

(2012) 08 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37158 of 2012

M/s. Dynamic Education Systems (International) Limited and
Another

APPELLANT

Vs

Bank of Baroda and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 20(c)
Constitution of India, 1950 — Article 226, 226(2)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19,
20, 30

Citation : (2012) 8 ADJ 61

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : S.D. Singh, for the Appellant; Vikram D. Chauhan, Anadi Narayana
and Manish Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Dilip Gupta, J.—M/s. Dynamic Education Systems (International) Limited (hereinafter referred to as the "Company") having its registered office at Indore in Madhya Pradesh and its Director who resides in Indore have filed this petition for quashing the order dated 24th April, 2012 passed by the Debts Recovery Appellate Tribunal at Allahabad by which the three Appeals filed u/s 20 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the "1993 Act") for setting aside the order dated 29th July, 2011 passed by the Debts Recovery Tribunal at Jabalpur, have been dismissed. The three Appeals were filed before the Debts Recovery Tribunal at Jabalpur u/s 30 of the 1993 Act to assail the orders passed by the Recovery Officer of the Debts Recovery Tribunal at Jabalpur in Original Application/Execution Case No. 84 of 2005. The petitioners have also sought the quashing of the orders passed by the Debts Recovery Tribunal at Jabalpur as also the orders passed by the Recovery Officer of the Debts Recovery Tribunal, Jabalpur. It transpires from the records of

the writ petition that the petitioner-Company having its registered office at Indore in the State of Madhya Pradesh was granted a loan of Rs. 1.60 Crores by the Bank of Baroda having its Branch office at Indore (hereinafter referred to as the "Bank") and for this purpose the property belonging to the Company situated in Indore was mortgaged in favour of the Bank. The petitioner-Company committed default in the payment of the loan amount and the Bank filed Original Application No. 114 of 2003 before the Debts Recovery Tribunal at Jabalpur u/s 19 of the 1993 Act. The Debts Recovery Appellate at Jabalpur issued the recovery certificate on 19th October, 2005. The mortgaged property of the Company was auctioned on 14th December, 2006 and sale was made in favour of respondent No. 4-M/s. Dodeja Builders Pvt. Ltd., Indore. It is against the orders passed by the Recovery Officer of the Debts Recovery Tribunal at Jabalpur, that the petitioner-Company filed three Appeals before the Debts Recovery Tribunal at Jabalpur u/s 30 of the 1993 Act. These appeals were dismissed by the Debts Recovery Tribunal at Jabalpur on 29th July, 2011 against which three Appeals were filed by the Company before the Debts Recovery Appellate Tribunal at Allahabad u/s 20 of the 1993 Act. These appeals have been dismissed by the common order dated 24th April, 2012.

2. The orders passed by the Recovery Officer, Debts Recovery Tribunal at Jabalpur, the order passed by the Debts Recovery Tribunal at Jabalpur and the order passed by the Debts Recovery Appellate Tribunal at Allahabad have been assailed in this petition.

3. A preliminary objection has been raised by Sri Vikram D. Chauhan, learned counsel appearing for the auction purchaser and Sri Manish Mehrotra, learned counsel appearing for the respondent-Bank that since the petitioner-Company has its registered office at Indore, the respondent-Bank which gave the loan is in Indore and the auction purchaser is also in Indore, this Court should refuse to exercise its discretionary jurisdiction by invoking the doctrine of "forum conveniens" and in support of this contention, they have placed reliance upon the decision of the Supreme Court in *Ambica Industries Vs. Commissioner of Central Excise*, and the Full Bench of five Judges of the Delhi High Court in *Sterling Agro Industries Ltd. Vs. Union of India (UOI) and Others*, .

4. Sri S.D. Singh, learned counsel for the petitioners has, however, submitted that as the order passed by the Debts Recovery Appellate Tribunal at Allahabad is also under challenge in this petition, part of cause of action has arisen within the territorial jurisdiction of this Court and, therefore, this Court will have the jurisdiction to entertain the writ petition. In support of his contention, he has placed reliance upon the decision of the Supreme Court in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, . It is also his submission that even if the doctrine of "forum conveniens" is applied, then too the writ petition can be entertained by this Court.

5. Learned counsel for the parties have suggested that the preliminary objection should be decided first.

6. The first issue that needs to be decided is whether part of cause of action has arisen within the territorial jurisdiction of this Court.

