# IN THE HIGH COURT OF ORISSA AT CUTTACK

## CMP No.929 of 2026

***Axis Bank & Ors.*** ..... ***Petitioners***

Represented By Adv. - Mr. Y.Das, Sr. Adv. along with Mr. Rajjeet Roy, Adv.

*-versus-*

***Brajakishore Mishra*** ..... ***Opposite Parties***

Represented By Adv. – Mr.Sameer Kumar Das, Adv.

**CORAM:**

**THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA**

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**Date of Hearing: 30.06.2026 | Date of Judgment: 06.08.2026**

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**A.K. Mohapatra, J. :**

**1.** The Petitioners, comprising the Bank and its personnel, have filed the present CMP petition, under Article 227 of the Constitution of India, assailing the ad-interim order dated 08.05.2026 passed by the learned Civil Judge (Junior Division), Bhadrak, in I.A. No. 207 of 2026 arising out of C.S. No. 458 of 2026, whereby the Petitioners were restrained from removing the Opposite Party-Plaintiff from his post of Cluster Head, Branch

Manager (Vice President), as also the consequential order dated 18.05.2026 passed in the said I.A., whereby the said ad-interim protection came to be extended pending disposal of the application filed by the Opposite Party under Order XXXIX Rules 1, 2 & 3 of the Code of Civil Procedure, 1908.

**2.** On a perusal of the CMP petition, it appears that the Opposite Party, stated to be working as Cluster Head (Vice President) under Axis Bank Ltd. and claiming long and continuous service of about two decades with successive promotions and satisfactory performance, has claimed that on 29.04.2026, at about 5:15 p.m., he was called for a meeting by the Petitioners/Defendants No.2 to 4 and was allegedly pressurized to resign, failing which he was threatened with adverse Employee Performance (EP) Ranking and removal from service. Aggrieved thereby, the Opposite Party addressed emails dated 30.04.2026 and 01.05.2026 to the Petitioners raising his grievance, which, according to him, remained unanswered.

**3.** Thereafter, the Opposite Party instituted C.S. No. 458 of 2026 before the learned Civil Judge (Junior Division), Bhadrak, seeking protection of his continuance in service, along with an I.A. No. 207 of 2026 under Order XXXIX Rules 1 & 2

CPC, supported by a petition under Order XXXIX Rule 3 CPC for an ad-interim injunction. On 08.05.2026, the learned Court below passed an ex parte ad-interim order under Order XXXIX Rule 3 of the CPC restraining the Petitioners from removing the Opposite Party from his post till their appearance, and posted the matter to 18.05.2026 for filing of objection.

**4.** The Petitioner No.1 received notice on 15.05.2026 and, on 18.05.2026, appeared before the learned Court below and sought time to file objection, while orally objecting to the ad-interim order dated 08.05.2026. The learned Court below, by order dated 18.05.2026, extended the interim protection under Order XXXIX Rules 1 & 2 CPC, restraining the Petitioners from removing the Opposite Party till disposal of the I.A. Aggrieved, the Petitioners have approached this Court directly by way of the present CMP under Article 227 of the Constitution of India.

**5.** Heard Mr. Y. Das, learned senior counsel along with Mr. Rajjeet Roy, learned counsel, appearing on behalf of the Petitioners. At the outset, it has been contended on behalf of the Petitioners that although the ordinary remedy against an order under Order XXXIX Rules 1, 2 & 3 CPC lies by way of appeal under Order 43 Rule 1 CPC, the learned Court below has committed a gross jurisdictional error going to the root of the matter, warranting interference notwithstanding the availability of the alternative remedy. The learned senior counsel submitted that the relationship between the Opposite Party and the Petitioners-Bank being one of a contract of personal service, the suit filed by the Opposite Party bearing C.S. No. 458 of 2026, seeking a declaration of a prohibitory and mandatory character restraining removal from service, is barred under Section 14(1) of the Specific Relief Act, 1963 ("SRA"), and consequently, grant of an injunction in aid thereof is equally barred under Section 41(e) of the said Act.

