
(2007) 09 MAD CK 0208

In the Madras High Court

Case No : Writ Petition No. 4682 of 2007 and W.P.M.P. No's. 1, 2 and 3 of 2007

Sanjos Jewellers

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 226(1), 226(2), 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 17(1), 18, 8
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 2(1), 3
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 3

Citation : (2011) 1 JCR 555 : (2007) 4 LW 473 : (2011) 1 RCR(Civil) 89 : (2011) 1 RCR(Civil) 89

Hon'ble Judges : S.J. Mukhopadhaya, J;Prabha Sridevan, J;N. Paul Vasanth Kumar, J

Bench : Full Bench

Advocate : Jayesh Doha, for Aiyar and Dolia, for the Appellant; P. Sreenivasulu, for the Respondent No. 1, for the Respondent

Judgement

Prabha Sridevan, J.—The question referred to the Full Bench is whether the Writ Petition challenging the order of the Debt Recovery Appellate Tribunal (D.R.A.T.) which is situate within the territorial limits of this Court, while the original Tribunal is situate in another State is maintainable and whether the decision in Bhanu Construction Co. Pvt. Ltd. and Others Vs. Andhra Bank and State Bank of India, , is correct.

2. The facts need not be set out in detail. But briefly the background of the case is this:

The Respondents issued a notice to the Petitioner u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("S.A.R.F.A.E.S.I. Act" in short) read with Rule 3 of the Security Interest

(Enforcement) Rules, 2002 on 30.8.2004. This was followed by a notice u/s 13(4) of the S.A.R.F.A.E.S.I. Act. The proceedings were challenged by the Petitioners u/s 17(1) of the S.A.R.F.A.E.S.I. Act before the Debt Recovery Tribunal at Bangalore. But the Petitioner failed. They filed an Appeal u/s 18(1) of the S.A.R.F.A.E.S.I. Act before the Debt Recovery Appellate Tribunal at Chennai. This was also dismissed on 22.12.2006. Against this order, the present Writ Petition has been filed.

3. The learned Counsel for the Respondents submitted that the Writ was not maintainable in this Court since the entire cause of action arose in Bangalore. Both the parties are in Bangalore. The notices under the SARFAESI Act were issued in Bangalore and in these circumstances, the Writ Petition should be filed before the Karnataka High Court and not the Madras High Court. The counsel for Respondents placed their reliance on Bhanu Construction Co. Pvt. Ltd. and Others Vs. Andhra Bank and State Bank of India, . The following paragraphs in the above said decision are relevant.

20. Thus, it is clear that the location of the Appellate Tribunal may vary from time-to-time according to its convenience. In the present case, as indicated above, the Appellate Tribunal is, in the eye of law, located at Hyderabad, though, for convenience, it holds office at Chennai, as the same Presiding officer has been discharging the same function for other States.

21. Admittedly, this Madras High Court has no power of jurisdiction or superintendence, either administrative or judicial, over the Debts Recovery Tribunal at Hyderabad. Merely because the Appellate Tribunal is situated within the territorial limits of this High Court, such a fact cannot confer jurisdiction to scrutinise the order passed by such Tribunal in any Appeal preferred against the decision of the original Tribunal, over which this Court has no power of superintendence.

22. By virtue of Article 226(1) of the Constitution, this High Court shall have power to issue appropriate orders to all Courts and Tribunals throughout the territories of this State, in relation to which it exercises jurisdiction, and can call for the returns from such Tribunals and may also make order, issue general rules and prescribe forms for regulating the practice and proceedings of such Courts and Tribunals. If a Tribunal is constituted as Appellate Tribunal for hearing Appeals against decisions of more than one original Tribunal situated in different States, in our view, in such a case, for the purpose of challenging the orders of such Appellate Tribunals by way of an Application under Article 226 or 227 of the Constitution, the aggrieved party is to approach the High Court of that State within the territorial limit of which the original Tribunal exercises jurisdiction in a particular case.

