

IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment Delivered on: February, 20th, 2009
W.P. (C) No. 7569/2007

New India Assurance Limited Petitioner
Through : Mr. A.S. Chandhiok, Senior
Advocate with Mr. Atul Y. Chitale,
Ms. Sunaina Dutta, Ms. Shweta
Kakkad and Ms. Abhiruchi,
Advocates

Versus

\$ Union of India and Others Respondents
Through : Mr. Yash Mishra and Mr. Vineet
Malhotra, Advocates for
respondentsno. 1 and 2
Mr. Yashobant Das, Senior
Advocate with Mr. Kul Bharat,
Advocate for respondent no. 3

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers be allowed to see the judgment? **Yes**
2. Whether the judgment be referred to the Reporter? **Yes**
3. Whether the judgment be reported in the Digest? **Yes**

G.S. SISTANI, J.

1. The *lis* in the present petition primarily appertains to the quantum of damages assessed in an insurance claim brought against the petitioner, a general insurance company having its head office at Mumbai and branch office at Tirupati.
2. The facts and circumstances leading to the present petition are undisputed and may be outlined as under:

2.1 M/s. J.P. Exports, the respondent no. 3 herein, purchased certain fire policies from the petitioner for insuring the stock of Red Sanders Wood in its godown

located at Andhra Pradesh. On 29.6.1996, an accidental fire broke out at the said premises, the fact of which was communicated by the respondent no. 3 to the petitioner vide a written notice dated 4.7.1996. On account of the loss suffered due to the accidental fire, a claim for damages to the tune of Rs. 40.17 crores was preferred by the respondent no. 3 against the petitioner. This claim, however, was repudiated by the petitioner vide letters dated 21.5.2001 and 1.6.2001, *inter alia*, on the ground of non-compliance with the terms and conditions of the fire policies.

2.2 Consequently, the respondent no. 3 filed an appeal against the repudiation of its claim before the Insurance Regulatory Development Authority, the respondent no. 2 herein and hereinafter, "the IRDA". Vide letter dated 31.7.2002, two surveyors were appointed by the IRDA for survey and loss assessment as well as for re-examination of the quantum of damages claimed by the respondent no. 3. Inasmuch as the two surveyors appointed by the IRDA disagreed vastly on the quantum of claim payable by the petitioner, they filed their reports separately - one assessing the claim of the respondent no. 3 at Rs. 21,01,00,000/- and the other at Rs. 2,21,34,819/-. After reviewing the reports filed by the surveyors as well as after seeking the comments of the petitioner and its surveyors on the said review, the IRDA vide order dated 2.6.2003 directed the petitioner to settle the claim at Rs. 2,21,34,819/-.

2.3 Against the order dated 2.6.2003 passed by the IRDA, the petitioner preferred an appeal before the Appellate

Authority constituted by the Union Ministry of Finance, the respondent no. 1 herein. Vide order dated 5.3.2004, the Appellate Authority directed the IRDA to appoint two surveyors for a joint report on the claim for the reason that there existed a substantial difference in the amounts of claim awarded by the previous two surveyors. The direction made in the order dated 5.3.2004 was subsequently re-iterated by the Appellate Authority in its order 30.9.2005, wherein, a further direction was also issued to the petitioner to make payment of Rs. 2,21,34,819/- to the respondent no. 3, which payment was, however, made subject to the findings of the IRDA on the basis of the fresh joint survey report.

2.4 Accordingly, the IRDA appointed two new surveyors, who, in their joint report, submitted on 9.10.2006, assessed the net loss suffered by the respondent no. 3 at Rs. 7,95,50,300/-. However, vide order dated 1.2.2007, the IRDA rejected the assessment made in the joint report and directed the petitioner to make payment of Rs. 2,21,34,819/- to the respondent no. 3.

2.5 The stand taken by the IRDA in its order dated 1.2.2007 was, however, negated by the Appellate Authority in its order dated 20.6.2007, and consequently, the petitioner was directed to pay a sum of Rs. 7,95,50,300/- less the amount of Rs. 2,21,34,819 already paid on account to the respondent no. 3.

2.6 Aggrieved, the petitioner filed the present petition under Article 226 of the Constitution of India, seeking, *inter alia*, that the orders dated 5.3.2004 and 20.6.2007 passed by the Appellate Authority be set aside.

3. The respondent no. 3, at the outset of the matter, has taken a strong objection to the maintainability of the present petition on the ground of lack of territorial jurisdiction. The said apart, the respondent no. 3 has also filed an application seeking vacation of an interim stay that was granted by this Court to the petitioner on the operation of the impugned orders dated 5.3.2004 and 20.6.2007.
4. By this judgment, I propose to dispose of the issue with respect to the maintainability of the present petition as well as the application seeking vacation of the interim stay granted on the operation of the impugned orders dated 5.3.2004 and 20.6.2007.
5. Before dealing with the rival contentions of both parties on the issue of maintainability of the present petition, it will be useful to refer to the provisions of Article 226 of the Constitution of India, reproduced herein below:

“226. Power of High Courts to issue certain writs.-

- (1) Notwithstanding anything in article 32 [***], every High Court shall have powers, 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.
- (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under Clause (1), without -
- (a) furnishing to such party copies of such petition and documents in support of the plea for such interim order; and
 - (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favor such order has been made or the counsel for such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.
- (4) The power conferred on a High Court by this article shall not be in derogation of the power

conferred on the Supreme Court by Clause (2) of Article 32.”

