

(2016) 02 DEL CK 0274

In the Delhi High Court

Case No : W.P.(C) No. 11814 of 2015

Alchemist Asset Reconstruction Co. P. Ltd. and Others

APPELLANT

Vs

Hotel Gaudavan Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2), Section 14, Section 5(5)

Citation : (2016) 2 BankJ 506 : (2016) 2 BC 259 : (2016) 227 DLT 463 : (2016)
2 DRTC 694

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Amit S. Chadha, Sr. Adv. instructed by Jayashree S. Dasgupta,
Abhirup Dasgupta and Dilpreet M. Singh, Advocates, for the Appellant; Shobha
and Akanksha Kaushik, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Mukta Gupta, J.—1. A brief exposition of facts necessary for deciding the preliminary objection of territorial jurisdiction raised by respondent No. 1 i.e. M/s. Hotel Gaudavan Pvt. Ltd. (in short "HGPL") is that State Bank of India (in short "SBI") Branch at Jodhpur sanctioned a term loan facility to HGPL having its registered office at Jaipur. The term loan was repayable in 27 quarterly installments of Rs. 86 lakh each, the last installment being of Rs. 78 lakh. HGPL defaulted in payment of first installment itself and sought for re-schedulement of the term loan. The repayment of the principal was rescheduled to start from March 31, 2010 instead of December 31, 2008, despite the same HGPL again defaulted. Thus, re-schedulement stood cancelled and the default was deemed to have continued from December 31, 2008 itself. HGPL was classified as NPA by SBI. In view of the defaulted, HGPL wrote to the petitioner Alchemist Asset Reconstruction Ltd. (in short "Alchemist") showing willingness to dispose of the property for adjustment of dues requesting the bank to find a suitable buyer.

Thus SBI assigned the financial assets of HGPL to Alchemist. SBI withdrew its previous notice and issued fresh notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (In short "the Act") whereafter on July 21, 2014 Alchemist issued fresh notice under Section 13(2) of the Act to HGPL. An application was filed under Section 14 of the Act before the District Magistrate at Jaisalmer when HGPL approached the High Court of Rajasthan at Jodhpur challenging the proceedings under Section 14 of the Act. Physical possession of the secured asset was taken over by Alchemist which notice was published in Times of India Jaipur Edition on March 11, 2015. The writ petition filed by HGPL was dismissed on March 19, 2015. In the meantime, HGPL initiated proceedings before the DRT at Jaipur which were disposed of on May 6, 2015 quashing the demand notice dated July 21, 2014, subsequent possession notice dated March 4, 2015 and the Sale Notice dated March 10, 2015. Alchemist was directed to restore possession of the secured asset to HGPL.

2. An appeal was filed before Debts Recovery Appellate Tribunal (DRAT) at Delhi by Alchemist wherein the order of the DRT, Jaipur returning finding that the account was wrongly classified as NPA was upheld. Hence the present writ petition by Alchemist before this Court.

3. Learned Counsel for HGPL at the outset objects to the maintainability of the present writ petition before this Court on the ground of want of territorial jurisdiction. Learned Counsel for HGPL contends that the loan was sanctioned at Jodhpur by SBI Branch, Jodhpur, the registered office of borrower i.e. HGPL is at Jaipur, the property in question was situated at Jaisalmer, the proceedings took place at DRT Jaipur culminating in the order dated May 6, 2015. It is contended that merely because the DRAT was situated at Delhi and the impugned order was passed at Delhi, the same would not vest territorial jurisdiction in this Court to entertain the present writ petition as no cause of action or even a part of cause of action arose in Delhi. Reference is made to the decision reported as , (2007) 6 SCC 769, *Ambica Industries v. Commissioner of Central Excise*.

4. Learned Counsel for the writ petitioner on the other hand contends that after the assignment of debts by SBI to the petitioner company, all the accounts and documents were transferred to Delhi. The Stressed Assets Management Branch of SBI the respondent No. 2 in the writ petition is situated at New Delhi. Alchemist being the assignee of the debts from SBI is also situated at Delhi. SBI issued the first and Second notice under Section 13(2) of the Act dated June 20, 2013 and October 14, 2013 respectively to HGPL from its branch situated at New Delhi. Alchemist also issued notice dated July 21, 2014 under Section 13(2) of the Act to HGPL from its registered office at New Delhi. The statements of accounts of HGPL are maintained by SBI at Delhi. The letter of consent dated March 20, 2014 for substitution under Section 5(5) of the Act and the NPS certificate have been issued by SBI from New Delhi and thus not only part of cause of action but entire cause of action took place at Delhi and thus this Court

