

**(1969) 10 OHC CK 0007**  
**In the Orissa High Court**  
**Case No : M.A. No. 14 of 1966**

Union of India (UOI)

APPELLANT

Vs

Kisan Khandelwal

RESPONDENT

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**Date of Decision :** 30-10-1969

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 47, 82

**Citation :** AIR 1970 Ori 137

**Hon'ble Judges :** R.N. Misra, J

**Bench :** Single Bench

**Advocate :** B.K. Pal, for the Appellant; R.N. Sinha, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R.N. Misra, J.—This appeal is on behalf of the Union of India against the order of the learned Subordinate Judge, Bala-sore, dated 27-11-65 by which an application u/s 47 C. P. C. made by the Union of India was overruled. The short facts relevant for the decision of this case are the following. On 15-11-55 a money decree was obtained against the Eailway. On 12-7-60 the First Appeal was disposed of. Execution case No. 48 of 1963 was levied on 15-7-63. On 20-12-63 the following order was passed by the learned Subordinate Judge in the execution case:

"It is seen from the original record that a report has not been made to the Government, Make a report to Government as ordered on 14-12-63. This execution case is dismissed as premature."

Thereafter a fresh execution ease was filed on 2-5-64. Upon notice to the Railway in the execution case an objection u/s 47 C. P. C. was filed taking the stand that the execution was barred by limitation. The learned Subordinate Judge mainly concentrated on the question as to whether in view of the fact that the Court had made a mistake in not taking effective steps limitation can ever arise. Having heard Mr. Pal and Mr. Sinha. learned counsel for the respective

parties, I am of the view that this appeal can be disposed of on a short point that until there is compliance with the provisions of Section 82 C. P. C. the decree is not in an executable stage and as such the period of limitation can really commence after that stage has reached. Until then it can be stated to be inchoate and limitation cannot be pleaded. My view is supported by a decision of the Patna High Court in Governor-General in Council Vs. Pirmal Marwari, , where Mr. Justice Ray took almost a similar view. I am thankful to Mr. Pal for having cited a decision reported in State of Kerala Vs. Kesavan Govindan Potti, , which also clearly supports the view indicated above. Therefore, until there was compliance with the provision of Section 82 C. P. C., the question of limitation could not arise In this case. The objection u/s 47 C. P. C. is, therefore, not maintainable. The execution is in time. The appeal is dismissed. Parties will bear their own costs.