

SALE

OF

GOODS ACT

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above situation.

A. Rules as to delivery.—Section 36 of the Sale of Goods Act provides the rules as to delivery. This section is based on Section 29 of the English Sale of Goods Act.

Delivery of Goods

1. Delivery at stipulated time and place.—Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract express or implied, between the parties. Apart from any such contract goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or if not then in existence at the place at which they are manufactured or produced. [Section 36(1), Sale of Goods Act]

The first part of this rule deals incidentally with the mode of delivery, and the second part with the place of delivery. The section lays down a specific rule as to the place of delivery but does not provide the mode of delivery. The mode of delivery, that is, whether the seller is to send the goods to the buyer, or the buyer is to take possession of them depends, says rule (2) on the contract between the parties.

2. Delivery within a reasonable time.—Where under the contract of sale the seller is bound to send the goods to buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time. [Section 36(II), Sale of Goods Act]

Sub-section (ii) states that when the seller is bound to send the goods to the buyer he must send them within a reasonable time.

What is a reasonable time is a question of fact. But rule in Section 36(2) will not apply where a time for delivery of goods has been fixed under the contract.

3. Goods, in possession of third party and acknowledgement by the buyer.—Where the goods, at time of sale are in the possession of a third person, there is no delivery by the seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf : [Section 36(III), Sale of Goods Act]

Provided that nothing in this section shall affect the operation of the issue or transfer of any document or title to goods.

Illustration.—A sells to B 50 Maunds of rice in the possession of C, a warehouseman. A hands over to B his (A's) order issued to C to transfer the rice sold to B. C assents to the order and transfers the rice in his books to B. This is a delivery of the goods to B.

4. Demand or tender of delivery at a reasonable form.—Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact. [Section 36(4), Sale of Goods Act]

5. Incidental expense and seller.—Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller. [Section 36(5), Sale of Goods Act].

Problem.—Section 38 (1) of the Sale of Goods Act lays down that unless otherwise agreed, the buyer of goods is not bound to accept delivery of the goods by instalments. This is based on the principle that neither seller nor buyer can claim to make or demand delivery of less than the full quantity and neither can insist that the delivery should be made by instalments.

Sad Sook Kothari v. Chaitram Rambilash, (1925) 29 C. W.N. 808.

In this case A has the right to refuse to take delivery of only one cot and wait four weeks for the other. The order of A was to supply

two cots and the necessary equipment at one and the same time and not in instalments. B therefore, cannot force A to take delivery in the manner not decided at the time of the contract.

A cannot, however, refuse to abide by the contract, because there was no stipulation about the time by which supply was to be made. The contract was silent on this point and therefore, it will not be against the contract to allow four weeks time to B for supply of the materials. As A refused to abide by the contract, B may treat contract as rescinded and sue for damages for the breach of the contract.