

<b>Course Name</b>	<b>LL.B 2<sup>nd</sup> sem</b>
<b>Subject</b>	<b>Special Contract Law</b>
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<b>Concept</b>	<b>Suit of Breach of Contract</b>

## **Suit for Breach of Contract (sections 55-61)**

### **Section 55 - Suit for price**

(1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

#### **Example**

1. Sale of butter to be shipped to London and to be paid for by bill at two months from the date of landing. Goods in conformity with the contract are dispatched, but the ship is lost. The buyer is liable to pay the price, for the property in the goods passed to him on shipment; and the term relating to payment merely indicated the time at which payment is to be made, and the arrival of the goods is not a condition precedent to the liability to pay.
2. Sale of a quantity of iron, to be delivered between 3 March and 30 April, if the buyer so required, the price to be paid in any event on the latter date. By 30 April, a portion only had been delivered, as the buyer had not required delivery of more. The seller may recover the whole price, and he need not show that he has appropriated to the contract any specific iron to complete the delivery of the remainder. *Dunlop v Grote* (1845) 80 RR 834.
3. Sale of goods FOB, the seller sends them to the port of shipment, but the buyer does not nominate an effective ship, and the goods in consequence remain at the port. The seller cannot sue for the price, but can only maintain an action for damages. *Colley v Overseas Exporters* [1921] 3 KB 302

### **Section -56 Damages for non-acceptance**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

In the case of *Suresh Kumar Rajendra Kumar v K Assan Koya & sons[iv]*, the plaintiff sold, through the commission agents, the goods and claimed compensation from the buyer who had rejected them. While doing so the plaintiff had taken all the measures necessary to sell the goods urgently in the ordinary course of business. In the absence of any records to show that the sale was conducted in an improper manner, it was held by the court that the plaintiff was entitled to claim the difference between the price at which the rice was supposed to be sold to the defendants, and the price at which it was finally sold.

Where the goods are deliverable by instalments and the buyer has to accept one or the other or all the instalments, the difference in prices is to be reckoned with on the day that a particular instalment was to be delivered[v]. Where the military authorities refused to accept further supplies of cots in breach of their contract, the J&K High court allowed Rs. 4 per cot as the damages to the supplies as the profit which the supplier would have earned under his contract of supply.

It has been seen that the seller has various remedies against both the goods and the buyer personally, and in many cases where those remedies exist he still has the option of availing himself of the remedy declared by this section[vii]; but where the property has not passed and there is nothing in the contract which enables him to resell the goods and charge the buyer with the difference between the contract price, and the price realized on the resale, or to sue for the price irrespective of delivery, or the passing of the property, the remedy provided by this section is the only remedy by which he can recover pecuniary compensation for the buyer's breach of contract.

### **Section -57 Damages for non-delivery**

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Blackburn Bobbin Co Ltd v TW Allen & Sons Ltd [1918] 1 KB 540

In the case of pre-payment, the date for ascertaining the measure of damages must be the date of the breach, though it might be said in such a case, the buyer has not got the money in his hands and cannot therefore go into the market and buy; and in conformity with this idea it has been ruled at *nisi prius* that the date of the trial may be taken. However a more rational view is that even in this case the date of breach should be taken to calculate the difference between the contract price and the sale price, and the buyer can recover this amount, along with an interest.

Sheikh Mohammad Habib Ullah v Bird & Co (1921) 37 TLR 405

In a case where the seller failed to deliver Finnish timber, and the nearest substitute which the buyer could obtain was English timber which involved more expenditure, in cutting and also more wastage, it was held that the buyer was entitled to claim the extra cost since the buyer had acted reasonably in mitigating his claim

### **Section -58 Specific performance**

Subject to the provisions of Chapter II of the Specific Relief Act, 1877 (1 of 1877), in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

### **Section-59 Remedy for breach of warranty**

(1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

- (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
- (b) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

### **Section -60 Repudiation of contract before due date**

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach

In *Hochster v De la Tour*[xxii] it was held that where one of the parties repudiates the contract before the time of the performance under the contract, the other party becomes entitled to sue for damages for the breach before the date of performance of contract was due. In this case, the defendant had employed the services of the plaintiff, to go with him on tour. The service of the plaintiff was to begin from the 1<sup>st</sup> June, but on 11<sup>th</sup> May the defendant informed him that his services were no longer required. The plaintiff filed the suit to recover damages for breach of contract before the arrival of the time of performance of the contract.