7. In this connection learned counsel for the petitioner has placed reliance upon the decision of the Supreme Court in *Kusum Ingots & Alloys Ltd. (supra)* and has submitted that since the order passed by the Debts Recovery Appellate Tribunal at Allahabad is also under challenge in this petition, part of cause of action has arisen within the territorial jurisdiction of this Court.

8. In *Kusum Ingots & Alloys Ltd. (supra)*, the appellant-Company which had its registered office at Mumbai obtained a loan from Bhopal Branch of the State Bank of India. Notice for repayment of the loan was issued from Bhopal under the provisions of "The Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002" (hereinafter, referred to as the "2002 Act"). The writ petition was filed by the appellant-Company in the Delhi High Court to question the vires of the 2002 Act. It was submitted by the appellant-Company before the Delhi High Court that since the constitutionality of a Parliamentary Act was in question, the Delhi High Court would have the jurisdiction to entertain the writ petition. The petition was dismissed by the Delhi High Court on the ground of lack of territorial jurisdiction. It is in this context that the Supreme Court examined whether cause of action wholly or in part had arisen within the territorial jurisdiction of the Delhi High Court for the writ petition to be maintainable. The Supreme Court dealt with "cause of action" and the scope of the power conferred on the High Court under Article 226(2) of the Constitution and observed that even if a small fraction of cause of action accrues within the territorial jurisdiction of a High Court, the said High Court will have the jurisdiction and the relevant observations are as follows :

6. Cause of action implies a right to site. The material facts which are imperative for the suitor to allege and prove constitutes 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:

(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 CPC reads as under :

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

(a) - (b) * * *

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

9. Although in view of Section 141 of the CPC the provisions thereof would not apply to a writ proceedings, the phraseology used in Section 20(c) of the CPC and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of 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 facts 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.

(Emphasis supplied)

9. And after referring to the decision of the Supreme Court in *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, the Supreme Court in the aforesaid decision in *Kusum Ingots & Alloys Ltd. (supra)* pointed out that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order is at a place outside the said area and the relevant observations are as follows :

25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.

27. When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

(Emphasis supplied)

10. The aforesaid decision leaves no manner of doubt that though the orders against which the Appeals were filed before the Debts Recovery Appellate Tribunal at Allahabad were passed by the Authority/Officer in Indore, part cause of action would arise within the territorial jurisdiction of this Court as the order passed by the Debts Recovery Appellate Tribunal at Allahabad is also under challenge in this petition. The petition, therefore, can be entertained in the Allahabad High Court.

11. The question, however, that needs to be considered is whether even in such a situation, this Court should, in its discretion, decline to entertain the writ petition by invoking the doctrine of "forum conveniens".

12. In Black's Law Dictionary, "forum conveniens" has been defined as follows:

The Court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses.

13. In *Kusum Ingots & Alloys Ltd. (supra)*, the Supreme Court observed that even if part of cause of action has arisen within the territorial jurisdiction of a High Court, it can still decline to entertain the writ petition by invoking the doctrine of "forum conveniens" and the observations are :

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 Bagga v. Dewan Jagbir Sawhany*, AIR 1941 Cal 670; *Madanlal Jalan v. Madanlal*, (1945) 49 CWN 357; *Bharat Coking Coal Limited v. Jharia Talkies & Cold Storage (P) Ltd.*, 1997 CWN 122; *S.S. Jain & Co. v. Union of India*, (1994) 1 CHN 445 and *New Horizons Ltd. v. Union of India*, AIR 1994 Del 126].

(Emphasis supplied)

14. In *Ambica Industries (supra)*, the Supreme Court made similar observations

41. Keeping in view the expression "cause of action" used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of forum conveniens may also have to be considered.

(Emphasis supplied)

15. In *Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others*, , the Supreme Court also observed:

29. The High Courts, however, must remind themselves about the doctrine of forum non conveniens also. [See *Mayar (H.K.) Ltd. and Others Vs. Owners and*

Parties, Vessel M.V. Fortune Express and Others, ; Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others,]

(Emphasis supplied)

16. The doctrine of "forum conveniens" was also elaborately examined by the Full Bench of five Judges of the Delhi High Court in M/s. Sterling Agro Industries Ltd. (supra). The petitioner-Company was located in the State of Madhya Pradesh. The initial order was passed by the Assistant Commissioner of Customs, District Bhind in the State of Madhya Pradesh, the appellate order was passed by the Commissioner (Appeals) Customs and Central Excise and Service Tax at Indore in the State of Madhya Pradesh but the revisional order was passed by the Government of India, Ministry of Finance, Department of Revenue, New Delhi. The writ petition was filed in the Delhi High Court as the petitioner was not satisfied with the order passed by the Revisional Authority and for the petition to be entertained in the Delhi High Court reliance was placed on the earlier Full Bench decision of three Judges of the Delhi High Court in New India Assurance Company Limited v. Union of India and others, AIR 2010 Delhi 43, in which the following observations were made :

For the foregoing reasons, we hold that where an order is passed by an appellate authority or a revisional authority, a part of cause of (sic action) arises at that place. When the original authority is situated at one place and the appellate authority is situated at another, a writ petition would be maintainable at both the places. As the order of appellate authority constitutes apart of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the petitioner is dominus litis to choose his forum, and that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens.

