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DILUTION OF CAVEAT VENDITOR IN ONLINE MARKET PLACES

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Abstract: As the pace of technological development increases, an era of online market places and online consumers have been grown to a greater extent. As the Consumer protection Act, 1986 was an ineffective piece of legislation to cope up with the growing needs, the Consumer protection Act,1986 was amendedin 2019 to bring online consumers within its purview and to afford protection to them. Though the amendment in Consumer Protection Act has brought a huge drift from caveat emptor (buyer beware) to caveat venditor (seller beware), consumers usually face problems while purchasing online products. Even though the Consumer Protection (e-commerce) rules, 2020 have brought certain corollary rules to protect the consumers, there is still a dark side on certain issues which the consumers face while purchasing products on online platforms. While the Consumer Protection Act,2019 has given the Doctrine of Caveat venditor a concrete shape, its exceptions grew with time dueto drastic increase of online market places. In this article, the author brings into picture certain issues faced by online consumers and provides certain proposals for reforms whichprotects online consumers from problems faced by them while purchasing online products.

IndexTerms - ***online market places, online consumers, online products.***

1. INTRODUCTION:

With the advent of digitization and e-commercialization, there has been an exponentialincrease in purchasing power of consumers who buy products via online market places. The corona virus breakdown and the following lockdown in the country too has a major shift in the shopping behavior of consumers. A survey report published by IT Company Capgemini in the first two weeks of April 2020 shows that over 46% of Indian purchasers haveshopped at physical retail stores compared to 59% who shopped at physical retail stores before the pandemic and the survey added that the appetite for online shopping would increase to 64% from 46% over the next six to nine months [1]. Though there has been an accelerated growth of online shopping, consumers all around faces issues equitably while purchasing products via online. The legislations and rules which govern ecommerce entities in India are The Information Technology Act [2], The Consumer Protection Act, 2019 [3]; The Consumer Protection (e-commerce) rules, 2020 and the Information Technology (intermediary guidelines) Rules,2011**.** The impetus which has led the author to write this article is due to the practical issues which the online consumers face several times while purchasing products via online.

2. ONLINE MARKET PLACES:

The online market places basically are of three types(i) Market place ecommerce entities which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers andsellers': e-bay, OLX, Naptol, etc. (ii) Inventory ecommerce entities which owns the inventory goods or services and sells such goods or services directly to consumers. Eg: Jabong etc,. (iii) An another market place model which is a hybrid model which provides platform for transactionsbetween buyers and sellers and alsosells their own goods on the onlineplatform i.e,. a blend of market place ecommerce model and inventory model. EgAmazon, Flipkart, Snapdeal etc,.

Online market places are usually placed under the genus of intermediary [4] and are afforded a safe harbour protection [5] under the Information Technology Act,2000. Safe harbour protection means that online market places are exempted from liability for any third party information, data, or communication link made available or hosted by them [6] when they does not- initiate the transmission, select the receiver of the transmission, and select or modifythe information contained in the transmission [7]. They are also not made liable when the online market places observes due diligence [8] under Information Technology (intermediary guidelines) rules,2011. Though these online market places are exempted from liability few restrictions are placed under the same Act [9]. They are made liable when they have conspired or abetted or aided or induced in the commission of an unlawful act [10] and upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that anyinformation, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner [11].

The Consumer Protection Ecommerce Rules, 2020 provides certain duties which must be followed by the ecommerce entities**.** Every e-commerce entity shall provide legal name of the e-commerce entity; principal geographic address of its headquarters and all branches; name and details of its website and contact details in a clear andaccessible manner on its platform. The rule also says that those entities shall not adopt any unfair trade practice. With respect to grievance redressal the rule mandates that these entities must have a grievance redressal mechanism and the grievance redressal officer must acknowledge the complaint within 48 hours of the receipt of the complaint. The rule also imposes duty on those entities to record an affirmative and an explicit consent of a consumer for the purchaseof any good and prohibited getting consent in the form of pre ticked check boxes [12].

3. CONVENTIONAL v. ONLINE MARKET PLACE:

The difference between conventional market places and online market places are wide which can be understood from the following points.

1. The communication between the sellerand the buyer in traditional market place is direct whereas the communication between buyer and seller isindirect via online platform.
2. The place of business in conventional market places include retail stores, outlets, warehouse, markets whereas in ecommerce market places the place of business or the place where the commodities are sold is in online platforms such as are Snapdeal, Flipkart, Amazon,etc.
3. For selling products or goods in ecommerce market places, fees are collected for each and every product whereas in the case of conventional market places fees are not levied for each and every product but rent is collected as a whole for month or year owing to rental agreement or lease agreement. This can be well explained below by means of two examples which was given in Amazon and Flipkart online platform.

Example No 1: The seller who sells a product in amazon platform must pay the following fee to theAmazon ecommerce entity [13].

1. referral fees which is product category-based fees and it starts at 2%, varies based onproduct category
2. Closing fees which is based on price of item sold and it starts at ₹ 2, Varies by product pricerange
3. Weight handling fees which are fees for Shipping/Delivery and it starts at Rs. 28 per itemshipped, varies by item volume & distance.
4. Other fees which are based on program/service.

