
(2020) 11 SHI CK 0149

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3291 Of 2020

Director General Of Works, CPWD

APPELLANT

Vs

Abhi Ram And Ors

RESPONDENT

Date of Decision : 12-11-2020

Acts Referred:

Rajasthan Urban Improvement Act, 1959 — Section 52, 52(1), 52(2), 152

Citation : (2020) 11 SHI CK 0149

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Shashi Shirshoo, Vivek Aggarwal, Manju Dhatwalia

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Maintainability of the petition on account of territorial jurisdiction is the first and foremost issue that needs adjudication.

2 Respondents-workmen raised an industrial dispute, that was referred by the appropriate government for adjudication to the Presiding Officer, Central Government Industrial Tribunal- Cum-Labour Court, New Delhi, which passed the impugned award, dated 5.8.2019. The same has been assailed by the petitioner, by way of the instant petition, before this Court only on the ground that out of 187 workers, 125 workers are from Shimla Central Electrical Division and rest of the workers are from Faridabad Central Division.

3 It is more than settled that the facts, which have no bearing with 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. The High Court will have territorial jurisdiction only if any cause of action of any part thereof has arisen within its jurisdiction and trivial events not forming integral part of cause of action will not give jurisdiction to the High Court.

4 In *Oil and Natural Gas Commission v. Utpal Kumar Basu & Ors.* [1994 (4) SCC 711, the Hon'ble Supreme Court, while dealing with issue of territorial jurisdiction, has held as under:

"12. Pointing out that after the issuance of the notification by the State Government under Section 52(1) of the Act, the notified land became vested in the State Government free from all encumbrances and hence it was not necessary for the respondents to plead the service of notice under Section 52(2) for the grant of an appropriate direction or order under Article 226 for quashing the notification acquiring the land. This Court, therefore, held that no part of the cause of action arose within the jurisdiction of the Calcutta High Court. This Court deeply regretted and deprecated the practice prevalent in the High Court of exercising jurisdiction and passing interlocutory orders in matters where it lacked territorial jurisdiction. Notwithstanding the strong observations made by this Court in the aforesaid decision and in the earlier decisions referred to therein, we are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made time and again, some of the learned Judges continue to betray that tendency. Only recently while disposing of appeals arising out of SLP Nos. 10065-66 of 1993, *Aligarh Muslim University and Anr. v. Vinay Engineering Enterprises (P) Ltd. and Anr.*, [1994 (4) SCC 710] this Court observed:

"We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction."

In that case, the contract in question was executed at Aligarh, the construction work was to be carried out at Aligarh, the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction, the Arbitrator was appointed at Aligarh and was to function at Aligarh and yet merely because the respondent was a Calcutta based firm, it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we

will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

5 In *National Textile Corporation Ltd. vs. Haribox Swalram*, (2004) 9 SCC 786, the Hon'ble Supreme Court has held as under:-

"10. Under clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person 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. Cause of action as understood in the civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. To put it in a different way, it is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. In *Union of India v. Adani Exports Ltd.* [2002 (1) SCC 567] in the context of clause (2) of Article 226 of the Constitution, it has been explained that 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 pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with 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. A similar question was examined in *State of Rajasthan v. Swaika Properties* [1985 (3) SCC 217]. Here certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and a notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for consideration was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land under Section 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52 of the Act. It was thus held that the Calcutta High Court had no jurisdiction to entertain the writ petition.

x x x x x

12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the

view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed. However, in order to avoid any further harassment to the parties and to put an end to the litigation, we would examine the matter on merits as well."

6 In *Alchemist Limited vs. State Bank of Sikkim*, (2007) 11 SCC 335, the Hon'ble Supreme Court has held as under:-

"20. It may be stated that the expression "cause of action" has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.

x x x x x

22. For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.

x x x x x

25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, 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 cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.

x x x x x

38. In the present case, the facts which have been pleaded by the appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of "cause of action" within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition."

7 In *Easter Coalfields Ltd. vs. Kalyan Banerjee*, (2008) 3 SCC 456, the Hon'ble Supreme Court has observed as under:

"13. In view of the decision of the Division Bench of the Calcutta High Court that the entire cause of action arose in Mugma area within the State of Jharkhand, we are of the opinion that only because the head office of the appellant Company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court, particularly when the head office had nothing to do with the order of punishment passed against the respondent."

8 Ratio in the aforesaid judgments has thereafter been approved by the Three-

Judge Bench of the Hon'ble Supreme Court in Maharaji Educational Trust vs. SGS Construction & Development (P) Ltd. (2015) 7 SCC 130.

9 In view of aforesaid discussion, we find no merit in the instant petition as no cause of action or part thereof has arisen in favour of the petitioner within territorial jurisdiction of this Court and the same is accordingly dismissed, leaving the parties to bear their own costs. However, it shall always be open to the petitioner to assail the impugned order before a competent court of law in accordance with law, subject to of course rights of the opposite party to raise all factual as well as legal questions.