254814 - How can the salam transaction [payment in advance for something to be delivered at a later date] be valid even though it is selling something that one does not have?

the question

How can the salam transaction [payment in advance for something to be delivered at a later date] be permissible, when there is no stipulation that the item should be in the possession of the seller, who is supposed to deliver the product later on, and in the authentic hadith it says: “Do not sell what you do not have”?

Detailed answer

Praise be to Allah.

Firstly:

The prohibition narrated from the Prophet (blessings and peace of Allah be upon him) in his words “Do not sell what you do not have” means that it is not allowed to sell items that are still in the possession of others. This is indicated by the reason why he said that.

It was narrated from Hakim ibn Hizam (may Allah be pleased with him): I said: O Messenger of Allah, a man may come to me and ask me to sell something that is not in my possession. Can I sell it to him, then buy it for him from the market? He said: “Do not sell what you do not have.”

Narrated by at-Tirmidhi (1232), Abu Dawud (3503), an-Niasa’i (4613) and Ibn Majah (2187); classed as sahih by al-Albani in *Sahih at-Tirmidhi*.

Ibn al-Mundhir said: Selling what one does not have may mean two things:

The first scenario is when one says: I am selling you a particular slave or house, when that is not

with the seller. This is similar to an ambiguous transaction, because it is possible that the items may get damaged or the buyer may not like them. The second scenario is when one says: This house is for such and such a price, on condition that I will buy it for you from its owner, or on condition that its owner will hand it over to you.

Ibn Hajar said: The story of Hakim refers to the second scenario.(*Fat-h al-Bari*, 6/460).

From this it becomes clear that the reason for it being disallowed for a man to sell what he does not have is the ambiguity that results from not being able to deliver the particular item sold, and what could result from that of disputes. That is because the seller may not be able to obtain the particular item that he sold and that the buyer is asking for, because the transaction has been concluded. Thus there will be a dispute between them.

Secondly:

If the item is something that can be described accurately, and it will most likely be available at the time of delivery, and they entered into the transaction on condition that the item will be available for delivery at the appointed time, this is the salam transaction, and it is permissible according to the Qur'an and Sunnah; this is the view of most of the Muslim scholars.

In the Qur'an, Allah, may He be Exalted, says:

{O you who have believed, when you contract a debt for a specified term, write it down}[Al-Baqarah 2:282].

Ibn `Abbas said: I bear witness that Allah permitted in His Book the loan that is guaranteed to be paid off on an appointed date, and He gave permission for that. Then he recited: {O you who have believed, when you contract a debt …} [Al-Baqarah 2:282].

Narrated by ash-Shafa`i (1314), al-Hakim (2/286) and al-Bayhaqi. Al-Albani said regarding its chain of narrators: It is authentic according to the conditions of Muslim. (*Irwa' al-Ghalil*, 5/213).

In the Sunnah, it is soundly narrated that Ibn `Abbas (may Allah be pleased with him) said: When

the Prophet (blessings and peace of Allah be upon him) came to Madinah, they used to pay two or three years in advance for dates. He said: “Whoever pays for something in advance, let him pay in advance for a specified measure and a specified weight, to be delivered at a specified time.” Narrated by al-Bukhari (2240) and Muslim (4202).

Ibn Hajar (may Allah have mercy on him) said: The scholars are agreed that it is permissible, except for what was narrated from Ibn al-Musayyab.(*Fat-h al-Bari*, 7/76).

Thirdly:

The questioner’s confusion about this matter stems from the fact that the item is not available at the time of drawing up the salam transaction, but that does not affect the validity of the transaction, because the salam transaction is not selling a specific item (such as a specific car). Rather it is selling a car that meets all the specifications agreed upon between the seller and the buyer. Then when he brings him a car that meets the agreed-upon specifications, he has done what was required of him and has fulfilled his obligations.

Hence the scholars did not stipulate that in order for the salam transaction to be valid, the item should be in the possession of the seller at the time of drawing up the transaction. Rather they stipulated that he should think it most likely that it would be available at the agreed-upon time of delivery.

