

(2012) 11 DEL CK 0084

In the Delhi High Court

Case No : Writ Petition (C) 6398 of 2010 and C.M. No. 12662 of 2010

Jagdambay Auto Station and Another

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Negotiable Instruments Act, 1881 (NI) — Section 138
Arbitration and Conciliation Act, 1996 — Section 11, 8

Citation : (2012) 11 DEL CK 0084

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Aman Lekhi, with Mr. Pramod Jalan, Ms. Srishti Saxena and Mr. Manoj Gupta, for the Appellant; Neeraj Chaudhari, CGSC, for the Respondent No. 1/UOI, Mr. M.M. Kalra and Mr. Kunal Kalra, Advocates for the Respondent No. 2/IOCL, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioners have preferred the present writ petition under Article 226 of the Constitution of India to seek a declaration that the termination letter dated 22.02.2010, terminating the petitioners' dealership as a dealer of respondent No. 2-Indian Oil Corporation Limited (IOCL) in respect of petrol, high-speed diesel, motor oil, grease, etc. is arbitrary; is issued in colourable exercise of power, and; is disproportionate to the alleged irregularity attributed to the petitioners. The petitioners also seek a writ of mandamus directing respondent No. 2 to restore the petitioners' dealership and to resume sale & supply of petroleum products to the retail outlet of petitioner No. 1. In the alternative, the petitioners have sought a declaration that interference by respondents No. 2 to 5, i.e., IOCL & its officers in the peaceful possession, use and enjoyment of land admeasuring 2 Kanals (40 Marlas), on which the retail outlet of petitioner No. 1 is situated, falling in Khasra No. 696/2, 697/2/2, Khatoni No. 380/4087 situated at G.T. Road Bypass, Village Chogitdi, Jalandhar City, Jalandhar, Punjab

(hereinafter referred to as the said land) is an abuse of authority conferred upon the respondents, and is unreasonable and unfair. The petitioners have also sought a restraint against the respondents from interfering with the peaceful possession, use and enjoyment of the said land by the petitioners. The petitioners have sought a declaration requiring the respondent No. 2 to remove its underground tanks, dispensing units, equipments, fixtures, fittings, etc. from the aforesaid land. The case of the petitioners is that a dealership agreement (hereinafter referred to as the agreement) was executed between the petitioners and respondent No. 2 on 05.11.1976 for retail sale and supply of petrol, HSD, motor oil, grease, etc. The petitioners state that this agreement was executed at Delhi. Clause 68 of the agreement confers exclusive jurisdiction upon the Courts in Delhi to entertain any suit, application or any other proceeding in respect of any claim or dispute arising under the agreement. According to the petitioners, even prior to the execution of the said agreement, petitioner No. 2 and one Shri Surinder Prakash purchased the aforesaid parcel of land, on which eventually the petrol pump was located under the agreement in the name and style of "Jagdambay Auto Station". The petitioners state that a lease deed was executed on 25.02.2002 in respect of the said land in favour of the respondent No. 2, granting the same to respondent No. 2 for a term of thirty years extendable for another ten years with mutual consent w.e.f. 01.03.2002. The petitioners claim that the lease deed was executed on account of the dominant position of respondent No. 2 and the undue influence and coercion exercised by respondent No. 2.

2. It appears that an inspection was carried out by the Anti-Adulteration Team of respondent No. 2 of the petitioners' petrol pump on 25.06.2009, which resulted in issuance of show-cause notice to the petitioners. The said show-cause notice was responded to by the petitioners. Apprehending action by the respondents on the basis of the said show-cause notice, the petitioners preferred a Civil Suit for permanent and mandatory injunction before the Senior Civil Judge, Tis Hazari Courts to seek a restraint against implementation of termination, if any, resulting from the show-cause notice dated 23.09.2009 and the inspection dated 25.06.2009. The petitioners also sought orders for continuation of sale & supply of petroleum products from the petitioners' petrol pump outlet. The petitioners submit that they were served with an ante dated order of termination dated 22.02.2010 passed by respondent No. 4, i.e., Marketing Division, Punjab State Office, Indian Oil Bhawan situated in Chandigarh in order to frustrate the aforesaid suit. The petitioners state that the said termination order was received by them on 23.05.2010. The petitioners state that the respondents have formulated the Marketing Discipline Guidelines, 2005 (MDG 2005) which, inter alia, provide for an appeal against the termination of dealership. Consequently, the petitioners preferred an appeal before the Executive Director (Retail Sales), IOCL, Mumbai on 21.03.2010.

