
(2015) 07 MP CK 0004
In the Madhya Pradesh High Court
Case No : W.P. No. 30 of 2012

Rajesh Wadhvani and Others

APPELLANT

Vs

Shyamnath Sharma and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 3 MPJR 92

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : V.K. Bhardwaj, Senior Advocate and A.V. Bhardwaj, Advocate, for the Appellant; Ankur Modi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—Parties are heard on I.A. No. 509/2015. Shri Ankur Modi, submits that this petition be not entertained at this Bench and petitioners be directed to approach the Principal Seat.

2. The bone of contention of Shri Modi is that it cannot be disputed that a part of cause of action has arisen within the territory of this court because revisional order is passed at Gwalior. However, he contends that all earlier orders are passed by the revenue authority at Bhopal. The matter is arising out of land situated at Bhopal and, therefore, petitioners should file the petition at Principal Seat Jabalpur.

3. In addition Shri Modi, submits that all the parties are residents of Bhopal/ Sihor. Hence there is no justification in entertaining this petition at this Bench. In addition, he submits that respondent No. 1 earlier filed W.P. No. 641/2009. He withdrew the same and filed it before Principal Seat. Accordingly, in the present petition, petitioners be directed to file the petition at Jabalpur.

4. Prayer is opposed by learned Senior Counsel.

5. He relied on the order passed by this court in W.P. No. 4284/2014 (Smt. Shakuntala & Ors. v. Smt. Sitabai & Ors).

6. I have heard learned counsel for the parties on this aspect.

7. It is seen that in Smt. Shakuntala & Ors. (supra), this court dealt with the aspect of territorial jurisdiction and cause of action. This Court opined that even if a part of cause of action has arisen within the territory of this Court, the petition would be maintainable. However, as canvassed by Shri Modi, it is clear that he is not disputing the jurisdictional aspect of the matter. Shri Modi submits that land in question and parties to the litigation are admittedly from Bhopal. All earlier orders (except revisional order) are passed from Bhopal. Hence, as per the concept of "Forum conveniens", the petitioners be relegated to Principal Seat.

8. It is seen that this principle of "Forum Conveniens" was dealt with by Supreme Court in Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, and in Alchemist Limited and Another Vs. State Bank of Sikkim and Others, . A Special Bench (5 judges) of Delhi High Court in Sterling Agro Industries Ltd. Vs. Union of India (UOI) and Others, considered this principle and in the said judgment. Justice Dipak Misra (C.J. as His Lordship then was) opined as under:--

"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 conclusion 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 in as much 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 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 Export 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."

9. In view of aforesaid Special Bench judgment, it is clear that merely because revisional order is passed within the territory of this Bench, it cannot be said that it constitutes the place of forum conveniens. The view taken by earlier Full Bench was held to be incorrect by the Special Bench. It is also made clear that despite the fact that part of cause of action has arisen, while exercising writ jurisdiction under Article 226 of Constitution, the High Court may apply doctrine of "forum

conveniens". Thus in my view, the earlier order of this Court in W.P. No. 4284/2011 is of no assistance to the petitioners because the said order merely deals with the aspect of part of cause of action and does not deal with the doctrine of "forum conveniens".

10. In the factual matrix of the present case, it is clear that it will be more convenient for all the parties before this Court to contest the matter at Principal Seat. All the parties are situated within the territorial jurisdiction of the Principal Seat. Land is also at Bhopal. Except revisional order, all orders are passed from Bhopal by revenue authorities. The Principal Bench will be more convenient forum for the parties. It will be convenient for the parties to put-forth their case/ defence by producing material which was available within the territory of Principal Seat. In this view of this matter, I deem it proper to invoke the doctrine of forum conveniens. Thus in exercise of discretionary jurisdiction under Article 226 of Constitution, I deem it proper to direct the petitioners to file the petition before the Principal Bench/Principal Seat. Resultantly, IA is allowed. The petition is dismissed. The liberty is reserved to the petitioners to file fresh petition before the Principal Seat.