6. Mr. A.S. Chandhiok, learned senior counsel for the petitioner, has resisted with vehemence the objection raised by the respondent no. 3 to the exercise of jurisdiction by this Court. It is contended that a part of the cause of action leading to the present petition has arisen in Delhi thereby vesting this Court with territorial jurisdiction under clause (2) of Article 226 of the Constitution of India. Learned senior counsel, in this connection, has relied on the following facts:

- I. The Appellate Authority, whose orders are the subject-matter of the present petition, is located in Delhi;
- II. The appeal dated 26.6.2003, against the order dated 2.6.2003 of the IRDA, was filed by the petitioner before the Appellate Authority in Delhi;
- III. The letter of the respondent no. 3, dated 29.12.2003, *qua* hearing of the appeal made by the petitioner against the orders of the IRDA, was received at the office of the Appellate Authority in Delhi;
- IV. The reply of the IRDA to the appeal dated 26.6.2003, and the rejoinder of the petition thereto, were both filed before the Appellate Authority in Delhi;
- V. The proceedings with respect to the appeal dated 26.6.2003 took place before the Appellate Authority in Delhi;
- VI. The order dated 5.3.2004, disposing of the proceedings with respect to the appeal dated 26.6.2003, was passed by the Appellate Authority in Delhi;

- VII. The application dated 18.2.2005, seeking re-call and modification of the order dated 5.3.2004, was filed by the IRDA before the Appellate Authority in Delhi;
- VIII. The reply to the IRDA's application dated 18.2.2005 was filed by the petitioner before the Appellate Authority in Delhi;
- IX. The appeal dated 30.9.2005, against the order dated 5.3.2004, was filed by the IRDA before the Appellate Authority in Delhi;
- X. The letter of the respondent no. 3, dated 17.2.2007, *qua* rejection by the IRDA of the re-assessment of the claim done by the new set of surveyors, was received at the office of the Appellate Authority in Delhi;
- XI. The impugned order dated 20.6.2007, disposing of the proceedings with respect to the letter dated 17.2.2007, was passed by the Appellate Authority in Delhi.

7. *Per contra*, Mr. Yashobant Das, learned senior counsel for the respondent no. 3, has vehemently argued that neither of the aforementioned facts nor circumstances can be considered as a cause of action, much less a part thereof, for investing jurisdiction in this Court to entertain the present petition. It is contended that if the petitioner is desirous of filing a writ petition, the appropriate High Court holding territorial jurisdiction in the matter would be the Andhra Pradesh High Court inasmuch all substantial, material as well as integral facts and circumstances, constituting the cause of action necessary to decide the present petition, have arisen in the State of Andhra Pradesh. Learned senior counsel, in this connection, has relied on the following facts:

- I. The respondent no. 3 has its principle place of business at the Chittoor District of Andhra Pradesh;
- II. All the fire policies between the petitioner and respondent no. 3 were executed at Tirupati;
- III. The accidental fire took place at the premises of respondent no. 3 located at the Chittoor District of Andhra Pradesh;
- IV. The written notice dated 4.7.1996, communicating the fact of the accidental fire to the petitioner, was issued by the respondent no. 3 from its office at the Chittoor District of Andhra Pradesh;
- V. The Fire Claim Form dated 24.10.1996 was submitted by the respondent no. 3 at the branch office of the petitioner at Tirupati;
- VI. The survey report dated 31.12.1997, prepared jointly by the two private surveyors appointed by the respondent no. 3, was submitted at the branch office of the petitioner at Tirupati;
- VII. The letter dated 21.5.2001, stating the grounds for repudiation of the claim of the respondent no. 3, was dispatched from the branch office of the petitioner at Tirupati to the office of the respondent no. 3 at the Chittoor District of Andhra Pradesh;
- VIII. The letter dated 1.6.2001, stating the additional grounds for repudiation of the claim of the respondent no. 3, was dispatched from the branch office of the petitioner at Tirupati to the office of the respondent no. 3 at the Chittoor District of Andhra Pradesh;
- IX. The letter dated 31.7.2002, appointing two surveyors for survey and loss assessment as well as for re-examination of the quantum of damages claimed by

the respondent no. 3, was dispatched from the head office of the IRDA at Hyderabad;

