delivery, meaning the buyer's duty to pay is not made conditional on receiving the goods; and the buyer wrongfully neglects or refuses to pay on that date. The reason is that by agreeing to pay on a fixed day regardless of delivery, the buyer has undertaken an independent obligation to pay, and the seller may enforce that promise as it stands. The seller remains bound to deliver the goods on receiving the price. For example, J agrees to sell 200 bags of cement to K, to be supplied from J's stock in November, and the contract states that K will pay ₹80,000 on 1 October whether or not delivery has been made. On 1 October K refuses to pay without any lawful excuse. Although no bags have yet been set aside for K and no property has passed, J can sue K for the full ₹80,000 under s. 55(2). If, however, the contract had said that payment was due on delivery, J could not sue for the price before property passed, and would instead have to claim damages for non-acceptance under s. 56.

56. Damages for non-acceptance

A buyer who wrongfully neglects or refuses to accept and pay for the goods shall be liable to the seller in damages for non-acceptance.

Section 56 of the Sale of Goods Act, 1930 gives the seller a remedy where the buyer breaks the contract by wrongfully failing or refusing to take delivery of the goods and pay for them. The refusal must be wrongful, meaning the buyer has no lawful excuse such as the goods not matching the contract description or quality, or late delivery where time was of the

essence. The remedy is a claim for damages, not for the price. A suit for the price lies under s. 55, generally where property in the goods has passed to the buyer or the price is payable on a fixed day; where property has not passed, the goods remain the seller's, and the seller's loss is compensated through damages under s. 56. The Act does not itself fix how damages are measured, so they are assessed under s. 73 of the Indian Contract Act, 1872: the seller recovers the loss that naturally arises from the breach, ordinarily the difference between the contract price and the market price on the date of the breach, if the market price is lower. The seller must take reasonable steps to reduce the loss, such as reselling the goods, and cannot recover loss that could have been avoided. If the market price equals or exceeds the contract price, the seller may recover only nominal damages, together with any incidental expenses caused by the breach (s. 61 preserves the seller's right to interest and special damages). For example, J agrees to sell 100 bales of cotton to K at ₹10,000 per bale, delivery on 1 March. On that date K wrongfully refuses to accept them. The market price on 1 March is ₹9,000 per bale, and J resells the bales at that price. J can sue K for damages of ₹1,00,000 (₹1,000 × 100 bales), plus reasonable expenses such as storage and resale costs. Had the market price risen to ₹11,000, J would have suffered no loss on resale and would be entitled only to nominal damages and any incidental expenses.

57. Damages for non-delivery

A seller who wrongfully neglects or refuses to deliver the goods shall be liable to the buyer in damages for non-delivery.

Section 57 of the Sale of Goods Act, 1930 gives the buyer a right to sue for damages when the seller, without lawful excuse, fails or refuses to deliver the goods as the contract requires. The breach must be "wrongful", so the seller is not liable where non-delivery is justified, for example where the buyer has not paid or tendered the price when payment and delivery are concurrent (s. 32), or where the seller exercises a lawful lien (s. 47). The right exists whether or not property in the goods has passed to the buyer. The Act does not itself fix the measure of damages; it is governed by s. 73 of the Indian Contract Act, 1872, which allows compensation for loss arising naturally in the usual course of things from the breach, or which the parties knew, when contracting, to be likely to result from it, but not for

remote or indirect loss. Where there is an available market for the goods, damages are ordinarily the difference between the contract price and the market price at the time and place fixed for delivery, since the buyer can buy substitute goods in the market. If the market price is equal to or lower than the contract price, the buyer suffers no loss on price and may recover only nominal damages, together with any other proven loss. The buyer must also take reasonable steps to reduce the loss. Section 57 operates alongside other remedies: the buyer may recover any price already paid (s. 61), claim interest and special damages (s. 61), or, in suitable cases involving specific or ascertained goods, seek specific performance (s. 58). For example, J agrees to buy 100 tonnes of steel from K at ₹50,000 per tonne, deliverable on 1 March. On that date K refuses to deliver, and the market price has risen to ₹55,000 per tonne. J may sue K for ₹5 lakh, the difference of ₹5,000 per tonne on 100 tonnes, which is what J must pay extra to buy the steel elsewhere, and may also recover any advance paid. If, however, the market price on 1 March had fallen to ₹48,000 per tonne, J would have suffered no loss on price and could recover only nominal damages, unless J proved some other loss that K could have foreseen.