23. While entertaining the petitions under Article 226 of the Constitution of India, this Court must ascertain as to what is the effect of interference prayed for in the Writ Petitions. If the result of such intervention is that an order of a Tribunal,

over which this High Court has no power of superintendence, has to be subjected to scrutiny, then, in that case, this High Court should refuse to entertain such a request.

Therefore, there is no difficulty for this Court to conclude that this High Court would not entertain the Writ Petitions mainly on two reasons, namely

(i) it would amount to interfering into and usurping the power of the Andhra Pradesh High Court, which alone is vested with the power of going into the legality or otherwise of the order of the Tribunal at Hyderabad, which has been confirmed by the Appellate Tribunal at Chennai

(ii) the seat of the Appellate Authority must be deemed to be within Hyderabad, though the building of the Office is situated at Chennai, for convenience.

4. Before the Division Bench it was contended on behalf of the Petitioners that the cause of action namely the order of the Tribunal got merged with the orders passed by the Debt Recovery Appellate Tribunal and therefore, the substantial cause of action is only at Chennai and reliance was placed on Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, : But the Division Bench referring to the following observations of the Supreme Court in the said decision which runs as follows:

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.

(Emphasis supplied)

held that,

Merely because the Appellate Tribunal is situated within the territorial limits of this High Court, such a fact cannot confer jurisdiction to scrutinise the order passed by such Tribunal in any Appeal preferred against the decision of the original Tribunal, over which this Court has no power of superintendence.

Even on the facts of the case, the Division Bench refused to exercise their discretion in favour of the Petitioners and held that this Court had no jurisdiction.

5. The learned Counsel for the Petitioners, on the other hand, referred to (i) U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others, (ii) Kusum Ingots and alloys Ltd v. Union of India 2004 (3) CTC 365: 2004 : AIR SCW 2766 (iii) Bhanu Construction Co. Pvt. Ltd. and Others Vs. Andhra Bank and State Bank of India, (iv) Ex Rect. (MP) A. Madurai Veeran v. Union of India and Ors. 2006 (1) CTC 732 (v) The Commissioner of Central Excise Vs. Sun Pharmaceuticals Industries Ltd. and Others, , and submitted that what can be culled out from all these decisions is that the Writ Petition will be maintainable

before the Court within whose jurisdiction a part of cause of action arose. The learned Counsel submitted that the order of the Appellate Tribunal cannot be said to be a trivial cause of action. The learned Counsel also submitted that when the Original Authority is constituted at one place and the Appellate Authority in another, the Writ Petition could be maintained in either of the Courts which had jurisdiction over the two Tribunals since the order of the original authority merges with that of the Appellate Authority. He also submitted that the decision reported in Bhanu Constructions case was given on the facts of that case where the conduct of the parties came in for severe criticism and it was found that they had done "forum shopping". The learned Counsel also submitted that if one were to disallow the Writ Petition filed in the High Court where the Part 5 Appellate Tribunal is situate then Article 226(2) of the Constitution of India will become otiose. The learned Counsel also pointed out the comparison between the words used in S.A.R.F.A.E.S.I. Act and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, to show that anyone challenging the order of the Appellate Tribunal could file it where the Appellate Tribunal is situate.

6. (i) Section 2(1)(a) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 reads thus:

2. Definitions - (1) In this Act, unless the context otherwise requires,

(a) "Appellate Tribunal" means a Debts Recovery Appellate Tribunal established under Sub-section (1) of Section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."

(ii) Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 reads thus:

"18. Bar of jurisdiction - On and from the appointed day, no Court or other authority shall have, or been titled to exercise, any jurisdiction, power or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17."

(iii) Section 3 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994 reads thus:

3. Sittings of Appellate Tribunal - An Appellate Tribunal shall hold its sittings either at Head-quarters or at such other place falling within its jurisdiction as it may consider convenient."

(iv) Section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 reads thus:

8. Establishment of Appellate Tribunal - (1) The Central Government shall, by notification, establish one or more Appellate Tribunals, to be known as the Debts Recovery Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify in the notification referred to in Sub-section (1) the Tribunals in relation to which the Appellate Tribunal may exercise jurisdiction.