- X. The survey reports, prepared by the two surveyors appointed by the IRDA, were submitted at the head office of the IRDA at Hyderabad;
- XI. The letter dated 26.2.2003, seeking comments of the petitioner on the review by the IRDA of the quantum of damages assessed by the surveyors, was dispatched from the head office of the IRDA at Hyderabad;
- XII. The letter dated 7.4.2003 - reminder to the letter dated 26.2.2003 - was dispatched from the head office of the IRDA at Hyderabad;
- XIII. The order dated 2.6.2003, directing the petitioner to settle the claim at Rs. 2,21,34,819/-, and which also later became the subject-matter of appeal before the Appellate Authority, was passed by the IRDA at its head office at Hyderabad;
- XIV. The survey report dated 9.10.2006, prepared jointly by the new set of surveyors appointed by the IRDA pursuant to the directions of the Appellate Authority, was submitted at the head office of the IRDA at Hyderabad;
- XV. The order dated 1.2.2007, rejecting the re-assessment of the claim done by the new set of surveyors, and which also later became the subject-matter of appeal before the Appellate Authority, was passed by the IRDA at its head office at Hyderabad.

8. Learned senior counsel for the respondent no. 3 has further buttressed his argument by relying, *inter alia*, upon the decision of the Apex Court in ***State of Rajasthan and Others v. M/s Swaika***

Properties and Another¹. In this case, the respondent company, whose registered office was at Calcutta (now, Kolkata), was served with a notice issued by the Special Town Planning Officer of Jaipur for acquisition of the former's immovable property located at Jaipur for the public purpose of a development scheme. In response thereto, the representatives of the respondent company appeared before the Special Town Planning Officer in several hearings, seeking, *inter alia*, exemption of their said property from acquisition. However, the Special Town Planning Officer, on being satisfied that the land was not needed by the respondent company *bona fide*, rejected their prayer for its release and recommended that the entire land be acquired by the State of Rajasthan. This was followed by a notification issued by the State of Rajasthan under section 52(1) of the Urban Land (Ceiling and Regulation) Act of 1976, and accordingly, the immovable property belonging to the respondent company came to be vested in the State of Rajasthan free from all encumbrances. The respondent company thereupon filed a petition in the High Court of Calcutta challenging the said notification. The High Court of Calcutta entertained the petition, issued rule *nisi* and passed an ad interim *ex parte* prohibitory order restraining the State of Rajasthan and the concerned authorities from taking any steps in terms of the impugned notification. The question before the Supreme Court in appeal was whether the service of the notice issued by the

¹(1985) 3 SCC 217.

Special Town Planning Officer at the registered office of the respondent company at Calcutta was sufficient to invest the High Court of Calcutta with jurisdiction to entertain the petition challenging the notification issued by the State of Rajasthan. Speaking for the Bench, A.P. Sen, J. observed in para 8 of the judgment, “[t]he answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226 (2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action”. It was, thus, observed that the mere service of notice on the respondent company at its registered office at Calcutta could not give rise to a cause of action within that territory, “unless the service of such notice was an integral part of the cause of action”. Observing that it was not necessary for the respondents to plead the service of notice on them by the Special Town Planning Officer of Jaipur for the quashing of the impugned notification issued by the State Government of Rajasthan, the Apex Court finally ruled that inasmuch as “[t]he entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench”, the High Court of Calcutta had no jurisdiction to entertain the petition under clause (2) of Article 226 of the Constitution of India.

9. In similar vein, the decision in ***Alchemist Ltd. and Another v. State Bank of Sikkim***² has been relied upon to drive home the point that a transaction, in order to invest a High Court with territorial jurisdiction to entertain a petition under clause (2) of Article 226 of the Constitution, must constitute a “part of the cause of action” resulting in the filing of the petition. In this case, the appellant company, whose registered office was at Chandigarh, submitted its formal proposal for a strategic business partnership with the registered corporate office of the respondent bank at Sikkim. Subsequently, the appellant company was informed that its proposal was accepted in principle subject to consideration and approval of the Government of Sikkim. In pursuance thereof, the appellant company, in order to show its *bona fides*, deposited a sum of Rs. 4.50 crores in a fixed deposit with the respondent bank. However, the appellant company thereafter received a communication whereby it was informed by the respondent bank that the Government of Sikkim had not approved of its proposal. The appellant company, therefore, filed a writ petition before the Punjab and Haryana High Court at Chandigarh. However, the High Court, without going into the merits of the matter, dismissed the writ petition on the ground that the facts which had been pleaded by the appellant company could not be said to constitute a part of cause of action necessary for conferring territorial jurisdiction under clause (2) of Article 226 of the Constitution of India. Upholding the

²(2007) 11 SCC 335.

stand taken by the High Court, the Apex Court observed at para 37, *“[i]t is no doubt true that even if a small fraction of the cause arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a part of cause of action, nothing less than that”*. As to how the expression “part of cause of action” was to be construed, it was observed, *“[f]or the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a **material, essential, or integral** part of the cause of action”*. In other words, *“[t]he fact which is neither material nor essential nor integral part of the cause of action would not constitute a part of cause of action within the meaning of clause (2) of Article 226 of the Constitution”*.

