

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.99 of 1992

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 08.01.1992 and 25.01.1992 respectively passed by the learned Additional District Judge, Jajpur in Money Appeal No.4 of 1988 setting aside the judgment and decree dated 07.12.1987 and 24.12.1987 respectively passed by the learned Subordinate Judge, Jajpur in Money Suit No.40 of 1985.

***Industrial Development
Corporation of Orissa Limited,
Bhubaneswar***

....

Appellant

-versus-

***Union of India, through General
Manager, South Eastern Railway,
Garden Reach, Culcutta***

....

Respondent

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant

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M/s.D.P.Mohanty
S.C. Mohanty, J.K. Bastia,
R.K. Nayak, B. Das and
B.B.Bhuyan
(Advocates)

For Respondent

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Mr.Alok Kumar Mohanty,
Addl. Standing Counsel

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 17.05.2022 :: Date of Judgment:20.06.2022

The Appellant, by filing this Appeal under Section- 100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment and decree dated 08.01.1992 and 25.01.1992 respectively

passed by the learned Additional District Judge, Jajpur in Money Appeal No.4 of 1988 whereby the judgment and decree dated 07.12.1987 and 24.12.1987 respectively passed by the learned Subordinate Judge, Jajpur in Money Suit No.40 of 1985 decreeing the suit filed by the Appellant, as the Plaintiff, directing the Respondents (Defendants) to pay a sum of Rs.10,170.12/- to the Plaintiff, have been set aside and the Appellant (Plaintiff) has been non-suited.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Suit.

3. The Plaintiff's case is that it is a Government of Orissa undertaking and for the purpose of production of Chromium Alloys at it's Ferro Chrome Plant at Jajpur Road, they use to purchase hard coke from different places. On 08.12.1982, the Plaintiff purchased 21.700 MT of hard coke from Central Coal Field (CCL), Giridih and was then loaded in the Railway Wagon at Giridih Railway Station in presence of Railway staff and under their supervision. The wagon was duly sealed and secured in accordance with the Railway Rules and practice. It was then weighed in the weigh bridge. The officials of the Defendant-Railways accepted the consignment for the purpose of carriage to Jajpur Road Railway Station and issued the Railway Receipt (RR) dated 08.12.1982 under the invoice No.4 without any such endorsement as to the deficiency of any kind with the loaded goods. The wagon reached the destination station after about three and half months. The Plaintiff, while taking the delivery of the goods in the wagon, found the doors to have been broken and a shortage of 8400 MTs of coke was detected. The Railway Authority then issued short certificate as mandated in law.

The price of such hard coke being raised at Rs.10,172.12, the same being the loss caused to the Plaintiff in course of carriage in the Railways in the wagon under their care and control, the suit came to be filed claiming the recovery of the said sum with interest from the Defendant (Railways) after issuing notice under Section 78-B of the Indian Railways Act as well as notice under section 80 of the Code.

4. The Defendant contested the suit. In the written statement, besides raising the technical pleas, appears to have asked the Plaintiff to strictly prove all those material facts as are essential for sustaining the claim.

5. The Trial Court, framing seven issues. On going through the evidence of solitary witness of the Plaintiff and the documents admitted from their side (Ext.1 to 9), which have not been countered from the side of the Defendant (Railways), either by examining any witness or proving any document, has answered all those in favour of the Plaintiff in decreeing the suit.

6. The First Appellate Court, being moved by the Defendant (Railways), feeling aggrieved by the judgment and decree passed by the Trial Court, has held that the Plaintiff is not entitled to recover the said sum from the Defendant. For such a finding, the only reason assigned is that the witness examined from the side of the Plaintiff (P.W.1) was not present at the time of loading of hard coke in the Railway Wagon and its sealing while being entrusted and taken over by the Railway Authorities at Giridih Railway Station for its onward carriage to Jajpur Road Railway Station. It has held that the Plaintiff has failed to prove the actual delivery of the goods to the Railways for its carriage. It has been further stated that as per the contract of carriage, the transportation of

goods being at the owners risk, as is evident from the document (Ext.1), i.e., the forwarding note, the Trial Court was not right in decreeing the suit.