**6.** Next, the learned senior counsel, relying on several judgements of the Hon'ble Supreme Court and High Courts, submitted that a contract of personal service, being incapable of specific performance, entitles the aggrieved employee only to a claim for damages, and not to continuity in service against the will of the employer, save in certain exceptional instances which are not attracted to the Opposite Party's case. It was further urged that the learned Court below, while passing the ad-interim order dated 08.05.2026 under Order XXXIX Rule 3 CPC, failed to record reasons for its satisfaction that the object of granting injunction would be defeated by delay, as mandatorily required under the proviso to Order XXXIX Rule 3 of the CPC, rendering the order unsustainable.

**7.** Lastly, the learned senior counsel has contended before this Court that the very same relief claimed in the suit filed by the Opposite Party was granted at the interlocutory stage, which is impermissible in law. Moreover, the plaint itself does not disclose any cause of action within the meaning of Order 7 Rule 11(a) CPC since the apprehension pleaded by the Opposite Party is founded on surmises and conjectures regarding the internal performance appraisal and ranking system of the Bank. As such, it was submitted that the balance of convenience lies in favour of the Petitioners, since the impugned orders compel the Bank to continue the Opposite Party in a sensitive post, to the detriment of its financial interest and that of its customers.

**8.** Per contra, the Opposite Party, represented by learned counsel Mr. Sameer Kumar Das, raised a preliminary objection as to the very maintainability of the present CMP, contending that in view of the clear position of law under Order 43 Rule 1 CPC, the remedy available to the Petitioners against an order under Order XXXIX Rules 1, 2 & 3 CPC is a statutory appeal, and that recourse to the supervisory jurisdiction under Article 227 of the Constitution of India, without exhausting or even attempting the alternative remedy, or without so much as filing an application for vacation of the interim order before the Court below, is impermissible.

**9.** On merits also, it was submitted that the Opposite Party has rendered more than twenty years of unblemished service and was forced to face the threat of resignation and removal at the hands of Petitioners/Defendants No.2 to 4, despite having raised the grievance before the higher authorities of the Bank, which went in vain. It was contended that the order dated 08.05.2026 is a reasoned order, having taken into account the nature of the grievance, the service records, the age of the Opposite Party and the immediacy of the threat of removal, and that the order dated 18.05.2026 came to be passed only after the Petitioner No.1 appeared but chose not to file any written objection either to the I.A. or to the suit.

**10.** Relying on Grounds E and G of the CMP itself, learned counsel for the Opposite Party contended that the Petitioners have disclosed their (i.e. the Bank's) intention to remove him from service, which lends credence to the case set up by the Opposite

Party and justifies the protective order passed by the Court below. It was further submitted that equity and balance of convenience lie in favour of the Opposite Party, inasmuch as he would have faced termination but for the interim protection granted by the learned Court below, and that no prejudice would be caused to the Petitioners in being relegated to the appropriate forum in the ordinary course.

**11.** Heard the learned senior counsel and the learned counsel appearing for the parties, perused the written submissions and other documents on record. It is not in dispute that the ordinary and efficacious remedy against an order passed under Order XXXIX Rules 1, 2 & 3 CPC is a statutory appeal under Order 43 Rule 1 CPC, and that the supervisory jurisdiction under Article 227 of the Constitution of India, which is to be exercised sparingly only in cases of patent lack of jurisdiction or gross failure of justice, is not intended to be a substitute for such a remedy. At the same time, it is equally well settled that the existence of an alternative remedy does not operate as an absolute bar to the maintainability of a petition under Article 227 [see paragraph 4 of ***Godrej Sara Lee Ltd. v. E&TOCAA***, reported in ***(2023) 109 GSTR 402***; ***Radha Krishan Industries vs. State of***

***Himachal Pradesh and Others***, reported in ***(2021) 6 SCC 771***], and this Court is not powerless to intervene where it is demonstrated, prima facie, that the Court below has acted in excess of, or in a manner not vested in it by, law. The question of maintainability, in the facts of the present case, is intertwined with the merits of the contention regarding the statutory bar under the SRA, 1963, and, in the view this Court proposes to take, need not be conclusively determined at this stage.