58. Specific performance

The Court may, on the buyer's application, order specific delivery of specific or ascertained goods instead of awarding damages.

Section 58 of the Sale of Goods Act, 1930 gives the buyer a remedy beyond damages where the seller breaches a contract to deliver specific goods (identified when the contract is made) or ascertained goods (identified afterwards). In a suit for such a breach, the Court may, on the plaintiff's application, decree that the contract be performed specifically, meaning the seller must deliver the very goods contracted for and cannot keep them by merely paying damages. The decree may be unconditional or subject to terms the Court considers just, such as payment of the balance price by the buyer or compensation for delay, and the plaintiff may apply for it at any stage before the decree is passed. The remedy is not available for unascertained goods, since there are no identified goods whose delivery can be ordered. It operates subject to Chapter II of the Specific Relief Act; the reference to the repealed 1877 Act is now read as a reference to the corresponding provisions of the Specific Relief Act, 1963 (General Clauses

Act, 1897, s. 8), which, among other things, list contracts that cannot be specifically enforced (s. 14). Historically, courts granted specific performance of contracts for goods mainly where damages would not be an adequate remedy, as with goods that are unique or not readily available in the market, since for ordinary goods the buyer could simply buy substitutes and claim the difference in price. For example, J agrees to buy a particular antique Mughal-era sword from K for ₹10 lakh, but K later refuses to deliver it because another collector has offered more. Since the sword is specific and cannot be replaced by an equivalent from the market, J may sue and ask the Court to direct K to deliver that very sword on J paying the agreed price, rather than accepting money compensation. By contrast, if the contract were for 100 bags of ordinary cement, the Court would usually leave J to his remedy in damages.

59. Remedy for breach of warranty

59.1 A buyer shall not reject the goods for breach of warranty, but may claim reduction or extinction of the price, or sue the seller for damages.

Section 59(1) of the Sale of Goods Act, 1930 sets out the buyer's remedies where the seller breaches a warranty, that is, a stipulation collateral to the main purpose of the contract, whose breach gives a right to damages but not a right to reject the goods and treat the contract as repudiated (s. 12(3)). The same remedies apply where the seller has broken a condition (a stipulation essential to the main purpose of the contract, s. 12(2)) but the buyer chooses to treat it as a breach of warranty, or is compelled to do so, for example because he has accepted the goods or part of them in a contract that is not severable (s. 13). In any of these cases the buyer must keep the goods; he cannot return them merely on account of the breach. He has two remedies instead. He may set up the breach as a defence when the seller demands the price, asking that the price be reduced, or wiped out entirely if the goods are worthless as a result. Alternatively, he may bring his own suit against the seller for damages. Under s. 59(2), the fact that the buyer has used the breach to reduce the price does not stop him from suing for any further damage he has suffered. For example, J buys a new generator from K for ₹1 lakh on credit, and K gives a warranty that it will consume no more than 2 litres of diesel per hour. After use, J finds that it consumes 3 litres per hour. Since this is a breach of warranty, J cannot return the generator. But when K

sues for the price, J may claim a reduction to reflect the lower value of the machine, say ₹20,000, and pay ₹80,000; or, if J has already paid in full, he may sue K for damages of that amount. If the excess fuel consumption also caused J further proven loss, J may still sue for it even after obtaining the price reduction.

59.2 A buyer who has used a breach of warranty to reduce or extinguish the price may still sue the seller for any further damage caused by the same breach.

Section 59(2) of the Sale of Goods Act, 1930 builds on s. 59(1), which gives a buyer two remedies for breach of warranty (or for a breach of condition that the buyer elects, or is compelled, to treat as a breach of warranty). The buyer cannot reject the goods, but may either set up the breach against the seller to reduce or wipe out the price, or sue the seller for damages. Section 59(2) makes clear that these remedies are not mutually exclusive: using the breach as a defence to lower the price does not bar a later suit on the same breach, provided the buyer has suffered loss beyond what the price reduction covered. The provision thus ensures the buyer is fully compensated. Its limit is that the buyer cannot recover twice for the same loss; the suit lies only for the further damage not already accounted for through the price reduction. For example, J buys a water pump from K for ₹30,000, and K warrants that it can run continuously for eight hours. The pump fails after two hours each day, and its actual value with this defect is only ₹20,000. When K sues for the price, J sets up the breach and the price is reduced by ₹10,000. Later, J shows that because the pump failed, his crop could not be irrigated in time and he lost ₹25,000 worth of produce. Under s. 59(2), J may sue K for that ₹25,000 of further damage, even though he has already relied on the same breach to reduce the price.

