

Conditions of Creation and Cancellation of “Meeting Place Option”

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Abstract:

Although sale contract is a binding and uncancellable contract, if the seller and buyer sign the sale contract in a meeting place, as long as they are in the meeting place they can cancel the contract without explanation of their reason. In fact, it is the application of the meeting place contract that creates such a right for the parties. Nevertheless, the buyer and seller can exclude the “meeting place option” through including a condition in the contract or by leaving the meeting place or separation of the parties or the seizure of the sold item/price. As there is a difference of opinions among the jurists as regards the mode of dissolution that is the goal of “meeting place option”, the jurists are also divided on the the seizure of the sold item/price of the option because the separation of parties and the seizure of the sold item/price are two sides of the same coin. Some jurists believe that the seizure of the sold item/price may result in the cancellation of option but some others would even imply the implementation of the option of meeting place and the bindingness of the contract. In the present essay, after the analysis of the concept of “meeting place option”, we discuss the conditions of the realization of meeting place option as well as those occasions that lead to the cancellation of the meeting place option and the finalization of the sale contract. Moreover, our study of the public notion of the seizure of the sold item/price renders it clear that option belongs to the contract not to the exchanged items. Also the material seizures that takes place being informed of the existence of the option leads to the cancellation of the meeting place option but such modes of seizure like selling or leasing the sold item by the seller might be understood as an act of actual cancellation.

KeyWords: Meeting Place Option, Separation of Parties, Seizure of the Sold Item, Seizure of the Price.

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Introduction:

Whenever the parties to the sale contract after sealing the contract decide to cancel it without presentation of any reason based on the “meeting place option” as long as they are present in the sale meeting. In this case the seller

can refuse to provide the sold item and the buyer can refuse to pay the price and there will be no liability of covering the possible damages. The meeting place option like other options is considered to be among the financial rights and is indeed part of the secondary principles because there is no sign of such an option in other systems. Although numerous papers have been authored regarding the meeting place option, there is still no comprehensive study that would cast light on every aspect of the discussion. Normally, the goal of the meeting place option is considered to be the separation of the seller and buyer based on the existing traditions but the seizure of the sold item and the price is one of the conditions of the finalization of the sale contract and the elimination of the meeting place option. If the parties to the contract are not separated, they can bind themselves by the act of seizure. Therefore, not only the terminological concept of seizure is an indication of the finalization of the contract in the event of any conflict and can prove the objective right of the owner, here the seizer can send a message to the other party by his act of seizure. Nevertheless, this can be also an expression of the contrary insofar as some jurists believe that if the seller seizes the sold item in some way after sealing the sale contract such a seizure can imply the termination of the contract. Therefore, the main question of this article is that what are conditions of realization of the meeting place option? What are the cases that lead to the dissolution of the meeting place option? Whether seizure of the sold item or the price by each one of the seller and the buyer leads to the termination of the sale contract? In present essay, we study the concept of the meeting place option, the conditions of the realization of the meeting place option as well as those cases that lead to the cancellation of the meeting place option and the finalization of the sale contract.

1- Concept of Meeting Place Option:

The meeting place option is one of the specific options of the sale contract. We first study the term “option”. “Option” refers to having the will to choose and possessing the right of termination (Helli Fakhr Al Muhaqiqin, 2008: 1/ 483). His definition is general and covers every termination and denial including termination of permissible contracts and denial in the unauthorized contract. However, Imam Khomeini believes that since option is a volitional act, the definition of option offered in Jawahir and other books of the later jurists based on possession is in contradiction with the lexical meaning of option because option is a right not possession (Imam Khomeini, 2000, 4: 11). Contract is the object of option. Then, it is better to be said that option is the volitional right of termination of contract the failure of its implementation leads to the sealing and finalization of the contract. In fact, it is an external and separable right of the exchanged items not the possession of termination. Termination is also a unilateral legal act that puts an end to the legal nature of the contract.

