HON'BLE SRI JUSTICE A. GOPAL REDDY
AND
HON'BLE SRI JUSTICE K.S. APPA RAO

A.S.Nos.1251 of 2000 and 2014 of 2001

Date: 20 -09-2011

A.S.No.1251 of 2000:

Between:

The Food Corporation of India

…….. Appellant

And

M/s. Jagdish Industries and others

…….. Respondents

HON'BLE SRI JUSTICE A. GOPAL REDDY
AND
HON'BLE SRI JUSTICE K.S. APPA RAO

A.S.Nos.1251 of 2000 and 2014 of 2001

COMMON JUDGMENT: (Per KSAR, J)

Aggrieved by the judgment and decree, dated 31-07-1989 passed in O.S.No.16 of 1984 on the file of the Subordinate Judge at Nizamabad, the plaintiff filed A.S.No.1251 of 2000 and the defendants filed A.S.No.2014 of 2001. Since both the appeals arose out of the same judgment and the issue is also one and the same, they are clubbed and disposed of by this common judgment. For convenience sake, the parties hereinafter will be referred to as they are arrayed before the trial Court.

2. The brief facts of the case are as follows:

The plaintiff filed the suit for recovery of Rs.1,07,31,494-76 ps. As per the plaint averments, the defendants have undertaken to mill the paddy of the plaintiff and to deliver the resultant rice to the plaintiff as per the specifications, for which the defendants will be paid milling charges and in pursuance of the same, they executed three agreements on 25-08-1980 and fourth agreement

on

05-01-1981. It is further averred that in the first and second agreements dated 25-08-1980, defendant Nos.3 to 5 have signed and in the third agreement dated 25-08-1980 and fourth agreement dated 05-01-1981, defendant Nos.3 and 4 have signed on behalf of all the partners of the firm. Accordingly, the defendants agreed to lift 7000 metric tonnes of paddy under the first agreement, 1000 metric tonnes of paddy under the second agreement, 5000 metric tonnes of paddy under the third agreement and 13,700 metric tonnes of paddy under the fourth agreement and to deliver the resultant rice, but they failed to lift the entire quantity of paddy as agreed by them resulting in short delivery. As per the agreement, the defendants are liable to pay 2 ½ times economic costs of rice for short delivery of rice. It is further averred that under the first agreement, the defendants lifted only 4140.376.000 metric tonnes as against 7000 metric tonnes and there is short delivery of 231.825.000 metric tonnes; under second agreement, they have lifted 993.780.000 metric tonnes as against 1000 metric tonnes and there is short delivery of 6.793.000 metric tonnes; under the third agreement, they have lifted 2916.576.000 metric tonnes as against 5000 metric tonnes and there is short delivery of 962.865.000 metric tonnes and under the fourth agreement the defendants have not lifted any quantity of paddy against 13,700 metric tonnes. Thus, the total amount for the short delivery of rice under all the agreements comes to Rs.74,69,803-16 ps. The defendants are also liable to pay Rs.2/- per quintal for the unlifted quantity of paddy, and thus under all the agreements, they have to pay Rs.3,73,000/- for the unlifted quantity of paddy. The defendants also failed to return 42,423 gunny bags supplied to them for which they are liable to pay Rs.4,29,945/- at the agreed price. The defendants are also liable to pay interest @ 11% per annum under the first and third agreements, which comes to Rs.24,58,746-60 ps. It is further averred that the first defendant has acknowledged the paddy received and also gave a statement of paddy

lifted by him and the resultant rice delivered by him which constitute clear admission of liability and it will extend the period of limitation. Therefore, in total, the defendants are liable to pay an amount of Rs.1,07,31,494-76 ps.

