

How Can Someone Take Possession Of Goods Located In Another City?

Ref: IEC.0070

Date:25-11-23

What do the Islamic scholars say about the following issue: I bought sacks of lentils from a person over a phone call and made the payment through the bank. The seller informed me that the lentils have been set aside in the warehouse, and I could collect them whenever I arranged for transportation. Will this way of surrender of lentils by the seller prove my possession of the lentils, or do I need to take possession separately? Neither I nor my representative have physically taken possession of the goods. Can I sell these lentils to someone else in this condition?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الجواب بعون الملك الوهاب اللهم هداية الحق والصواب

Selling movable goods before taking possession is impermissible and sinful. In the scenario you described, merely stating, “The lentils have been set aside for you in the warehouse, and you can collect and transport them whenever you want,” does not constitute actual (حقيقةً) or effective possession (حكماً).

The detailed explanation of this issue is as follows: Before selling any purchased item, it is necessary to take possession of it, either in reality (حقيقةً) or in effect (حكماً). Actual possession means physically taking control of the item. Effective possession means that the seller has removed all barriers between the buyer and the item to be possessed in such a way that:

1. The buyer is able to take possession of the sold item if he wants, without any hindrance.
2. There is no obstacle between the buyer and the purchased item.
3. The buyer gets so close to the item that if he extends his arm, he can touch it i.e. he is so close that he does not need to walk to it.

In some cases, as per the practice, even if the item is not within arm's reach, if it is visible to the buyer, and he is capable of taking possession and moving the item, then effective possession is established.

In asked scenerio, simply stating over the phone that “The lentils have been set aside for you in the warehouse, and you can collect and transport them whenever you want,” is insufficient to establish possession i.e. due to these words neither actual nor effective possession has taken place. Therefore, if you wish to sell the lentils, you must first take possession of them yourself or through your representative. Selling them without taking possession would be impermissible and sinful. If you proceed with the sale, the transaction would be considered invalid (فاسد), and it would be obligatory for both parties to annul the deal.

It has been mentioned in Fatawa Qazi Khan and Fatawa Aalamgiri regarding taking something into possession:

”ولو اشترى ثوبا وأمره البائع بقبضه فلم يقبضه حتى غصبه إنسان فإن كان حين أمره البائع بالقبض أمكنه أن يمد يده ويقبض من غير قيام صح التسليم وإلا فلا“

Translation: If someone bought a piece of cloth and the seller told him to take possession of it, but before the buyer could take possession, someone seized the cloth. If, at the time the seller instructed the buyer to take possession, it was possible for the buyer to extend his hand and take possession of the cloth without

standing up, then the transfer of possession is valid. However, if it was not possible to take possession without standing up, then the transfer of possession is not valid.

(Fatawa Qazi Khan, Vol 02, Page 145, Beirut, Fatawa Aalamgiri, Vol 03, Page 17, Queta)

Likewise, it has been mentioned in the book Raddul-Muhtar:

”لو اشترى ثوباً فامر به البائع بقبضه فلم يقبضه حتى أخذه انسان ان كان حين امره بقبضه امكنه من غير قيام
صح التسليم وان كان لا يمكنه الا بقيام لا يصح“

Translation: If someone bought a piece of cloth and the seller told him to take possession, but before the buyer could take possession, another person took hold of the cloth, then if, at the time the seller told the buyer to take possession, it was possible for the buyer to take hold of the cloth without standing up, the possession is valid. However, if it was not possible to take possession without standing up, the possession is not valid.

(Raddul-Muhtar, Kitabul Buyoo, Vol 07, Page 96, Queta)

It has been mentioned in Fatawa Qazi Khan, Fatawa Bazzaziyah, Majma-ud-Dhamanat and Ghamzo-Oyoonil-Basair. The words of Fatawa Qazi Khan are as follows:

”قال أبو حنيفة رحمه الله تعالى التخلية بين المبيع والمشتري تكون قبضاً بشرائط ثلاثة أحدها أن يقول
البائع خلت بينك وبين المبيع فاقبضه ويقول المشتري قد قبضت والثاني أن يكون المبيع بحضرة
المشتري بحيث يصل إلى أخذه من غير مانع والثالث أن يكون المبيع مفزاً غير مشغول بحق الغير---
واختلف أبو يوسف ومحمد رحمه الله تعالى في التخلية في دار البائع قال أبو يوسف رحمه الله تعالى لا
يكون تخلية وقال محمد رحمه الله تعالى يكون تخلية“

Translation: Imam A'zam رحمه الله تعالى said: The act of handing over (تخلية) between the sold item and the buyer constitutes possession under certain conditions. One condition is that the seller says, “I have made space (تخلية) between you and the sold item, so take possession of it.” and the buyer responds, “I have taken possession.” The second condition is that the sold item is in

front of the buyer in such a way that he can grasp it without any hindrance. The third condition is that the sold item is separate and not occupied by any other rights. Imam Abu Yusuf and Imam Muhammad رحمہما اللہ تعالیٰ differed regarding possession in the seller's house. Imam Abu Yusuf رحمہ اللہ تعالیٰ said that in such a case, the act of handing over (تخلیة) does not occur, while Imam Muhammad تعالیٰ رحمہ اللہ said that it does occur.

(Fatawa Qazi Khan, Vol 02, Page 141, Beirut)

Sadarius-Shariah Badrut-Tariqah Mufti Amjad Ali Azami

رحمة اللہ تعالیٰ علیہ mentions in his book Bahar-e-Shariat:

بائع نے بیع اور مشتری کے درمیان تخلیہ کر دیا کہ اگر وہ قبضہ کرنا چاہے کر سکے اور قبضہ سے کوئی چیز مانع نہ ہو اور بیع و مشتری کے درمیان کوئی شے حائل بھی نہ ہو تو بیع پر قبضہ ہو گیا اسی طرح مشتری نے اگر ثمن و بائع میں تخلیہ کر دیا تو بائع کو ثمن کی تسلیم کر دی۔“

Translation: The seller made a space (تخلیة) between the sold item and the buyer such that if the buyer wished to take possession, he could do so, and there was nothing preventing possession, nor was there anything obstructing the buyer and the sold item. In such a case, possession of the sold item has been completed. Similarly, if the buyer made a space (تخلیة) between the payment (ثمن) and the seller, then the seller has been given the possession of the payment.

(Bahar-e-Shariat, Vol 02, Page 641, Maktabah-tul-Madinah)

واللہ اعلم عزوجل ورسولہ اعلم صلی اللہ تعالیٰ علیہ وآلہ وسلم

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Rabi-ul-Awwal 07, 1445 Hijri/ September 25, 2023

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