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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: April 18, 2009

LPA 109/2009 & CM No. 3468/2009

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Atul Y. Chitale, Senior Advocate
with Ms. Sunaina Dutta, Advocate.

versus

UOI & ORS. Respondents
Through: Mr. Yashobant Das, Senior Advocate
with Mr. Kal Bharat, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

O R D E R

18.04.2009

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1. The present appeal arises out of the judgment and order dated 20th February, 2009 passed by the hon'ble Single Judge in Writ Petition (Civil) No. 7569 of 2007. Claims had been raised by respondent No. 3 under certain fire policies obtained by respondent No. 3 from the appellant. This claim was, however, repudiated by the appellant. Consequently, respondent No. 3 filed an appeal against the repudiation of its claims before the Insurance Regulatory Development Authority (hereinafter referred to as 'IRDA'), respondent No. 2 herein. The IRDA passed an order on 2nd June, 2003, against which the appellant preferred an appeal before the Appellate Authority constituted by the Central Government, Ministry of Finance (respondent No. 1 herein). The Appellate Authority passed its order on 20th June, 2007.

2. Aggrieved by the order of the Appellate Authority dated 20th June, 2007, the appellant filed Writ Petition (Civil) No. 7569 of 2007 under Article 226 of the Constitution of India seeking *inter alia* that the orders dated 5th March, 2004 and 20th June, 2007 passed by the Appellate Authority be set aside. The Appellate Authority is constituted under Section 110H of the Insurance Act, 1938 and has its seat at Financial Sector Division, Jeev Deep Building, 3rd Floor, Parliament Street, New Delhi.

3. The learned Single Judge relying on various judgments including ***Ambica Industries Vs. Commissioner of Central Excise, 2007 (6) SCC 769, Bombay Snuff P. Ltd. Vs. Union of India & Ors., 125 (2005) DLT 605 (DB), Rajkumar Shivhare Vs. Assistant Director of Enforcement, Mumbai 154 (2008) DLT 28 (DB)*** and ***West Coast Ingots (P) Ltd. Vs. Commissioner of Central Excise, New Delhi 2007 (209) ELT 343 Delhi***, held that going by the strict provisions of Clause(1) of Article 226 of the Constitution of India, this Court had the jurisdiction to entertain the petition, however, the basic issue was whether this Court really was the most appropriate Forum to decide the present petition considering that the significant part of the cause of action imperative for the effective settlement of disputes has not arisen within its territorial jurisdiction. As per the learned Single Judge, a significant part of the cause of action could not be said to have arisen within the territorial jurisdiction of a High Court merely because the order under challenge had been passed by

a Tribunal or Authority located within its territorial jurisdiction when the events leading to the filing of the proceedings before such Tribunal or Authority and the parties to such proceedings are located outside the territorial jurisdiction of the Court. The learned Single Judge went on to observe that this was the precise situation in the present case and also held that any stand taken by this Court to the contrary would lie in the teeth of the consistent and settled approach adopted by the courts of this country in **Ambica Industries Vs. Commissioner of Central Excise** (*supra*) **Bombay Snuff P. Ltd. Vs. Union of India & Ors.** (*supra*), **Rajkumar Shivhare Vs. Assistant Director of Enforcement** (*supra*) and **West Coast Ingots (P) Lts. Vs. Commissioner of Central Excise, New Delhi** (*supra*). The learned Single Judge in view of the same declined to entertain the writ petition.

4. The counsel for the appellant relied on various judgments of the Supreme Court of India and other High Courts. Reliance was placed on **Shri Nasiruddin Vs. STAT (1975) 2 SCC 671**, wherein it was held in para-37 as under:-

“37. To sum up, our conclusions are as follows. First, there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the Order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third, the Chief Justice has power under

the second proviso to paragraph 14 of the Order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in Oudh areas shall be instituted or filed at Allahabad instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the Order be directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place."