Here a product called camera lens (Dimensions: 11.7 x 7.7 x 7.7 cm; Unit weight: 0.25 kg; Listing price on Amazon: ₹ 18,900) is taken and fee is computed.

3.1 CALCULATION OF FEES TO BE PAID BY THE SELLER FOR THIS PRODUCT:

S.NO	FEE	AMOUNT
1	Referral fees	7% * 18900 = ₹ 1323
2	Closing Fee	26
3	Shipping Fee & Other Fees	38
	Total fee w/o Tax	₹ 1391 i.e 7.4%

Example No 2: The seller who sells a product in Flipkart platform has to pay a following fee to theFlipkart e-commerce entity [14].

1. Commission fee: A percentage of the order item value vary based on vertical/sub-category
2. Shipping fee : calculated based on the product weight, shipping location and
3. Collection fee : This will vary based on order item value and customer paymentmode (Prepaid/Cash on Delivery)
4. Fixed fee : A slab wise Fixed fee. This vary based on Order item value
5. GST which is applied on all the above components

Deductions:

Product Selling Price: 1500

S.NO	FEE	AMOUNT
1	Commission Fee (varies across sub-categories/verticals)	250
2	Shipping Fee (Local shipping , weight 500 grams)	35
3	Collection Fee (2 % on the Order item value)	30
4	Fixed Fee	40
5	Total Marketplace Fee	255
6	GST (18% on Marketplace fee deduction)	45.09
	TOTAL	300.09

Therefore the total deductions =300.09Amount credited to the seller =1199.91

4. CERTAIN TERMS LAID DOWN BY ONLINE MARKET PLACES:

Online market places usually have policies that position themselves as merely facilitators in transaction between seller and buyer while some buyers might view online market places as seller. These platforms provide certain terms and conditions which the online purchasers consent to it unknowingly as they cannot reasonably foresee while purchasing products in online platforms. The following are some of the certain terms and use laid down by online market places such asAmazon, Flipkart and Snapdeal etc,. and so on.

i. Online market place is a mere intermediary.

ii. The contract for sale of the product is only a bipartite contract between buyer and seller and online platform is not a third-party beneficiary under such contract.

iii. It is not an absolute offer and such sale is subject to repudiation by the seller at any time before delivery of the product to the buyer and without any obligation to assign or provide any reason for such repudiation and without any consent from the buyer and without any liability or obligation towards the buyer. Seller has the sole discretion to cancel the order for any reason whatsoever.

iv. Online platforms are in no way responsible or liable for the delayed delivery of the products/ defective product/ breach of warranty.

v. As sellers are independent Contractors, e-commerce entities are not liable for the act of sellers.

vi. Online market places are not responsible for any breach of performance or non- performance of contract by the seller.

vii. In bipartite contract between buyer and seller, time is not the essence of contract.

5. ISSUES FACED BY CONSUMERS:

The following are some issues faced by the online consumers

i. Sellers in e-commerce market places taking advantage of the disadvantageous positionof the purchasers sell defective products or quality less products for their profit. But online market places cannot be made liable for such defective product sold online and they won't be subjected to strict liability andproduct liability action under Consumer Protection Act as an intermediary. The Consumers who purchase online have no easy accessibility to the seller's place of business and find it difficult to reach them incase if any defective product has been received.

ii. Certain e-commerce entities delay the delivery of products even for two months or more.

iii. In some cases, Sellers in ecommerce entities provide misleading information as to the availability of stock and quality of products.

iv. Online market places coerce purchasers to cancel the products on their own if they have any operational or technical issues on their part to maintain seller reviews on their platform.

v. The buyers are not able to communicate directly to the sellers in case of any issues related to products bought them.

vi. If a product is returned by the buyer due to some issues as to size, color, quality etc., the person from online market place receiving such a returned product would scan for the bar code present in the tag to be verified and returned to the seller. But certain goods from online market places are not even sold with tags which become a burdensome process when the product is returned by buyer.

6. PROPOSALS FOR REFORM:

Though Consumer Protection Ecommerce Rules, 2020 provides duties and liabilities for marketplace ecommerce entities, the terms of use of certain market place ecommerce entities nullifies the object of the Consumer Protection Act,2019. The terms given above under heading 4 are likely to cause conflict, confusion and misuse at the hands of litigious consumers. There is a need of an hour to make certain reforms and regulations in Consumer Protection Act, The Consumer Protection (ecommerce) rules, and Information Technology Act,2000 to protect the consumers and certain proposals for reform suggested by the author are as follows:

i. In order to make e-commerce entities liable for the defective product sold by the seller, e-commerce entities must have to exercise a degree of control over the product to be labelled as a seller.

ii. Rule 5 (2) of Consumer Protection (e-commerce) Rules states that "Everymarketplace e-commerce entity shall require sellers through an undertaking to ensure that descriptions, images and other content provided on their platform are accurate and corresponds directly with the appearance, nature, quality and purpose [15].Though the above rule imposes a duty on the seller ,it doesn't provide any stringent penalty for such dereliction of duty by the sellers. It is suggested that reforms shall me made for imposing stringent penalty if a seller acts in contravention of such undertaking.