3. The defendant Nos.1 and 3 to 5 have filed written statement which briefly reads as follows:

One P.B.Sajwal, who verified the pleadings, is not competent and he has no legal capacity to institute the suit on behalf of the plaintiff-corporation. On 18-02-1985 the second defendant died and the firm has got only defendant Nos.3 to 5 as partners from 18-02-1985 onwards and the defendants admitted to have executed the agreements on behalf of the first defendant firm and denied the quantities of paddy which are shown as lifted by them. It is also stated that they have lifted 8010.680.747 metric tonnes under the first three agreements and have not lifted any paddy under the fourth agreement. They denied the shortfall of the rice and stated that the penalty of 2 ½ times economic cost of rice for short delivery is onerous, oppressive, unconscionable and cannot be legally enforced. They also averred that the stipulation of payment of Rs.2/- for the unlifted quantity of paddy is also onerous, unconscionable and not enforceable and denied the liability to pay Rs.4,29,945/- towards the cost of 42,423 gunny bags and also denied the liability to pay interest. They further averred that the suit is barred by limitation and the letter dated 05-05-1985 cannot be taken as acknowledgment.

4. Basing on the rival pleadings, the following issues have been framed and settled for trial before the trial Court:

1. Whether Sri P.B. Sajwal Dist. Manager has capacity to file suit on behalf of the plaintiff corporation?
2. Whether under 1st agreement the short delivery of rice is only 231.506 M.Ts. and not 231.825 MTs?
3. Whether under 3rd agreement the short delivery of rice is only 923.634 M.Ts. and not 962.865 MTs?

4. Whether the liabilities of defendant to pay 2 ½ times for 1st and 3rd agreement costs of rice is illegal and cannot be endorsed?
5. Whether defendants signed agreement under influence of plaintiff?
6. Whether defendants are liable to pay at the rate of Rs.606-15 ps, Rs.280-50 ps & Rs.627-87 ps per quintal of short delivery of rice under 1st, 2nd and 3rd agreements?
7. Whether the penalty of Rs.2/- per quintal for unlifted quantity of paddy is illegal and unenforceable?
8. Whether defendants failed to account for Rs.42,423/- gunny bags and liable to pay Rs.4,29,945/-?
9. Whether claim of interest by plaintiff is illegal in view of penalty clauses in agreements?
10. Whether suit is barred by limitation?
11. Whether the letter dated 05-05-1981 of defendants amounts to admission and acknowledgement of liability?
12. To what relief the parties are entitled to?

Additional Issue framed on 26-09-1988:

1. Whether under second agreement dated 25-08-1980 there is a short delivery of rice 6.793 M.T by the defendants?

5. During the course of trial, on behalf of the plaintiff, PWs.1 to 3 were examined and Exs.A-1 to A-18 were got marked. On behalf of the defendants, DW-1 was examined and Exs.B-1 to B-4 were got marked. After full-fledged trial, the trial Court decreed the suit in part through the judgment dated 31-07-1989. Being aggrieved, the plaintiff-corporation preferred the present A.S.No.1251 of 2000 and the defendants preferred A.S.No.2014 of 2001.

6. The learned counsel appearing for the plaintiff-corporation strenuously argued that the trial Court failed to appreciate that Ex.A-10, statement of rice supplied date wise, is prepared as per the accounts maintained by the plaintiff and that expressing doubt about its correctness is not tenable. He further urged that the trial Court ought to have held that there is short delivery of 231.825 metric

tonnes, 6.783 metric tonnes and 962.865 metric tonnes under the first, second and third agreements respectively. He also urged that the trial Court erred in holding that the interest and transit loss cannot be included while calculating the economic cost and also erred in holding that the plaintiff is entitled to Rs.1/- per quintal towards the penalty for the unlifted paddy when the agreement specifically provides the same at Rs.2/- per quintal. Therefore, the trial Court ought to have held that the defendants are bound by the terms of the agreements in Exs.A-2, A-4, A-6 and A-8. He further urged that the claim of the plaintiff is not barred by limitation in view of Ex.A-15, acknowledgment, dated 05-05-1981 and placed reliance on the decisions reported in **SHAPOOR FREDOOM MAZDA v. DURGA PROSAD CHAMARIA AND OTHERS** [1] and **M/s. LAKSHMIRATAN COTTON MILLS CO. LTD v. ALLUMINIUM CORPORATION OF INDIA LTD** [2].

