

(2008) 09 AP CK 0100
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 673 of 2008

Alind Workers Congress (affiliated to INTUC)	APPELLANT
Vs	
United Shippers Limited and Others	RESPONDENT

Date of Decision : 01-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 20
Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 17(1), 18,
18(1), 18(2)

Citation : (2009) 2 ALD 7 : (2008) 6 ALT 325 : (2008) 3 APLJ 164 : (2009) 147
CompCas 559

Hon'ble Judges : T. Meena Kumari, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : Mahmood Ali, for N. Sridhar Reddy, for the Appellant; Arshand
Hidyathullah, for S. Ravi, for Respondent No. 1, K. Rama Moorth, for J.V. Prasad,
for Respondent No. 2, Arshad Hidayatullah, for R. Raghunandan, for Respondent
No. 5, G. Anil Rao and C.V. Mohan Reddy and A.K. Jayaprakash Rao for
Respondent Nos. 7 and 8, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—Would location at Hyderabad of two divisions, and the assets therein, of a Sick Industrial Company registered in the State of Kerala, and the petitioner having submitted their bid for its take-over, based on which the Board of Industrial and Financial Reconstruction, (for short "the B.I.F.R"), had sanctioned a separate scheme, constitute "cause of action in part", for invoking the jurisdiction of the High Court of Andhra Pradesh in a Writ Petition filed challenging the order of the Appellate Authority, (for short "the A.A.I.F.R"), under the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "SICA"), dated 06.02.2007 setting aside the order of the B.I.F.R. dated 26.07.2005?

2. An ancillary question which falls for consideration is whether, in the absence of

any plea that the "cause of action", even in part, had arisen within its territorial limits, this Court would be justified in placing reliance on the list of dates and events annexed thereto, and the material documents filed therewith, to determine whether or not "cause of action" in part has arisen within its territorial limits?

3. The 5th respondent herein is a company registered under the Companies Act, 1956 with its registered office, and some of its divisions, situated in the State of Kerala. Three of its divisions i.e. Machinery division, Conductor division and Material Handling division are at Hyderabad. It also has a Conductor division at Hirakud in the State of Orissa. Since its net-worth had eroded, the 5th respondent made a reference, u/s 15 of SICA, to the 4th respondent. The reference was registered as Case No. 93 of 1987. The 5th respondent was declared a sick company, by the B.I.F.R. on 20.10.1987, in terms of Section 3(1) (o) of S.I.C.A. The B.I.F.R. had hitherto sanctioned a scheme of revival of the 5th respondent, in the year 1989, which had resulted in the 1st respondent taking over the management of the 5th respondent. In the year 1994 the B.I.F.R. had declared the said scheme of revival to have failed.

4. The 2nd respondent-writ petitioner submitted their bid for Rs. 27 crores, (later revised to Rs. 42.5 crores), to take over the machinery and conductor divisions of the 5th respondent at Hyderabad. The B.I.F.R. was of the view that three separate schemes should be formulated and, accordingly, the drawn up draft rehabilitation scheme was circulated on 21.08.2005. The 1st respondent herein, in their capacity as a major shareholder of the 5th respondent, submitted their objections to the scheme. The B.I.F.R, in its order dated 26.07.2005, observed that, since bids were invited through advertisement as per their directions at the hearings held on 27.06.2002 and 19.12.2002, as none of the new bidders, i.e. G.V.K. Group, Ambience Properties, Clean Foods Ltd., Chitrahara Agencies etc, had responded to the advertisement issued by the B.I.F.R through the O.A, and these new offers had been received after finalization of the whole process, reopening the finalized process would be detrimental to the revival process of the unit. The B.I.F.R, in exercise of its powers u/s 18(4) read with 19(3) of S.I.C.A, sanctioned all the three draft rehabilitation schemes by its order dated 26.07.2005, and directed that the machinery and conductor divisions located at Hyderabad be spun off into a separate company and its assets and liabilities be segregated.

5. Aggrieved by the order of the B.I.F.R, the 1st respondent preferred Appeal No. 98 of 2005, u/s 25 of SICA, before the A.A.I.F.R. Likewise, the 7th respondent also preferred an appeal. Among the contentions raised before the A.A.I.F.R. was that the sanction of three independent schemes for transfer of viable units, instead of approving a comprehensive scheme, was violative of the provisions of S.I.C.A.