3. The petitioners preferred another Civil Suit for permanent injunction against the officers of the respondent-IOCL; this time before the Civil Judge (Senior

Division), Jalandhar. The petitioners state that the said suit had been filed apprehending dispossession of the petitioners from the said land. The respondents preferred an application u/s 8 of the Arbitration & Conciliation Act, 1996 in this suit on the basis of an arbitration agreement between the parties. During the pendency of the suit filed before the Civil Judge (Senior Division), Jalandhar, which appears to have been filed some time in April 2010, the appeal preferred by the petitioners under MDG 2005 came to be dismissed vide an order dated 09.08.2010. It is in this background that the petitioners preferred the present writ petition during the pendency of the aforesaid two suits-one pending before the Senior Civil Judge, Tis Hazari Courts and the other pending before the Civil Judge (Senior Division), Jalandhar.

4. When the present writ petition was taken up on 21.09.2010 for consideration, it was pointed out by learned counsel for the respondents-Mr. Kalra that the petitioners' suit is pending before the Civil Court. The petitioners stated that they would withdraw the said suit as also the suit pending before the Civil Judge (Senior Division), Jalandhar. On the next date of hearing, the petitioners informed the Court that the two suits aforesaid had been withdrawn. The affidavit filed in this respect was taken on record.

5. Upon issuance of notice in the writ petition, Mr. Kalra, learned counsel for the respondents raised a preliminary objection to the maintainability of the writ petition on the basis of the territorial jurisdiction of this Court. Eventually, it is this preliminary objection which has been argued before me. By this order, I proceed to dispose of the said preliminary objection while making it clear that I have not heard the submissions of the parties on merits of their respective case.

6. The preliminary objection of Mr. Kalra is that the petitioner is seeking quashing of the impugned order passed by the IOCL at Chandigarh, whereby the petitioners' dealership has been terminated on 22.2.2010 and for restoration of the said dealership. The injunctive relief sought is also in respect of the immovable property situated in Jalandhar, Punjab. It is argued that the retail outlet in question is situated in Jalandhar. The inspection was carried out in Jalandhar; show cause notice was issued by SDRSM, Indian Oil Corporation Ltd, Jalandhar, and; the termination letter has been passed by the General Manager of IOCL not in Delhi. Mr. Kalra submits that the parties cannot confer jurisdiction by agreement upon a court which otherwise lacks jurisdiction. In this regard, he placed reliance on Union of India and Others Vs. Adani Exports Ltd. and Another, . He also placed strong reliance on the decision of this Court in Jai Ganesh Petroleum (Writ Petition (C) No. 5133/2005), Khutar Filling Station (Writ Petition (C) No. 5167/2005) and M/s Annapurna Filling Station (Writ Petition (C) No. 16946/2004), decided by a common judgment dated 23.12.2005. He also placed reliance on the judgment of this Court in Hilal Filling Station Vs. Indian Oil Corporation Limited, and Phool Service Station Vs. Indian Oil Corporation Ltd., . Mr. Kalra further submits that the petitioner earlier preferred a civil suit before the Court at Jalandhar claiming substantially the same relief.