5. Reliance was also placed by the appellant on the judgment of the Supreme Court of India in ***Kusum Ingots Vs. Union of India, 2004 (6) SCC 254***, where in para-27 it was held as under:-

"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.”

6. Thus, it was sought to be urged on behalf of the petitioner that order of the Appellate Authority constitutes a part of the cause of action and the writ petition would thus be maintainable before the Delhi High Court, within whose jurisdiction the Appellate Authority was constituted. The petitioner also drew our attention to the judgment of the Bombay High Court in the case of ***Kishor Rungta & Ors. Vs. Punjab National Bank & Ors. 2003 (151) ELT 502 (Bombay)*** , wherein it was held that where the Appellate Authority reverses the order under appeal or modifies that order or dismissed the appeal and thus confirms the order without any modification, in all such cases if the Appellate Authority has disposed of the appeal, the operative order is the order of the Appellate Authority whether it has reversed the original order or modified it or confirmed it. In that case it was held that the order of the Debt Recovery Tribunal in Jaipur merged in the order of the Debt Recovery Appellate Tribunal at Mumbai. The courts in Jaipur would have no jurisdiction to entertain the writ petition which challenged the order of the Debt Recovery Appellate Tribunal, Mumbai. Even otherwise, the writ

petition was maintainable in the Bombay High Court within whose jurisdiction the Appellate Authority was based. Part of the cause of action having arisen in Mumbai, the Bombay High Court had the jurisdiction to entertain the writ petition in view of Article 226(2) of the Constitution of India.

Accordingly, it was urged on behalf of the appellant in the present appeal that the order of the IRDA merged into the order of the Appellate Authority which was located in Delhi and thus part of the cause of action arose in Delhi and the Delhi High Court had the jurisdiction to entertain the writ petition.

7. The appellant also cited before us the judgment in **ORJ Electronics Oxides Limited vs. Customs, Excise and Service Tax and Anr. (225) ELT 202 (Madras)**, wherein it was held that the territorial jurisdiction of the court and the cause of action are inter-linked and that to decide the question of territorial jurisdiction it is necessary to find out the place where the cause of action arose. It was further observed in the said case that the order impugned was issued by the Tribunal at Chennai and since the appellant therein was aggrieved by the said order which had been passed in Chennai, the grievance of the appellant arose at Chennai and as such the Principal Bench had the jurisdiction to deal with the matter. The learned counsel for the appellant also relied on the judgment in **Jayaswal Neco Vs. Union of India** of the Delhi High Court (decided

on 2nd July, 2007). The counsel for the appellant further submitted, relying on **Lt. Col. Khajoor Singh Vs. UOI, AIR 1961 SC 532**, that in any case the writ was maintainable in Delhi under Article 226(1) of the Constitution of India as the seat of the Appellate Authority was in Delhi. The learned senior counsel also contended that the reference to the case of **Lt. Col. Khajoor Singh Vs. UOI** (*supra*) in **Kusum Ingots Vs. Union of India**, (*supra*) was in the context of Article 226(2) of the Constitution of India and not Article 226(1) of the Constitution of India as the question of exercise of jurisdiction under Article 226(1) of the Constitution of India was not in issue in the case of **Kusum Ingots Vs. Union of India** (*supra*).

8. The principal contention of the counsel appearing for the appellant is that the case of **Ambica Industries Vs. Commissioner of Central Excise** (*supra*) dealt with a statutory appeal under Section 35 (g) of the Excise Act and the law as laid down therein could not be applied to the facts of the present case where the jurisdiction of the court had been invoked under Article 226 of the Constitution of India. Similarly, it was pointed out that the case of **Bombay Snuff P. Ltd. Vs. Union of India & Ors.** (*supra*) also dealt with the filing of statutory appeals and thus would have no application in the facts of the present case. The counsel for the appellant contended that in **Ambica Industries Vs. Commissioner of Central Excise** (*supra*), the Appellate Tribunal exercised jurisdiction over three States and it was in that context that the

Supreme Court in para-13 held as follows:-

“13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litus, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or Courts or Tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.”

