
(2013) 09 CAL CK 0020

In the Calcutta High Court

Case No : M.A.T. No. 1457 of 2013 and C.A.N. 9772 of 2013

Magma Fincorp Ltd.

APPELLANT

Vs

Assistant Director, DGCEI, Kochi

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2014) 1 CHN 697

Hon'ble Judges : Arun Mishra, C.J;Joymalya Bagchi, J

Bench : Division Bench

Judgement

Joymalya Bagchi, J.—The appeal is directed against the judgment and order dated 08.08.2013 passed by the learned Single Judge in W.P. No. 18048 (W) of 2013 dismissing the writ petition challenging impugned summons dated 18.08.2013 and 11.01.2013 issued by respondent No. 1 authority on the ground of lack of territorial jurisdiction. The appellant is a non-banking finance company having its registered office in Kolkata and is engaged in the business of financial services. It has centralised registration with the Commissioner of Service Tax, Kolkata and is regularly submitting returns with the Service Tax Department in Kolkata Commissionerate. The appellant claimed that with regard to the relevant period i.e. 2007-08 and 2011-12 in respect of which the impugned summons were issued by the respondent No. 1 i.e. Assistant Director, Directorate General of Central Excise Intelligence situated at Kochi, Kerala, enquiries had been initiated at the behest of the respondent No. 3 i.e. Commissioner of Service Tax, Kolkata as well as CERA attached to the Comptroller and Auditor General, Government of India and orders on adjudication have also been passed in respect thereof with regard to service tax liability. It has also been pleaded that statements of the officers of the appellant company were recorded in Kolkata and various documents/information have been collected.

2. The appellant further pleaded that the subject-matter of the impugned summons relate to an enquiry into the affairs of the company undertaken in Kolkata and the records relating thereto are also lying within the territorial

jurisdiction of this Court.

3. Learned Counsel appearing for the appellant submitted that the Learned Judge failed to consider the aforesaid facts and illegally dismissed the writ petition on the ground of lack of territorial jurisdiction. He further argued that mere sites of the office of the respondent No. 1 at Kochi, Kerala would not divest jurisdiction of this Court as part of cause of action is traceable within its territorial limits.

4. In support of his contentions Learned Counsel relies on National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, .

5. Challenge thrown in the writ petition is to the legality of the summons dated 18.08.2013 and 11.01.2013 issued by respondent No. 1 with regard to the period between 2007-08 and 2011-12 on the ground that the appellant company has already been subjected to exhaustive scrutiny with regard to its tax liability by the respondent No. 3 as well as by CERA associated with the office of the Comptroller and Auditor General.

6. In Union of India and Others Vs. Adani Exports Ltd. and Another, , it has been held 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 or dispute 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.

7. In National Textile Corpn. Ltd. (supra) relied on by the appellant it has been held that 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.

8. In the instant case, the subject-matter of challenge are impugned summons issued by the authority from Kochi in the State of Kerala. Impugned summons have been received in Kolkata by the appellant company. Such fact is an incidental one and does not constitute an integral part of cause of action so as to vest jurisdiction in this Court.

9. Reference in this regard may be made to State of Rajasthan and Others Vs. Swaika Properties and Another, , wherein the Apex Court held that receipt of notice at the registered office of the writ petitioner within the territorial limits of the High Court would not give rise to cause of action within its territory unless service of such notice was an integral part of cause of action.

10. In Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , the Apex Court emphasized the concept of "Forum Conveniens" and 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. (See Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney, ; Madanlal Jalan Vs. Madanlal and others ; Bharat Coking Coal Limited. Vs. Jharia Talkies and Cold Storage Private Ltd., ; S.S. Jain and Co. Vs. Union of India (UOI), ; M/s. New Horizons Limited and another Vs. Union of India and others,).

11. Although it has been pleaded that the appellant company had been subjected to alleged similar enquiries at the behest of respondent No. 3 and other authorities in Kolkata, we are of the considered view that in the factual matrix of the instant case as impugned summons had been issued by respondent No. 1 authority from Kochi and the appellant company is required to respond to the same at Kochi also, the principle of forum conveniens, as aforesaid, would dissuade the Court from exercising its discretionary writ jurisdiction.

12. For the aforesaid reasons, we are not inclined to interfere with the order impugned. We, however, clarify that we have not gone into the merits of the case and the appellant is at liberty to agitate its grievances against the impugned summons before the appropriate forum in accordance with law, if so advised.