7. On the other hand, Mr. Lekhi, learned Senior Counsel for the petitioner has submitted that the appellate authority under the MGD 2005 is situated at Mumbai. However, the mere location of the appellate authority at Mumbai is not enough to vest jurisdiction in the courts at Mumbai. In this regard, he also placed reliance on *Sterling Agro Industries Ltd. Vs. Union of India*, 2011 (181) DLT 658 . Mr. Lekhi submits that even if a miniscule part of cause of action arises within the jurisdiction of a Court, the same would confer territorial jurisdiction on that Court. In this regard, he placed reliance on *Alchemist Limited and Another Vs. State Bank of Sikkim and Others*, . He also placed reliance on *Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others*, . It is argued by the petitioner that the place of inspection and the place from where show cause notice is issued-is irrelevant to decide the issue of territorial jurisdiction in the present case. The petitioners have sought to distinguish the judgments relied upon by the respondents. It is argued that the judgment in *Phool Service Station (supra)* is not relevant, as the grievance in that case was with regard to the method of inspection-which is not the issue raised in the present case. *Hilal Filling Station (supra)* is sought to be distinguished on the ground that in this case as well, the dispute was with regard to the drawing and attesting of samples which is not the case in hand. Similarly, in *Arun Service Station Vs. Indian Oil Corporation Ltd.*, , the challenge was to the procedure adopted in drawing and attesting of samples and the cause of action being linked to the situs of retail outlet and not to the agreement, the court within whose jurisdiction the testing had been carried out were held as having territorial jurisdiction in the matter. On the same basis, the petitioner seeks to distinguish *Adani Exports (supra)* by contending that in that case none of the facts were connected to the relief sought and mere presence of registered office of the petitioner company within the jurisdiction of the court was held not to give it territorial jurisdiction. The decision in *Jai Ganesh Petroleum (supra)* and *Khutar Filling Station (supra)* is distinguished by contending that in those cases, the dealership agreements were not executed in Delhi, but at Agra and the petitioners in those cases sought to invoke the jurisdiction of this Court on the premise that the principal office of the respondent corporation is situated in Delhi and that clause 68 of the dealership agreement confers jurisdiction on Delhi courts alone. However, in the present case, the agreement was executed at Delhi and accordingly the disputes have to be adjudicated at Delhi alone. Reliance is placed on *Rattan Singh Associates (P) Ltd. Vs. Gill Power Generation Company Pvt. Ltd.*, 136(2007) DLT 629 ; and on *A.K. Surekha Vs. The Pradeshia Investment Corpn. of UP Ltd. and Another and Govt. of NCT and Another*, , to contend that the act of making and signing of the contract forms part of the cause of action. It is argued that to determine the territorial jurisdiction of the court, one has to go by the averments made in the petition which are not only material but are an integral part of the cause of action.

8. Having considered the rival submissions of the parties and the various decisions relied upon by them, I am inclined to accept the preliminary objection of the respondent and to dismiss the petition on the ground that this Court lacks

territorial jurisdiction in the matter. Various decision relied upon by the respondents in Phool Service Station (supra), Hilal Filling Station (supra), Arun Service Station (supra) and Adani Exports Ltd. (supra) have all been considered in Jai Ganesh Petroleum (supra) which, in my view, is a detailed and considered decision of the learned Single Judge of this Court with which I respectfully agree.

9. In Adani Exports Ltd. (supra), the Supreme Court has held that 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. However, the fact pleaded by the writ petitioner in its petition does not ipso facto lead to the conclusion that those facts gave rise to a cause of action within the court's territorial jurisdiction, unless those facts pleaded are those which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. In the present case, the factum of the agreement having been signed at Delhi, has absolutely no bearing or relevance to the dispute which has arisen on account of the inspection of the petitioner's petrol pump, admittedly not situated within the jurisdiction of this Court; the issuance of show cause notice at Jalandhar; its adjudication at Jalandhar and the rejection of the petitioner's appeal at Mumbai. Even if this agreement had been executed in any other jurisdiction, the same would have no connection with, or bearing on the act of termination of the agreement.

10. In National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, , the Supreme Court held that 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. In Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , the Supreme Court observed:-

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, Madanlal Jalan v. Madanlal, Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd., S.S. Jain & Co. v. Union of India and New Horizons Ltd. v. Union of India.]