has territorial jurisdiction to entertain the present writ petition. Reliance is placed on the decisions reported as , 111 (2004) DLT 480 (SC) : III (2004) SLT 565 : (2004) 6 SCC 254, Kusum Ingots & Alloys Ltd. v. Union of India & Anr.; , 181 (2004) DLT 658 (LB) : AIR 2011 Delhi 174, M/s. Sterling Agro Industries Ltd. v. Union of India & Ors.; , 2015 (III) AD (Delhi) 721, Urmila Kumari v. Om Prakash Jangra & Ors.; , 224 (2015) DLT 464, Edara Gopi Chand v. Union of India & Ors.; , 118 (2005) DLT 274, Ansal Buildwell Ltd. v. North Eastern Indira Gandhi Institute of Health and Medical Science & Ors.; , MIPR 2007 (2) 0396, (India TV) Independent News Service Pvt. Ltd. v. India Broadcast Live LLC & Ors.; , 156 (2009) DLT 330 : 2009 (39) PTC 498, Glaxosmithkline Consumer Healthcare Ltd. v. Heinz India (P) Ltd.; , 218 (2015) DLT 267, Lt. Col. A.S. Chaudhari v. Union of India and , 219 (2015) DLT 321, Mukul Gupta v. Management Development Institute & Ors.

5. In the decision reported as (supra), Kusum Ingots & Alloys Ltd. v. Union of India & Anr., while dealing with the issue of situs of office of the respondent, referring to its earlier decision in , 1975 (2) SCC 671, Sri Nasiruddin v. State Transport Appellate Tribunal, Supreme Court noted:

"25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Courts, it will be for the petitioner to choose his forum.

26. The view taken by this Court in U.P. Rashtriya Chini Mill Adhikari Parishad, , (1995) 4 SCC 738, that the situs of issue of an order or notification by the Government would come within the meaning of the expression "cases arising" in Clause 14 of the (Amalgamation) Order is not a correct view of law for the reason hereafter stated and to that extent the said decision is overruled. In fact, a legislation, it is trite, is not confined to a statute enacted by Parliament or the Legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instructions issued in this behalf shall also come within the purview thereof. Situs of office of Parliament, Legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a Court only because of the situs of the office of the maker thereof.

27. When an order, however, is passed by a Court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition

would be maintainable in the High Court within whose jurisdiction it is situated having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

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30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney, , AIR 1941 Cal 670 : ILR (1941) 1 Cal 490, Madanlal Jakn v. Madanlal, , (1945) 49 CWN 357 : AIR 1949 Cal 495, Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd., , 1997 CWN 122, S.S. Jain & Co. v. Union of India, , (1994) 1 CHN 445 and New Horizons Ltd. v. Union of India, , AIR 1994 Del 126]."

6. On reference to five Judges Bench of this Court in the decision reported as (supra), Sterling Agro Industries Ltd. v. Union of India & Ors. while dealing with the issue of territorial jurisdiction to entertain a writ petition on ground that an order of appellate authority constitutes part of cause of action to support the claim of maintainability of the writ petition in the High Court within whose jurisdiction the appellate authority is situated, this Court laid down--

"33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows--

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situated and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a minuscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum

conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the Court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated herein above stands overruled."

7. We may note that "cause of action" are the bundle of facts which give rise to a lis. An adjudicatory forum decides the lis. This distinction appears not to have been brought to the notice of either the Supreme Court when the decision in Kusum Ingots case (supra) was pronounced nor was it brought to the notice of the five Judge Bench of this Court when Sterling Agro Industries case (supra) was decided. But we would be bound by the law declared by the Supreme Court for the reason a point which squarely arose for adjudication and decided by the Supreme Court would bind all Courts in India and it would be no argument to urge that a particular facet of an argument was not presented before the Supreme Court. Similarly, we would be bound by the view taken by the five-Judge Bench of this Court. But notwithstanding said distinction, the end result would be the same because this Court exercises supervisory jurisdiction over tribunals functioning within the territorial jurisdiction of this Court under Article 227 of the Constitution of India and any erroneous exercise of jurisdiction would be capable of being corrected by this Court.

8. Indubitably in the present case though the term loan facility was availed at Jodhpur having been granted by SBI at Jaipur and initial proceedings before the DRT took place at Jaipur, however for the reasons that the debts have later been assigned to Alchemist by SBI at Delhi, all accounts and documents have been transferred to the Stressed Assets Management Branch of SBI at Delhi and the statement of accounts of HGPL have also been now maintained by SBI at Delhi. Thus, on the principle of law, which we are bound to follow, the principle of

forum conveniens would require the instant writ petition to be decided by this Court. List the matter for hearing on merits on March 8, 2016.