

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.206 OF 2018**

|                                            |                  |
|--------------------------------------------|------------------|
| Caryaire Equipments India Pvt. Ltd., Thane | .... Petitioner  |
| V/s.                                       |                  |
| Ajaykumar Shivdayal Sharma & Anr.          | .... Respondents |

Mr. Vishwanath S. Talkute for the Petitioner.

Mr. Sandesh Patil, i/by Ms. Anusha P. Amin, for the Respondents.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 4<sup>TH</sup> APRIL, 2018.**

**P.C. :**

1. Heard Mr. Talkute, learned counsel for the Petitioner, and Mr. Patil, learned counsel for the Respondents.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 11<sup>th</sup> December 2017 passed by the District Judge-7, Thane, thereby allowing the Miscellaneous Civil Appeal No.210 of 2017 and setting aside the order passed below the application at "Exhibit-5", filed in Regular Civil Suit No.672 of 2017, on 2<sup>nd</sup> November 2017 by the Civil Judge, Junior Division, Bhiwandi.

3. Respondent No.1 herein has filed the said Suit against the

Petitioner-Company for a declaration that, the notice of termination dated 8<sup>th</sup> August 2017 issued by the Petitioner is illegal, bad in law, ultra vires and Petitioner should be restrained from acting in pursuance of the said notice. Along with the Suit, the Respondent No.1 has also filed an application for interim injunction, restraining the Petitioner from taking any action in pursuance of the said notice of termination of his services.

4. The Trial Court, after considering the relevant provisions of Section 14(1)(a)(c) of the Specific Relief Act and also considering the law laid down by the Apex Court in its various Judgments, was pleased to hold that a contract of personal service cannot be specifically enforced and, accordingly, rejected the said application for interim injunction.

5. The Appellate Court, however, allowed the Appeal preferred against the said order and directed the parties to maintain status-quo till next six months and further requested the Trial Court to expedite the matter.

6. Surprisingly, however, the Appellate Court has not at all adhered to the provisions of Section 14(1)(a)(c) or Section 41(e) of the Specific Relief Act and also the law laid down by the Apex Court, which was discussed at length by the Trial Court.

7. Learned counsel for the Petitioner has also, in this Writ Petition, placed reliance on the Judgment of the Apex Court in the case of *Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi*, MANU/SC/0016/2004, wherein the Apex Court has, in paragraph No.7 of its Judgment, categorically laid down that, a contract of personal service cannot be specifically enforced and a Court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. The observations of the Apex Court on this aspect can be reproduced as follows :-

*“7. Learned counsel for the Appellant argued that the prayers in the Suit seek reinstatement of the Plaintiff as an employee of the Defendant-Company, which really amounts to specific performance of a contract of personal service, which is specifically barred under the provisions of the Specific Relief Act. It is a well settled principle of law that a contract of personal service cannot be specifically enforced and a Court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. This general rule of law is subject to three well recognized exceptions - (I) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach of violation of the mandatory provisions of the statute.”*

8. In the light of this clear dictum of the law laid down by the Apex Court in the case of *Pearlite Liners Pvt. Ltd. (Supra)*, it has to be held that, the order passed by the Appellate Court, setting aside the well-reasoned order of the Trial Court, cannot be sustained in law and, hence, it is liable to be quashed and set aside.

9. Accordingly, the Writ Petition is allowed. The impugned order passed by the Appellate Court is quashed and set aside and the order passed by the Trial Court below the application at “Exhibit-5” is restored.

10. Writ Petition is disposed of in the above terms.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**