

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No.797 of 2010**

% Reserved on: 13th February, 2012
Pronounced on: 17th February, 2012

VINOD KR BHORA

. . . Appellant

Through: Mr. V.K. Garg, Advocate with
Mr. Pranav Vyas, Advocate.

VERSUS

HDFC STANDARD LIFE INSURANCE
COMPANY LTD. AND ANR.

. . . Respondents

Through: Mr. Joydip Bhattacharya,
Advocate with Mr. Robin
George, Advocate.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, Acting Chief Justice

1. In the writ petition filed by the respondent No.1 herein questioning the orders passed by Insurance Ombudsman, Rajasthan and Delhi, the appellant herein had taken preliminary objections to the maintainability of the said writ petition on the ground that Delhi High Court did not have the territorial jurisdiction to entertain this petition. The said objection has been turned down by the learned Single Judge and writ petition is decided on merits whereby orders of the Insurance Ombudsman had been set aside. In these circumstances, though the appellant challenges the order both on jurisdiction as well as on merits, with the consent of the counsel for the parties, arguments were heard on the question

of jurisdiction and order was reserved. Therefore, by means of this order, we are deciding the issue of jurisdiction. Accordingly, we will take note of only those facts which touch upon this issue.

2. The appellant herein had taken a Unit Linked Assurance Plan with the respondent No.1 on 20.6.2008 for a sum assured of ₹8,72,200/-. The respondent No.1 had informed the appellant about the acceptance of this proposal on 21.8.2008. As per the respondent No.1, the policy document mentions 'heart attack as a separate disease covered under the policy'. On 18.3.2009, the appellant while driving two wheeler scooter felt chest pain and palpitation for which he was immediately rushed to Manidhari Hospital and Maloo Neuro Centre, Jodhpur. He was admitted in the hospital and was being treated as a case of D.M. (Type-II), IHD, unstable Angina. Thereafter, he preferred claim for the expenses incurred in the said hospital. This claim was rejected by the respondent No.1 on the ground that the appellant had furnished wrong information in the proposal form inasmuch against the column in the form as to whether he was treated or had suffered from diabetes, he had stated 'no' which was not correct. Since the claim of the appellant was rejected, the appellant approached the Ombudsman who after hearing the parties passed orders dated 12.1.2010 concluding that the respondent No.1 had wrongly rejected the claim of the appellant and directed the respondent No.1 to release the full amount covered under the critical illness. We may mention that before the learned Ombudsman, ground taken by the respondent No.1 for repudiating the claim was that 'coronary angioplasty' was not covered under the policy and this plea of the respondent No.1 was not entertained by the learned

Ombudsman on the ground that this was a new plea raised for the first time which was not raised while rejecting the claim of the appellant.

3. We may mention the facts relevant to the question of jurisdiction. The appellant is a resident of Jodhpur, Rajasthan. Though the registered office of the respondent No.1 is at New Delhi, it has its various offices in several parts of the country and one such branch office is situated at Jodhpur. The appellant had taken the Unit Linked Assurance Plan by submitting the proposal with Jodhpur Office of the respondent No.1. It is the respondent No.1, which has accepted the proposal and issued the Insurance Policy. The appellant suffered heart ailment in Jodhpur and was also treated for this ailment at a hospital situated at Jodhpur. It is the Jodhpur branch with which the appellant submitted its claim. Again, it is the Jodhpur branch which cancelled the policy. Thus upto this stage, every part of action took place in Jodhpur.
4. The Central Government in exercise of powers conferred by sub-Section (1) of Section 114 of the Insurance Act, 1938 has framed 'The Redressal of Public Grievances Rules, 1998, which are duly published in Gazette of India dated 11.11.1998. The object of these Rules is to resolve all complaints relating to settlement of claim on the part of insurance companies in cost-effective, efficient and impartial manner. It provides for Insurance Council which as per Rule 4(f) consists of Life Insurance Corporation of India, General Insurance Corporation of India and its four subsidiaries and other Insurance Companies which will be permitted to do insurance business in

future. Governing body of Insurance Council is provided in Rule 5. These Rules also provide for the established office of the Ombudsman. As per Rule 6, it is the Governing body of the Insurance Council who has to appoint one or more persons as Ombudsman for the purpose of these Rules. Details of territorial jurisdiction of Ombudsman read as under:

"10. Territorial jurisdiction of Ombudsman.

- (1) The office of the Ombudsman shall be located at such place as may be specified by the Insurance Council from time to time.
- (2) The governing body shall specify the territorial jurisdiction of each Ombudsman.
- (3) The Ombudsman may hold sitting at various places within his areas of jurisdiction in order to expedite disposal of complaints."