60. Repudiation of contract before due date

On anticipatory repudiation of a contract of sale, the aggrieved party may either keep the contract alive until the delivery date or treat it as ended and sue for damages at once.

Section 60 of the Sale of Goods Act, 1930 deals with anticipatory breach, which occurs when one party, before the date fixed for delivery, clearly refuses to perform or disables himself from performing. The innocent party,

whether buyer or seller, then has a choice. First, he may treat the contract as subsisting and wait until the delivery date, giving the other party a chance to change his mind and perform; but the contract then remains alive for both sides, so if meanwhile an event such as a government ban frustrates it, the repudiating party is discharged and the innocent party loses his claim for damages. Second, he may accept the repudiation, treat the contract as rescinded, and sue for damages immediately, without waiting for the delivery date. Once he makes this election he is himself released from further performance, and he must take reasonable steps to mitigate his loss. The provision parallels the general rule in s. 39 of the Indian Contract Act, 1872. For example, on 1 January, S agrees to sell 100 tonnes of steel to B for delivery on 1 June. On 1 March, S writes to B that he will not supply the steel. B may wait until 1 June, and if S still fails to deliver, sue for breach then; or B may accept the refusal at once, buy steel elsewhere, and sue S immediately for damages, generally the difference between the contract price and the market price, subject to his duty to mitigate.

61. Interest by way of damages and special damages

61.1 The buyer or the seller may recover interest or special damages wherever the law allows, and may recover money paid where the consideration for it has failed.

Section 61(1) of the Sale of Goods Act, 1930 is a saving clause. The Act sets out specific remedies for breach of a contract of sale, such as the seller's suit for price (s. 55) and damages for non-acceptance (s. 56), and the buyer's damages for non-delivery (s. 57) and for breach of warranty (s. 59). Section 61(1) makes clear that these remedies are not exhaustive and do not take away three further rights available under the general law. First, the right to interest, where it is payable by agreement, by trade usage or under a statute, such as the Interest Act, 1978. Second, the right to special damages, meaning compensation for loss that does not arise in the ordinary course from the breach but results from special circumstances that both parties knew of when they made the contract, as recognised by s. 73 of the Indian Contract Act, 1872. Third, the right to recover money paid where the consideration for it has failed, that is, where the party paying received nothing of what was bargained for, as when the price is paid but the goods are never delivered. For example, J, a caterer, orders a commercial oven

from K for ₹3 lakh, pays in advance, and tells K that he needs it by 1 December for a wedding contract worth ₹5 lakh. K never delivers. Since the consideration has wholly failed, J can recover the ₹3 lakh paid, with interest where the law allows it. And because K knew of the wedding contract when the sale was agreed, J may also claim as special damages the profit he lost on that contract, in addition to the ordinary damages for non-delivery under s. 57.

61.2 Unless the contract provides otherwise, the court may award interest on the price at such rate as it thinks fit: to the seller from the date of tender of the goods or the date the price was payable, and to the buyer from the date of payment.

Section 61(2) of the Sale of Goods Act, 1930 empowers the court to award interest on the price, so that a party kept out of money that should have been paid, or retained, is compensated for the delay. It works in two situations. Under clause (a), where the seller sues the buyer for the price (a suit that lies under s. 55 when property has passed or the price is payable on a fixed day), the court may award interest from the date the seller tendered the goods or from the date on which the price became payable. Under clause (b), where the buyer has paid the price and the seller has broken the contract, for instance by failing to deliver, the buyer may sue for refund, and the court may award interest from the date on which the buyer made the payment. The power is discretionary: the word "may" means the court decides whether to award interest at all, and it fixes the rate it considers fair. The provision applies only "in the absence of a contract to the contrary", so if the parties have agreed on interest, such as a fixed rate for late payment, or have excluded it, their agreement governs. Section 61(1) further preserves any right to interest or special damages available under other law. For example, J supplies 200 chairs to K on 1 January, with the price of ₹4 lakh payable on 31 January, but K does not pay. If J sues for the price, the court may award him ₹4 lakh with interest at a rate it considers fit, running from 31 January (or from 1 January, the date of tender). Conversely, if K had paid ₹4 lakh in advance on 1 January and J had failed to deliver the chairs, K could sue for refund, and the court may award interest on ₹4 lakh from 1 January, the date of payment. But if their contract fixed interest on late payment at 12 per cent a year, that agreed rate would apply instead of one chosen by the court.