6. The A.A.I.F.R, in its order dated 06.02.2007, observed that the, employees and creditors were the employees/creditors of the company and not of a particular unit, that diverting the assets and resources of the company for the

benefit of some creditors and workmen was highly questionable, that, by adopting a piecemeal approach, some creditors were given preference vis-a-vis others and that the assets of the company were being diverted to other legal entities, thus leaving no recourse to the remaining creditors of the company for recovery of their dues. While observing that it would be well within the powers of the B.I.F.R., while framing a rehabilitation scheme, to direct sale of one or more unviable divisions of a sick industrial company, if such divisions were held to be unviable, the A.A.I.F.R. was of the view that it was more appropriate to take into account all prevalent facts while formulating a scheme u/s 18 of S.I.C.A. It held that the approach of the B.I.F.R., that no revivable scheme for rehabilitation of all the divisions of the 5th respondent was feasible and that it was not possible to work out a comprehensive scheme for reviving of all the divisions, was erroneous, that viable units should be revived and unviable units could be sold but this should be done under the umbrella of one scheme which would also take into account the concerns of all stake holders, that the net effect of the procedure adopted by the B.I.F.R. was that all the assets of the company would stand transferred to third parties and a major portion of the liabilities, mainly statutory dues, labour dues and dues of unsecured creditors would be left behind in a shell company with virtually no assets, resulting in payment of certain creditors in a preferential manner while the dues of others would be rendered irrecoverable.

7. The A.A.I.F.R. further observed that it was a matter of public knowledge that there was considerable increase in the price of land particularly in cities like Hyderabad and there was no reason why the value of the 5th respondent's assets should be brought down as projected before the B.I.F.R. The A.A.I.F.R. also noted that while the B.I.F.R., by its order dated 27.06.2002, had directed the operating agency to issue a fresh advertisement, and though no fresh advertisement was in fact issued, the 2nd respondent had submitted its offer vide letters dated 17.05.2002 and 22.08.2008. It held that there was repeated non-compliance by the operating agency of the directives of the B.I.F.R., particularly in pursuance of its order dated 19.12.2002, that while advertisements were issued for the units in Kerala, no advertisement was issued by the operating agency for the Hyderabad units.

8. The A.A.I.F.R. issued several directives including for a change in the composition of the Board of Directors of the 5th respondent, appointment of auditors, that within four weeks the existing promoters of the 5th respondent should submit a comprehensive rehabilitation scheme and, in the event they failed to do so, the B.I.F.R. should explore other avenues for reviving the 5th respondent including the option of a change in management. It is this order of the A.A.I.F.R. which was under challenge in the Writ Petition filed by the 2nd respondent before this Court.

9. Aggrieved by the order of the A.A.I.F.R a bidder, who had submitted proposals for taking over the relays division of the fifth respondent at Thiruvananthapuram,

filed W.P. No. 6625 of 2007 before the High Court of Kerala. The learned Single Judge of the Kerala High Court, while finding force in the petitioner's contention that the promoters had not evinced interest in reviving the sick company over the years as expected of them, that the scheme of revival sanctioned by the B.I.F.R in the year 1989 did not yield the desired results and that the conduct of the promoters before the B.I.F.R. was also not very positive or satisfactory, however, held that the order of the B.I.F.R in respect of the relays division as well as the sanctioned scheme for its rehabilitation could not be sustained. The learned Single Judge observed that the phenomenal rise in the land value was a determinative factor in the process of revival, that disintegration of the company may not be to the benefit or advantage of many barring a few and that there was no harm in giving one more chance to resurrect the company especially since the Government of Kerala, the financial institutions, the employees' organization and the operating agency had expressed their willingness to give one more try for revival.

10. The learned Single Judge of the Kerala High Court observed that the A.A.I.F.R was justified in deeming it fit to afford a further opportunity to the promoters to prepare a comprehensive rehabilitation/revival scheme for the Sick company and that the B.I.F.R would have to play a pro-active role and ensure that the promoters did not fail in their duty to put the company back on its rails. The learned Single Judge forwarded a copy of the scheme of rehabilitation prepared by the promoters in June, 2007 to the B.I.F.R. holding that the order of the A.A.I.F.R need not be disturbed at this juncture. The writ petition was dismissed. While an appeal was preferred, against the order of the learned Single Judge, to the Division Bench of the Kerala High Court, no interim orders were passed in the appeal and the order of the learned Single Judge is said to be still in force.