11. The learned Single Judge in Jai Ganesh Petroleum (supra), after taking note of the aforesaid dictum, has observed as follows:-

18. This principle finds application in the rationale and reasoning of the Apex Court in the Adani Export matter. Thus, there may be some facts which may

constitute a cause of action whereby the High Court would be enabled and empowered to decide the disputes. Yet, each and every such fact pleaded by a party does not by itself lead to the conclusion that the court would have the territorial jurisdiction to entertain the writ petition. It is only such facts which have a nexus or relevance with the issues raised in the litigation which vest the court with territorial jurisdiction. Thus, though an agreement may have been executed within the territorial jurisdiction of the court, however in order to decide the issue of territorial jurisdiction in cases where the extraordinary jurisdiction of the High Court has been invoked under Article 226 of the Constitution of India, it has to be seen whether the execution of the agreement is such an integral part of the facts relating to the litigation and dispute that consideration of such fact is absolutely imperative and essential for deciding the disputes involved in the case.

(emphasis supplied)

12. While dealing with Phool Service Station (supra) and Hilal Filling Station (supra), the learned Single Judge observed as under:-

23. In Phool Service Station vs. Indian Oil Corporation 2003 (4) AD (Delhi) 6 the agreement between the parties restricting jurisdiction was contained the aforementioned clause 68. The petitioner, Phool Service Station, was located in the state of Uttar Pradesh. Being aggrieved by the action of the respondents in taking a sample, a challenge was laid by it relating to the sampling procedure which was adopted by the Indian Oil Company. The writ petition was filed at Delhi against a show cause notice issued by the respondents to the petitioner. Inasmuch as the matter was at the show cause notice stage, apart from holding that no cause of action had arisen in favour of the petitioner as yet, the court further held that the grievance with regard to the sampling was outside the scope of the agreement and the reliance placed on the jurisdiction cause was misconceived.

The Bench therefore held as under:-

10. In all the present case, first of all, no cause of action as such has arisen inasmuch as a final decision is yet to be taken by the respondent in response to the reply filed by the petitioner on 26.07.2003. Where the cause of action itself has not arisen, the question of territorial jurisdiction obviously cannot arise. However, assuming that any cause of action has accrued in favour of the petitioner, such a cause of action is not one which could be said to have arisen under the said Dealership Agreement. This being the case, clause 68 of the said Dealership Agreement would not come into play at all. The grievance with regard to the sampling procedures and non-compliance with the mother sample are all outside the domain of the contract between the petitioner and the respondent and has entirely arisen in U.P. No part of it has arisen within the territorial jurisdiction of this Court.

(emphasis supplied)

24. Considering a similar objection as to want of territorial jurisdiction in yet another judgment, reported at Hilal Filling Station Vs. Indian Oil Corporation Limited, , this court has held thus:-

5. xxxx

The learned Counsel for the petitioner seeks to apply the aforesaid observations of the Division Bench to the facts of the present case to show that the Courts in Delhi alone would have jurisdiction. The learned counsel for the respondent, however, submitted that the fact situation is entirely different. In the case before the Division Bench the party was being proceeded against in terms of the agreement. In the present case, no action has yet been taken in terms of the agreement. What has happened is that a surprise inspection was carried out on 5.7.2003 which has been followed by the show cause notice dated 16.8.2003 to which the petitioner has replied by his Advocate's letter dated 19.8.2003. Nothing more has happened. As such, clause 68 of the said agreement does not come into play at all.

6. I am in agreement with the submission of the learned Counsel for the respondent. Clause 68 specifically speaks of a suit, application or other proceeding in respect of any "claim or dispute" arising under the agreement. There is no claim or dispute which has arisen under the agreement. In construing the expression "arising out of" in the context of an arbitration clause contained in an agreement, the Supreme Court in the case of Union of India (UOI) Vs. Salween Timber Construction (India) and Others, laid down the following test :

In our opinion the claim made by the respondent firm was a claim arising out of the contract. The test for determining the question is whether recourse to the contract by which both the parties are bound is necessary for the purpose of determining whether the claim of the respondent firm is justified or otherwise. If it is necessary to take recourse to the terms of the contract for the purpose of deciding the matter in dispute it must be held that the matter is within the scope of the arbitration clause and the arbitrators have jurisdiction to decide the case.