7. The learned counsel appearing for the defendants argued that the suit filed by the plaintiff is not maintainable and it stands as abated as one of the partners (Defendant No.2) died subsequent to its institution and the legal representatives of defendant No.2 were not brought on record in time and that the suit is barred by limitation and that the stipulation of liquidated damages at 2½ times the economic cost of rice is unconscionable, and unenforceable and that fixing the damages @ Rs.627-87 per quintal for the undelivered rice is absolutely unjustified and that levying penalty of Rs.1/- per quintal for the unlifted paddy is unsustainable and that the finding of the trial Court fixing the liability towards cost of gunny bags is erroneous as the plaintiff did not prove the same.

8. Basing on the pleadings, though the trial Court framed as many as 12 issues, now the points that arise for consideration are:

1. Whether the suit filed by PW-1 on behalf of the plaintiff-corporation is maintainable?
2. Whether the suit is barred by limitation?
3. Whether there is shortage of delivery of resultant rice

pursuant to the agreements entered into between the plaintiff and defendants?

4. Whether the plaintiff is entitled to 2 ½ times economic cost for the shortage of delivery of rice?

5. Whether the plaintiff is entitled to the penalty of Rs.2/- per quintal for the unlifted quantity of paddy?

6. Whether the plaintiff is entitled to claim Rs.4,29,945/- towards the cost of 43,423 gunny bags? and

7. Whether the plaintiff is entitled to claim interest in view of the penalty clause in the agreements?

POINT No.1:

9. The plaintiff, in order to prove that the suit is maintainable, got examined PWs.1 to 3 and got marked Ex.A-16, certified copy of the delegation of powers, Ex.A-17, letter addressed to the District Manager, and Ex.A-18, copy of the express telegram sent by Head Office.

10. The defendants have taken a specific plea that the said P.B. Sajwal, who signed the pleadings of the plaint on behalf of the plaintiff-corporation, is not authorised to sign the pleadings and has no legal capacity to file the suit. P.B. Sajwal was examined as PW-2. According to him, he worked as District Manager, FCI, Nizamabad during July, 1982 to January, 1985 and he was delegated the powers and authorised to file the suit on behalf of the plaintiff-corporation. Accordingly, he signed on the plaint and marked the certified copy of the extract of delegation of powers as Ex.A-16. PW-3, another witness by name Sanjeeva Rao, who was working as District Manager, FCI, Nizamabad, deposed that the manager of the plaintiff-corporation is authorised to sign the plaint and accordingly,

PW-2 was authorised through Ex.A-16 to file the suit on behalf of the plaintiff-corporation and he also produced Ex.A-17, letter authorising the District Manager to sign the pleadings on behalf of the plaintiff. As seen from Ex.A-16, the powers are delegated effecting from 01-07-1980 as amended upto 06-12-1985 in which the appropriate officer not below the rank of District Manager obtaining necessary prior approval

of the authority competent to sanction filing suit appeals etc., is authorised to sign and execute vakalat, plaint and written statement and verify the pleadings. Ex.A-17 is the letter, dated 28-01-1984 under which the Deputy Manager has communicated to the District Manager, FCI, Nizamabad about the approval of the Managing Director, FCI, Head Quarter, New Delhi, authorising him to sign and verify the plaint etc. filed against M/s. Jagdish Industries and Radhakrishna Rice Mill, Nizamabad, on behalf of the FCI, Nizamabad. So, Exs.A-16 and A-17 clearly show that there is an amendment and delegation of powers w.e.f. 01-07-1980 under which the District Manager, with the prior approval of the competent authority, is empowered to sign the pleadings. Therefore, Exs.A-16 and A-17 are the crucial documents basing on which the suit was filed against the defendants.

11. Accordingly, PW-2, who was working as District Manager, FCI, Nizamabad, as on the date of filing of the suit, was authorised to sign the plaint and he has legal capacity to file the suit, and therefore, the suit is maintainable. Hence, we see no force in the argument advanced by the learned counsel for the defendants that the suit filed by PW-2 on behalf of the plaintiff is not maintainable. The trial Court also, after considering the contents of Exs.A-16 and A-17, held that the suit is maintainable. Therefore, the finding of the trial Court on this point is sustainable.

POINT No.2:

12. The defendants have taken a plea that the first three agreements were executed on 25-08-1980 and 4th agreement was executed on 05-01-1981, whereas the suit was filed on 31-01-1984 and as such, it was not filed within three years from the date of agreement and therefore, it is barred by limitation.

