
(1963) 05 OHC CK 0024
In the Orissa High Court
Case No : Civil Revision No. 1 of 1962

Union of India (UOI)

APPELLANT

Vs

Shri Mahabir Rice Mills

RESPONDENT

Date of Decision : 09-05-1963

Acts Referred:

Citation : (1963) 29 CLT 546

Hon'ble Judges : Narasimham, C.J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant; H. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a petition to review an ex-parte order passed by the S.C.C. Court, Balasore, decreeing the Plaintiff's suit for recovery of a certain sum of money with costs by way of compensation for short delivery of certain goods booked through the Petitioner-railway. The goods were booked through the Petitioner-railway. The goods were booked from some place at Balasore on 23-3-1958 and delivery was taken at Rourkela on 5-4-1958. 8 maunds were found short in the consignment and the Petitioner immediately laid a claim for the same before the railway authorities. The statement in paragraph 6 of the plaint is as follows:

That no part of the Plaintiff's claim in suit is barred by the Law of Limitation inasmuch as the Defendant Railway acknowledged liability held out hopes of settlement in the mind of the Plaintiffs in writing within the period of limitation and ultimately through the letter, dated 23-12-1958/3-1-1959, addressed by the Chief Commercial Superintendent South Eastern Railway, of Royal Exchange Place, Calcutta, to the Plaintiff, the Defendant Railway wrongfully repudiated liability for the Plaintiffs' claim in suit.

2. As the Defendant did not appear to contest the suit, it was heard ex-parte. No specific issue on the question of limitation was tried by the Lower Court, but the

case was decreed on the facts stated in the plaint and the evidence of one witness.

3. As the ex-parte decree was not set aside in accordance with law the only point urged by Mr. Pal on behalf of the Petitioner is that on the materials on record the suit should have been thrown out as being barred by limitation. The limitation in case of short delivery is one year from the date on which the goods ought to be delivered. As pointed out by their Lordships in *Bootamal Vs. Union of India (UOI)*, in cases of this type where there has been short delivery the starting point of limitation would be the date on which the bulk of the goods were delivered, namely, 5-4-1958. But their Lordships further pointed out that from the correspondence between the parties it may appear that the reasonable time for considering when the goods ought to be delivered may be extended. They have also said that the correspondence may show that there was acknowledgment of liability which will give a fresh starting point of limitation. Here the Plaintiff had definitely asserted that there was acknowledgment of liability and holding out of hopes of payment of money. The final refusal took place only on 1-9-58. As the Petitioner did not contest this averment in paragraph 6 of the plaint, it must be taken as true. On the very decision relied on by Mr. Pal, I must hold that the suit was not barred by limitation. No question of law arises out of the judgment of the lower court.

The revision petition is dismissed with costs. Hearing fee Rs. 32/-.