

(2014) 08 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1759 of 2013

BBF Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Citation : AIR 2015 JK 1 : (2015) 3 BC 69 : (2015) 1 JKJ 663

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Pranav Kohli, Advocates for the Appellant; Z.A. Shah, Sr. Advocate and Vipin Gandotra, Advocates for the Respondent

Judgement

Tashi Rabstan, J.—Through the medium of this writ petition, the petitioners are seeking quashing of Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 along with notice issued under Section 13(2) of the Act, bearing Ref. No.

JKB/ZOM/2013-1653 dated 15-11-2013 on the grounds taken in it. When this case was taken up on 3-7-2014, Mr. Shah, learned senior

counsel raised the objection with regard to territorial jurisdiction of this Court. The issue with the consensus of learned counsel appearing for the

parties has been treated as a preliminary issue and, thus, this judgment is primarily confined to this issue only.

2. Before dealing with the issue, it would be appropriate to give brief facts of the case which led to filing of the present petition, which, in turn, gave

an occasion to Mr. Shah, learned senior counsel to raise the issue of territorial jurisdiction of this Court.

3. The facts as averred in the writ petition are that the petitioner-Company, established in the year 1996, has been engaged in manufacturing of

corrugated cartons, printed duplex cartons, plastic moulded products and contractual manufacturing of mosquito coils. Petitioners 2 to 6 are the

Directors/Guarantor/Mortgager of petitioner-Company. The petitioner-Company is having four manufacturing units, one at Ludhiana in Punjab and

three at Samba in Jammu and Kashmir. It is averred that due to financial crunch and lack of timely infusion of funds, the petitioner-company

proposed with the consortium of banks for restructuring of loan accounts to mitigate the financial stress, as the Company had secured a term loan

and financial assistance from consortium of banks. Accordingly, the Company and the Banks entered into a general agreement for restructuring of

the accounts and the restructuring proposal was approved vide letter dated 3-5-2011 under the CDR Scheme of the Banks. These banks are,

Punjab National Bank, State Bank of India, Jammu and Kashmir Bank, Allahabad Bank, IDBI Bank and Indus Ind Bank. It is averred that as per

the CDR the implementation of sale was to be carried out within the period specified, but the same could not be done as the CDR remained

pending implementation with various members of the consortium Banks and now the Banks are shifting the onus of default upon the petitioner-

Company. It is contended that the petitioner-Company had also procured financial assistance from Jammu and Kashmir Bank Ltd., Branch

Mohali, Punjab, respondent No. 2 herein, against hypothecation of stocks, machinery and mortgage of property/assets of the Company and its

Directors. It is stated that in view of the afore-stated facts the petitioner-Company could not meet its financial commitments of repayment of

loan/interest etc., as a result of which the account of petitioner-Company was declared as NPA by respondent No. 2. Accordingly, respondent

No. 3 issued notice dated 15-11-2013 to the petitioner-Company under Section 13(2) of the Securitization and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (hereinafter, for short, the Act) for repayment of Rs. 29,20,25,185.24/- along with interest.

Aggrieved of the same, the petitioners have approached this Court for redressal of their grievances.

4. Upon notice, objections have been filed on behalf of respondents 2 and 3 herein. The preliminary objection raised by them is that this Court has

be territorial jurisdiction to decide the writ petition for the simple reason that the notice impugned came to be issued from Mohali (Punjab) Branch

of the J.&K. Bank, from where the loan was procured by the petitioner-Company and the properties-in-question too situated outside the State of

Jammu and Kashmir. Thus, it was argued that no cause of action was ever accrued to the petitioners in the State of J.&K. in view of material facts,

therefore, the writ petition is liable to be dismissed.

5. In response to the objections, petitions filed a supplementary affidavit controverting the stand taken by respondents 2 & 3. It is averred that the

first loan taken by the petitioner-Company was for its unit situated at Samba. The loan was sanctioned by the J.&K. Bank, Head Office Srinager

vide its letter dated 3-6-2005 and the loan amount was disbursed by its Branch Office situated at Gandhi Nagar, Jammu. Further, it is averred that

another loan agreement along with Deed of Hypothecation was executed between the petitioner-Company and J.&K. Bank, through its Branch

Office at Gandhi Nagar, Jammu on 25-9-2008 after the same was sanctioned by the Head Office of the Bank situated at Srinagar. It is further

averred that the primary properties, which have been hypothecated towards the loan by way of equitable mortgage, are situated at Samba in

Jammu & Kashmir, therefore, this Court has the territorial jurisdiction to decide the writ petition. It is further contended that otherwise also there

was no mention of Mohali Branch of the Bank in the loan documents or the Hypothecation Agreement(s) being the lender bank, therefore, Mohali

Branch has no jurisdiction to issue the impugned notice.