13. The learned counsel for the plaintiff-corporation mainly urged that Exs.A-2 and A-6, agreements, are dated 25-08-1980 and 05-01-1981, and under the agreements it is a running

contract and the period can be extended and as such, the suit was filed within the period of limitation from the date of delivery of resultant rice. It is further argued that under
Ex.A-15, dated 05-05-1981, one Satyanarayana Attal, one of the partners of D-1 firm, has acknowledged the liability and as such, the limitation starts from 05-05-1981.

14. The learned counsel for the defendants argued that Exs.A-2 and A-6, agreements, were tampered with and the dates were altered to bring the suit within the period of limitation.

15. The trial Court observed that in Ex.A-15 there is an alteration, but it was signed by one Rajkumar who is not a partner in the firm. It is also noted that Satyanarayana Attal has signed at the place of alteration. Admittedly the said Rajkumar was figured as a witness in Ex.A-2, wherein at page No.9, the date is mentioned as 25-03-1981 and though the month column is altered, it is signed by Satyanarayana Attal, who is a partner of D-1 firm. Though there are strike outs and alterations in
Ex.A-15, the trial Court discussed the evidence on record and came to the conclusion that the corrections were attested by one of the partners of the firm i.e., Satyanarayana Attal.

16. Though the learned counsel for the defendants cited several decisions in the trial Court, the trial Court did not place reliance on those decisions, as the facts and circumstances of those decisions are entirely different from the facts and circumstances of the case on hand, and held that the suit is well within the period of limitation.

17. The learned counsel for the plaintiff placed reliance on the decisions reported in **SHAPOOR FREDOOM MAZDA's case** (1 supra) and **M/s. LAKSHMIRATAN COTTON MILLS CO. LTD's case** (2 supra), and argued that the acknowledgement as prescribed under Section 19 of the Limitation Act merely renews the debt and it does not create a new right of action.

18. In **SHAPOOR FREDOOM MAZDA's case** (1 supra), it

was held:

> "Acknowledgment as prescribed by S.19 merely renews debt; it does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication.
>
> The statement on which a plea of acknowledgement is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words.

In **M/s. LAKSHMIRATAN COTTON MILLS CO. LTD's case** (2 supra), it was held:

> "The statement on which the plea of acknowledgement is founded need not amount to promise and need not indicate the exact nature or the specific character of the liability. It must, however, relate to a present subsisting liability and indicate the existence of jural relationship between the parties such as for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances."

19. From the above decisions, it is clear that where there is an acknowledgement, it need not be in clear words, but it can be inferred by implication from the nature of the admission and the surrounding circumstances. Admittedly in the case on hand, Ex.A-15, dated 05-05-1981 clearly goes to show that one of the partners of the firm acknowledged the liability to the extent of 1155.140.443 metric tonnes of rice and thus under Ex.A-15, the defendants through Satyanarayana Attal have admitted that they are due under the said agreement of rice, and as such, in view of the aforesaid decisions, Ex.A-15 can be taken as an acknowledgement and admission about

the relationship of the parties. It is rightly argued by the learned counsel for the plaintiff that as the liability is admitted under Ex.A-15, dated

05-05-1981 by Satyanarayana Attal, one of the partners of the firm, the agreement binds the liability of the firm and therefore, the limitation starts from the date of Ex.A-15 i.e., 05-05-1981.

As Ex.A-15, dated 05-05-1981 is binding on the defendants, the present suit is within the period of limitation. Therefore, the finding of the trial Court that the suit is within the period of limitation is sustainable.

POINT No.3:

20. On this point, the trial Court, after considering the evidence on record, held that there is short delivery of 231.506 metric tonnes of rice under the first agreement and 923.634 metric tonnes of rice under the third agreement and there is no shortfall under the second agreement.

