

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 10th Feb. '15.

F.A.O. No.54 of 2014.

[Arising out of the order dated 24.03.2014 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No.723 of 2013, corresponding to C.S. No.650 of 2013.]

Suddha Pradeep Giri, aged about 52 years, Son of Late Dibyasingha Prasad Giri, Resident of Plot No.546, Saheed Nagar, Bhubaneswar-7, Dist. - Khurda.

... **Appellant.**

-V e r s u s-

1. GMR Kamalanga Energy Limited, Registered Office at Skip House, 25/1, Museum Road, Bangalore-560 025, Represented through its Business Chairman.
2. GMR Kamalanga Energy Limited, Branch Office at 29, Satya Nagar, Bhubaneswar, Dist. - Khurda, Represented through its President and Director.

... **Respondents.**

Counsel :

For Appellant : Shri S.N. Das & Associates.
For Respondents : Shri B. Jena & Associates.

Date of arguments : 15.01.2015.

Date of judgment : 10.02.2015.

J U D G M E N T

The appellant is the plaintiff-petitioner before the Court below, who by way of this appeal assails the order dated 24.03.2014 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No.723 of 2013, arising out of C.S. No.650 of 2013, dismissing the petition filed under Order 39, Rules 1 & 2 read with section 151 of the C.P.C. seeking an ad-interim injunction restraining the defendants-opposite parties (respondents herein) from implementing the order of transfer dated 21.06.2013 and from taking any coercive action for termination of his service.

2. The parties hereinafter have been referred to as they have been arrayed in the Court below for the sake of convenience and proper appreciation.

FACTS :

3. The relevant facts leading to the case of the plaintiff, in a nutshell, are stated hereunder :

The plaintiff is an employee under the defendants having been appointed for the post of “Manager – Client Relationship”. It is the case of the plaintiff that at the time of his appointment, the defendants had committed that he would operate the office at Bhubaneswar and his service is not transferable. But, all of a sudden, on 21.06.2013, defendant

No.2 intimated the plaintiff that he has been transferred from Bhubaneswar to Kamalanga in the district of Dhenkanal, where his service is very much required. Since the plaintiff is aged about 45 years having three children and his wife is serving at Kolkata, for better education of their children, he voiced his grievance requesting not to transfer him, but the same was paid a deaf ear. It is also averred in the plaint that the plaintiff is suffering from back bone disease for the last thirteen years and he was advised not to undertake long journey. According to him, at no point of time, he is defaulted in his job, rather he is extremely hard working and has performed his job to the fullest satisfaction of the defendants. Since the request of the plaintiff was turned down by the defendants with a warning that if he does not join his new assignment his service would be terminated, he filed the suit for declaring the transfer order dated 21.06.2013 as illegal, void and not binding on him and for a decree of permanent injunction restraining the defendants from transferring him from Bhubaneswar to Kamalanga site office at Dhenkanal.

4. The defendants filed written statement refuting the entire allegations made in the plaint. It is the case of the defendants that there is no cause of action to file the case. According to the defendants, for the sake of the Institution,

the services of the plaintiff can be utilised at any Department of defendants-Company and there is already order of transfer passed by the defendants. Going by clause 3 of the appointment letter, the service of the plaintiff was placed in Kamalanga Branch of defendants-Company at Dhenkanal. It is the further case of the defendants that the service of the plaintiff is very much required there because of his experience and seniority to handle the project. The plaintiff instead of obeying the directions of the defendants submitted to stop his transfer and utilise his service at Bhubaneswar in view of his ailments. The defendants, after due consideration, rejected his representation and advised for joining the post at Kamalanga, Dhenkanal. Since the plaintiff did not obey the instructions, the defendants found him unsuitable for the Institution and, accordingly, issued order of termination of the plaintiff from service. As such, it is submitted by the defendants that the plaintiff has no case and the suit should be dismissed. Moreover, the defendants prayed to reject the petition for temporary injunction on the ground that the plaintiff has no prima facie case, balance of convenience lies in favour of the defendants and in case of injunction, the defendants will be put to irreparable loss and injury. Accordingly, the defendants prayed to dismiss the interim application.

5. After hearing both parties, the learned trial Court did not find out any prima facie case in favour of the plaintiff. The learned Court below also did not find the other ingredients to have been proved for passing temporary injunction in favour of the plaintiff for which she dismissed the interim application.

CONTENTIONS :

6. Learned counsel appearing for the appellant submitted that the learned trial Court has erred in law by not understanding the concept of Order 39, Rules 1 & 2 of the C.P.C. and by not realising the problems being encountered by the appellant from humanitarian point of view. It was submitted by learned counsel for the appellant that during course of hearing, the defendants showed a paper of termination of the plaintiff from service, which should not have been taken into consideration by the learned Court below since the same is a *lis pendens* document. The learned Court below has also erred in law by not appreciating the services rendered by the plaintiff, who being a disciplinarian has devoted his entire career for the sake of the defendants-Company. The learned Court below should have appreciated that there is a prima facie case in favour of the plaintiff and balance of convenience also leans in his favour because his representation being genuine deserves favourable consideration and there is a

contract subsisting between the employer and the employee to be looked after. He further submitted that in the event injunction is not granted, the plaintiff will suffer irreparable loss or injury. So, he submitted to set aside the impugned order of the learned Court below and allow the appeal.

