

(2013) 09 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52475 of 2013

Sumit Kumar Gupta

APPELLANT

Vs

Debts Recovery Appellate Tribunal and Others

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 9 ADJ 653 : (2013) 121 RD 336

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Ashok Kumar Tiwari and N.L. Srivastava, for the Appellant; Rahul Sahai and Sandeep Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri N.L. Srivastava, the learned counsel holding the brief of Sri Ashok Kumar Tiwari, the learned counsel for the petitioner and Sri Sandeep Agarwal, the learned counsel holding the brief of Sri Rahul Sahai, the learned counsel for respondent Nos. 2 and 3. The petitioner has filed the present writ petition praying for the quashing of the order dated 26th July, 2013 passed by the Debts Recovery Appellate Tribunal, Allahabad as well as the order dated 3rd June, 2011 passed by the Debt Recovery Tribunal, Ranchi in the State of Jharkhand.

2. A preliminary objection was raised with regard to the maintainability of the writ petition before this Court. The Court has heard the learned counsel for the parties at some length and finds that a part of cause of action arose within the territorial limits of this Court, inasmuch, as the appellate order was passed by an authority, which was located at Allahabad, which is within the territorial jurisdiction of this Court.

3. In the light of the various decisions of the Apex Court starting from Sri Nasiruddin Vs. State Transport Appellate Tribunal, and Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , since a part of cause of action has

arisen, the writ petition is maintainable. However, the Court in the given circumstances is not inclined to entertain the writ petition for the following reasons:

- a. The petitioner is a resident of district East Singhbhum, Jamshedpur in the State of Jharkhand.
- b. The respondent Nos. 3, 4 and 5 are also resident of district East Singhbhum, Jamshedpur in the State of Jharkhand.
- c. Notice under the SARFAESI Act was issued by the bank from Jharkhand, which was questioned by the petitioner before the Debt Recovery Tribunal at Ranchi in the State of Jharkhand.
- d. The petitioner, being aggrieved by the order of the Debt Recovery Tribunal, filed an appeal before the Debt Recovery Tribunal at Allahabad.
- e. All the contesting parties are resident of district East Singhbhum, Jharkhand except respondent No. 1, which is the Debt Recovery Appellate Tribunal, which is located at Allahabad and is only a formal party.

4. The Court is of the opinion that the doctrine of "forum convenience" comes into play, namely, that in the given circumstances, the Court will decline to exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India and leaves it to the party to file a petition before the appropriate Forum, which in the instant case would be the High Court at Jharkhand.

5. The doctrine of "forum convenience" was examined by a Full Bench of five Judges of the Delhi High Court in *Sterling Agro Industries Ltd. Vs. Union of India (UOI) and Others*, . The Full Bench of the Delhi High Court held that, even though, a part of cause of action has arisen in the State, where the appellate authority is located, it does not become the "forum convenience" for a party to challenge that order in that particular State, inasmuch as, it is obligatory on the part of the Court to see the convenience of all the parties. The Full Bench held that the concept of "forum convenience" means that it is obligatory on the part of the Court to see the convenience of all the parties before it, which would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessary for just adjudication of the controversy involved and its ancillary aspects. The balance of convenience is also to be taken into consideration. The Supreme Court in the case of *Kusum Ingots (supra)* also touched on the aspect of forum convenience while opining that the cause or part of action would entitle the High Court to entertain the writ petition.

6. In similar situation, where the Debt Recovery Tribunal of Madhya Pradesh had passed an order and the Appellate Tribunal at Allahabad had dismissed the appeal, a writ petition was filed before this Court, wherein, the Court declined to entertain the petition and directed the parties to litigate before the appropriate forum in Madhya Pradesh. This judgement, namely, *M/s. Dynamic Education*

Systems (International) Limited and Another Vs. Bank of Baroda and Others, , is fully applicable in the instant case. In the light of the aforesaid, the Court is not inclined to exercise its discretionary jurisdiction under Article 226 of the Constitution of India and by invoking the doctrine of "forum convenience", the writ petition is dismissed with the observation that it would be open to the petitioner to litigate and agitate the matter before the High Court at Jharkhand.