10. It is, therefore, argued by learned senior counsel for the respondent no. 3 that none of the facts and circumstances pleaded by the petitioner in support of its case can be considered as a part of the cause of action, let alone being a material, essential or integral part thereof, necessary for vesting this Court with the requisite territorial jurisdiction in terms of clause (2) of Article 226 of the Constitution of India.
11. Learned senior counsel for the petitioner, in order to foil the aforesaid argument put forth on behalf of the respondent no. 3, has heavily relied upon the judgment in ***Kusum Ingots & Alloys Ltd. v. Union***

of India and Another³, wherein, the Apex Court, while delving at length on the relevant facts constituting a cause of action, conclusively observed that in para 18 *“[t]he facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action”*. Relying on these observations, it is contended that the prayer made by the petitioner before this Court is singularly directed against the impugned orders dated 5.3.2004 and 20.6.2007, and as the said orders have been passed by the Appellate Authority in Delhi, therefore, at least a part of the cause of action leading to the present petition has certainly arisen within the territorial jurisdiction of this Court.

12. Having submitted that the passing of the impugned orders dated 5.3.2004 and 20.6.2007 by the Appellate Authority in Delhi constitutes a part of the cause resulting in the present petition, learned senior counsel for the petitioner has next invited the attention of this Court to paragraph 10 of the judgment in **Kusum Ingots & Alloys Ltd.** (supra), wherein, while interpreting clause (2) of Article 226 of the Constitution of India, it was held that *“even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter”*. While explaining this point, the decision in **Sri Nasiruddin v. State Transport Appellate**

³(2004) 6 SCC 254.

Tribunal⁴ is cited as an illustrative authority, which decision, it is submitted, was described by the Apex Court in **Kusum Ingots & Alloys Ltd.** as “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” (para 25) and further, in such a 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” (para 27). Explaining the rationale behind vesting jurisdiction also in the High Court of the State where the appellate authority is situate, the Apex Court further opined that inasmuch “as (the) 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”. It is, thus, contended by learned senior counsel for the petitioner that the passing of the impugned orders dated 5.3.2004 and 20.6.2007 by the Appellate Authority in Delhi has given rise to a part of the cause of action therein, and further, that the said cause of action, though small, is nevertheless integral to decide the present petition, thereby vesting in this Court jurisdiction in terms of clause (2) of Article 226 of the Constitution of India.

⁴(1975) 2 SCC 671.

13. The submission of the counsel for the petitioner cannot be appreciated when the judgment of ***Kusum Ingots & Alloys Ltd.*** is read and understood in its entirety. The short question, it may be recalled, that came up for consideration before the Apex Court in ***Kusum Ingots & Alloys Ltd.*** was whether passing of a legislation gives rise to a cause of action necessary to vest jurisdiction in a High Court in terms of clause (2) of Article 226 of the Constitution of India. “A distinction”, opined S.P. Sinha, J., “between a legislation and executive action should be borne in mind while determining the said question”. His Lordship further adduced, “[i]f passing of a legislation gives rise to a cause of action, a writ petition challenging the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner”. It was, thus, using this distinction between a legislative and executive action as a basis, that the Apex Court in ***Kusum Ingots & Alloys Ltd.*** concluded that passing of an order by a Tribunal or Authority, being essentially an executive action, gives rise to a part of cause of action, thereby vesting jurisdiction in the High Court before whom the Tribunal or Authority is situated. This proposition, however, was qualified by the Apex Court with a caveat in the following words:

“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 Bugga v. Dewan Jagbir Sawhney*, *Madanlal Jalan v. Madanlal*, *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.*, *S.S. Jain & Co. v. Union of India* and *New Horizons Ltd. v. Union of India.*]

(emphasis supplied)

14. A similar attempt, in fact, was also made in ***West Coast Ingots (P) Ltd. v. Commissioner of Central Excise, New Delhi***⁵. The appellant therein, whose registered office was at Goa, was slapped with a show cause notice from the Commissioner of Central Excise, Goa, alleging evasion of the payment of excise duty. In pursuance thereof, a settlement application was filed before the Settlement Commissioner by the appellant for settlement of its case. The settlement application was initially filed before the Additional Bench of the Settlement Commissioner at Mumbai where initially certain sums were deposited. Thereafter, the settlement application was filed before the Principal Bench of the Settlement Commissioner at Delhi. Disposing of the settlement application, the Settlement Commissioner at Delhi, *inter alia*, directed the appellant to pay simple interest at the rate of ten per cent per annum on the total excise duty liability. Aggrieved, the appellant invoked the writ jurisdiction of a

⁵2007 (209) E.L.T. 343 (Del.).

