

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

Present:

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

*Dated, Bhubaneswar the 11<sup>th</sup> Nov. '14.*

**R.F.A. No. 549 of 2014.**

[Arising out of the order dated 02.07.2014 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No.6489 of 2014.]

Sri Susanta Sundaray, aged about 46 years, Son of Sri Jogendra Sundaray, resident of At - Chhotarapur, P.O. - Patrapada, P.S. - Khandagiri, Dist. - Khurda.

... **Appellant.**

***-V e r s u s-***

1. ODISHA HYDRO POWER CORPORATION LTD (OHPC Ltd.), Represented through its Managing Director, At - Odisha State Police Housing & Welfare Corp. Building, Vanivihar Square, Janpath, Bhubaneswar - 751 022, Dist. - Khurda.
2. The Manager (C & P), Corporate Office, ODISHA HYDRO POWER CORPORATION LTD. (OHPC Ltd.), At - Odisha State Police Housing & Welfare Corp. Building, Vanivihar Square, Janpath, Bhubaneswar - 751 022, Dist. - Khurda.

... **Respondents.**

**Counsel :**

For Appellant      --      Shri S. Mishra & Associates.  
For Respondents  --      --

Date of argument : 29.10.2014.

Date of judgment : 11.11.2014.

**J U D G M E N T**

The order dated 02.07.2014 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No.6489 of 2014, directing the return of the plaint under Order 7, Rule 10 of the C.P.C. is under challenge in this appeal. Appellant is the plaintiff and respondents are the defendants in the Court below.

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.

3.           The factual matrix leading to the case of the appellant is that he filed the suit in the Court below seeking relief of injunction in mandatory form for refund of security deposit retained by the defendants arbitrarily. According to the plaintiff, he got work order from the defendants for completion of the work assigned to him. Accordingly, he deposited Rs.1,23,000/- with defendant No.1 as security for the purpose

of the said work. After completion of work, the security deposit was not refunded in spite of legal notice by the plaintiff to the defendants. Thus, he filed the suit for mandatory injunction seeking a direction to release the security deposit in his favour. After filing of the plaint, the learned Court below passed the order to return the plaint as the amount involved exceeds its pecuniary jurisdiction. Hence the appeal.

4. Learned counsel appearing for the appellant submitted that the impugned order dated 02.07.2014 passed by the learned Court below is illegal, erroneous and contrary to the settled position of law. The learned Court below has erred in law by assuming that the plaintiff has prayed for recovery of money, although he has not sought for money decree but only a direction to release the security deposit in his favour. It was further submitted that the learned Court below has failed to appreciate the settled position of law to the effect that the provision under section 8 of the Suits Valuation Act, 1887 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court-fees. According to him, the plaintiff has to exercise his option and value his claim for the purpose of court-fees and, accordingly, value for jurisdiction is determined. On the other hand, it was submitted that the impugned order passed by the learned trial

Court is perverse and should be set aside.

5. Since the matter was disposed of by the learned trial Court at the stage of admission without issuing notice to the defendants, no notice has also been issued to the respondents while disposing of this appeal.

6. Perused the plaint, documents and the impugned order passed by the learned trial Court. It is revealed from the plaint that the plaintiff being a contractor undertook work offered by the defendants for construction of boundary wall on plot No.324 (Part), khata No.619, Chandrasekharapur vide work order No.3519 dated 24.04.2012 and the total value of the work was fixed at Rs.24,55,818/-. As per the work order, he deposited a sum of Rs.1,23,000/- towards security amount. Construction started, work was completed to a major extent and running bills were paid to the plaintiff. Thereafter, defendant No.1 could not provide the rest of the construction site. So, the plaintiff submitted representation to release his security deposit; but the same was not given in spite of notice. Finally, the plaintiff filed the suit for mandatory injunction against the defendants directing them to release the security deposit of Rs.1,23,000/- in his favour. It is pleaded in the plaint that there is prima facie case, balance of convenience lies in favour of the plaintiff and in the event of refusal of his

prayer, he will suffer irreparable loss. In the suit, he has valued the mandatory injunction at Rs.100/- and, accordingly, court-fees worth Rs.10.50 p. was paid. So, from the plaint itself it appears that the plaintiff has sought for relief of mandatory injunction even if the security amount is Rs.1,23,000/-.

7. The learned trial Court has passed the following impugned order on 02.07.2014 :

“Advocate for the plaintiff is present. Perused the office note. Heard on the point of admission. This is a suit for mandatory injunction valued at Rs.100/-. Mandatory direction to release security deposit of amount of Rs.1,23,000/- will have the effect cancelling the document security the amount of Rs.1,23,000/-. So provision of Section 7(iv)(a) of Court Fee Act will apply. So the suit is beyond pecuniary jurisdiction of this Court. Hence the plaint be returned to be filed in proper forum”.

8. From the above order, it shows that the learned Court below has not valued the mandatory injunction but took into consideration the amount of security deposit keeping in mind that cancellation of such deposit will fetch an amount of Rs.1,23,000/-, which is beyond its pecuniary jurisdiction. After perusal of the plaint, as discussed above, the learned Court below could have gone through the office note although the Court can override the same. In the office note, there is no objection raised as to the suit being not maintainable due to

lack of pecuniary jurisdiction. When there is prayer for mandatory injunction and it is evaluated, the learned Court below should not take into consideration the amount involved in the security deposit in terms of cancellation of document. Whether the suit is to be construed as recovery of money by a decree or not is a question that needs to be decided only after admission of the suit and appearance of the defendants. The ground taken by the learned trial Court by evaluating the suit as per the amount of security deposit, when there is a specific prayer for mandatory injunction, is palpably wrong and illegal. Thus, the impugned order is liable to be set aside. Hence ordered :

### **O R D E R**

The appeal is allowed on remand without cost. The order dated 02.07.2014 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No.6489 of 2014 is hereby set aside.

The appellant is directed to appear before the learned Court below on 20.11.2014 to receive further instructions and the learned trial Court will pass fresh order on the question of admission of the suit in accordance with law on the same date.

**District Judge, Khurda  
at Bhubaneswar.**

11.11.2014.

Dictated, corrected by me and pronounced in the open Court  
this day the 11<sup>th</sup> November, 2014.

**District Judge, Khurda  
at Bhubaneswar.**

11.11.2014.