11. In the order dated 10.06.2008, which is under challenge before us, the learned Single Judge noted that, in the order passed earlier on 01.02.2008, it was observed that the objection to the maintainability of the writ petition, for lack of territorial jurisdiction, did not have substance, that, thereafter, W.P.M.P. No. 3076 of 2008 was filed to decide the question of territorial jurisdiction as a preliminary issue and that the Division Bench, by its order dated 29.02.2008, had held that reasons should be given by the learned Single Judge for coming to the conclusion that this Court had jurisdiction to entertain the writ petition and then only the writ petition should be heard on merits.

12. The learned Single Judge passed an elaborate order holding that the proceedings before the B.I.F.R. and the A.A.I.F.R. were only for revival and rehabilitation of the viable units of the 5th respondent, for protection of employment therein through utilization of productive industrial assets, that each and every step taken under the provisions of S.I.C.A, for revival and rehabilitation of the viable units at Hyderabad should be construed as material facts forming part of the "cause of action" and, since these proceedings were aimed at revival of the viable units of the 5th respondent, which would have a

direct impact on the employment and productive industrial assets located at Hyderabad, a major part of the "cause of action" had arisen at Hyderabad also in so far as the scheme relating to these two units were concerned. The learned Single Judge further observed that, since the entire question raised in the writ petition related to the validity of the scheme sanctioned by the B.I.F.R. in respect of the said units at Hyderabad, all proceedings under S.I.C.A, which ultimately resulted in the impugned order, should be treated as material and integral facts having a direct nexus with the lis involved, that all facts pleaded in the affidavit related to the scheme sanctioned by the B.I.F.R. under which the petitioner acquired a legal right to revive the viable units at Hyderabad, and had a direct nexus with the issue involved in the writ petition constituting "cause of action" for the writ petition.

13. While observing that the expression "cause of action" may not have been repeatedly used in the affidavit, the learned Single Judge held that, on a meaningful reading of all the averments, it was clear that a part of the "cause of action" had also arisen within the territorial jurisdiction of this Court. The learned Single Judge concluded by holding that, notwithstanding the fact that the situs of the office of all the respondents was beyond the territorial jurisdiction of this Court, the writ petition was maintainable since a major part of the cause of action had arisen at Hyderabad where the viable units in respect of which the rehabilitation scheme was sanctioned by the B.I.F.R, under the provisions of S.I.C.A, were located. Aggrieved thereby, the All India Workers Congress has preferred this Appeal, after obtaining leave to do so.

14. Sri Mehmood Ali, Learned Counsel for the appellant, would take this Court through the writ affidavit in support of his contention that it is completely silent on the aspect of the "cause of action" and that the averments therein do not reflect any part of the "cause of action" having arisen within the territorial limits of this Court. Learned Counsel would contend that not every fact pleaded, but only such material facts which have a nexus to the lis, would constitute "cause of action", that S.I.C.A. provided for the revival and rehabilitation of the sick industrial company as a whole and not merely of some of its units, that a "unit" of a sick industrial company is merely one of its assets, and location at Hyderabad of the assets, owned by a sick industrial company registered in the State of Kerala, would not constitute "cause of action", even in part, when the order of the A.A.I.F.R., setting aside the order of the B.I.F.R. in preparing three separate schemes for revival of the sick company, is under challenge in the writ petition. Learned Counsel would submit that the order of the A.A.I.F.R. can only be assailed in its entirety, and not piecemeal, and that the petitioner's claim with regards the Hyderabad units cannot be examined in isolation. Learned Counsel would place reliance on Union of India and Ors. v. Adani Exports Ltd. and Anr. (2002) 1 SCC 657 and Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, .

15. Sri Arshad Hidayatullah, learned Senior Counsel appearing on behalf of the

5th respondent, would emphasize on the complete absence of pleadings in the affidavit with regards "cause of action" and submit that none of the facts stated therein constitute "cause of action", even in part, having arisen within the territorial jurisdiction of this Court. He would submit that, while deciding the question of territorial jurisdiction, no protracted enquiry is permissible, it is only the pleadings in the affidavit which can be examined and that only such facts which constitute a material, essential and integral part of the "cause of action", and which have a nexus to the lis, would confer territorial jurisdiction on this Court. Learned Senior Counsel would point out that the prayer in the writ petition is to set aside the order of the A.A.I.F.R and that not even a consequential direction has been sought for implementation of the orders of the B.I.F.R. He would contend that the order of the B.I.F.R. cannot even be looked into to determine whether a part of the "cause of action" had arisen within the territorial limits of this Court as it is only the order of the A.A.I.F.R which is under challenge in the writ petition. Learned Senior Counsel would rely on *Alchemist Limited and Another Vs. State Bank of Sikkim and Others*, and *Sarabjit Kaur Vs. Union of India (UOI) and Others*, .

