
(2016) 03 GAU CK 0091
In the Gauhati High Court
Case No : WP(C) No. 334 of 2016

Balaji Water and Power Engineer Pvt. Ltd.	APPELLANT
Vs	
S.B. of Sikkim	RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19

Citation : (2017) 1 GauLT 435

Hon'ble Judges : Mr. Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. A. Dasgupta, Mr. S. Saha, Ms. B. Das and Mr. B. Das, Advocates, for the Petitioners; Mr. G.N. Sahewalla, Sr. Advocate and Md. Aslam, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Michael Zothankhuma, J.— Heard Mr. D. Das, Senior counsel, assisted by Ms. B. Das, counsel for the petitioner. Also heard Mr. G. N. Sahewalla, Senior Advocate, assisted by Md. Aslam, counsel for the respondent No. 1.

2. The petitioner's case in brief is that the petitioner had taken a loan from the State Bank of Sikkim. The State Bank of Sikkim has its registered office at Gangtok. The petitioner had taken the loan in Sikkim and thus, the cause of action arose in Sikkim. Due to default in payment of the loan, an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (In short, "RDDBFI Act, 1993") was filed in the Debt Recovery Tribunal (In short, "DRT"), located in Guwahati, Assam. The case was registered in the DRT as O.A. 58/2014. The DRT located in Guwahati, Assam, has jurisdiction over eight States, which includes the State of Sikkim.

3. The petitioner submitted an objection in the DRT to the effect that the State Bank of Sikkim is not a bank within the meaning of Section 2 (d) as per the RDDBFI Act, 1993 so as to initiate a recovery proceeding at the instance of the

State Bank of Sikkim. The petitioner's counsel submits that in view of the above, the DRT could not pass any orders against the petitioner as per the said Act. The DRT, after hearing the parties, passed order dated 27.05.2015, holding that the State Bank of Sikkim was to be considered as a bank under the RDDBFI Act, 1993 and accordingly, held that the application filed by the State Bank of Sikkim under Section 19 of the RDDBFI Act, 1993 was maintainable.

4. The petitioner, being aggrieved by the order dated 27.05.2015, passed in Petition No. 4/2015 in O.A. No. 58/2014 has preferred the present writ petition under Article 226 of the Constitution of India, praying for setting aside the order dated 27.05.2015 passed by the DRT, Guwahati, Assam, in Petition No. 4/2015 in O.A. No. 58/2014.

5. The petitioner's counsel submits that as the DRT is located in Guwahati, Assam, this High Court has jurisdiction to entertain the present writ petition. On the other hand, the counsel for the respondent No. 1 submits that the cause of action having arisen in the State of Sikkim, which has a separate High Court, the present writ petition should be filed before the Sikkim High Court.

6. Mr. D. Das, Senior Counsel, appearing on behalf of the petitioner, has submitted that a reading of the provisions of Article 226 of the Constitution would go to show that a High Court can interfere with any order passed by a Tribunal, situated within its territorial jurisdiction even if the cause of action arose in a different State. In support of his submission, he has relied upon the judgment of the Calcutta High Court, in the case of Navin Jain and others v. State Bank of India, reported in AIR 2002 CAL 223.

7. Mr. G. N. Sahewalla, Senior Advocate, appearing for the respondent No. 1, on the other hand, submits that the present writ petition is not maintainable in view of the law laid down by the Supreme Court in the case of Nawal Kishore Sharma v. Union of India and others, reported in (2014) 9 SCC 329, Ambica Industries v. Commissioner of Central Excise, reported in (2007) 6 SCC 769 and the decision of the Sikkim High Court, in the case of P.K. Saraswat, T.P. Sharma, Ravi v. Union of India, reported in AIR 1999 Sikkim 16.

8. The Calcutta High Court in the case of Navin Jain (supra) has held that the High Court under Article 226 of the Constitution of India can interfere with any order passed by a Tribunal, situated within the territorial limit of the said High Court, even though the cause of action arose in a different State.

9. The Apex Court in the case of Nawal Kishore Sharma (supra) has relied upon the judgments passed by the Apex Court in Kusum Ingots & Alloys Ltd. v. Union of India and Another reported in (2004) 6 SCC 254, which is as follows, "keeping in view the expressions used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court has jurisdiction in the matter". It has also held as follows:

"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."

In the case of *Ambica Industries* (supra), the Supreme Court has held at para 12 to 15 and 17 as follows:

"12. The said decision proceeded on the basis that part of the cause of action may arise at the forum where the appellate order or the revisional order is sourced. If, thus, a cause of action arises within one or the other High Court, the petitioner shall be the dominus litis. Indisputably, if this set of reasoning is to be accepted, the impugned judgment as also the decision rendered in *Bombay Snuff* (supra) would not be correct. Before dilating on the said proposition of law it may be noticed that the decision of a Tribunal would be binding on the Assessing Authority. If the situs of the appellate Tribunal should be considered to be the determinative factor, a decision rendered by the Tribunal shall be binding on all the authorities exercising its jurisdiction under the said Tribunal.

13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or Courts or Tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.

14. Furthermore, when an appeal is provided under a statute, Parliament must have thought of one High Court. It is a different matter that by way of necessity, a Tribunal may have to exercise jurisdiction over several States but it does not appeal to any reason that Parliament intended, despite providing for an appeal before the High Court, that appeals may be filed before different High Courts at the sweet will of the party aggrieved by the decision of the Tribunal.