As previously mentioned, the meeting place option itself denotes the basis of the option that allows the termination of the contract. This option is included in the sale contract and when the parties gather together to seal the contract without their will. Since the meeting place option that could be brought about for the parties in the meeting place, this is why it has the meeting place as its noun in gnetive case. In other words, being together in the same place and not being separate is the basis of this option. The meeting place option exists in all types of sale including the cash, on credit and advances sales. Moreover, in each case regardless of whether the sold item is a determinate object or a general determinate object or a general promised object, there is a meeting place option. Not only the general outlines and details of the traditions endorse this, rather in law no specific conditions have been drawn for this. The Article 397 of Civil Code reads: “Each one of the seller and buyer after the sealing of contract has the right to terminate the latter before leaving the meeting place”. This law is drawn upon a number of prophetic traditions (Cf. Sheikh Horre Ameli, 2006, 12: 349; Koleini, 1987, 5: 170; *ibid*, 5: 170; Bokhari, 2002, 3: 84; Moslem, n., 3: 1163).

1-1- Conditions of Creation of Meeting Place Option: The meeting place option is a completely exceptional option and it seems that it is a secondary conditional institution and there is no such an option in any of other systems. Given the aforementioned prophetic traditions and the Article 397 of Civil Code, the conditions of creation of meeting place option are as follows: 1- Seller/Buyer; in other words, the meeting place option exist only in the sale contract between the seller and the buyer. This term itself suggests that such an option is restricted to the sale contract and it is not the case in other contracts. It is needless to say that if the seller and the buyer are two distinct parties, there will be the meeting place option otherwise if the two titles gathers together in one person, since there is no possibility of separation of one person from himself the meeting place option is pointless. Even in those cases that one’s guardian is the party to the sale contract in which the guarded person is involved or one’s advocate represents the two parties at the same time, there is no possibility for the separation that is insisted as the requirement of the meeting place option and this renders it irrelevant as a whole. Then, the meeting place option is expected to executed only in those cases where there is an actual possibility of such a separation of the seller and the buyer. This is perhaps why the legislator has underlined the phrase “while the

parties are present in the meeting place”; 2- without getting separated: it seems that the substantive condition of the meeting place option is “without getting separated”. To put it otherwise, being together and refusal of leaving each other and getting separated is the origin of creation of the meeting place option. In other words, as long as the parties have not been separated there is such an option. The meaning of being together and the separation is determined by the common law (Sheikh Horre Ameli, op. cit, 12: 349). If in public it is said that one step away means separation, then they have got separated and the option is cancelled and the contract will be finalized (Imam Khomeini, 1991: 1/ 518). Of course, sometimes it is possible that the parties are present in one meeting place and the contract is sealed and then they turn to another work and the meeting for sale is ended and another meeting starts. If in public this is considered to be separation the meeting place option will be cancelled otherwise the option will last based on the rule of “following the status quo” (Imam Khomeini, 2000, 4: 142). One should say that in general, the sale that does not have any sealing place, gathering and separation, it will not be an extension of the prophetic tradition (Rashti, 1987: 22). As previously mentioned, the meeting place option is concerned with the place where the meeting is held but if the meeting is arranged in two different places, whether this lets there we have a meeting place option. No meeting can be deemed as to the transactions that take place through sending letter but the question is about the transactions in which the parties reach each other through phone or internet where the acceptance of the realization of the meeting place option is difficult. On the other hand, if we pay attention to the prophetic traditions, the word “meeting” and “gathering place” has not been mentioned and only such an option has been described to be contingent upon the separation and this separation is understood in terms of the public. Thus, it is possible to be said that if the sale contract is sealed through the phone call or the like, there will be the meeting place option (Qomi, 1992, vol. 17: 25). Nevertheless, the jurists have interpreted being together and separation in physical terms and have noted the condition “bodies” (Sheikh Tusi, 1997, vol. 3: 9), insofar as the presence in the meeting of the sale has been considered to be part of the subject (Imam Khomeini, 2000, vol. 4: 142). It should be said that in general, those sales that do not have the place for gathering and separation, are not subject to the prophetic tradition (Rashti, 1987: 22). The legal experts have considered the physical presence to be necessary and believe that it is not the spiritual relationship that can create the option and if the two parties finish their negotiations of the sale in the gathering and engage in another stuff until they have not left the meeting they have the termination option though their intellectual relationship has been terminated (Katoozian, 2005, vol. 1: 17). Nevertheless, some scholars have considered the stay of the parties in the same place where the contract is sealed to be the basis of the legitimacy of the meeting place option and if they leave the place this will render the option irrelevant (Rouhani, 1998, vol. 5: 219). Accordingly, some legal experts have suggested that the time in which the parties are together through electronic connection including phone call and internet is the time of the realization of the meeting place option and by the same token, the moment in which this connection is ended is the end of the meeting place option too (Izadifar, 2013: 72) while not only this electronic connection of the parties is not considered a meeting in public rather the end of the connection is not taken as the actual end. The conditions of the e-transaction have been outlined in the Article 29 of the law of electronic commerce due to the numerous places: “In the event the location of the information system is different from that of the receipt of the “data message”, the following conditions are to be effective: a) Unless otherwise agreed between the originator and the addressee, a “data message” is deemed to be dispatched at the place where the originator has its place of business or work, and is deemed to be received at the place where the addressee has its place of business or work. b) If the originator has more than one commercial domicile, the closest one to the place of transaction is considered his commercial domicile; otherwise, the corporate headquarters is considered as the commercial domicile.”