16. Both the learned Advocate General and Sri S. Ravi, learned Counsel appearing on behalf of some of the other respondents, would adopt the arguments of Sri Arshad Hidayatullah, the learned Senior Counsel.

17. Sri K. Ramamoorthy, learned Senior Counsel appearing on behalf of the 2nd respondent, would submit that location of the "units" at Hyderabad was sufficient to constitute "cause of action in part", that, while the words "cause of action" may not have been used in the affidavit, the facts as stated in the list of dates and events, and the documents filed along with the writ petition, must also be examined in determining whether or not "cause of action in part" had arisen within the territorial limits of this Court. Learned Senior Counsel would submit that, while both the B.I.F.R. and the A.A.I.F.R. were situated at New Delhi, their orders had consequences all over the country. According to the Learned Senior Counsel, the mere fact that a few others had invoked the jurisdiction of the High Court of Kerala against the order of the A.A.I.F.R. would not necessitate the 2nd respondent having to implead itself in the said writ petition and the mere fact that a part of the "cause of action" may also have arisen within the territorial limits of either the Delhi High Court or the High Court of Kerala would not preclude the 2nd respondent from invoking the jurisdiction of this Court since a part of the cause of action had also arisen within its territorial limits, that the choice of the High Court, whose jurisdiction should be invoked, is for the 2nd respondent-petitioner to decide, that it is for this Court to determine, on the facts and circumstances of the case on hand, whether or not "cause of action", in part, had arisen within its territorial limits and, while several tests have been laid down by the Supreme Court and different High Courts, the facts of one case were seldom identical to another.

18. According to the learned Senior Counsel, the material facts which give rise to

the cause of action in part within the territorial jurisdiction of this Court are: (1) location of two of the divisions at Hyderabad, (2) scope of revival of the sick industrial company had to be examined also with reference to the divisions at Hyderabad; (3) the value of the assets and the turnover of the Hyderabad units were also relevant facts required to be taken into consideration for revival of the sick industrial company; (4) the interest of the employees of the Hyderabad unit was also required to be safeguarded; and (5) it was obligatory for bidders, such as the 2nd respondent-petitioner, to keep the Hyderabad unit going and ensure payment of salaries to the employees and workmen employed in the said units. Learned Senior Counsel would submit that all the aforementioned material facts had arisen within the territorial limits of this Court. He would rely on *State of Rajasthan and Others Vs. Swaika Properties and Another*, *Ambica Industries Vs. Commissioner of Central Excise*, *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, *Canon Steels P. Ltd. Vs. Commissioner of Customs*, *National Textile Corp'n. Ltd. and Others Vs. Haribox Swalram and Others*, *Everest Coal Co. Pvt. Ltd. v. Coal Controller* 90 C.W.N. 438, *Balaji Vegetable Products P. Ltd. Vs. Union of India and Others*, *Mustafa Hussain Vs. Union of India (UOI) and Another*, *Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another*, *Read v. Brown* (1888) 22 QBD 128, *The State of Madras Vs. C.P. Agencies and Another*, *Om Prakash Srivastava Vs. Union of India (UOI) and Another*, *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, *M/s. D.R.M. Steel Industries Private Ltd. Vs. Board for Industrial and Financial Reconstruction and others*, *Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee*, .

19. While the scope and purport of the expression "cause of action" has been explained in a catena of Judgments of the Supreme Court and several High Courts, it, nonetheless, continues to remain the subject matter of immense debate and is in issue in this writ petition also. It is, therefore, necessary to note how the expression "cause of action" has been construed by the Supreme Court and High Courts and explained in authoritative texts.

