147531 - Cancelling a transaction because the purchaser is in financial difficulty, and ruling on selling a hired tool to the one who is leasing it

the question

Two people made a contact for lease of a tool used in construction, then the lessee [the one who was leasing the tool] wanted to buy it, so they agreed on a period of four months for payment of the price. But he delayed paying for a further three months, so the owner of the tool decided to cancel the deal because the purchaser was taking too long to pay, and he was harmed as a result of this delay. Please note that the purchaser or lessee has been making use of the tool for the past seven months. The question is: does the owner have the right to charge a fee for the last seven months?

Detailed answer

Praise be to Allah.

Firstly:

If the sale transaction was concluded by the two parties, and the item was delivered to the purchaser, then the seller has no right to cancel the deal after that because the sale contract is binding and cannot be cancelled except with the consent of both parties, or if there is an excuse which makes that permissible. The fact that the purchaser is in financial difficulty and is not able to pay the price is one of the excuses which makes it permissible to cancel the deal, if the seller was not aware, at the time of the deal, that the purchaser was in financial difficulty. But if he was aware of that, then he has no right to cancel the deal.

Shaykh Ibn ‘Uthaymeen said: If the seller was aware that the purchaser was in financial difficulty, then he does not have the option to cancel the deal. So if, for example, a man sells an item to someone, thinking that he is well off, then he finds out that he is in financial difficulty, in that case

he has the right to cancel the deal, because giving him more time to pay is detrimental to his own interests.

But if he sells this item to someone when he knows that he is in financial difficulty, in that case he does not have the option to cancel the deal, because he was aware of his situation." (A*sh-Sharh al-Mumti‘* 8/364).

Similarly, if he finds out that the purchaser is not in financial difficulty, but he is taking too long to pay, then it is permissible for the seller to cancel the deal and take back the item that he sold.

This view was favoured by Shaykh al-Islam Ibn Taymiyah.

In *al-Mawsoo‘ah al-Fiqhiyyah* (32/136), it says: Ibn Taymiyah was of the view that if the purchaser is well off but is taking too long to pay, the seller has the right to cancel the deal for the purpose of warding off the harm of dispute. He said in *al-Insaaf*: And this is the correct view. End quote.

Shaykh Ibn ‘Uthaymeen said: If it becomes clear that the purchaser is taking too long to pay, then the seller has the right to cancel the deal, because some of those who take too long to pay cause more trouble than poor people, for the poor man, if Allah blesses him with wealth, will pay it off, but if someone is taking too long to pay and this is his usual habit, it is very difficult to make him pay up.

So the correct view is that the seller has the right to cancel the deal in order to avoid financial loss. In addition to protecting the seller from financial loss, this also serves as a deterrent to the one who takes too long to pay, because if the one who takes too long to pay knows that his taking too long to pay will lead to annulment of the deal, he will learn a lesson and will not take too long to pay in the future." (A*sh-Sharh al-Mumti‘* 8/364).

Secondly:

If the sale contract was done after cancelling the rental contract or after it had expired, then you do not have the right to charge rent for the period during which he used the tool, because it was in his possession and he was liable for it. Therefore if the tool was damaged during this period, that is

his responsibility.

But if the sale contract was done before the rental contract had expired – or you did not cancel the rental contract – then in this case you have the right to charge rent for the remaining period of the rental contract only.

It says in *al-Mawsoo'ah al-Fiqhiyyah* (1/275): If the rented item is sold to the renter, then the more correct view according to the Shafaa'is and Hanbalis, and others, is that the rental contract is not cancelled. End quote.

Ibn Qudaamah al-Maqdisi said: If he leases an item then sells it, the sale is a valid… If the lessee buys it, the sale is also valid, because it is valid to sell it to someone else, so it is more appropriate to sell it to him [the lessee], because it is already in his hand.

Based on that, the rent remains due from the purchaser and he must pay for the tool, and the seller will have both payments, just as if the purchaser were someone else." (A*l-Mughni* 6/53).

And Allah knows best.