Given the above article, the difference and separation of the seller and buyer in the time of transaction are proven and such a relationship, contrary to the view of some writers, is not considered in public to be a meeting although the transaction is done on line. Though creation of the meeting place option in phone call or internet transactions is doubted, given the fact that the sale contract is sealed by acceptance and in a binding form, and this binding nature of the contract prevents its being challenged and the emergence of every option, and on the other hand, since the meeting place option is a secondary principle, and it exceptionally exists in the sale contract, and though the condition “in meeting place” has not been mentioned in all traditions, then the realization of such an option in suspicious cases will not be inconsistent with the principle of the necessity.

Cases of Rejection of Meeting Place Option: although the issue of seizure is discussed as one of the cases of the rejection of the option, there are also other cases that are shortly discussed here.

1- Cancellation of Option through the Inclusion of the Contractual Condition: option is a financial right and thus can be rejected. In the same way that the implementation of the option is a unilateral legal action and takes place based on the volition of the owner of the option, the rejection of the option is optional and even there is no need

for expression of willing it. Nevertheless, the expression of will in this regard would be done in an explicit or implicit way. The Article 448 of Civil Code reads: “cancellation of all or some of the options can be included in the contract as contractual conditions”. Of course, cancellation of option takes place in three forms.

First Form, the parties reach an agreement as regards the cancellation of the option before sealing the contract and then without mentioning this issues they proceed to seal the contract. Second Form, the parties reach an agreement regarding the cancellation of the option before sealing the contract and then by mentioning the agreement they finalize the contract. Third Form, the alternative that is mentioned in the Article 448. As to the condition of the cancellation of the option before the sealing of the contract without mentioning it, if the contract has been sealed based on a collusion, such a condition¹ will be correct. But if the contract is sealed without paying attention to it, there is difference on the correctness of such a condition and it is said that such a condition is not binding because the binding nature of this contract is gratuitously and the person can do it only in a voluntary way (Sobhani, 2003: 83). However, the cancellation of the option before sealing the contract is confirmed by Sheikh Tusi (Tusi, 1987, 3: 21). Anyway, the well-known idea is that the condition of the cancellation of option in the form of the condition of the result and by mere sealing of the contract is put into action in an automatic way and it is not one of the extensions of the “acquittal of what is not binding”. Nevertheless, some believe that regardless of the inclusion of the condition of cancellation before or after the sealing of the contract, it is one of the extensions of the “acquittal of what is not binding” (Sheikh Ansari, 1995, 3: 225).

Volitional Separation: The goal of the meeting place option is separation. If the two leave each other or one leaves the other regardless of their awareness of the realization of the meeting place option, the contract will be binding. There is no difference of opinion in this regard (Haeri, 1987, 8: 292). As previously mentioned, most jurists believe that one step away is sufficient for the realization of the separation (Shahid Thani, 1990, 3: 270) while the measure of recognition is the common law and in each case if there is any doubt the meeting option will be treated based on the general procedure followed by the majority. In fact, the indication of “one step” is an example for expression of the minimum condition for separation. The separation cancels the option that takes place upon volition and satisfaction. Therefore, if the separation takes place through deception or reluctance or force, it is not considered as a separation. It is needless to say that after the disappearance of the reluctance or force there is no occasion for speaking of meeting and separation and the general procedure will be the basis for decision in this regard unless certain actions are taken that contradict the option.