Division Bench of this Court, seeking a stay on the order passed by the Settlement Commissioner at Delhi. The appellant, while placing reliance on the judgment in ***Kusum Ingots and Alloys Ltd.*** in the same manner as the petitioner herein, beseeched the Division Bench “*not to decline to exercise jurisdiction*”. “[T]he cause of action”, urged the appellant, “(was) traceable to the order of the Principal Bench of the Settlement Commissioner in Delhi, and (had), therefore, substantially arisen within the jurisdiction of this Court”. However, this contention of the appellant, especially its reliance on the judgment in ***Kusum Ingots & Alloys Ltd.***, did not find favour with the Division Bench. It was unequivocally clarified that “*the judgment in Kusum Ingots & Alloys Ltd. does not lay down that a High Court should invariably exercise jurisdiction when an order challenged before it is passed by an authority or Tribunal located within its territorial jurisdiction*”. Holding that “*a significant part of the cause of action cannot be said to arise within the territorial jurisdiction of this Court merely because the order under challenge has been passed by a Tribunal located within its territorial jurisdiction*”, the Division Bench declined to entertain the petition of the appellant, setting the latter at liberty to approach the appropriate High Court for relief.

15. Relying on the decision in ***West Coast Ingots (P) Ltd. v. Commissioner of Central Excise, New Delhi***, another Division Bench of this Court in ***Indian Perfumes & Flavours & Anr. v.***

Customs & Excise Settlement Commission & Anr.⁶ declined to entertain a writ petition challenging an order passed by the Settlement Commissioner in Delhi in pursuance of certain excise proceedings initiated against the petitioner, a resident of Uttar Pradesh, by the Deputy Commissioner, Central Excise Division - V, Noida, Uttar Pradesh. In doing so, it was held as under:

“Even though the impugned order may have been passed by the Settlement Commission in Delhi, we decline to entertain this petition since the proceedings were initiated in Uttar Pradesh and the assessed is also a resident of Uttar Pradesh. Various Benches of this Court have repeatedly taken the view that in such cases, the jurisdictional High Court will be with reference to the place from where the show cause notice was issued or the place from where the order in original was passed [see for example **Seth Banarsi Das Gupta v. Commissioner of Income Tax**, (1978) 113 ITR 817; **Suresh Desai & Associates v. Commissioner of Income Tax**, (1998) 203 ITR 912; and **Commissioner of Income Tax v. Digvijay Chemicals Ltd.**, (2006) 204 CTR 234.]”

(emphasis supplied)

16. It is, however, in the leading pronouncement in **Ambica Industries v. Commissioner of Central Excise**⁷ that the salient propositions of law for determining the writ jurisdiction of High Courts, as laid down by the Apex Court in **Kusum Ingots & Alloys Ltd.**, were authoritatively reinforced.

⁶142 (2007) DLT 215 (DB).

⁷(2007) 6 SCC 769.

17. The appellant in **Ambica Industries** carried on business at Lucknow. Aggrieved by the assessment proceedings carried out against it in Lucknow, the appellant appealed before the Central Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi. The CESTAT, it was stated, exercised jurisdiction in respect of cases arising within the territorial limits of the State of Uttar Pradesh, the National Capital Territory of Delhi and the State of Maharashtra. Aggrieved by the decision of the CESTAT, an appeal in terms of section 35-G of the Central Excise Act, 1944 was filed before a Division Bench of this Court. The preliminary issue that arose for consideration before the Division Bench related to determination of *situs* of the High Court in which appeals would lie under section 35-G of the Central Excise Act, 1944. The *situs* of the CESTAT being in Delhi, it was argued, an appeal would be maintainable before this Court. The Division Bench, however, did not find any merit in the argument of the appellant, and on the basis of its earlier judgment in **Bombay Snuff Pvt. Ltd. v. Union of India and Others**⁸ held that it had no territorial jurisdiction in the matter. The appeal consequently filed by the appellant before the Apex Court also turned out to be an exercise in vain. Rejecting the contention of the appellant that the *situs* of the Appellate Tribunal was determinative of the jurisdiction the High Court in which an appeal would lie against the order passed by a Tribunal or Authority situated in more than one State, the Apex Court ruled that only the

⁸125 (2005) DLT 605 (DB).

High Court of that State within whose territorial jurisdiction the original adjudicating Tribunal or Authority functions would have jurisdiction to deal with an appeal filed in terms of section 35-G of the Central Excise Act, 1944.

18. Thus, after having held in ***Kusum Ingots & Alloys Ltd.*** that passing of an order by a Tribunal or Authority situated in more than one State by itself does invest jurisdiction in the High Court of the State in which such Tribunal or Authority is situate, the Apex Court in ***Ambica Industries*** went a step forward by clarifying that an order passed by a Tribunal or Authority situated in more than one State shall be assailable only in the High Court of that State wherein the original adjudicating Tribunal or Authority were present.
19. It would be useful to reproduce the reasons culled out from ***Ambica Industries***:

“...If the *situs* of the appellate Tribunal should be considered to be the determinative factor, a decision rendered by the Tribunal shall be binding on all the authorities exercising its jurisdiction under the said Tribunal.”