20. "Cause of action" is every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. (*Read* (1888) 22 QBD 128 , *The State of Madras Vs. C.P. Agencies and Another*,). In other words, a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. (*State of Rajasthan and Others Vs. Swaika Properties and Another*, ; *Bloom Dekor Limited Vs. Subhash Himatlal Desai and Others*, ; *Om Prakash Srivastava Vs. Union of India (UOI) and Another*, . It must include some act done by the defendant since, in the absence of such an act, no cause of action would possibly accrue or would arise. [*South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. and Others*, ; *Om Prakash Srivastava Vs. Union of India (UOI) and Another*, . In a generic and wide sense,

(as in Section 20 of the Civil Procedure Code, 1908), "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment, (*Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, ; *Om Prakash Srivastava Vs. Union of India (UOI) and Another*, , the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. (*Rajasthan High Court Advocates' Assn. v. Union of India* (2001) 2 SCC 294; *Om Prakash Srivastava Vs. Union of India (UOI) and Another*,). These are all those essential facts without the proof of which the plaintiff must fail in his suit. (*Gurdit Singh and Others Vs. Munsha Singh and Others*, ; *Om Prakash Srivastava Vs. Union of India (UOI) and Another*,). It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour. (*Mst. Chand Kour v. Partab Singh* 15 Ind. App. 156; *The State of Madras Vs. C.P. Agencies and Another*,).

21. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (*Black's Law Dictionary*). In *Stroud's Judicial Dictionary* a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; In *Words and Phrases* (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (*Navinchandra N. Majithia Vs. State of Maharashtra and Others*, ; *Om Prakash Srivastava Vs. Union of India (UOI) and Another*,).

22. In *Halsbury's Laws of England* (4th Edn.):

"Cause of action" has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.

The collocation of the words "cause of action, wholly or in part, arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of Courts. (*Navinchandra N. Majithia Vs. State of Maharashtra and Others*,). Although in view of Section 141 of the Code of Civil Procedure, the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure, and Clause (2) of Article 226, being in *pari materia*, the decisions of the Supreme Court rendered on an interpretation of Section 20(c) CPC apply to writ proceedings also. (*Ambica Industries Vs. Commissioner of Central Excise*, ; *Kusum Ingots &*

Alloys Ltd. (2004) 6 SCC 2542.

23. In order to exercise jurisdiction to entertain a writ petition, the High Court must be satisfied, from the entire facts pleaded in support of the cause of action, that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. (Union of India and Others Vs. Adani Exports Ltd. and Another,). Each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing on the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. (Union of India v. Adani Exports Ltd.; National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, . Similarly, the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court. (Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, ; Eastern Coalfields Ltd. 90 C.W.N. 438).

24. What is necessary to be proved, before the petitioner can obtain a decree, are material facts. The expression material facts is also known as integral facts. (Ambica Industries Vs. Commissioner of Central Excise, ; Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another,). The test is whether a particular fact (s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. In determining the question, the substance of the matter and not the form thereof has to be considered. (Alchemist Limited and Another Vs. State Bank of Sikkim and Others,). High Courts should exercise caution not to transgress into the jurisdiction of other High Courts merely on the ground that some insignificant event, trivial and unconnected with the cause of action has taken place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. (Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, ; Navinchandra N. Majithia Vs. State of Maharashtra and Others,).

25. It is no doubt true that if the original order and the appellate order are passed at two different places a part of the cause of action can be said to arise at the place where either of the said orders were passed. It is also not in doubt that the place from where an appellate order or a revisional order is passed may give rise to a part of the 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 Court, it will be for the petitioner to choose his forum. (Sri Nasiruddin Vs. State Transport Appellate Tribunal, ; Canon Steels P. Ltd. Vs. Commissioner of Customs,). Since the situs of both the B.I.F.R. and A.A.I.F.R is at New Delhi, a part of the cause of action, on a challenge to the order of the A.A.I.F.R, can be

said to arise within the territorial limits of the Delhi High Court.

26. Similarly, a reference u/s 15 of S.I.C.A can be initiated, among others, by the Sick industrial company itself and any order passed either by the B.I.F.R or the A.A.I.F.R. which effects the company would also give rise to the cause of action at the place where the registered office of the sick industrial company is situated. (M/s. D.R.M. Steel Industries Private Ltd. Vs. Board for Industrial and Financial Reconstruction and others,). As such a part of the cause of action can also be said to have arisen within the territorial limits of the High Court of Kerala.

27. While a part of the cause of action has arisen within the territorial limits of both the Delhi and the Kerala High Court, what, however, needs to be examined is whether a part of the cause of action can be said to have also arisen within the territorial jurisdiction of the High Court of Andhra Pradesh, for even if a fraction of the cause of action has so arisen, and as the choice of the forum is for the suitor to decide, the petitioner would be justified in having invoked the jurisdiction of this Court.