**12.** On merits, the Petitioners have raised a substantial contention, supported by the decisions cited at the Bar, that a contract of personal service is not specifically enforceable, that breach thereof entitles the employee only to damages, and that grant of an injunction restraining termination of such a contract is barred under Section 41(e) of the SRA. This principle, as reflected in the decisions of the Hon'ble Supreme Court cited by the Petitioners, is well recognised in law, subject to the well-known exceptions carved out in relation to statutory bodies and instrumentalities of the State acting in violation of Articles 14 and 16 of the Constitution, or cases attracting the protection of industrial law [see ***Executive Committee of Vaish Degree College v. Lakshmi Narain***, reported in ***(1976) 2 SCC 58*** and

***Pearlite Liners (P) Ltd. v. Manorama Sirsi***, reported in ***(2004) 3 SCC 172***]. Equally, the Opposite Party has placed before the learned Court below and before this Court a case of coercion to resign and apprehension of arbitrary removal against more than two decades of service rendered by the Opposite Party at the Petitioner-Institution. The Court below found the Opposite Party's case sufficient, prima facie, and passed the impugned *ad-interim ex-parte injunction* order in favour of the Opposite Party.

**13.** The Petitioners have also raised the grievance that the impugned order dated 08.05.2026, passed under Order XXXIX Rule 3 CPC, does not record the reasons for the Court's opinion that the object of granting injunction would be defeated by delay, as mandated by the proviso thereto, and that the same relief as claimed in the suit has, in substance, been granted at the interlocutory stage itself. These are matters which go to the propriety and legality of the exercise of discretion by the Court below in the facts of a still-pending suit, and, in the ordinary course, are matters more appropriately addressed either in a properly constituted objection before the Court below, or in appeal under Order 43 Rule 1 CPC, where the entire factual and legal matrix, including the question regarding lack of cause of action under Order 7 Rule 11(a) CPC, can be examined on a complete record and with the benefit of a considered order passed after hearing objections on merits, rather than being finally adjudicated in this summary jurisdiction upon materials that have not yet been tested by written objection to be filed before the Court below.

**14.** Significantly, despite the Petitioner No.1 alone having appeared before the Court below on 18.05.2026 and despite the legal remedy being available to the Petitioners under Order XXXIX Rule 4 CPC to seek discharge/variation/vacation of the ad-interim order, the Petitioners have, till date, not filed any written objection to the I.A. or to the suit before the Court below, choosing instead to approach this Court directly. In these circumstances, this Court is of the considered view that the ends of justice would be best served by declining to enter into a final adjudication of the rival contentions, instead affording the parties an opportunity to pursue expeditious final adjudication of I.A. No.207 of 2026 (the application by the Opposite Party under Order XXXIX Rule 1 and 2 of the CPC), by the Court below, while balancing the equities of both sides in the interregnum.

**15.** Having regard to the submissions of the parties and the aforesaid analysis of this Court, the present CMP application is disposed of with a direction to the parties to maintain the status quo, as on date, with regard to the post and service of the Opp. Party, until the learned Civil Judge (Junior Division), Bhadrak finally decides I.A. No. 207 of 2026 arising out of C.S. No. 458 of 2026. The Petitioners are hereby directed to appear before the learned Court below along with a certified copy of this order within a period of one week from today. On such appearance, the learned Court below shall proceed to finally decide I.A. No. 207 of 2026, filed under Order XXXIX Rules 1 & 2 CPC, as expeditiously as possible and in accordance with law, uninfluenced by any observation made in this order, after affording due opportunity of hearing, including filing of objection, to the parties. All of the contentions of the parties, including on the question of maintainability of the present CMP, the applicability of Section 14(1) read with Section 41(e) of the Specific Relief Act, 1963, and on merits generally, are left open to be urged before the learned Court below.

**16.** Additionally, without prejudice to the status quo order passed hereinabove qua the continuance of the Opposite Party, and having regard to the specific contention of the Petitioners that the Opposite Party has been exhibiting hostility against the Bank and its officials, the Petitioners shall be at liberty to change/alter the place of posting of the Opposite Party, in the ordinary course of administrative exigency and in terms of the service conditions governing his employment, should they be so advised.

**17.** Accordingly, the CMP application fails. Parties to the CMP shall bear their respective costs.

**(A.K. Mohapatra)**
**Judge**

*Orissa High Court, Cuttack*
*The 6th August, 2026/ Rubi/ Sr.Stenographer*