iii. It is suggested that separate liability for hybrid market place ecommerce entity has to be provided. Rules shall also be made to change the privacy policy of hybrid model e commerce entities byimposing certain liabilities to protect the consumers.

iv. It is suggested that online market places shall make reasonable efforts to maintain a record of relevant information that allow identifying sellers who are repeat offenders for offering destructive or spurious goods.

v. A better provision shall be made for the termination of agreement between the seller and the online market places if a seller continues to sell defective goods and to imposea comprehensive set of fines and imposition of penalties for any violation by theseller.

vi. The privacy policies given by the ecommerce entities shall be clear and precise so that a layman can understand it.

vii. Rather than placing all online market places within a single framework as an intermediary under Information Technology Act, 2000 regulations shall be made out by providing better classification of an intermediary whether it is a passive one or active one and to provide separate liabilities for the same. In the case of Christian Louboutin v.Nakul Bajaj and others [16] the Delhi High Court provided a greater insight about passive transmitter of information. The Court detailed out an exhaustive list of various functions performed by an intermediary andheld that if the intermediary performs more functions then it is said to be an active intermediary. Some of the list given by the Delhi high Court to make an intermediary to be an active intermediary are:

a. Identification and providing details of the seller;

b. Providing transport for the seller to send his product to the platform's warehouse;

c. Uploading the entry of the said product;

d. Providing quality assurance after reviewing the product;

e. Providing authenticity guaranteed;

f. Creation of the listing of the said product;

g. Providing reviews or uploading reviews of the product;

h. Enrolling members upon payment of membership fees;

i. Promoting the product amongst its dedicated database of customers;

j. Advertising the products on platform;

k. Giving specific discounts to members;

l. Providing assistance for placing a booking of the product, including call centreassistance;

m. Accepting an order on a particular payment gateway promoted by the platform;

n. Collecting the payment through the users registered for electronic payment modes;

o. Packaging the product with its own packing, instead of the original packing of the trademark owner or changing the packaging in which the original owner's product is sold;

p. Transporting the product to the purchaser;

q. Employing delivery personnel for delivering the product;

r. Accepting cash for sale of the product;

s. Transmission of payment to the seller after retaining commission;

t. Promoting its own affiliated companies based on more favorable termsthan other sellers;

u. Entering into favorable arrangements with various sellers;

v. Arranging for exchange of the product if there is a customer complaint;

w. Providing/arranging for service if the product requires the same;

x. Booking ad-space or ad-words on search engines;

y. Using trademarks through meta-tags or in the source code of the website inorder to attract traffic;

z. Deep-linking to the trade mark owner's website;

As many market place ecommerce entities are active intermediaries, they can't be brought inside the boundaries that they are only independent contractors and have safe harbour protection. As they exercise a quite degree of control over the sellers it is suggested that some sort of liability must be placed on the intermediaries.

viii. It is suggested that a separate nodal agency in each e-commerce entity shall be established in order to provide direct communication between the buyer and seller on question and issues relating to product. This might improve the efficiency of transactions in ecommerce entities.

ix. An efficient grievance redressal mechanism and a grievance redressal officer who is able to communicate in regional languages shall be appointed by ecommerce entities in each of the districts in a particular state to redress the grievances.

x. If a complaint is registered, a ticket shall be given by the appropriate grievance redressal officer to the buyer to track the complaint and know the status of the complaint. While redressing such complaints, effort should be made to redress such grievance in the best interest of the consumers of e commerce of entities.

xi. In case of any issues with respect to the delivery of products, both seller and entities have a product liability action as it is a deficiency in service [17] under the Consumer Protection Act, 2019 . The liability is extended to them as they exert a small degree of control in providing service as to the delivery of products. These online market places make a percentage cut when a seller sells their product to customerand receives commissions for each item sold by the seller. So, a regulation should be made by casting a bounden duty on such platforms receiving commissions for each product to protect the consumers in case of issues.

xii. Consumers of e -commerce entity all around face certain issues with respect to the quality of products. The reliance, trust and confidence placed by the buyers on the online platforms is more than on the sellers who have place of business in different countries. Communication between sellers and market place ecommerce entities is easy as entities are provided with seller details. There is a need for a regulation to direct the e- commerce entities to enter into an agreement with the seller to have an indemnity clause to indemnify for the loss incurred by the buyer or if case there is no such clause is made out in an agreement, regulations shall be made that it is deemed to be an indemnity clause.

xiii. It is suggested that the Central Consumer Protection Authority shall function efficiently to provide legal measures to enable consumers to obtain expeditiously.

Thus, the scope and object of Consumer Protection Act can be fully achieved only when the online consumers are placed at par with conventional consumers. The safe harbour protection granted under Sec 79 of Information Technology Act,2000 must be used by the courts cautiously to balance the rights and interest of intermediaries and consumers and to carve outa fair and reasonable solution to various issues pertaining to market place ecommerce entitiesin India.

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