21. According to the plaintiff, under the first agreement the defendants have lifted 4140.376.00 metric tonnes of paddy and delivered the resultant rice of only 2662.069 metric tonnes and that there is short delivery of 231.82.000 metric tonnes; under the second agreement, the defendants have lifted 993.780 metric tonnes and delivered resultant rice of 680.810 metric tonnes and thus there is short delivery of 6.793.000 metric tonnes; under the third agreement, they lifted 2916.576.000 metric tonnes of paddy and delivered resultant rice of 1085.005.000 metric tonnes and thus there is short delivery of 962.865.000 metric tonnes. However, the defendants denied the same and clearly stated that there is no short delivery under the agreements. In proof of the alleged short delivery, the plaintiff filed Ex.A-11 showing the paddy lifted under the first three agreements and the rice delivered. Ex.A-15 is the letter dated 05-05-1981 along with the statement given in reply to the notice of the plaintiff in Ex.A-14. According to the defendants, they have lifted 2592.273.449 metric

tonnes of Tella Hamsa and the short fall thereof, according to the plaintiff, is 227.379 metric tonnes, however according to the plaintiff, it is 227.035.365 metric tonnes against the shortfall claimed by the plaintiff. The claim of the plaintiff is mainly based on Exs.A-11 and A-15.

As per Ex.A-11, the short delivery is 1201.543.000 metric tonnes. As per Ex.A-15, it is only 1155.140.000 metric tonnes. Thus as per the statements of the plaintiff and defendants, there is a difference of 46.403.000 metric tonnes of resultant rice.

As stated already, the plaintiff's claim is based on Ex.A-11 document through the evidence of PW-1. On plaintiff's side, no document is filed evidencing the actual quantity of paddy lifted and the resultant rice delivered by the defendants and the shortfall thereunder. However, as the defendants admitted the shortfall in the written statement, it can be said that there is short delivery of 231.506 metric tonnes of rice under the first agreement and 923.634 metric tonnes of rice under the third agreement and there is no short delivery under the second agreement.

Moreover, the claim of the plaintiff-corporation on the point of limitation is based on Ex.A-15. If that be the case, Ex.A-15 document and its contents have vital bearing in the present suit on hand. If Ex.A-15 is taken into consideration, the finding of the trial Court that there is short delivery of rice is sustainable. Ex.A-15 is the acknowledgment given by one of the partners of the firm which saved the limitation in filing the suit. The allegation of short delivery is also based on Ex.A-15 crucial document.

22. In view of the above circumstances, the finding of the trial Court with regard to the short delivery of rice is sustainable.

POINT Nos.4 and 5:

23. As per the agreements in Exs.A-2 and A-6, the defendants are liable to pay 2 ½ times economic cost as per clause O(iv). It is admitted by the plaintiff that under the second agreement, the

defendants are liable to pay only 50% of the government price, but as per Ex.A-4, second agreement, the defendants are not liable for payment for the shortfall of rice as there is no shortfall of delivery of rice under the second agreement.

24. The learned counsel appearing for the plaintiff argued that the paddy supplied by the plaintiff has to be milled by the agents and the resultant rice will be sent to the public distribution system to be distributed for the consumers and if there is any shortfall in the delivery of rice by the millers, it will affect the public distribution system and as such, certain penalties have been imposed in the agreement itself, so that the millers will not avoid the delivery of the resultant rice or will not leave the paddy agreed to be lifted by them.

25. On the other hand, the learned counsel for the defendants argued that the said penalty is not just and reasonable, and it is excessive.

26. In the trial Court, series of rulings were submitted, but the trial Court disagreed with the observations in those rulings on the ground that they are not applicable to the facts and circumstance of the suit on hand. The trial Court also noted that all the decisions cited by the learned counsel for the defendants go to show that under Section 74 of the Contract Act, the party is entitled for compensation for breach of contract by other party, but the measure of damages must be reasonable and where the contract itself contained pre-estimated damages, the said damages can be awarded in breach of contract and Section 74 of the Contract Act permits compensation though the extent of actual loss or damages is not proved.