6. Heard learned counsel for the appearing parties and considered the rival contentions meticulously.

7. Mr. Kohli, learned counsel for petitioners, while referring explanation to Section 20(c) of the Code of Civil Procedure has argued that the

objection raised by respondents 2 & 3 with regard to territorial jurisdiction of this Court is devoid of merit. For ready reference, the said

explanation is reproduced hereunder:

A corporation shall be deemed to carry on business at its sole or principal office in the State or, in respect of any cause of action arising at any

place where it has also a subordinate office, at such place.

8. While projecting his case, Mr. Kohli also referred to Article 226 of the Constitution of India to contend that this Court has the power to decide

the writ petition. In support of his argument, he also referred to certain

judgments delivered in Dr. Vijay Pahwa Vs. West Bengal Medical Council

and Others, ; Rajendran Chingaravelu Vs. Mr. R.K. Mishra, Addl. Commissioner of IT and Others, ; 2007 Vol. 11 SCC 335 : AIR 2007 SC

1812) and Sri Nasiruddin Vs. State Transport Appellate Tribunal, .

9. Mr. Kohli also argued that as respondents 2 & 3 have not specifically denied the contents of paragraphs 3 to 11 of the Supplementary Affidavit,

therefore, the same are deemed to have been admitted by them. In support of his argument, he relied upon judgment of the Supreme Court

delivered in Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, and a judgment of this Court delivered in S. Kanmuth Vs. State

of Jammu & Kashmir, .

10. Mr. Shah, learned senior counsel vehemently argued that all the arrayed respondents have been shown from outside the State of J.&K. He,

while referring to paragraphs 12, 15(5) and 19 of the writ petition, further argued that the petitioners themselves have admitted that total financial

assistance was procured from respondent No. 2 herein under various agreements, therefore, it cannot be said that respondents 2 & 3 have no

authority to issue the impugned notice. In support of his argument he also referred to judgments of the Supreme Court in cases, titled as, Kusum

Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, ; Om Prakash Srivastava Vs. Union of India (UOI) and Another, and Eastern

Coalfields Ltd. and Others Vs. Kalyan Banerjee, .

11. It is not in dispute that the petitioner-Company had procured loan/financial assistance from Jammu and Kashmir Bank after the same was

approved/sanctioned by its Head Office situated at Srinagar in J.&K. The loan agreements and Hypothecation Agreements were also executed

between Gandhi Nagar Branch of the Bank situated at Jammu and the petitioner-Company, and the loan amount was also disbursed by said

Branch. It is also not in dispute that the properties in respect of which the impugned notice was issued admittedly situated outside the State of

J.&K., i.e., Ludhiana in Punjab and the same is clearly evident from Annexure ""B"" to the writ petition.

12. However, it would be relevant to note here that vide order dated 3-2-2014 learned counsel for respondents 2 and 3 was directed to file

response to the supplementary affidavit filed by the petitioners. In response

thereto, respondents 2 and 3 have not specifically denied the averments made in the supplementary affidavit nor have they denied that the loan amount was disbursed by the Branch Office of the Bank situated at Gandhi Nagar, Jammu or that the primary properties of the petitioner-Company are situated at Samba, in J&K. In fact, the response filed by them is silent and evasive one when it comes to the execution of loan agreement(s) and the Hypothecation Agreement(s) by the J.&K. Bank, Gandhi Nagar, Jammu with the petitioner-Company after the same were sanctioned by the Head Office of the Bank situated at Srinagar. Further, a perusal of introductory part of the impugned notice clearly reveals that the same was issued on behalf of Jammu and Kashmir Bank, M.A. Road, Srinagar (J.&K.), relevant portion whereof is reproduced hereunder:

For and on behalf of The Jammu and Kashmir Bank Ltd. a Banking Company established under the J.&K. Companies Act 1977 (Samvat) having its Registered Office at M.A. Road, Srinagar, hereinafter referred to as the bank (which expression shall mean and include its successors and assigns, successors in interest etc.), I, Vinod Sharma, Authorized 'Officer of the bank, do hereby serve you with the following Notice under Section 3(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

13. A 4-Judge Bench of the Supreme Court in case, titled as, Sri Nasiruddin Vs. State Transport Appellate Tribunal, has held that if the cause of action arises in parts at two different places falling within the jurisdiction of two different Courts, the litigant will have the choice to institute proceedings at either of the two places. It would be relevant to reproduce paragraph 37 thereof hereunder:

The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression ""cause of action"" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression ""cause of action"" is well-known. If the cause of action

arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh area, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen part within specified areas in Oudh and part outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court rightly attracted by the alleged cause of action.