(Emphasis supplied)

17. The Full Bench of five Judges in M/s. Sterling Agro Industries Ltd. (supra) agreed with the Full Bench of three Judges in New India Assurance Company Ltd. (supra) to the extent that the order of the appellate authority constitutes a part of cause of action so that the writ petition can be entertained in the High Court within whose jurisdiction the appellate authority is situated, but the Full Bench did not agree with the conclusion drawn by the earlier Full Bench that the place where the appellate authority is located is also "forum conveniens" and observed that the same may not be the singular factor to compel the High Court to decide the matter on merits as the High Court can still refuse to exercise its discretionary jurisdiction by invoking this doctrine. According to the Full Bench it is obligatory on the part of the Court to see the convenience of all the parties before it and the relevant observations are as follows :

31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the Court to see the convenience of all the parties before it The convenience in its ambit and sweep would include the existence of more

appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of *Kusum Ingots (supra)*, *Mosaraf Hossain Khan (supra)* and *Ambica Industries (supra)* about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable:

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in *New India Assurance Co. Ltd. (supra)* has not kept in view the concept of forum conveniens, and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in *New India Assurance Company Limited (supra)* and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/ revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of *Alchemist Ltd. (supra)*.

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the Court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled.'''

(Emphasis supplied)

18. To examine this aspect, it will be appropriate to reproduce the description of the parties in the writ petition which is :

1. M/s. Dynamic Education Systems (International) Limited having its registered office at 224, Khatiwala Tank, Manikbagh Road, Indore M.P. through its Director Sri Ravindra Pillai, S/o Sri Raghav Pillai, R/o 224, Khatiwala Tank, Manikbagh Road, Indore M.P.

2. Sri Ravindra Pillai, S/o Sri Raghav Pillai, R/o 224, Khatiwala Tank, Manikbagh Road, Indore M.P

....Petitioners

Versus

1. Bank of Baroda, Branch 13, Old Palasiya, A.B. Road, M.P. through its Branch Manager.

2. Smt. Annu Jain, W/o Sri Rakesh Jain, R/o 57, Shiv Shakti Nagar, Indore (M.P.)

3. Vaibhav Jain, S/o Sri Rakesh Jain, R/o 57, Shiv Shakti Nagar, Indore (M.P)

4. M/s. Dodeja Builders Pvt. Ltd. Mohit Palace, 387, Khatiwala Tank in front of Dwarika Garden, Indore (M.P.) through its Director.

5. Chairperson, Debts Recovery Appellate Tribunal, Allahabad.

.... Respondents

19. From the description of the parties and the facts stated in the writ petition, it is seen that the petitioner-Company is located in the State of Madhya Pradesh, its Director is residing in the State of Madhya Pradesh, the Bank which had

advanced loan to the petitioner-Company is situated in the State of Madhya Pradesh, the property that was auctioned and sold is situated in the State of Madhya Pradesh and the auction purchaser is also in the State of Madhya Pradesh.

20. In *M/s. Starling Agro Industries (supra)*, the Full Bench of the Delhi High Court observed that it is obligatory "for the Court to see the convenience of the parties before it and the convenience will include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessary for adjudication of the controversy.

21. It is also stated by learned counsel for the respondents that the Bank has in fact filed a writ petition in the Madhya Pradesh High Court as it also felt aggrieved by the order passed by the Debts Recovery Appellate Tribunal at Allahabad.

22. It is in this context that the doctrine of "forum conveniens" has to be examined and having so examined it and in view of the decisions rendered by the Supreme Court and the Delhi High Court referred to above, there is no manner of doubt that the more appropriate forum for all the parties to agitate the matter would be the Madhya Pradesh High Court.

23. The Court, therefore, refuses to exercise its discretionary jurisdiction by invoking the doctrine of "forum conveniens". The writ petition is, accordingly, dismissed.