Whether the death of one of the parties after sealing the contract in the meeting place is an extension of the separation? The reality is that separation occurs as a result of death because separation denotes the departure of one party or two parties that render the gathering meaningless. Moreover, dead person cannot sustain a contract as the meeting place option depends on the person. Therefore, the majority believe that the death of one party means separation and the agreement of the transaction disappears.

Agreement: Parties allow each other to decide of the option and this takes place in two forms. Either the parties agree not to include the option in the contract (Halabi, Ghanyah, 1997: 217). Of course, this is in positive form in line with the confirmation of the contract along with the cancellation of the option. Or after the sealing of the contract, one of the parties who has the option tells the other party to choose and the other party signs the contract.

Seizure: Although in the works of some great jurists, there is no discussion of seizure as one of the conditions of the cancellation of the meeting option or confirmation of the sale (Sheikh Najafi, 1984, 23: 19), the seizure of the sold item by the customer or the seizure of the price by the seller are indeed a form of execution or cancellation of the option. Here we need to explain the concept of seizure.

Concept of Seizure: Seizure means acquisition of something and its modification and in some cases it refers to undertaking something (Ameed, 1979: 322). Although seizure has not been defined in our laws including the Civil Procedure Code and Civil Code, seizure implies that a property is at the custody of someone and he can take every decision regarding this property (Langeroodi, 2004: 139, 154). Seizure as a term both in jurisprudence and law refers to domination. It seems that seizure exists in different forms. Seizure has different senses in lexical, public and legal contexts. Seizure can be in one of the following forms: 1- seizure would be something

¹ The collusion conditions are those that have not been mentioned in the contract but the parties have reached an agreement over them and after this mutual understanding they have prepared the contract.

secondary to the ownership or would pave the path for ownership; 2- seizure would refer to the exhaustion of property or its management or its use ... (Langeroodi, 2004: 156). Moreover, the seizure to which is referred as domination that can be either in possessive or trusted forms. Nevertheless, the seizure that is intended in this context and leads to the cancellation of the option is divided into two groups:

A) Material Seizure: It is a seizure as a result of which the property itself is exhausted, modified or changed. Such a seizure is influential and leads to the decrease of the rights of the seizer or causes the cancellation of the rights including the right of option. Therefore, mere extension and contraction of material seizure is not considered to be influential.

B) Legal Seizure: Legal seizure is a seizure that takes place as regards the transaction without any material modification and even without the contraction and domination over the transacted item and carries the object itself along with its profits. This seizure is called the transferring seizure.

The question is that which one of the abovementioned seizures leads to the cancellation of the option or indicates the satisfaction of the transaction?

Before answering this question, one should say that jurists are divided in this regard (Khoei, 1992, 6: 196). Anyway, to answer this question, two points have to be reminded. Firstly, in option's time ownership has been brought about for the parties and the existence of the option does not render the ownership impossible and even there is no need for the cancellation of the option because in any way the buyer is the owner of the sold item and the seller is the owner of the price. Secondly, according to the principle of "people own their properties", people can use their properties the way they want regardless of the fact whether the sold item or price are seized by the parties or not. Therefore, the existence of option does not render the application of the principle of domination impossible.

On the other hand, if one side seizes the exchanged item the option will be cancelled while the option of the other party remains. The Article 450 of Civil Code reads: "Any possessory acts which are by their nature an indication of satisfaction with the transaction amount in practice to acceptance; for instance, if the purchaser who has an option, and who knows that he has an option, sells the object or pawns it."

