

“Bifold Role of Hire Purchase Agreement Concerning With Law and Economy”

*Kavita Sharma,
B.A.LLB
Indore Institute of Law*

Abstract

Hire purchase agreements are special type of agreements in contract. It is basically governed under Hire Purchase Act, 1972. According to Sec.2(c), Hire Purchase Act,1972 hire purchase agreement means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of agreement and includes agreement under which the possession of the goods is delivered by the owner thereof to the person on the condition that such person pays the agreed amount in periodical installments, the property in the goods is to pass to such person on payment of the last of such installments; and such person has a right to terminate the agreement before the property so passes. There are many rights and obligations of hirer and owner. Often sales of goods, installment payment and hire purchase agreement are understood to be same but through this paper we will come to know that whether they are actually same or not. Hire purchase agreements are not only part of contract law but they play important role in business which is directly related to economy. India is a developing economy where people have limited resources. Industrial sector of India is also not much developed. Small scale businessmen are not able to provide quality products due to lack of funds. Hire purchase agreement gave them a chance to have these assets with them by hiring. If industrial sector of the country prosper then obviously economy will also grow. This paper also covers loopholes of hire purchase agreement and its solutions.

KEYWORDS

Hire Purchase Agreement, hirer, owner, economy, installment payment, sales of goods

INTRODUCTION

The ambit of contract law is very vast. It covers different kind of agreements and contracts. One such interesting type of agreement is hire purchase agreement. It is basically governed under Hire Purchase Act, 1972. According to Sec.2(c), Hire Purchase Act,1972 hire purchase agreement means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of agreement and includes agreement under which-

- The possession of the goods is delivered by the owner thereof to the person on the condition that such person pays the agreed amount in periodical installments

- The property in the goods is to pass to such person on payment of the last of such installments; and
- Such person has a right to terminate the agreement before the property so passes¹

Basically the concept of hire and purchase emerged in 19th century when at the time of industrial development. This was first introduced by piano maker in 1846. Singer Manufacturing Company was the first one to let its customer take sewing machine on hire at the option of purchase. In this way many other companies started coming up with hire and purchase agreement in context of wagons, durable goods etc. After First World War, large scale financing companies came into existence and instead of directly selling goods to consumer, goods were bought by hiring company and then were let on hire to the consumers.²

A peculiar growth of this concept was seen in India after Second World War. It became sort of popular in 1960 but could not take deep roots. The landmark in this field was the entry of State Agro Industries Corporation. Basically we needed a new act that is hire and purchase act to:-

- Protect the rights of hirer
- To clearly lay down the essentials for such kind of agreement
- To encourage people having less resources work by this form of agreement so that economy can also prosper

Essentials of hire and purchase agreement

- **Hirer**

According to section 2 (e) of Hire Purchase Act 1972, hirer is the person who obtains goods from an owner under a hire purchase agreement, and includes person to whom hirer's rights or liabilities under the agreement have been passed or assigned by the law;

- **Owner**

According to section 2 (f) of Hire Purchase Act 1972 owner means the person who lets or has let, delivers or has delivered possession of goods, to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law;

- **Letting goods on hire**

Under hire and purchase agreement goods are hired by hirer at installments and he has option either to buy it at payment of last installment or terminate the agreement and return the goods.

- **Payment of hire purchase price by the hirer**

¹ The Hire Purchase Act, 1972*(26 of 1972),1, 2011

² Ibid pg-1

Hire purchase price means total price payable by hirer in order to complete purchase of or acquisition of property in goods to which the agreement relates and includes any sum payable by way of deposit or other initial payment whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by payment of money or transfer of delivery of goods or by any other means; but does not include any sum payable as penalty or compensation for breach of agreement.

Rights of the Hirer

- **Right to purchase at any time with rebate**

The hirer has the right to purchase goods any time he wants before the expiration of hire purchase agreement. When this occurs the hirer get some rebate as intrest elemnt of hire purchase has been reduced.

- **Right to terminate agreement at any time**

The hirer can terminate agreement anytime before final payment by giving a prior notice in writing at least 14 days before termination. He also has to pay owner the amount which already accrued and also the amount which may have been mentioned in the agreement as payable on such termination of the agreement.

- **Right of the hirer to appropriate payments in respect of two or more agreements**

Where a hirer has more than one hire-purchase agreement with the same owner, he has a right to appropriate his payment in respect of the hire-purchase agreements. Where he fails to appropriate his payment, the HPA normal provides for how his payment should be appropriate.

- **Assignment and transmission of hirer's right**

It's the right given to hirer that he can assign his rights, title and interest in hire purchase agreement with the consent of the owner of the goods and without the owner of goods if owner unnecessarily withholds his consent.³

Obligations on the part of hirer

- **Not to make unauthorized use of the goods**

It's the duty to the hirer to use the goods carefully and according to the terms of the agreement. Any damage caused to the goods due to fault of hirer will make him liable for compensation towards the owner.