7. On the other hand, emphasizing to sustain the order impugned, it was contended by learned counsel appearing for the respondents that as per the terms and conditions of the agreement between the plaintiff and respondents, the plaintiff can be transferred to any other place in India to join different Departments of their Company. He submitted that going by the terms and conditions, the plaintiff was transferred to Kamalanga in the district of Dhenkanal for undertaking the task; but he did not join there, which clearly shows his insubordination to the defendants. He further submitted that since the order of termination of the plaintiff from service has already been passed, the present suit for declaring the order of his transfer as illegal is infructuous and hence the appeal is liable for dismissal.

DISCUSSIONS :

8. Perused the plaint, written statement, petition, objection, impugned order, copies of documents filed, the lower Court record and the appeal memo. For obtaining the relief

under Order 39, Rules 1 & 2 of the C.P.C., it is the sine qua non that the petitioner should have prima facie case and balance of convenience must have leaned in his favour. Not only this, but also it must be shown that in the event of rejection of the order of injunction, the petitioner will suffer irreparable loss or injury. No doubt, the petitioner has got burden to prove all the three ingredients to obtain an order of injunction. In this case, admittedly, the plaintiff is an employee under the defendants. There is a contract in the form of appointment letter containing the terms and conditions issued by the defendants to the plaintiff and the plaintiff has accepted the same. On going through such letter of appointment, it is found from clause 3 that the Company may send the plaintiff on deputation, lend or transfer his services to any of its Departments, Affiliates, Subsidiaries or Associate Companies or in any other location in India. Consequent upon such document, the petitioner is governed by the terms and conditions of the services as applicable. The letter of transfer shows that the defendants-Company has issued the same to the plaintiff informing that he has been transferred from GMR Energy Ltd., Bhubaneswar to GMR Kamalanga Energy Ltd., Bhubaneswar. Undeniably, Kamalanga is at Dhenkanal. This letter was issued on 19.04.2008. Subsequent message to the

plaintiff shows that he has been transferred as an experienced and competent CR resource. But, subsequent letter shows that he did not join and was asked to immediately report to GKEL site not later than 31.12.2012. In spite of persuasion, the plaintiff did not join his new assignment. So, on 09.12.2013, the defendants found that the plaintiff is not interested to work in their organization and, accordingly, terminated his service. Pertinently, there was a status quo order passed by the learned Court below on 13.12.2013; but, prior to that on 09.12.2013, the service of the plaintiff was terminated from the defendants-Company by offering three months' basic salary in lieu of a three-month-notice. When there is a contract between the employer and the employee and there is clear clause that the employer can transfer the employee to any other location in India for utilization of his service, the service of the plaintiff is required in Kamalanga, Dhenkanal due to his expertise in the field. As such, the absence of the plaintiff from his service on the ground of illness cannot be termed as genuine. Moreover, the status quo order was passed later to the order of termination for which the order of termination of service of the plaintiff cannot be said to be lis pendens. Be that as it may, the order of transfer was passed on 19.04.2008 and the employer waited upto 2013; but the plaintiff did not carry

out the order of transfer as per the terms and conditions. Consequently, it cannot be said that there is a prima facie case in favour of the plaintiff. When the employee will remain absent from service for a long period of five years, definitely there will be loss to the Institution of the employer, which cannot be adequately compensated in terms of money. So, balance of convenience cannot be said to have tilted in favour of the plaintiff. The question of losing the job cannot be said to be irreparable loss or injury when the plaintiff has not come with clean hands to the Court of law. On the other hand, if injunction is refused, there will be no irreparable loss or injury caused to the plaintiff. Apart from this, there is already order of termination against the plaintiff. So, either way, the plaintiff has not been able to prove any of the ingredients to get the relief of injunction in his favour. I am in complete agreement with the impugned order passed by the learned Court below, who has correctly assessed the materials on record and passed the order refusing the prayer for injunction. No other point is there warranting interference with the impugned order by this Court. Hence ordered :

O R D E R

The appeal is dismissed on contest against the respondents without cost. The order dated 24.03.2014 passed

by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No.723 of 2013, arising out of C.S. No.650 of 2013, is hereby confirmed.

**District Judge, Khurda
at Bhubaneswar.**

10.02.2015.

Dictated, corrected by me and pronounced in the open Court this day the 10th February, 2015.

**District Judge, Khurda
at Bhubaneswar.**

10.02.2015.