28. The question whether "cause of action", either in whole or in part has arisen within the territorial jurisdiction of a particular High Court must only be decided on the basis of the pleadings. In determining the objection regarding lack of territorial jurisdiction, the court must take all the facts pleaded in support of the cause of action into consideration, albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words, the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the writ petition. (Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others,). In the absence of an averment that the cause of action, or a part of it, has arisen within the territorial jurisdiction of the concerned High Court the writ petition would be dismissed. (Sarabjit Kaur Vs. Union of India (UOI) and Others,).

29. It is not in dispute that the affidavit filed in support of the writ petition is silent on the aspect of "cause of action". Reliance, however, is placed on the list of dates and events, and the documents enclosed to the writ petition, to contend that the facts discernible therefrom would establish that a part of the cause of action has arisen within the territorial limits of this Court. The list of dates and events is prepared by the Counsel for the Court's convenience and does not form part of the pleadings. Particulars, regarding cause of action having arisen within the territorial jurisdiction of a High Court, must be specifically averred in the affidavit filed in support of the writ petition and, since the writ affidavit is completely silent in this regard, the order under appeal may be required to be set aside on this ground alone.

We do not, however, propose to non-suit the petitioner on this ground since we are satisfied that, even on the facts as stated in the list of dates and events, and

the documents enclosed to the writ petition, "cause of action", even in part, has not arisen within the territorial limits of this Court.

30. It is wholly unnecessary for us to burden this judgment with the factual details in each of the cases cited before us, as Sri K. Ramamoorthy, Learned Counsel appearing for the 2nd respondent-petitioner, has submitted, in our opinion rightly so, that the factual context in which the question, whether "cause of action in part" had arisen within the territorial limits of a High Court, had been decided in one case would vary from another. We shall, therefore, confine our enquiry to the facts of the present case and the relief sought for in the writ petition.

31. As noted hereinabove, the question which falls for consideration is whether location at Hyderabad of two divisions, which form part and parcel of the assets of a Sick industrial company registered in the State of Kerala, would, by itself, constitute "cause of action in part" having arisen within the territorial limits of this Court. In a given case where the subject matter of the lis are the assets themselves, their location may itself constitute a material, essential and integral part of the lis sufficient to give rise to "cause of action in part" conferring territorial jurisdiction on the High Court within whose limits these assets are located.

32. The subject matter of challenge in the writ petition is not the Divisions/factories located at Hyderabad but the order of the A.A.I.F.R. dated 06.02.2007 setting aside the earlier order of the B.I.F.R. dated 26.07.2005 sanctioning three schemes. The Order of the A.A.I.F.R., and the several directives issued by it pursuant thereto, are in exercise of its powers u/s 25(2) of the Act. It is necessary, therefore, to briefly examine the scope and ambit of S.I.C.A and its relevant provisions.

33. It is evident from the preamble of S.I.C.A. that the Act has been made with a view to secure the timely detection of sick and potentially sick companies owning industrial undertakings. Section 2(e) of S.I.C.A defines "industrial company" to mean a company which owns one or more industrial undertakings. Section 2(f) defines "industrial undertaking" to mean any undertaking pertaining to a scheduled industry carried on in one or more factories by any company. Section 2(o) defines "sick industrial company" to mean an industrial company, being a company registered for not less than five years which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

34. S.I.C.A. places emphasis on the "sick companies" which own industrial undertakings, and not on "industrial undertakings/factories", divorced from the Sick company to which it belongs to. It is also evident from Section 2(f) of the Act that a distinction is made between an "industrial undertaking" and a "factory" for it is an undertaking belonging to a scheduled industry, carried on in one or more factories, by a company which is defined to be an "industrial undertaking". In the case on hand, while the fifth respondent herein is the "Sick