³ DR. R.K. Bangia , LAW OF CONTRACT-II WITH INDIAN PARTNERSHIP ACT AND SALES OF GOODS ACT,494(7th ed;2017)

- **Give information to the owner about the where about of goods**

The hirer is obligated to give information about the where about of the goods to the owner which is in his possession within the 14 days of the notice sent by the owner.

- **Hirer's right in case of seizure of goods**

The hirer has the right to recover in case of seizure of goods by the owner, if any, by which hire purchase price fall short of aggregate of following amounts namely:-

- Amount paid up to the date of seizure in respect of hire purchase
- Value of goods on date of seizure less expenses incurred by owner on maintenance, repair, seizing etc.

If the owner fails to pay the amount within 30 days from the date of notice by the hirer then it will have to pay interest at the rate of 12% p.a. from date of expiry to said period of 30 days.⁴

Rights of the owner

- **Right to terminate the agreement**

The owner has the right to terminate agreement if default is made by hirer in respect of payment of installment more than once by giving a prior notice of 1 week notice and if amount is payable within a week or earlier then 2 weeks prior notice is being given to hirer.

- **Right to retain**

The owner has the right to retain the hire already been paid and recover the due arrears.

- **Right to seize goods**

The owner has the right to enter premises of the hirer and seize the goods on termination of the agreement on condition that statutory price has not been paid by the hirer.

Obligations of owner

- **Duty to supply true copy of agreement**

⁴ Supra 1, at pg 495.

It is duty of the owner to supply free of cost, true copy of hire purchase agreement to the hirer.

- **Duty to tell hirer regarding payment of sum**

The owner is obligated to supply information regarding the sum paid by hirer, sum to be paid, amount of each installment, when it is to be paid etc. within 14 days of request made by hirer.⁵

Distinction between Sales of Goods and Hire purchase

The sale of goods is governed by Sales of Goods Act, 1930. Section 4 of this act says that where seller transfers or agrees to transfer the property in goods to buyer for price.⁶

Hire purchase agreements are governed by Hire Purchase Act, 1972.

Lee v. Butler

The furniture was given to Lloyd on a condition that he would pay sum of £1 on May 6 and a further sum of £96 on August 1 and owner would be entitled to take possession of goods in case of default payment. It was also there in agreement that after payment of installments the rent would cease and hirer would become owner of furniture. Lloyd's wife sold this furniture to defendant before payment of installments. The owner sued the defendant to recover furniture. It was held that defendant cannot be forced to return the furniture because Lloyd did not have option to return the furniture under the agreement and he can be compelled to buy it.

Helby v. Mathews

The piano was given on hire by plaintiff to Brewster under agreement that he would pay 36 monthly installments of 10s. 6p. and after payment the piano will become of Brewster. Besides this another option that is to terminate the hire and return the piano was also given to Brewster. Brewster pledged the piano to defendant in good faith without payment of installment. It was held that plaintiff can recover piano from defendant because here it was hire purchase agreement and not sale agreement where buyer has agreed to buy.

In the first case hirer had agreed to buy and had no option to return the goods. In second case hirer had option to return the goods.⁷

⁵ Supra 2, at pg 497.

⁶ Section 4, HIRE PURCHASE ACT,1972, Available at <<https://indiankanoon.org/doc/651105/>> (11th July, 2018,9:02 P.M.)

To understand further differences let's take some example:-

1. A owns a company. Due to limited resources he is not able to buy a new machinery. His friends give him option to take machinery on hire from ABC Ltd. company. A makes a written agreement that he will pay installments and he may either terminate it at the end or may buy it. Company SK Ltd. also wanted same machinery and asked A to sell him the machinery for three times higher price. A denies to it.
2. A owns a company. He was in a need of new machine due to sudden change in technology. He went to AYC shop and purchased it by making payment by cheque. Later he gave this machine on rent to his friend B.

The first case is of hire purchase agreement and second is of sale.

Hire purchase agreement is made in writing whereas in case of sales of goods agreement can be either oral or written.

In hire purchase agreement there is hirer i.e. A and owner i.e. ABC Ltd. Company whereas in case of sales of goods there is buyer i.e. A and seller i.e. AYC shop owner.

In hire purchase agreement hirer becomes owner only when he pays all the installments and buys the goods hired. In case of sale of goods as soon as contract is executed the buyer becomes owner.⁸

In hire purchase the hirer has no right to sell the goods hired or give it on rent until and unless all payments are made by him and he had purchased the asset. In case of sales of goods the buyer after purchasing can do whatever he wants to do with the goods purchased.