Ibn al-Qayyim (may Allah have mercy on him) said:

With regard to the salam transaction, whoever thinks that it is not allowed thinks that that prohibition is indicated by the words of the Prophet (blessings and peace of Allah be upon him) “Do not sell what you do not have”, so it is selling something that is not available, and the hadith disallows that.

However, the correct view is that it is permissible, because it is a guaranteed transaction that is guaranteed by the seller, for an item that meets certain specifications and that he most likely will be able to obtain and deliver.

Comparing the salam transaction to an item that is not available and he does not know whether he will be able to obtain it or not, and both the seller and the buyer are uncertain about it is not a correct comparison in all respects. All rational people can understand the difference between a person selling what he does not have and is unable to obtain, and the salam transaction involving produce that is under his control and he is usually able to deliver.

With regard to the Prophet's words to Hakim ibn Hizam – "Do not sell what you do not have" – they may mean two things:

1.. They may mean that he is selling a specific item that is not in his possession – rather it belongs to someone else – so he sells it then tries to obtain it and deliver it to the buyer.

2.. Or they may mean that he wants to sell something that he cannot deliver, even if someone else owes it to him. This is similar to the situation mentioned above, because the item is not with him either in a physical sense or a metaphorical sense, so he has sold him something that he does not know whether he will be able to obtain it or not.(*I`lam al-Muwaqqi`in `an Rabbi l-`Alamin*, 2/20).

Shaykh as-Sadiq ad-Darir (may Allah have mercy on him) said:

The salam transaction does not come under the heading of selling something that is not available and is not permissible to sell, because the majority of jurists who said that it is permissible for the item you pay for now to be delivered later, if it is not available at the time of signing the contract, stipulated that the item to be delivered later on must be something that will most likely be available at the appointed time. This takes it out of the category of that which is not available and not permissible to sell, and brings it into the category of that which is not available but is permissible to sell, because, as Ibn Taymiyah and Ibn al-Qayyim said: There is no text in the Book of Allah or in the Sunnah of His Messenger, or even narrated from one of the Sahabah, to suggest that selling something that is not available is not permissible, either in general terms or in implicit terms. Rather the prohibition is on selling some items that are not available, as there is a prohibition on selling some items that are available.

Therefore the reason for the prohibition on selling some items that are not available is not the fact

that they are not available. This is similar to the case where the reason for disallowing selling some items that are available is not that they are available. So there must be another reason for the prohibition on selling items that are not available, and that reason is ambiguity. So if something is unavailable and there is ambiguity about it, it is prohibited to sell it because of ambiguity, not because it is not available, such as if someone sells what a certain animal is carrying on its back, or what a certain garden may produce, because it may or may not produce a harvest, and if it does produce a harvest, the quantity and quality thereof is not known.(*Majallat al-Buhuth al-Islamiyyah*, 9/260).

One of the results of differentiating between selling an item with an agreed-upon characteristic and selling particular items is that the seller is obliged to deliver what he has sold and owes when the time for delivery comes, and if the entire harvest, part of which he was supposed to deliver, has failed, he must deliver what he agreed to in the salam transaction, even if he has to buy it from someone else.

As for selling a specific item, he is only obliged to deliver the exact item that he sold, and he is not obliged to give the buyer something different instead.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) was asked:

How can we reconcile the Prophet's words "Do not sell what you do not have" and allowing a salam transaction regarding an item to be delivered at a specific time?

He replied: The salam transaction has to do with something of which the characteristics are agreed upon, that is owed to the purchaser. The difference is that the Prophet's words "Do not sell what you do not have" refer to sale of a specific item.

As for that of which the characteristics are agreed upon and it is owed, it is something that is not a specific item.

Therefore it is required from the one who sells something with specific characteristics that he owes that he should deliver it regardless of the circumstances.

However, in the case of a specific item that is ruined or destroyed, we do not require him to deliver it.(*Al-Kafi*, 1/274).

And Allah knows best.