Do the issue raised in the present petition fall within the expression "claim or dispute arising under this agreement" appearing in Clause 68 of the said agreement? The test for determining the question is whether recourse to the said agreement is necessary for the purpose of deterring these issues? Recourse to the agreement is not necessary for considering the incident of the inspection. Recourse to the agreement is not necessary while taking up the issue of drawing of samples and the correct procedure therefor. Recourse to the agreement is also not necessary for deciding the question as to whether the show cause notice dated 16.8.2003 is valid and legal. Clause 68 of the said agreement is not at all attracted. Consequently, the judgment of the Division Bench in the case of A.T. Surekha (supra) would not be applicable to the facts of the present petition.

7. Thus, the question of territorial jurisdiction will have to be decided de hors Clause 68 of the said agreement. The Supreme Court in the case of Union of

India and Others Vs. Adani Exports Ltd. and Another, , observed as under:

17. xxxx

In the present case the facts that have a nexus with the lis are those with regard to the inspection which took place on 5.7.2003 and the show cause notice that was issued by the respondent on 16.8.2003. In this petition the petitioner has submitted that the respondent's said letter dated 16.8.2003 is absolutely vague. It is also submitted that, while it has been alleged that the HSD samples drawn from the petitioner's pump on 5.7.2003 failed to meet the BIS specifications, it has not been disclosed as to when and where and in which laboratory, the samples were tested. The petitioner has further submitted that the respondent's impugned letter dated 16.8.2003 does not even point out any illegality or irregularity on the part of the petitioner. It is also alleged that the said letter dated 16.8.2003, without supplying any test report, cannot be termed as a show-cause notice at all. In the absence of a test report, the petitioner is unable to rebut any allegations made against it. Finally the petitioner has stated that the issuance of the purported show cause notice dated 16.8.2003 by the respondent is merely an eye wash and the petitioner has reasons to believe that the respondent intends to terminate the petitioner's dealership. From these averments and submissions, it is clear that the petitioner's grievance is essentially with respect to the inspection of 5.7.2003, the show cause notice dated 16.8.2003 and the sampling and testing procedure adopted by the respondent. These are the facts which constitute the cause of action. They have entirely arisen in U.P., beyond the territorial jurisdiction of this Court. Hence, this Court would not have the territorial jurisdiction to entertain the present writ petition:

(emphasis supplied by me in bold)

13. In Arun Service Station (supra), the court held as follows:-

4. It is clear, only those facts which have a bearing with the lis or the dispute involved in the case give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. All other facts which have no nexus or relevance with the lis are to be ignored for the purposes of territorial jurisdiction. In the present case, the facts which have a nexus with the lis or the dispute, have all arisen in Meerut, beyond the territorial jurisdiction of this Court. Accordingly, in view of the aforesaid decision of the Supreme Court, since no part of the cause of action has arisen in Delhi, this Court does not have territorial jurisdiction to entertain the present writ petition.

5. Moreover, the writ petition itself is premature as no action has been taken by the Indian Oil Corporation. Mr. Kalra's submission that the writ petition is also premature is well founded. In any event, if any action is taken, the same will be taken by Indian Oil Corporation as may be available to it under law.

14. The conclusion drawn by the learned Single Judge in Jai Ganesh Petroleum

(supra) reads as follows:

27. From a careful consideration of the aforesaid decisions, the following principles emerge:-

- (i) making and signing of a contract is part of cause of action;
- (ii) parties cannot by consent confer jurisdiction on a court
- (iii) In the case of several courts having jurisdiction, parties can legally agree to exclude the jurisdiction of any of such courts and elect to restrict territorial jurisdiction to one out of such courts which otherwise has jurisdiction.
- (iv) the high court must be satisfied from the entire facts pleaded in support of the cause of action that those facts which constitute the cause or are necessary to decide the dispute have wholly arisen within its territorial jurisdiction, or, in any case, which have, at least in part, arisen within its jurisdiction;
- (v) each and every fact pleaded in the petition does not ipso facto lead to the conclusion that those facts constitute cause of action vesting territorial jurisdiction upon the court to adjudicate upon the lis.
- (vi) only those facts pleaded which have a nexus or relevance with the issues involved in the lis confer territorial jurisdiction on the court;
- (vii) in determining an objection relating to lack of territorial jurisdiction, the court must take all the facts pleaded in support of the cause of action as pleaded in the petition into consideration without embarking upon an inquiry as to the correctness or otherwise to the fact that.
- (viii) A question of territorial jurisdiction must be apparent on the facts pleaded in the petition, the source or otherwise of the averments made in the writ petition being immaterial. In matters where the parties have agreed to restrict jurisdiction to one or the other court out of several courts which may have territorial jurisdiction, such clause would be enforceable only if the litigation which has arisen falls within the domain of the subject matter which is being provided in such clause. The parties may have confined jurisdiction to litigation arising only under the agreement. In such cases, the court has to arrive at a finding that the litigation between the parties was within the domain of the clause confining jurisdiction. If it does not, then the territorial jurisdiction of the court could be barred.
- (ix) The court must be satisfied that all relevant facts which have merely a substantial nexus with the lis are located within its territorial jurisdiction.
- (x) Even if it were to be held that a court has jurisdiction, yet guided by principles of forum non-conveniens, the court may divert the parties to the court having a closer connection with the subject matter of the litigation. Residence of parties, location of evidence, situs of the dispute and such like considerations could guide the decision of the court to this effect.

15. The Court then proceeded to examine the facts of each case, i.e. Jai Ganesh Petroleum (supra), Khutar Filling Station (supra) and M/s Annapurna Filling Station (supra) and concluded that the existence of the mere clause conferring jurisdiction on the courts at Delhi was not sufficient to entitle the petitioner in those cases to approach this Court under Article 226 of the Constitution of India. In Jai Ganesh Petroleum (supra), the dealership for retail outlet was commissioned at Mau, U.P. Clause 11(u) of the Agreement provided that the respondent IOCL (IBP) could stop all supplies on breach of the agreement by the dealer. For this purpose, the Manager of the company in New Delhi was made the sole Judge as to whether or not there was a breach. The petitioner in that case had consequently filed the writ petition in Delhi. The respondents had contended that no part of the contract has arisen in Delhi. The dispute in the case was unrelated to payment or action under the Agreement. The action has been taken on account of inspection carried out at the retail outlet. The samples drawn on from the retail outlet has been tested and had failed. The petitioner was found to be in breach of not only clause 9(e) of the dealership agreement but also the MGD 2005. Samples were tested at Amausi depot at Lucknow. The supplies were affected to the petitioner from the petroleum company's depot at Noida, Uttar Pradesh. The corresponding took place between the parties in Uttar Pradesh. No part of cause of action had arisen in Delhi and consequently, the writ petition was held to be not maintainable. In Khutar Filling Station (supra), the dealership agreement was entered into with the IOCL at Delhi for setting up of the petroleum pump at Shahjahanpur at Uttar Pradesh. The petitioner in this case was aggrieved by the method of taking sample from his petroleum pump by claiming that it was in violation of the MGD 2001. Show cause notice was issued by the IOCL from Bareilly on 22.7.2003 which was replied to by the petitioner. After considering the reply, the dealership termination order was issued on 24.12.2004. This termination was assailed before this Court. Once again, the court applied the principles laid down, inter alia, in Adani Exports (supra) and concluded that no part of cause of action had arisen in Delhi. The Court, inter alia, held as follows:-

As noticed hereinabove, that it is well settled that in order to confer jurisdiction on this court, a part of the cause of action must have arisen at Delhi. This is not so in the instant case. Further as was held in the case of Hilal Service Station (supra), recourse to the agreement is not necessary for consideration of the inspection and the drawing of the sample. In the present case also there is no claim or dispute which has arisen under the agreement. Therefore, recourse cannot be made to clause 68 of the agreement to vest this court with the jurisdiction to adjudicate upon the dispute raised. I therefore, find that the jurisdiction of this court is barred on account of want of territorial jurisdiction.