Therefore, the sale or transfer of the sold item or any other modification that results in the fundamental change of the sold item cancels the option. The knowledge of the existence of the option is the influential condition for the cancellation of the option. Therefore, if the seller or the buyer does not know the existence of the option, seizure does not have any impact on the cancellation of the meeting place option. This is why the legislator has used the phrase "who knows he has an option" in the Article 450. Generally speaking, given the laws and the results acquired through the common law, one should say that seizures or possessory acts are divided into the cancelling and non-cancelling ones. It is clear that a seizure that takes place with the permission of the other side on the sold item does not cancel the option. Cancelling possessory acts are those that show the satisfaction in the transaction (based on the universal law set by the reasonable men and the common law) and cancel the meeting option. In other words, it is said that the seizure that expresses the seizer's commitment to the contract reflects his intention for the prevention from the cancellation of the contract not every possessor act that is handled by the person.

Seller's Possessor Acts on the Sold Item:

The possessory acts of the seller in the time of the existence of the meeting option for both parties would be in material or legal forms each one of which should be discussed in an independent form. If the seller makes use of the sold item that belongs to the buyer in a material and objective way and modifies or changes it, this in some way is an indication of the execution of the meeting place option. For the cancellation or even the continuation of the option is either in oral or written or actional forms. In fact, the seller with his own action executes the meeting place option and causes the transaction to be terminated. This theory particularly when the seller consciously, i.e. despite his knowledge of the existence of the meeting place option, proceeds to seize the sold item is completely logical and rational and acceptable. But if the seller's possessory acts as to the sold item are of legal or intellectual nature, it is contemptable. In other words, the seller would have taken advantage of the financial rights or profits of the sold item and this is in conflict with the buyer's rights, e.g. reselling or leasing it. Some jurists believe that this action implies termination of contract and execution of the meeting option (Naraq,

2005: 106). However, such jurists as Ayatollah Khoei, believe that although such acts are not considered impermissible, they certainly do not cancel the option and make the sale unauthorized (Khoei, 1992, 7: 403). Imam Khomeini believes that such acts as selling or leasing or riding the horse are not reasons for termination (Imam Khomeini, 2000, 4: 201). The basis of such a theory seems to be the idea that option belongs to the contract not to the exchanged items. Therefore, if the sold item is exchanged, the option still stands. It seems that what the legislator has noted in the Article 450 of Civil Code is merely the case in those cases where the customer has option and the customer despite his knowledge of having an option has transferred the sold item. Therefore, the possessory acts of the transferring party who does not have the knowledge of the option do not lead to the cancellation of the option.

Seizure of Price by the Seller: It is needless to say that the seller's use of the price that is in his custody out of satisfaction leads to the cancellation of the meeting option and this is a clear example of the content of the Article 450 of Civil Code. In fact, the seizer with his action cancels the meeting option. The seller's seizure in this case can be either material or legal provided this has happened out of the knowledge of the option.

Seizure of the Price by the Buyer: If the buyer uses the price that is supposed to be possessed by the seller in return of the sold item, since this state is like the state related to the seller the results will be the same.

The Buyer's Possessory Act on the Sold Item: The buyer's use of the sold item is just like the use of the price by the seller. It seems that both share the same judgement. We have already noted the judgement in this regard. In other words, if the seizure is by the seller on the sold item, this will be tantamount to the termination of the contract and the sale will be cancelled and if the seizure is by the buyer on the sold item there is a type of commitment to the sale and the option of the buyer is cancelled but the option of the seller remains. If both seize the sold item and the price this would cancel the sale (Bahrani, n., 9: 19). Anyway, such acts must be interpreted base on the common law.

Conclusion:

In the present article, it was proven that if the parties to the sale contract gather together and there is no exceptional condition and the contract is sealed, there will be a meeting place option. But the cancellation of the meeting option as a result of the separation of the parties or its cancellation takes place by the parties or through agreement and seizure. It is suggested that the option belongs to the contract itself not the exchanged items, i.e. sold item and price. One needs to say that if the exchanged items are exhausted, this will not lead to the cancellation of the meeting option. On the other hand, if the possessory acts of the seller on the sold item that belongs to the buyer are material or objective and change or modify or exhaust the sold item this is an indication of the use of the meeting option. For cancellation of the option is either oral or written or actional. In fact, the seller by his action has implemented the meeting option and terminated the contract. This theory is the case particularly when the seller consciously, i.e. despite his knowledge of the existence of the meeting option, seizes the sold item. However, if the seizure means that the seller would take advantage of the sold item after its sale and possession by the buyer this will be in conflict with the buyer's rights and the situation will be different.

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