27. At this juncture it is pertinent to note that as per Ex.A-2, agreement, there are no clauses regarding the imposition of penalty or damages for the short delivery of rice, for which the plaintiff is entitled. Whereas in Ex.A-6, agreement, dated 05-01-1981, Clause 'O' (iv) indicates that in case the agent fails to supply the resultant rice, the recovery would be made from him for shortages of paddy and rice at 2

½ times economic costs of the rice according to the variety involved, and under cause 'M' (iii), damages shall be recovered from him at Rs.2/- per quintal on the stock which remains unlifted by the stipulated date. It is also clearly noted that the Senior Regional Manager/Regional Manager may, however, waive or reduce the damages depending upon the specific circumstances. He may also, besides imposing the damages, cancel the contract without forfeiting the security deposit and get the remaining quantity milled from some other miller.

28. Therefore, it is clearly asserted in the agreements itself that in case of non-delivery of resultant rice, 2 ½ times economic cost of the rice, according to the variety involved, will be collected and in case of unlifted paddy, Rs.2/- per quintal will be collected, however, the said amount can be waived or reduced by the Regional Manager depending upon the circumstances.

29. The trial Court, while exercising its discretion, which is vested to the Regional Manager under the agreements, rightly reduced the penalty to Rs.1/- per quintal for the unlifted quantity of rice in the circumstances of the case on hand, and held that

2 ½ times of the economic cost of rice at Rs.547.81 ps per quintal for the undelivered rice of 1155.140.443 metric tonnes should be calculated and penalty of Rs.1/- per quintal for the unlifted quantity of paddy of 18,689.319.253 metric tonnes has to be calculated.

30. Therefore, the trial Court rightly answered the points and we see no grounds to differ with the finding of the trial Court on these points and the same is sustainable.

POINT No.6:

31. The plaintiff claimed an amount of Rs.4,29,945/- towards 42,423 gunny bags supplied to the defendants at the time of lifting the paddy. The defendants denied that they have received any gunny bags. According to the evidence of PW-1, the defendants are due of

42,423 gunny bags under the four agreements i.e., Exs.A-2, A-4, A-6 and A-8. During the course of evidence, DW-1 denied that he is liable for payment of the value of gunny bags. The defendants, except denying that they are not liable to pay for gunny bags, they did not state that the gunny bags were not supplied to them at the time of lifting the paddy. It is an admitted fact that as per Ex.A-13, statement of gunny bags, the defendants have lifted 1,15,969 gunny bags in total and returned only 73546 gunny bags and therefore, the balance gunny bags are 42,423. Admittedly the defendants received the gunny bags as per Ex.A-13, and therefore, it is for them to discharge the burden on that score. As there is no explanation from the defendants, they are liable to pay an amount of Rs.4,29,945/- for 42,423 gunny bags as claimed by the plaintiff basing on the agreements.

32. The trial Court also came to the same conclusion and allowed the claim of the plaintiff for Rs.4,29,945/- towards the value of 42,423 gunny bags. Therefore, the finding of the trial Court on this point is sustainable.

POINT No.7:

33. The plaintiff claimed interest @ 11% per annum under Exs.A-2 and A-6. The defendants pleaded that they are not liable to pay interest as claimed by the plaintiff. Admittedly there is a clause in the agreement for imposing penalty for shortfall of rice and unlifted paddy. As the agreement clearly postulates about the claim of interest besides imposing of penalty on shortfall of rice and unlifted quantity of paddy, we see no justification in claiming interest again.

34. The trial Court also viewed in right perspective and declined to grant interest at 11% per annum, however awarded interest @ 12% per annum from the date of filing of the suit.

Though the said rate of interest at 12% per annum from the date of suit is excessive, in view of the circumstances of the case on hand much less when the plaintiff made a claim for future interest at 18% per annum, the finding of the trial Court on that score is justified and the

same is sustainable.

35. Therefore, on an overall scrutiny of the ocular evidence of PWs.1 to 3 and DW-1 and the documentary evidence of Exs.A-1 to A-18, and Exs.B-1 to B-4, the findings of the trial Court are based on the evidence on record and we see no grounds to differ with the same, and accordingly, the judgment of the trial Court is sustainable. There are no merits in these appeals and they are liable to be dismissed.

36. In the result, both the appeals are dismissed confirming the judgment of the trial Court in all respects.

No order as to costs.

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A. GOPAL REDDY, J

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K.S. APPA RAO, J

Date: 20-09-2011

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[1] AIR 1961 SC 1236(1)

[2] AIR 1971 SC 1482(1)