16. In similar circumstances, the writ petition of M/s Annapurna Filling Station (supra) was also dismissed. The court in para 51 of the judgment held as follows:-

51. I have noticed the authoritative judicial pronouncements aforesaid to the effect that the dispute relating to violation of Marketing Discipline Guidelines, short supplies etc do not arise under the agreement and as such a party could not place reliance on Clause 68 of the agreement in support of the submission that the courts in the city of Delhi alone could have jurisdiction to entertain any suit, application or other proceedings in respect of such claim. Furthermore, the retail outlet of the petitioner is located on Mainpuri in the city of Uttar Pradesh which is beyond the territorial jurisdiction of this court. The show cause notice has been issued from Uttar Pradesh and the reply was sent by the petitioner to Uttar Pradesh. The order was passed after consideration thereof at Uttar Pradesh. Such order has been impugned in the present writ petition. I find, therefore that no material fact having a nexus with the lis has arisen within the territorial jurisdiction of this court.

17. In my view, the distinctions sought to be drawn by the petitioner are wholly irrelevant and do not render the said decision in *Jai Ganesh Petroleum* (supra) and others inapplicable.

18. Reliance placed on the decision in *Rattan Singh* (supra) appears to be wholly misplaced. In fact, in that case, even though the agreement was held to have been executed in Delhi, it was held that the Court at Delhi did not exercise jurisdiction u/s 11 of the Arbitration and Conciliation Act, 1996, since, the contract had not been performed at Delhi; the respondent was located at Punjab; the performance of the contract and transactions in question took place outside the jurisdiction of the Court at Delhi; the respondent had his office at Batala in Punjab; no correspondence has been addressed by the petitioner to the respondent at any address in Delhi. There was no material to indicate that the petitioner had dealt with any officer of the respondent at Delhi. In my view, this decision, in fact, advances the case of the respondent rather than that of the petitioner.

19. The decision in *A.K. Surekha* (supra) has no relevance as that was the case which vested exclusive jurisdiction in the Court at Lucknow. The loan agreement between the parties had taken place at Lucknow. Consequently, it was held that this Court would have no jurisdiction.

20. The decision in *Alchemist Ltd. and Another* (supra) also does not assist the petitioner. The Supreme Court held that whether the facts averred by the writ petitioner constitute a part of the cause of action has to be determined on the basis of the question whether such facts constitute a material, essential or integral part of the cause of action, and, in determining this question, the substance of the matter and not the form thereof has to be considered. The Supreme Court, inter alia, observed as follows:

25.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 x x x x

37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.

21. Reliance placed on Musaraf Hossain Khan (supra) appears to be equally misplaced. This was a case where writ petition had been preferred before the Kerala High Court to seek quashing of the criminal complaint preferred before the CJM, Birbhum, West Bengal alleging dishonor of cheques issued by the petitioner. The Supreme Court held that the Kerala High Court had no territorial jurisdiction to entertain the writ petition as none of the facts constituting cause of action which were required to be proved by the complainant for the purpose of attracting ingredients of Section 138 of the Negotiable Instruments Act arose within the jurisdiction of the Kerala High Court. It was held that the facts that the registered office of the accused was at Ernakulam at Kerala; that the amount due under the cheques in question was meant to be payable at Ernakulam, and; that the payment in respect of the one of the dishonoured cheques was later sent from Ernakulam was not relevant for holding that part of the cause of action arose within the territorial jurisdiction of the Court at Kerala. Applying the aforesaid principles to the facts of the present case, it is clear to me that this Court does not have territorial jurisdiction to entertain the present writ petition. Accordingly, this petition is dismissed with costs quantified at Rs. 25,000/- to be paid to the respondents within two weeks. It is, however, made clear that this Court has not dealt with the merits of the petitioner's case and it shall be open to the petitioner to approach the appropriate forum to raise all its grievances on merits.