9. Counsel for the appellant further submitted that it was in that background that the Supreme Court had held that though there could not be any doubt, whatsoever, that in terms of Article 227 of the Constitution of India as also Article 226 thereof, the High Court would exercise its discretionary jurisdiction as also power to issue writ of *Certiorari*, in respect of the orders passed by the subordinate courts within its territorial jurisdiction or if any cause of action has arisen there within, but the same test cannot be applied when the Appellate Court exercises jurisdiction over a Tribunal situated in more than one State. In such a situation, the Supreme Court held that the High Court situated in the State where the first court is

located should be considered to be appropriate Appellate Authority. Similarly in ***Bombay Snuff P. Ltd. Vs. Union of India & Ors.*** (*supra*), the Delhi High Court dealing with the statutory appeal under Section 35(g) of the Central Excise Act held that jurisdiction to hear petition under Section 35(g) sub-clause III of the Central Excise Act, 1944 lay with the High Court exercising jurisdiction over the authority from whose order the proceedings had originated and not the High Court of Delhi merely because the main seat of CESTAT was situated at Delhi or the appeal was heard and decided in Delhi.

10. Our attention was drawn to the judgments of the Delhi High Court in ***West Coast Ingots (P) Ltd. Vs. Commissioner of Central Excise, New Delhi*** (*supra*) and ***Rajkumar Shivhare Vs. Assistant Director of Enforcement*** (*supra*), wherein the Delhi High Court had rejected the argument that a writ against an order of the Appellate Authority situated in Delhi would lie before the Delhi High Court, holding that it was not the convenient Forum. The Delhi High Court therein had also rejected the argument that the judgment in ***Bombay Snuff P. Ltd. Vs. Union of India & Ors.*** (*supra*) would have no application to the facts of that case as the case in ***Bombay Snuff P. Ltd. Vs. Union of India & Ors.*** (*supra*) pertained to a statutory appeal, whereas the case in ***West Coast Ingots (P) Ltd. Vs. Commissioner of Central Excise, New Delhi*** (*supra*) pertained to exercise of jurisdiction under Article 226 of the Constitution of India. The counsel for the appellant argued that case pertaining to a

statutory appeal could not be equated with the jurisdiction conferred under Article 226 of the Constitution of India and the reasons as contained in the case of ***Ambica Industries Vs. Commissioner of Central Excise*** (*supra*) in paragraphs 12 to 17 would have no application to the exercise of jurisdiction under Article 226 of the Constitution of India. It was also argued on behalf of the appellants that in view of the categorical observations of the courts in the cases of ***Shri Nasiruddin Vs. STAT, Kusum Ingots & Alloys vs. UOI (2004) 6 SCC 254, Jayaswals Neco Limited vs. Union of India and others, Kishor Rungta & Ors. Vs. Punjab National Bank & Ors. And ORJ Electronics Oxides Limited vs. Customs, Excise and Service Tax and Anr.*** (*supra*), this hon'ble Court clearly had the territorial jurisdiction to entertain the writ petition as the Appellate Authority was situated in Delhi and thus part of the cause of action arose in Delhi. It was further submitted on behalf of the appellant that it was aggrieved by the order of an Appellate Authority which was located in Delhi. It is the decision of the Appellate Authority which was under challenge and the order of the IRDA stood merged with the order of the Appellate Authority and thus this Court was the most appropriate and convenient Forum to decide the writ petition.

11. In the light of what has been stated hereinabove, we feel that an issue of considerable importance has arisen in the matter and we deem it fit and proper to refer the matter to a Larger Bench.

12. Accordingly, the Registry is directed to take necessary steps in terms aforesaid.

CHIEF JUSTICE

NEERAJ KISHAN KAUL, J

APRIL 18, 2009
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