“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.”

“Furthermore, when an appeal is provided under a statute, Parliament must have thought of one High Court. It is a different matter that by way of necessity, a Tribunal may have to exercise jurisdiction over several States but it does not appeal to any reason that Parliament intended, despite providing for an appeal before *the High Court*, that appeals may be filed before different High Courts at the sweet will of the party aggrieved by the decision of the Tribunal.”

“There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also Clause (2) of 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 tests cannot be applied when the appellate court exercises a jurisdiction over Tribunal situated in more than one State. In such a situation, in our opinion, the High Court situated in the State where the first court is located should be considered to be the appropriate appellate authority. Code of Civil

Procedure did not contemplate such a situation. It provides for jurisdiction of each court. Even a District Judge must exercise its jurisdiction only within the territorial limits of a State. It is inconceivable under the Code of Civil Procedure that the jurisdiction of the District Court would be exercisable beyond the territorial jurisdiction of the District, save and except in such matters where the law specifically provides therefore.”

“...The doctrine of dominus litus or doctrine of situs of the Appellate Tribunal do not go together. Dominus litus indicates that the suitor has more than one option, whereas the situs of an Appellate Tribunal refers to only one High Court wherein the appeal can be preferred. We may consider two hypothetical cases in order to enable us to find out an answer. A Tribunal may hear out a matter either at Allahabad or at Bombay and pass a judgment at that place. Only because the head office is situated at Delhi, would it mean that a judgment delivered at Allahabad or at Bombay would not attain its finality then and there?”

“...It is possible that in a case of emergency while the Tribunal holding its sitting at Allahabad or Bombay may entertain a matter where the cause of action had arisen at Delhi. But that would not mean that when the Tribunal pronounces its judgment at Allahabad or Bombay, although the cause of action had initially arisen at Delhi, the Delhi High Court would have no jurisdiction in relation thereto.”

“An appeal may have to be filed by the Commissioner of Central Excise. His office may be located in a

different State. If he has to prefer an appeal before the High Court, he would be put to a great inconvenience whereas, the assessee would not be.”

“...We have noticed hereinbefore that if (situation of the Appellate Tribunal is taken as the determinative factor), the same would lead to a great anomaly. It would also give rise to the problem of *forum shopping*. We may notice some examples to show that the determination of the appellate forum based upon the situs of the Tribunal would lead to an anomalous result. For example, 'an assessee affected by an assessment order in Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it which may be contrary to judgments of the High Court of Bombay. This cannot be allowed...”

20. Learned senior counsel for the petitioner has, however, stoutly rejoined that the propositions laid down by the Apex Court in ***Ambica Industries*** have no bearing to the present petition. He has sought to distinguish the case in ***Ambica Industries*** on the ground that the question therein concerned the maintainability of a statutory appeal under section 35-G of the Central Excise Act, 1944 while the question herein concerns the maintainability of a writ petition under clause (2) of Article 226 of the Constitution of India.
21. The core issue pertains to ***Ambica Industries***, it may be recollected, appertained to determination of the *situs* of the High Court in which an appeal would lie against the order passed by a Tribunal or Authority situated in more than one State. The Apex Court

conclusively opined *“the High Court situated in the State where the first Court is located should be considered to be the appropriate Appellate Authority”*. It would be relevant to note that the Apex Court, while arriving at such a conclusion, made reference, *inter alia*, to the judgments in **Sri Nasiruddin** and **Kusum Ingots & Alloys Ltd** to underline *“how the situs doctrine had been given a go-by”* even under the writ jurisdiction of High Courts, and further, that the said judgments *“are not authorities for the proposition that the High Court, which is situated at the same place as the situs of the tribunal, alone will have jurisdiction”*. The rudimentary principle of jurisdiction thus recognised in both sets of decisions - **Ambica Industries**, which concerned maintainability of a statutory appeal, as well as **Sri Nasiruddin** and **Kusum Ingots & Alloys Ltd**, which concerned maintainability of a writ petition - is the same, that is, a High Court should not exercise jurisdiction only because the Tribunal or Authority whose order is in appeal before it is located within its territorial limits. This being the case, I see no reason why the ratio in **Ambica Industries** should not be applied by this Court for declining to exercise its jurisdiction under clause (2) of Article 226 of the Constitution of India.

