

SALE

OF

GOODS

ACT

LL.B. II Sem

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A. Law relating to auction sale.—Section 64 of the Sale of Goods Act lays down the principle of auction sale. It gives following principle.

1. Each lot a separate contract.—In auction sale where goods are put for sale in lots, each lot is *prima facie* deemed to be the subject of separate contract of sale. [Section 64 (1)]. That is to say, if the goods in an auction sale are in lots, the presumption arises that each lot is a subject of separate contract. This presumption can however, be rebutted by showing a contrary intention of the parties. But this presumption cannot be said to have been rebutted by the mere fact that a single purchaser purchases several lots [*MC Manus v. Fortexue*, (1907) 2 K. B. 1.]

2. Auction sale when complete.—The auction sale is complete when the auctioneer announces its completion by the fall of hammer or in other customary manner ; and until such announcement is made to any bidder may retract his bid. [Section 64 (2)]. It has been held in *Payne v. Cave*, (1789) 3 T. R. that the bidder is entitled to revoke his bid at any time before the fall of hammer or before the property is finally knocked down. The rule in this case has been followed in a Madras case, *Jorwamal Champamal v. Joygopaldas Ghanshyamdas*, (1992) 43 Mad. L. J. 132, where before the property was knocked down the bidder discovered that the property was subject to mortgage. He, therefore, revoked his bid. The owner of the property sued him. His action was dismissed by the court on the ground that the bid of the plaintiff was simply an offer and could be revoked at any time before it was accepted by knocking down the property in his favour. It was held that a contract of sale is concluded in an auction sale on the fall of the hammer unless that *prima facie* rule is excluded from applying because of a different intention appearing or because there was some condition in the contract which prevented the rule from applying."

3. Right to reserve a bid by or on behalf of the seller.—A contract of sale is generally a bilateral contract where the buyer and seller are two different persons. But auction sale is an exception to this general rule. In a sale by an auction a right to bid may be reserved expressly or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any

one person on his behalf may bid at the auction [Section 64 (3)]. The sellers can employ only one person to bid on his behalf. In case"more persons than one are employed to bid that amounts to fraud, as only one is necessary to protect the property and the employment of more can only be to enhance the price and therefore, renders the sale void."

Moreover, the seller can employ any one person to bid on his behalf only when he notices that the sale is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. The buyer may treat any sale contravening this rule as fraudulent [Section 64 (4)].

4. Auction sale subject to a reserved or upset price.—According to Section 64(5) of the Sale of Goods Act, in the case of a sale by auction, the sale may be notified to be subject to such a reserved or upset price. In a case, the seller may reject the highest bid if the same is less than the reserve price.

In *Denant v. Skinner and Collm*, (1948) 2 All E. R. 29, in an auction sale of motor vehicles, the highest bidder paid the price by cheque and was allowed to take the delivery of vehicles. He sold one of the motor vehicles to a third party who in its turn sold it to the defendant. Subsequently the cheque of the purchaser was dishonoured. The auctioneer sued the defendant for the recovery of the motor vehicle or its value. It was held that he could not recover motor vehicle or its value, from the defendant because in the absence of any effective condition that it should not pass till the cheque was honoured, the property in motor vehicles had passed to the buyer. The court enunciated the rules in the following words :—

"At an auction sale apart from any question of reserve price, when a lot is knocked down to the highest bidder by the fall of the hammer, whoever the highest bidder may be, the property in the lot passes to him. A contract of sale is concluded in an auction sale on the fall of the hammer unless that *prima facie* is excluded from applying because of a different intention appearing or because there was some condition in the contract which prevented the rule from

5. Effect of pretended bidding to raise the price.—If the seller makes use of pretended bidding to raise the price, the sale will be voidable at the option of the buyer [Section 64 (6)]. The obvious reason for this rule is that the seller may reserve the right to make a bid or employ any one person to bid on his behalf to protect his property but he cannot misuse this right to enhance the price.