



SALE AND HIRE-PURCHASE AGREEMENTS: DIFFERENCES AND INCONSISTENCIES

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Chapter I - Introduction

The contract law plays an important role in our daily lives, which subsequently has given rise to a number of kinds of contracts. The sale and hire purchase agreements are two such examples. Let's first understand the meaning of sale and agreement to sale. The essence of the sale is the transition from the seller to the customer of the general property of the commodities for a price. If the property of the commodities is transferred from the seller to the buyer under a sales contract, such that the seller ceases to be the owner of the goods and the buyer becomes the owner, the sales contract is considered a sale. However, if the transfer of the property of the goods is to take place at a future period or prior to the fulfilment of any condition subsequently, the arrangement is referred to as the sale agreement. When the time expires or the terms are met, an agreement to sell becomes a sale. Hire purchase agreement implies an agreement in which the goods are let on hire and in which the hirer has the option of purchasing them in compliance with the terms of the agreement which requires an agreement in which the owner of the goods has to deliver the goods to the person, provided that the person pays the negotiated amount in periodic instalments, the property in the goods, and the property in the goods. Although their result is similar, that is, sale of goods, yet these agreements differ from each

other in a multitude of ways. In a sale agreement, after the payment, the goods, along with the ownership, are transferred to the buyer by the seller. Whereas, in a hire-purchase agreement, the hire purchaser pays instalment and generally an interest for the goods, and only after the payment of all the instalments, a hire-purchaser can acquire the goods ownership.

In the case of *Damodar Valley Corporation v. State of Bihar*¹, the Supreme Court laid down certain tests to determine whether an agreement is of hire-purchase instead of sale-

1. Whether the hire-purchaser has the right to return goods at any point of time before the performance of the contract?
2. Whether there is a binding obligation upon him to return the goods?

The Supreme Court held that if there is such a right and no binding obligation, then there is no contract of sale but rather a hire-purchase agreement.

The Sale of Goods Act, 1930 is originated from the Indian Contract Act, 1972. The main motive was to enhance the buyer-seller transactions, where the seller transfers the ownership to the buyer for consideration. On the other hand, Hire-Purchase agreement is a common law product, introduced by the British in India. Earlier such agreements were governed only by the precedents and the English law, but today India has been through considerable developments in this field of law.

Chapter II - Nature and Scope

The research paper follows qualitative research methodology. The paper is a

¹ *Damodar Valley Corporation v. State of Bihar*, AIR 1960 Mad 328



conceptual evaluation and hence is not specific to any industry.

The gist of the paper can be very well explained with stating the following two questions that the paper aims to answer:

- a. Analysing the similarities and contrasting features of sale agreement and hire-purchase agreement.

The first question aims to identify the legal and technical differences between agreements of sale and hire-purchase, which is further substantiated by precedents.

- b. Finding inconsistencies within each agreement in question and analysing the impact of said inconsistencies.

The second question pertains to identification of the inconsistencies which are observed while practically applying the provisions which govern the sales agreements and hire purchase agreements respectively.

The acts referred to for this paper are Sale of Goods Act 1930 and Hire-Purchase Act 1972.

Chapter III - Critical Analysis

Addressing the first issue in our hand, the basic contractual essentials are to be met by both sale and hire-purchase agreements, and yet there are many legal and technical points which differentiate a sale agreement with a hire-purchase agreement.

Governed by the Sale of Goods Act, 1930, in a sale agreement, after the payment, i.e. the consideration, both the goods and its ownership are transferred to the buyer by the seller. On the other hand, in a hire-purchase agreement, governed by the Hire Purchase Act, 1972, the hire purchaser pays instalment and generally an interest for the goods;

making up the entire consideration, and only when the instalments are fully paid can a hire-purchaser acquire its ownership as well. It is to be noted that a sales agreement may be written or oral, but a hire-purchase agreement is always in writing.

In the case of *Helby v. Mathews*², since the agreement allowed to do so, the purchase-hirer had the option to either buy or return the hired goods. Whereas, in the case of *Lee v. Butler*³, the purchase hirer had to buy the goods, at the end of the agreement, since the agreement did not allow return of goods. Hence, in a hire-purchase agreement, the question of return or purchase is determined by the agreement. And clearly, in the sales agreement, there is no such condition, as it leads to complete ownership.

An example of hire-purchase agreement would be Mrs. Y, who is short of funds, hiring technological equipment from a company. A written statement consisting of instalment, termination and purchase or return details would transfer the possession, and not ownership, to her name. Hence Mrs. Y is not entitled to sell or rent the equipment until making the final instalment.

However, if, Mr. X makes payment to a vendor for a photocopy machine, then he enters into a sales agreement. He may even re-sell it, as he has acquired complete ownership over it.

Before the payment of the complete instalments, the hire purchaser is just like a bailee and all the instalments made by him are the hire-charges, whereas, in a sales agreement, as soon as the amount is paid, the buyer becomes the owner. So, the transfer of

² *Helby v. Mathews*, [1895] AC 471

³ *Lee v. Butler*, [1893] 2 QB 318.



goods takes place immediately in a sale agreement whereas in a hire purchase agreement, the transfer only takes place after the completion of the final instalment.

In sales agreement, for default by the buyer, the seller can only take up legal action against the buyer. But, for a similar situation in a hire-purchase agreement, the hire vendor has the power to re-possess the goods.