Company", the two divisions located at Hyderabad are its "industrial undertakings/factories". The underlying object of S.I.C.A. is for preventive, ameliorative, remedial and other measures to be taken with respect to such "sick companies". While Section 17(1) requires the B.I.F.R. to enquire whether the Sick industrial company can make its net-worth exceed its accumulated losses within a reasonable time, in cases where it is not so practicable the B.I.F.R. has been empowered to adopt all or any of the measures specified in Section 18 of S.I.C.A, including an order directing the operating agency to prepare a scheme providing for such measures. The measures which may be provided for under the Scheme are those specified in Sub-sections (1) and (2) of Section 18 which include the sale of a part or the whole of an industrial undertaking of the Sick industrial company, and for the transfer to the transferee company of all the business properties, assets and liabilities of the Sick industrial company. Sale of industrial undertakings/units/factories/ assets of a Sick industrial company, (such as the two divisions located at Hyderabad), may be provided for in a scheme as part of the remedial and other measures needed to be taken in respect of the Sick industrial company. Section 18(4) confers power on the B.I.F.R to pass an order sanctioning the scheme. The distinction between an Order sanctioning the scheme, and the measures which the scheme may provide for, must also be borne in mind, for Section 25(1) provides for an appeal against an "Order" made by the B.I.F.R. under the Act and not against the measures provided for in the scheme, independent of the "Order" sanctioning the scheme. It must also be noted that the A.A.I.F.R is constituted, u/s 5(1) of S.I.C.A, for hearing appeals against the "Orders" of the B.I.F.R. under the Act.

35. The order of the B.I.F.R, which was subjected to challenge before the A.A.I.F.R, was the order dated 26.07.2005 and among the measures provided for, in one of the three schemes, was that the machinery and conductor divisions at Hyderabad should be spun off into a separate company and its assets and liabilities segregated. While the consequence of the order of the A.A.I.F.R being set aside may be the revival of the order of B.I.F.R. sanctioning the schemes, what must not be lost sight of is that the "Order" would stand revived in its entirety and not merely a part thereof or some of the measures provided therein. Even if the order of the A.A.I.F.R. dated 06.02.2007 were to be set aside, the Order of the B.I.F.R dated 26.07.2005 would revive in its entirety and not merely some of the measures, provided in one of the schemes, relating to the Divisions located at Hyderabad.

36. The very purpose of constituting the B.I.F.R. and the A.A.I.F.R, under S.I.C.A, is for the revival and rehabilitation of Sick industrial companies. The question whether a sick industrial company can be revived has to be ascertained taking into consideration all relevant facts and not merely the location of some of its Divisions at a particular place such as the two divisions of the fifth respondent being located at Hyderabad. The interests of the employees working in the Hyderabad Divisions cannot also be examined in isolation ignoring the interests of other employees employed in other units/Divisions of the fifth respondent sick

industrial company. The two divisions at Hyderabad are not independent legal entities but form part of the industrial undertakings/factories of the fifth respondent. The turnover of these two divisions is but a part of the turnover of the fifth respondent. These facts, and the fact that a bid was submitted for the purchase of these assets/take over of the divisions at Hyderabad, are insignificant events, trivial and unconnected with the dispute. They are neither facts of substance nor do they constitute material, integral or essential facts which have nexus and relevance to the lis i.e, the order of the A.A.I.F.R dated 06.02.2007.

37. In a writ petition, wherein the order of the A.A.I.F.R is under challenge, what is required to be pleaded as a part of the cause of action by the aggrieved party is that the appeal was allowed either wholly or in part. The plea that, on the appellate order being set aside, the order of the B.I.F.R and the Schemes sanctioned thereunder would stand revived is relevant only to show that the petitioner has a right of action on the accrued cause of action. The distinction between a "right of action" and the "cause of action" must be borne in mind, for it is the bundle of facts taken with the law applicable to them which constitutes "cause of action", and it is before the High Court, within whose territorial limits the "cause of action" has arisen, can the petitioner have his right to the relief enforced. The consequence which the petitioner suffers, as a result of the order of the A.A.I.F.R, is at the place where either the appellate order was passed or where the registered office of the sick industrial company is situated and not where some of the divisions/assets of the sick industrial company are located. In order to obtain the benefit of the measures provided under the scheme sanctioned by the B.I.F.R, on the order of the A.A.I.F.R being set aside, the 2nd respondent-petitioner may have a right of action within the territorial jurisdiction of the High Court where a part of the cause of action arose i.e. either the Delhi High Court or the High Court of Kerala and not where some of the divisions of the sick industrial company are located i.e. the High Court of Andhra Pradesh.

38. For the reasons aforesaid, it must be held that "cause of action", even in part, has not arisen within the territorial jurisdiction of this Court. Accordingly the order of the learned Single Judge, in W.P.M.P. No. 3076 of 2008 dated 10.06.2008, is set aside.

39. The Writ Appeal is allowed. However, in the circumstances, without costs.