In case of default in hire purchase agreement the owner can take repossession of goods whereas in case of sales of goods the seller can sue buyer.⁹

Difference between Installment Payment and Hire Purchase Agreement

1. A owns a company. Due to limited resources he is not able to buy a new machinery. His friends give him option to take machinery on hire from ABC Ltd. company. A makes a written agreement that he will pay installments and he may either terminate it at the end or may buy it. Company SK Ltd. also wanted same machinery and asked A to sell him the machinery for three times higher price. A denies to it.

⁷ Pollock and Mulla The Sales of Goods Act, 156(6th ed, 2002)

⁸ www.gradestack.com

⁹ www.owlgen.com

2. A wants to buy an AC costing rupees 30,000. He purchase it from SK Ltd. and pays 15000 and for remaining 15,000 he makes contract with seller that he will pay in installment of Rs 3000 for 5 months. He decides to sell this AC after 6 months as it was having some electric issues.

Here the first example is for hire purchase agreement and second is for Installment payment.

- Under hire purchase the hirer does not become owner immediately whereas in installment method the buyer becomes owner as soon as he signs the contract.
- Under hire purchase hirer has no right to dispose goods until he becomes the owner whereas under installment payment method the buyer has the right to dispose the goods as he wants.
- Under hire purchase agreement risk are to be born by owner until and unless reasonable care is not taken on part of hirer whereas under installment payment method risk is to be born by buyer.
- Under hire purchase agreement hirer can terminate the contract whereas under installment payment the buyer cannot run away from his liability.¹⁰

Hire purchase agreement helps in economic growth in the following ways:-

- **No needs to pay huge amt of cash in one go**

India is a developing country in which resources with the people are limited. People in India cannot invest huge amount in machineries immediately so hiring them instead of purchasing is the best option.

- **Easy possession**

By hiring goods it gives a chance to the people to possess the goods despite of having fewer resources.¹¹

- **Easy to buy**

The hirer also has option to buy the goods hired.

¹⁰<http://www.yourarticlelibrary.com>

¹¹ Dr S GURUSAMY, MERCHANT BANKING AND FINANCIAL SERVICES, 323(3rd ed;2010)

- **Source of income to government**

The government gets tax on interest that is paid by hirer to owner and owner has to pay goods and if hire purchase agreement is converted into sale then sale tax is to be paid. This increases income of the government.

- **Increases standard of living**

A trader not in capacity to buy hires high tech machinery for production of goods then high quality goods will be provided to consumers and they will have greater and better choice. Therefore, it also helps in rising living standard of people.

Loopholes in Hire Purchase Agreement

I feel that this law is bit partial towards hirer. Hirer is given more rights than the owner.

- According to section 16 of Hire Purchase Act, 1972 its hirer obligation to give information as to whereabouts of the goods within 14 days without any reasonable reason or else hirer shall be punishable with fine of rupees 200.
- According to section 23 of Hire Purchase Act, 1972 it's the obligation of the owner to give all the information about payment of sums to the hirer regarding how much is paid, to be paid and when to be paid within 14 days and if he fails to give the information without reasonable reason he shall not be entitled to enforce the agreement against the hirer.

This is partial on the side of hirer as in somewhere same circumstances different punishments are given.

- The owner is also given right to seize the goods but if statutory proportion that is one half of the price in case of goods below Rs. 15000 and three- fourth for goods amounting more than Rs. 15000 then even hirer has the right to recover amount from the owner in respect of amount paid upto the date of seizure, amt. spent by owner for payment of arrears of taxes and other dues that hirer was liable to pay. Here this act is silent that what if interest amount is not paid by hirer and if he is not giving further money.

This is partial on the side of owner so much implications on him even to carry out his own right to seize goods.

- Our complex tax structure is also liable for discouraging people to enter into hire purchase agreement as the owner has to pay tax on interest received as well as on sale if hirer buys it. People in India do not pay tax basically for two reason either they want to

evade it or they are scared of so many formalities. This also fluctuates our government's income and ultimately affects country's development.¹²

Solutions

- Same kind of provisions should be laid down for hirer and owner in context of section 16 and section 23 of Hire Purchase Act, 1972.
- More rights should be given to owner in respect of seizure of goods by removing concept of statutory price and fixing no. of chances that should be given by owner to hirer on default.
- If person is paying interest tax then rebate should be given in sales tax.

Conclusion

It can be concluded that hire purchase agreements are of great importance to the economy as they help small traders, people having limited resources to acquire high tech goods and uses them in business which increases their production level and generates income of economy. It also helps government to increase its revenue through tax. Although these agreements are not much popular in India as there are some loopholes in Hire Purchase Act, 1972 which needs to be corrected in order to encourage people to enter into such kind of agreements and help our economy to prosper.

¹² psnacet.edu.in/courses/MBA/Financial%20services/3.pdf