In the case of a sales agreement, the buyer cannot terminate the contract and he have the obligation to pay for the goods. On the other hand, in case of a hire-purchase agreement, the hirer can by giving a prior notice terminate the agreement by returning the goods. In such a case he no longer has to pay the instalments. The owner can also terminate the hire purchase agreement by giving out a notice of termination by reason of hirer's breach of the terms and conditions.

With respect to the repairing, in a sales agreement, once the goods are sold, the buyer has to bear the repair expenses. Whereas, in a hire purchase agreement, the hire vendor has to bear all repair related expenses.

Good title of the goods cannot be transferred by the hire purchaser to a third party, because the hire purchaser holds mere possession of the goods and not the ownership. Contrastingly, in a sales contract, the buyer can transfer good title of the goods to a third party because he holds complete ownership of the said goods. For the similar reasons mentioned above, the buyer can resell the

goods whereas on the contrary a hire-purchaser has no power to resell.

The seller has to bear the loss in case the buyer becomes insolvent. As opposed, if the hire purchaser becomes insolvent, the hire vendor will not have to bear any loss, because in such a case he can just re-possess his goods.

In a sales contract, a sales tax is imposed whereas in a hire-purchase sales tax is not imposed until the agreement eventually forms into a sale⁴, that is, when the hire-purchaser buys the goods after the payment of complete instalments.

These are some of the major differences observed between a sale agreement and a hire-purchase agreement.

For determining the second issue in-hand, there exist a few inconsistencies with the essentials of the sale and hire purchase agreements.

Section 11 of the Sale of Goods Act, 1930, explicitly exclude time as an essence of the sale agreement, unless stated otherwise. The question of repudiation of contract by the seller or the buyer in cases of delay is usually concluded by the conduct of the parties. In the case of Hind Techno Machines (P) Ltd. v. Jaipur Wire Industries (P) Ltd⁵, the buyer could not sue for delay as he continued to accept the purchased goods. Similarly, in Burn & Co. Ltd. v. Morvi State⁶, the seller lost the right to repudiate the contract when he, despite the buyer defaulting his payments,

⁴ K.L. Johar & Co. vs. Dy. Commercial Tax Officer, 1965 AIR 1082

⁵ Hind Techno Machines (P) Ltd. v. Jaipur Wire Industries (P) Ltd, (1988) 2 Raj LR 56

⁶ Burn & Co. Ltd. v. Morvi State, (1926) 30 Cal WN 145.



supplied his wagons. A grey area arises when this method is not possible to rule on the issue.

Another inconsistency arises with respect to assessment of damages. In case of *Union of India v. A.L. Rallia Ram*⁷, where the arbitration tribunal provided damages to the respondent under three heads, broadly categorised into loss incurred, incidental charges, and interest on sum refunded, the Supreme Court's ruling did not sustain the second head. The reasoning stated that on delivery of goods the ownership was transferred to the respondent and the incidental charges and interest could not be charged for his own goods. The reasoning for not sustaining the third head was the absence of such clause in the contract.

On reading the Hire and Purchase 1972, an inconsistency to note is that a hirer is not obligated to purchase the goods but only has an option to do so. As concluded in *Dalpat Rai v. Manohar Lal & Sons*⁸, it is upto the courts to decide on the matter.

The said act, in case of default, provides an arrangement for recovery of amount the hirer is liable to pay. However, it is silent on an arrangement for non-payment of interest amount by the hirer.

Chapter IV - Impact of the Inconsistencies

In contrary to the act, over precedents, it has been found that time, being the essence of a sale agreement, depends on circumstances of the case. In *Orissa Textile Mills v. Ganesh Das*⁹, it was recognised that time of delivery

is a significant feature to protect the buyer from any harm caused due to delay, despite if the specifications of delivery time have not been expressly mentioned in the contract. Hence, we see the court directly deviating from the words of the provision. With respect to the damages for breach, the SC's approach has put the buyers in a position of facing losses due to incidental charges, despite receiving compensation for loss incurred.

With respect to the Hire and purchase agreements, it is observed that the provisions bring the seller to a certain disadvantageous situation, where he has no remedy but to approach the courts, which in turn leads to more cost expenditure. This, thereby, on a practical note, makes the remedy unapproachable to the seller. A Similar situation arises with regards to the non-payment of interest by the hirer, as the silence of the act provides the seller with no option but to approach the courts.

Chapter V - Suggestions and Conclusions

To sum up everything that has been stated, it has been established that sale and hire-purchase agreements are closely related. There are a few inconsistencies observed with the provisions governing the agreements in question. For the reasons discussed above, the authors feel a need for a more consumer centric approach with respect to damages in a sales agreement. In addition, an amendment to include the delivery time as an essential feature without any expressed statement in the agreement is desired.

⁷ *Union of India v. A.L. Rallia Ram*, IR 1963 SC 1685.

⁸ *Dalpat Rai v. Manohar Lal & Sons*, AIR 1974 Raj 61

⁹ *Orissa Textile Mills v. Ganesh Das*, AIR 1961 Pat 107



As for the hire-purchase agreements, it is strongly suggested to bring the seller and hirer on equal footing with regards to return of goods, and provide for arrangements for non-payment of interests and other incidental charges by the hirer to the seller in case of defaults.

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