15. In a case of this nature, therefore, the cause of action doctrine may not be invoked.

17. There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also Clause (2) of Article 226 thereof, the High Court

would exercise its discretionary jurisdiction as also power to issue writ of certiorari in respect of the orders passed by the Subordinate Courts within its territorial jurisdiction or if any cause of action has arisen there within but the same tests cannot be applied when the appellate court exercises a jurisdiction over Tribunal situated in more than one State. In such a situation, in our opinion, the High Court situated in the State where the first court is located should be considered to be the appropriate appellate authority. Code of Civil Procedure did not contemplate such a situation. It provides for jurisdiction of each court. Even a District Judge must exercise its jurisdiction only within the territorial limits of a State. It is inconceivable under the Code of Civil Procedure that the jurisdiction of the District Court would be exercisable beyond the territorial jurisdiction of the District, save and except in such matters where the law specifically provides therefor."

10. In the case of "P.K. Sarma T.P. Sarma" (supra), the Sikkim High Court has dismissed the writ petition, which had challenged the order of the learned District Judge (East and North) at Guwahati, whereby the District Judge had ordered the civil suit to be transferred to the DRT, Guwahati under the provisions of Section 31 of the RDDBFI, Act, 1993.

11. I have heard the learned counsel for the parties.

12. In the present case at hand, the cause of action arose at Sikkim. The DRT has got jurisdiction for proceedings, which arise at Sikkim. The seat of office of the State Bank of India is in Sikkim. The petitioner is also from Sikkim. In the event that the DRT makes an order in favour of the respondents, then the realization of the amount would have to be done through the Courts in Sikkim. Thus, the correct place for filing the present writ petition would be the Sikkim High Court. The Apex Court in the case of Nawal Kishore Sharma (supra) has referred to the case of Kusum Ingots & Alloys Ltd. v. Union of India and Another, reported in (2004) 6 SCC 254, which is as follows:-

"9. 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 this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material fact is also known as integral facts.

10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter." Their Lordships further observed as under:-

"29. In view of clause (2) of Article 226 of the Constitution of India, now if a part

of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh has, thus, no application. 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."

It was also held in Nawal Kishore Sharma(Supra) at paragraph 16 as follows:

"16. Regard being had to the discussion made herein above, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."

13. In the case of Ambica Industries (supra), the Supreme Court has held that if the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Court or Courts, some sort of judicial anarchy shall come into play. In this aspect, the Apex Court had considered the facts of that case, which is to the effect that the appellant had carried on business at Lucknow and he was assessed at Lucknow. The matter came up before the Central Excise and Service Taxes Appellate Tribunal (In short, "CESTAT"), New Delhi. The said Tribunal (CESTAT) exercised jurisdiction in respect of the cases arising within the territorial limit of the State of Uttar Pradesh, National Capital Territorial of Delhi and the State of Maharashtra. The appeal was filed against the order of the Tribunal before the Delhi High Court, having regard to the situs of the Tribunal. A Division Bench of the Delhi High court, relying on the basis of an earlier Division Bench's judgment, in Bombay Snuff (P) Limited v. Union of India, reported in 2006 194 ELT 264 Delhi, held that the Delhi High Court has no jurisdiction in the matter. In the case of Bombay Snuff(P) Ltd. (Supra), the Division Bench of the Delhi High Court held as follows:

"29. On the reasoning adopted by this Court in Technological Institute of Textile case an appeal under Section 35-G must also be filed only in the High Court who has jurisdiction over the authority from whose order the proceedings have originated. The fact that the main seat of CESTAT is situated in Delhi or that the appeal was heard and decided at Delhi would not mean that all appeals arising from cases so decided regardless from which State the case has originated can be maintained in this Court."

14. The Apex Court agreed with the view that the Delhi High Court has no jurisdiction in the matter. In para 38 of Ambica Industries (Supra), the Apex

Court held as follows:-

"38. We have noticed hereinbefore that if the decision of the High Court in the aforementioned question is taken to its logical conclusion, the same would lead to a great anomaly. It would also give rise to the problem of forum shopping. We may notice some examples to show that the determination of the appellate forum based upon the situs of the tribunal would lead to an anomalous result. For example, an assessee affected by an assessment order in Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it which may be contrary to judgments of the High Court of Bombay. This cannot be allowed. (See *Suresh Desai and Associates v. CIT, ITR*, at pp. 915-17 and *CCE v. Technological Institute of Textile.*)"

The Apex Court subsequently agreed with the judgment of the Division Bench of Delhi High Court in *Ambica Industries* (Supra).

15. In the present case, the proceeding have originated from the issuance of the loan by the State Bank of Sikkim to the loanee, who are both residents of Sikkim. The authority whose orders and decisions are being adjudicated is a resident of Sikkim. As such, the High Court, within whose jurisdiction the proceeding has originated from would have territorial jurisdiction to entertain the matter.

16. In view of the fact that no cause of action exists in the State of Assam and as the cause of action arose in the jurisdiction of the Sikkim High Court and keeping in view the decision of the Apex Court in the case of *Ambica Industries* (Supra) and *Nawal Kishore Sharma* (Supra), this Court holds that this Court is not the proper Court to decide the issue at hand. Accordingly, the present writ petition, being not maintainable, the same is dismissed. The petitioner is at liberty to approach the Sikkim High Court, if so advised, as the Sikkim High Court is the proper forum to entertain a writ petition keeping in mind the facts of the case and the judgments of the Hon''ble Supreme Court.

17. This writ petition is accordingly dismissed.