14. In *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, it has been held as under:

6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action.

Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary

for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything

which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt.

For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

7. Clause (2) of Article 226 of the Constitution of India reads thus:

226. (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by

any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such

power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

8. Section 20(c) of the Code of Civil Procedure reads as under:

20. Other suits to be instituted where defendants reside or cause of action arises.--Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a)-(b) xxx xxx xxx

(c) the cause of action, wholly or in part, arises.

15. Even while filing response to the supplementary affidavit, respondents 2 and 3 did not specifically deny the averments contained in paragraphs

3 to 11 thereof and the same have remained unrebutted. This Court in case, titled as, S. Kanmuth Vs. State of Jammu & Kashmir, , while relying

on a judgment of the Supreme Court, has specifically held that if the averments contained in the petition are not specifically denied, the same are

deemed to have been admitted; paragraph 7 thereof is reproduced hereunder:

7. It is beaten law of the land that when averments contained in the writ petition are not specifically denied, the same are deemed to have been

admitted. Same view was taken by the Apex Court in case, titled as, Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, . It

would be relevant to reproduced paragraphs 17, 18 and 19 herein.

17. It is a settled principle of the law of pleadings that an averment made by the appellant is expected to be specifically denied by the replying

party. If there is no specific denial, then such averment is deemed to have been admitted by the respondent. In the present case, it is evident that

the above-noted averments in the writ petition were relevant and material to the case. In fact, the entire case of the appellant hinged on these three

paragraphs of the writ petition. It was thus expected of the respondents to reply to these averments specifically, in fact to make a proper reference

to the records relevant to these paragraphs. In view of the omission on the part of the respondents to refer to any relevant records and failure to

specifically deny the averments made by the appellant, we are of the considered view that the appellant has been able to make out a case for

interference.

16. Thus, it would be incorrect to say that no cause of action ever accrued to the petitioners in the State of Jammu and Kashmir. After the loan

was sanctioned by the Head Office of the Bank situated at Srinagar, admittedly, part of cause of action accrued to the petitioners in the State as

the loan documents came to be executed between the Bank and the petitioner-Company at Jammu itself. The loan amount too, was disbursed by

Gandhi Nagar Branch of the Bank situated at Jammu.

17. No doubt, the impugned notice was issued by Mohali Branch of the Bank situated in Punjab, but the same was issued on behalf of Jammu and

Kashmir Bank, having its Head Office at M.A. Road, Srinagar; meaning thereby for all practical purposes the impugned notice would be deemed

to have been issued by the Head Office of the Bank. As the impugned notice was issued by the Authorized Officer in the representative capacity

having authority to act on behalf of Head Office of the Bank situated at Srinagar and the said officer was an attorney-in-fact for the principal, then

how could it be pleaded that this Court has no territorial jurisdiction to entertain and decide the petition-in-hand.

18. Also, as per Schedule 1, i.e., annexure 'C' to the supplementary affidavit, one of the Lender Banks of the petitioner-Company is J. & K. Bank

Ltd., Gandhi Nagar Branch, Jammu and there is no mention of Mohali Branch of the Bank. The further contention of learned senior counsel for

respondents 2 and 3 as regards territorial jurisdiction of this Court that the properties mentioned in the impugned notice have been situated at

Ludhiana, against which the loan amount was secured by the petitioner-Company, also has no significance in view of the fact that the loan amount

was meant for and was to be utilized by the petitioner-company for its four Units--three being situated at Samba in Jammu and Kashmir and one at

Ludhiana in Punjab. Even the demand for repayment of loan was in respect of all the aforementioned four units of the petitioner-Company. Further,

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.

19. Therefore, in view of the discussions made above and the law laid down by the Supreme Court, the preliminary objection raised by

respondents 2 and 3 is devoid of any merit and is not sustainable in the eyes of law. Accordingly, the same is rejected. Registry is directed to list

the case for further proceedings after two weeks.