[*(3) Notwithstanding anything contained in Sub-sections (1) and (2), the Central Government may authorise the Chairperson of one Appellate Tribunal to discharge also the functions of the Chairperson of other Appellate Tribunal.]

* "Inserted by Act I of The Recovery of Debts due to Banks and Financial Institutions (Amendment) Act, 2000, dated 25.3.2000.

(v) Articles 226(1) and (2) of the Constitution of India read thus:

226. Power of High Courts to issue certain writs -(1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including Writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(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.

7. In Chini Mill's case, the question was whether the Bench at Lucknow or the High Court at Allahabad had the territorial jurisdiction to entertain the Writ Petition under Article 226 of the Constitution of India. The answer to the said question depend upon the interpretation of the expression of the words "in respect of cases arising in such areas in Oudh" occurring in First Proviso to Article 14 of the High Court (Amalgamation) Order, 1948 (hereinafter called Amalgamation Order). A notification order was issued by the Uttar Pradesh High Court at Lucknow by which it was decided to sell the sugar factories, one of the sugar mills is situate in Oudh whereas the other is situate in outside Oudh. This notification was challenged by way of a Writ Petition and it was held that by no stretch of imagination that the Judges can exercise the power of jurisdiction in respect of any area outside Oudh. The Supreme Court held

With there being an order/notification by the Government there could be no cause of action at all. The Petitioner got aggrieved only from the order/notification which "arose" from Lucknow. The grievance of the Petitioner "arose" at Lucknow which is within the Oudh area and as such on the plain reading of the relevant provisions of Clause 14 of the Amalgamation Order, the Bench at Lucknow had the jurisdiction to deal with the matter.

8. In Kusum Ingots case, the words "cause of action" were dealt with in detail

and the Supreme Court also considered Article 226(2) of the Constitution of India and the relevant paragraphs are as follows:

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.

Situs of office of the Respondents - whether relevant:

23. A Writ Petition, however, questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. (See Abdul Kafi Khan Vs. Union of India (UOI) and Others, .)

24. Learned Counsel for the Appellant in support of his argument would contend that the situs of framing law or rule would give jurisdiction to the Delhi High Court and in support of the said contention relied upon the decisions of this Court in Sri Nasiruddin Vs. State Transport Appellate Tribunal, and U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others, . So far as the decision of this Court in Nasiruddin v. STAT (cited supra) is concerned, it is not an authority for the proposition that the situs of legislature of a State or the authority in power to make subordinate legislation or issue a notification would confer power or jurisdiction on the High Court or a Bench of the High Court to entertain a Petition under Article 226 of the Constitution. In fact this Court while construing the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 stated the law thus: (SCC p. 683, para 37)

37. The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an Application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a Writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum convenience. The litigant has the right to go to a court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen part within specified areas in Oudh and part outside

the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action."

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.

Forum convenience:

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 convenience. [See Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney, , and New Horizons Ltd v. Union of India AIR 1994 Del 126.

The above paragraph No. 30 was relied on by the Division Bench to come to the conclusion that this High Court had no jurisdiction. But on a reading of Paragraph No. 30, it is clear that what the Supreme Court said was that the fact that small part of cause of action arose within the jurisdiction of one Court may not be a determinative factor. This means that even if it had the territorial jurisdiction the particular High Court may refuse to exercise its jurisdiction under Article 226 of the Constitution of India in view of the Doctrine of forum convenience. It is impossible to construe Paragraph No. 30 of Kusum Ingots case as excluding the jurisdiction of the Court where only a small part of cause of action arose. All that it means is that if the forum that is chosen is not a convenient one then the High Court may refuse to exercise its jurisdiction not because it does not have jurisdiction but because it chooses not to exercise its discretion.

(Emphasis supplied)

9. In Madurai Veeran's case, the Division Bench of this Court quoted Paragraph 35 from the decision of the Supreme Court in Election Commission, India Vs.