22. Counsel for the respondents has also referred to a judgment in W.P. (C) No. 6527/2008 entitled **“Shri Rajkumar Shivhare v. Assistant Director of Enforcement , Mumbai and Another,** delivered by a Division Bench of this Court on 24.9.2008, which

elaborately deals with how the propositions for determining the jurisdiction of High Courts in statutory appeals, as laid down by the Apex Court in **Ambica Industries**, have come to be applied by the Courts even in respect of writ petitions filed under Article 226 of the Constitution of India. The moot issue in **Shri Rajkumar Shivhare** entailed determining whether or not this Court had jurisdiction under Article 226 of the Constitution of India to entertain a petition assailing an order passed by the Appellate Tribunal for Foreign Exchange, Janpath, New Delhi. Following the propositions in **Ambica Industries**, the Division Bench declined to entertain the petition but set the petitioner at liberty to approach the appropriate High Court of the State where a significant part of the cause of action had arisen or where the adjudication had originally taken place. Elucidating the Court's predilection to direct a writ petition impugning an order passed by a Tribunal or Authority situated in more than one State to the High Court of that State where the proceedings had first originated, learned brother judge, Vikramjit Sen, J., with his usual felicity of expression, opined as follows:

“Various Division Benches of the Delhi High Court, inter alia, in *Suraj Woolen Mills -vs- Collector of Customs, Bombay*, 2000 (123) E.L.T. 471 (Del.), *Bombay Snuff Pvt. Ltd. -vs- Union of India*, 2006 (194) E.L.T. 264 (Del.) and *Commissioner of Central Excise -vs- Technological Institute of Textile*, 1998 (47) DRJ 667 (DB) have clarified that the High Court should not exercise jurisdiction only because the Tribunal whose

order is in appeal before it, is located within its territorial boundaries. In Seth *Banarsi Dass Gupta -vs- CIT*, (1978) (113) ITR 817 and *Birla Cotton & Spinning Mills Ltd. -vs- CIT, Rajasthan*, (1980) (123) ITR 354 this Court declined to exercise jurisdiction because both the assesses resided and carried on business in outside Delhi. On a reading of Article 226 (1) of the Constitution it will be palpably clear that without the next following provision, a High Court may not have been empowered to issue a writ or order against a party which is not located within the ordinary territorial limits of that High Court. The power to issue writs against any person or Authority or government even beyond the territorial jurisdiction of a High Court is no longer debatable. The rider or pre-requisite to the exercise of such power is that the cause of action must arise within the territories of that particular High Court. It does not logically follow, however, that if a part of the cause of action arises within the territories over which that High Court holds sway, it must exercise that power rather than directing the petitioner to seek his remedy in any other High Court which is better suited to exercise jurisdiction for the reason that the predominant, substantial or significant part of the cause of action arises in that Court. In other words any High Court is justified in exercising powers under Article 226 either if the person, Authority or Government is located within its territories or if the **significant part of the cause of action has arisen within its territories.** The rationale of Section 20 of the Code of Civil Procedure would, therefore, also apply to Article 226 (2). These considerations are aptly encapsulated in the term *forum conveniens* which refers to the situs where the legal action be most

appropriately brought, considering the best interests of the parties and the public (see Black's Law Dictionary). The writ Court should invariably satisfy itself that its choosing is not mala fide or an example of forum shopping."

(emphasis supplied)

23. Learned senior counsel for the petitioner, while fairly conceding that the passing of the impugned orders by the Appellate Authority in Delhi alone is not a sufficient cause of action for this Court to decide the present petition, has sought to invoke the jurisdiction of this Court under clause (1) of Article 226 of the Constitution of India.
24. The main plank of the learned senior counsel's contention, in this last leg of his submissions, is premised on a decision dated 2.7.2007 of a co-ordinate Bench of this Court in W.P. (C) No. 2103/2007 and others entitled "**Jayaswals NECO Limited v. Union of India and Others**". In this case, the dispute between the parties arose based on certain letters of demand of punitive damages raised by the respondent railway authorities on the allegation that there had been overloading of wagons. *Inter alia*, the legality of a certain provision in the Indian Railways Commercial Manual was also challenged by the petitioner therein. The respondent railway authorities, on the other had, contended lack of territorial jurisdiction in this Court to settle the disputes between the parties. It was, *inter alia*, argued that neither had the punitive demands been raised in Delhi nor had the goods been booked, re-weighed or delivered at Delhi, and thus, no part of

the cause of action had arisen within the territorial limits of this Court. The emphasis laid by the respondent railway authorities on the accrual of cause of action as a condition precedent for vesting writ jurisdiction in High Courts, however, proved to be a sterile exercise. It was, *inter alia*, held that if the authority or government to whom the writ is to be issued is located within the territorial limits of a High Court, then *de hors* the question whether or not cause of action arose within its territorial jurisdiction, the High Court would have territorial jurisdiction to entertain the writ petition under clause (1) of Article 226 of the Constitution of India. The application of the doctrine of *forum conveniens* was also spurned by this Court on the reasoning that the “*doctrine is a common law doctrine which cannot override statutory or constitutional provisions*”.