6. Mr.D.P.Mohanty, learned counsel for the Appellant submitted that the finding of the First Appellate Court is completely contrary to the evidence on record. Placing the evidence of P.W.1, it was submitted that his evidence is clear on the point that the Plaintiff have got their agents, who used to over-see the said loading made by C.C.L. staff and the same was supervised by the Railway staff and that being so clearly reflected in the railway receipt and forwarding note, he contended that the same ought to have been held sufficient for proving the fact that the goods had been delivered for carriage. He further submitted that when all said facts, as pleaded in the plaint, have not been specifically denied and as such falling foul of the rule of non-traverse, the First Appellate Court has ignored that settled legal position that said facts are not required to be proved as being deemed to have been admitted.

7. Mr.Alok Kumar Mohanty, learned Additional Standing Counsel for the Central Government supported the judgment passed by the First Appellate Court.

8. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plant, written statement and the deposition of P.W.1 as well as the documents admitted in evidence (Ext.1 to 9).

9. The Plaintiff, at paragraph-3 of the Plaint, has clearly pleaded that the hard coke purchased from C.C.L., Giridih had been loaded in the Railway Wagon at Giridih Railway Station and it had been properly

sealed and secured as per the rules and practice. The Defendants, in their written statement, which has been filed under the signature of Deputy Chief Commercial Superintendent, South Eastern Railway, at paragraphs-9 and 10, has pleaded as under:-

“9.That without admitting any of the allegations regarding the consignment stated in the plaint, the defendant would refer to the F/Note and the R/R for the description of the consignment, their condition etc. and the terms, conditions effect thereof; and

10.That the defendant denies the quantum of the alleged loss and/or shortage. The plaintiff be put to strict proof. Should it be proved that there was any loss/shortage, the defendant submits further that the same was/were due to short loading/act or omission and/or negligence on the part of the consignor and/or his agents.”

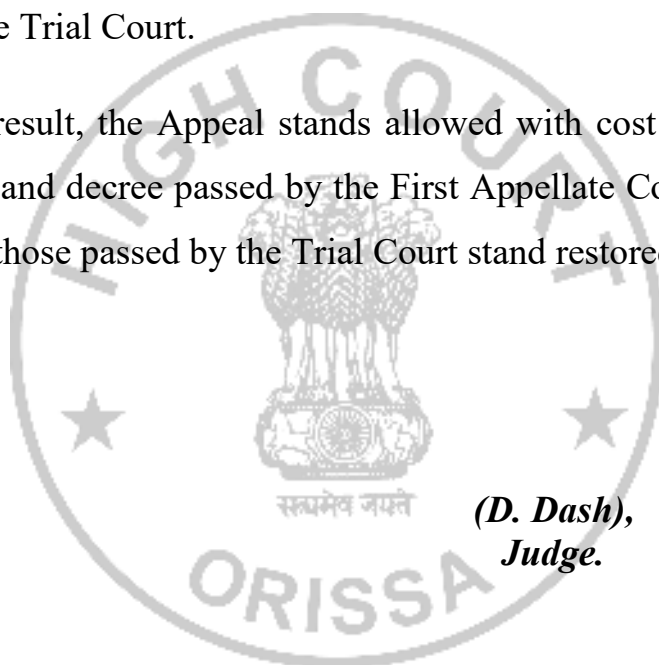
This written statement does not even indicate the date when the Deputy, Chief Commercial Superintendent, South Eastern Railway verified the averments. Another written statement bearing no date has been filed under the signature of the Railway Advocate, which is without any authority, verification in terms of the provisions contained in Order 6 Rule 15(3) of the Code.

In the above state of affairs in the written statement, the First Appellate Court should have ignored all the same in the written statement from the side of the Defendant. As is seen, the written statement with the averments as noted suffers from the vice of the rule of non-traverse as contained in Rule 4 of Order 8 of the Code. Therefore, the factum of delivery of goods to the Railway Authority at Giridih Railway Station and its loading in the Railway Wagon being duly sealed and secured followed by issuance of railway receipt and forwarding note as also the fact as to short delivery of the goods at the

destination Railway Station as reflected in the short certificate ought to have been deemed to have been admitted by the Defendant-Railways and no fault should have been found with the Plaintiff in that they have not proved their case as to actual delivery of goods at the loading Railway Station, Giridih and the loss occasioned to them on account of short supply of goods at the destination Railway Station, i.e., at Jajpur Road.

In that view of the matter, the substantial question of law stands answered in favour of the claim of the Plaintiff as laid as had been decreed by the Trial Court.

10. In the result, the Appeal stands allowed with cost althrough and the judgment and decree passed by the First Appellate Court are hereby set aside and those passed by the Trial Court stand restored.



**(D. Dash),
Judge.**

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