Saka Venkata Subba Rao and, , and it runs as follows:

The power of the High Court to issue Writs under Article 226 of the Constitution is subject to the two-fold limitation that such writs cannot run beyond the territories subject to its jurisdiction and the person or authority to whom the High Court is empowered to issue such writs must be amenable to the jurisdiction of the High Court either by residence or location within the territories subject to its jurisdiction.

10. In *The Commissioner of Central Excise v. Sun Pharmaceuticals Industries Ltd.*, Writ Appeal No. 323 of 2006, the question of jurisdiction was decided on the basis of *Kusum Ingots case* and *Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others*, .

11. In *Bhanu Constructions case*, the Petitioners had approached the Andhra Pradesh High Court twice and obtained orders with a direction to exhaust their remedy before the Tribunal and before the Appellate Tribunal. They filed an Application and also an Appeal and got them dismissed. The question was asked as to why the Petitioners having chosen to challenge the decree twice in Andhra Pradesh, have not gone back to Andhra Pradesh but approach this Court, there was no answer and therefore, the Division Bench concluded that they lack bona fides. Therefore, their conclusion that it amounts to forum shopping and this Court would refuse to exercise its discretion to entertain the Writ Petition cannot be faulted. However, the Division Bench held that under Article 226(1) of the Constitution of India, the High Court's jurisdiction depends on the seat of authority and by a legal fiction, a seat of Debt Recovery Appellate Tribunal should be deemed to be within the seat concerned and therefore, held that the Court do not have jurisdiction. This finding ignores the effect of Article 226(2) of the Constitution of India. Under Article 226(2) of the Constitution of India the High Court is vested with the same powers as mentioned in Article 226(1) of the Constitution of India, if the cause of action arose wholly or any part within the territories over which the High Court exercise its jurisdiction notwithstanding that the seats of authorities is not within those territories. It is only because of Article 226(2) of the Constitution of India it was held in *Kusum Ingots case* that the High Court which has jurisdiction over the place where the Appellate Authority is situate, can entertain the Writ Petition.

12. In *Om Prakash Srivastava Vs. Union of India (UOI) and Another*, Apex Criminal 680 the Supreme Court held:

6. Clause (2) of Article 226 of the Constitution is of great importance. It reads as follows:

226 (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.

7. The question whether or not cause of action wholly or in part for filing a Writ Petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a Writ Petition, a writ Petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the Respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. (See Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, :

13. The following extract from Alchemist Limited and Another Vs. State Bank of Sikkim and Others, , traces the history of Article 226(2) of the Constitution of India. From this it is clear that this Court has the jurisdiction to entertain a Writ Petition challenging the order of the Debt Recovery Appellate Tribunal at Chennai regardless of where the Tribunal is situate.

9. Before entering into the controversy in the present Appeal, let the legal position be examined:

Article 226 of the Constitution as it originally enacted had two- fold limitations on the jurisdiction of High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised by the High Court "throughout the territories in relation to which it exercises jurisdiction", i.e. the writs issued by the court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be "within those territories", which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories.

10. In Election Commission, India Vs. Saka Venkata Subba Rao and, , the Petitioner applied to the High Court of Madras under Article 226 of the Constitution for a Writ of prohibition restraining the Election Commission (a statutory authority constituted by the President) having its office permanently located at New Delhi, from inquiring into the alleged disqualification of the Petitioner from membership of the Madras Legislative Assembly. The High Court of Madras issued a Writ. The aggrieved Petitioner approached this Court.

Allowing the Appeal and reversing the decision of the High Court, this Court held

that the High Court of Madras had no territorial jurisdiction to entertain the Petition.

Speaking for the Court, Patanjali Sastri, C.J. made the following observations:

The makers of the Constitution, having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs which the Courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States' sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc., "for any other purpose" being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England. But wide as were the powers thus conferred, a two-fold limitation was placed upon their exercise. In the first place, the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the Writs issued by the Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such Writs must be "within those territories", which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories.