25. Relying fervently on the judgment in **Jayaswals NECO Limited**, especially paragraphs 14, 20 and 38 thereof, learned senior counsel for the petitioner has contended that the Appellate Authority to whom the writ is to be issued in the present petition being located in Delhi, this Court would have jurisdiction to entertain the present petition in terms of clause (1) of the Constitution of India irrespective of the fact that sufficient cause of action has not arisen in Delhi.
26. The petitioner's recourse to clause (1) of Article 226 of the Constitution of India and its heavy reliance on the decision in **Jayaswals NECO Limited**, I am afraid, is not of any help. Absence of cause of action will not divest the High Court of a State from

exercising jurisdiction in terms of clause (1) of Article 226 of the Constitution of India, provided that the person or authority to whom the writ, direction or authority is to be issued is situate within the territorial limits of that State. This, as I understand, is the precise ratio on which this Court vindicated its decision to entertain the petition in **Jayaswals NECO Limited**. Thus, despite the fact that no cause of action had arisen in Delhi, when this Court decided to entertain the petition in **Jayaswals NECO Limited**, it assumed jurisdiction under clause (1) of Article 226 of the Constitution of India. What, however, is important to understand is that the thrust laid by the respondent railway authorities on the accrual of cause of action as a condition precedent for vesting writ jurisdiction did not find favour with this Court, not because of any technical anomaly in the submissions, but because it was observed that this Court was the most appropriate forum inasmuch as the Indian Railways Commercial Manual, certain provisions whereof were the root cause for the raising of the punitive demands, was issued by the Railway Board situated in Delhi. It was further observed that *“if the case rested only on a challenge to the demands de hors the question of validity of para 1744 (of the Indian Railways Commercial Manual) then, only Article 226 (2) would be applicable and this Court would not have territorial jurisdiction as no part of the cause of action has arisen in Delhi. But, that is not the case”*. That the respondent railway authorities’ submissions were not outrightly rejected by this Court is further evident from paragraph 21

in **Jayaswals NECO Limited**, wherein, whilst determining the scope of territorial jurisdiction under Article 226 of the Constitution of India, this Court observed, “(if) the person, authority or government is located in State ‘A’, but the cause of action has arisen (in whole or in part) in State ‘B’, the territorial jurisdiction for the filing of a writ petition would lie both with the High Court of State ‘A’ and of State ‘B’”. Thus, when this Court decided to assume jurisdiction in **Jayaswals NECO Limited**, it was found, in the specific facts and circumstances of the said case, that it was the most appropriate forum to settle the disputes between the parties. The situation in the present petition is different. Unlike the case in **Jayaswals NECO Limited**, no legislative provision or enactment passed by the Union or State Legislature is under challenge in the present petition so as to confer jurisdiction in this Court in terms of clause (1) of Article 226 of the Constitution of India by virtue of the *situs* of the maker thereof. Moreover, inasmuch as the root cause of the disputes between the parties herein rests *only* on the quantum of damages assessed by the adjudicating authorities located in Andhra Pradesh, the present petition can be most effectively settled by the High Court in Andhra Pradesh.

27. To conclude, it is important that the solemn purpose of determining the jurisdiction a Court of law is to locate such territory wherein disputes between parties can be most effectively settled. Viewed from this perspective, the issue in the present petition is not whether this Court lacks jurisdiction to entertain the present petition. That it

certainly does going by the strict provisions of clause (1) of Article 226 of the Constitution of India. The basic issue herein is whether this Court really is the most appropriate forum to decide the present petition considering that a significant part of the cause of action, imperative for effective settlement of disputes, has not arisen within its territorial jurisdiction. I may observe that a significant part of the cause of action cannot be said to arise within the territorial jurisdiction of a High Court merely because the order under challenge has 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. This is precisely the situation in the present case - the respondent no.3 has its registered office at Andhra Pradesh; the petitioner too has its branch office at Andhra Pradesh wherefrom the fire policies were purchased; the accidental fire took place in Andhra Pradesh; and, the quantum of damages were originally assessed and thereafter adjudicated upon by the IRDA which is also located in Andhra Pradesh. Moreover, given that all the parties herein are located in Andhra Pradesh, it stands to reason that any decision which this Court might render eventually on the merits of the matter will merely be of persuasive value to the parties who would rather be bound by the Insurance Act, 1938 as applicable and as prevailing in Andhra Pradesh in pursuance of the interpretation of the law by the

High Court of that State. Furthermore, I am also assured by the fact the petitioner herein would not be without remedy on account of this Court declining to entertain the present petition. Lastly, and most significantly, 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, Bombay Snuff Pvt. Ltd., Shri Rajkumar Shivharel.***

28. For all of the reasons stated in the foregoing paragraph, the objection raised by the respondent no. 3 to the exercise of jurisdiction by this Court appears to be well-founded. I, therefore, hereby decline to entertain the present petition. As a consequence, the interim stay that was granted by this Court on the operation of the impugned orders dated 5.3.2004 and 20.6.2007 is vacated. Needless to say, the rejection of the present petition shall not preclude the petitioner from approaching the appropriate High Court for redressal of its grievance.
29. The present petition and the application accompanying it, accordingly, stand disposed of with no orders as to cost.

February 20th, 2009

G.S. Sistani, J.