(Emphasis supplied)

As to the cause of action, the Court stated:

The rule that cause of action attracts jurisdiction in Suits is based on statutory enactment and cannot apply to Writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority "within the territories" in relation to which the High Court exercises jurisdiction

11. Again, a question arose in *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, . A Bench of Seven Judges was called upon to consider the correctness or otherwise of *Saka Venkata Rao*. The majority (Sinha, C.J., Kapoor, Gajendragadkar, Wanchoo, Das Gupta and Shah, JJ.) reaffirmed and approved the view taken by this Court earlier in *Saka Venkata Rao* and held that the High Court of Jammu & Kashmir was right in not entertaining the Writ Petition filed by the Petitioner on the ground that it had no territorial jurisdiction. Speaking for the majority, Sinha, C.J., stated: It seems to us therefore that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or CTC/07.11.2007 location of the person affected can have no relevance on the question of the High Court's jurisdiction.

12. The effect of the above decisions was that no High Court other than the High Court of Punjab (before the establishment of the High Court of Delhi) had jurisdiction to issue any direction, order or Writ to the Union of India, because the seat of the Government of India was located in New Delhi. Cause of action was a concept totally irrelevant and alien for conferring jurisdiction on High Courts under Article 226 of the Constitution. An attempt to import such concept was repelled by this Court. In the circumstances, Article 226 was amended by the Constitution (Fifteenth Amendment) Act, 1963 and after Clause 1, new Clause (1-A) was inserted which read as under:

(1-A) 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.

It may be stated that by the Constitution (Forty-second Amendment) Act, 1976, Clause (1-A) was renumbered as Clause (2). The underlying object of amendment was expressed in the following words:

Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226. So that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs.

(Emphasis supplied)

13. The effect of the amendment was that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under Article 226 of the Constitution.

As Joint Committee observed:

This Clause would enable the High Court within whose jurisdiction the cause of action arises to issue directions, orders or Writs to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feel that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction.

The legislative history of the constitutional provisions, therefore, make it clear that after 1963, cause of action is relevant and germane and a writ petition can be instituted in a High Court within the territorial jurisdiction of which cause of action in whole or in part arises.

14. The Division Bench in Bhanu Constructions case held that the High Court would have no power of superintendence, if as a result of intervention under Article 226 of the Constitution of India, an order of a Tribunal over which the High Court has no power of superintendence, is subject to scrutiny and that then the High Court would refuse to entertain the request since it would amount to interfering and usurping the power of the other High Court, and that, in that case the seat of authority must be deemed to be in Hyderabad. This is really contrary to the judgment in Kusum Ingots case. Even in Bhanu Constructions case, the Division Bench at Paragraph No. 26 has held after the 15th amendment of the Constitution introducing Article 226(2) of the Constitution of India, The legal position is that a Writ can be issued by a High Court within whose jurisdiction the cause of action wholly or in part arises irrespective of the seat of authority. Therefore, even assuming that by a fiction, the seat of Appellate Authority in this case should be deemed to be in Hyderabad logically, that alone is not the criterion and the High Court within whose jurisdiction, cause of action, arises can definitely issue a Writ. In this case, the order of the Debt Recovery Appellate Tribunal by which the Petitioner is aggrieved is most certainly "a cause of action". This is what the Supreme Court says in Om Prakash Srivastava's case.

15. As already stated, on facts in Bhanu Construction's case, the High Court refused to exercise jurisdiction. But on law, the finding that this Court would not have jurisdiction, even though it is the Appellate whose order is subject to scrutiny and even though the Appellate Authority is situate in Chennai, is contrary to the law laid down in Kusum Ingots Case. The party would have the right to choose either of the fora, Therefore, against the order of an Appellate Authority at Chennai, the Writ Petition is maintainable on the ground of forum conveniens or other reasons, the High Court refuses to exercise its discretion is quite another matter.

16. The decision in Bhanu Constructions Pvt. Ltd.'s case as regards maintainability is not correct, The order of reference is answered accordingly.

17. The connected Miscellaneous Petition are closed.