5. Powers of Ombudsman are stipulated in Rule 12, which read as under:

"12. Power of Ombudsman. (1) The Ombudsman may receive and consider –

- (a) complaints under rule 13;
 - (b) any partial or total repudiation of claims by an insurer;
 - (c) any dispute in regard to premium paid or payable in terms of the policy;
 - (d) any dispute on the legal construction of the policies insofar as such disputes relate to claims;
 - (e) delay in settlement of claims;
 - (f) non-issue of any insurance document to customers after receipt of premium.
- (2) The Ombudsman shall act as counselor and mediator in matters which are within his terms of reference and, if requested to do so in writing by

mutual agreement by the insured person and insurance company.

- (4) The Ombudsman's decision whether the complaint is fit and proper for being considered by it or not, shall be final.

6. Rule 13 prescribes the manner in which complaint is to be made to the Ombudsman and sub-Rules (1) and (2) are relevant for our purposes. We, therefore, reproduce the same:

"13. Manner in which complaint is to be made. –

- (1) Any person who has a grievance against an insurer, may himself or through his legal heirs made a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complained against is located.
- (2) The complaint shall be in writing duly signed by the complainant or through his legal heirs and shall state clearly the name and address of the complainant, the name of the branch or office of the insurer against which the complaint is made, the fact giving rise to complaint supported by documents, if any, relied on by the complainant, the nature and extent of the loss caused to the complainant and the relief sought from the Ombudsman."

7. As per Rule 14, Ombudsman is supposed to act fairly and equitably. His task is to settle the complaint through mediation by himself as provided in Rule 15. If the complaint is not settled by agreement under Rule 15, then the Ombudsman is supposed to pass an award which he thinks fair in the facts and circumstances of a claim in terms of Rule 16. Sub-rule (6) of Rule 16, insurance company is to comply with the award within 15 days of the receipt of the acceptance under sub-rule (5) of Rule 16. If the complainant does not intimate the acceptance under sub-rule (5) of Rule 16, the award may not be implemented by the insurance company.

8. It is clear from the conjoint reading of the aforesaid Rules that one or more persons are to be appointed as Ombudsman for different areas/jurisdiction under sub-rule (2) of Rule 10, while making appointment of a particular Ombudsman, governing body is to specify the territorial jurisdiction of such Ombudsman. An aggrieved person is required to make complaint to that particular Ombudsman within whose jurisdiction the branch or office of the insurer complained against is located [see Rule 13(1)]. For this purpose, the complainant is required to state not only his name and address but the name of the branch or office of the insurer against which the complaint is made.
9. In the present case, it becomes clear that the appellant was required to make complaint to that Ombudsman within whose jurisdiction the branch or office of the respondent No.1 is situated, i.e., Jodhpur. The area of jurisdiction of respondent No.3 who dealt with the complaint incidentally is not only Rajasthan but Delhi as well. However, the complaint was filed before him in his capacity as the Ombudsman with office at Rajasthan. Not only it was entertained in Rajasthan, admittedly, the hearing of the case was also fixed at Jodhpur, Rajasthan. The hearing was concluded at Jodhpur. Even on this basis, it becomes clear that when the hearing of Ombudsman whose jurisdiction is in Rajasthan as well and who has entertained and heard the complaint in Rajasthan, the entire cause of action has arisen in Rajasthan and the writ petition in the Delhi High Court would not be maintainable.

10. However, the justification given by the respondent No.1 in filing the writ petition in Delhi was that the award/orders passed by the respondent No.3 was in Delhi and his jurisdiction is both in Rajasthan and Delhi. The learned Single Judge while rejecting the objection of the appellant to the territorial jurisdiction relied upon the judgment of Full Bench of this Court in the case of ***New India Assurance Co. Ltd. v. Union of India (UOI) and Ors.*** [161 (2009) DLT 55]. It would be pertinent to mention here that the ratio of the aforesaid Full Bench judgment was questioned and the matter was referred for reconsideration before the Bench of Five Judges in the case of ***Sterling Agro Industries Ltd. Vs. Union of India*** [W.P.(C) No.6570/2010]. Vide judgment dated 01.8.2011, a part of the aforesaid Full Bench decision was overruled. In this judgment rendered by the five-Judges Bench, most of earlier judgments available on the question of jurisdiction rendered by the Supreme Court as well as the High Courts were discussed in detail which included the following:

- (i) ***Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors., (1994) 4 SCC 711.***
- (ii) ***Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254.***
- (iii) ***Ambica Industries v. Commissioner of Central Excise, 2007 (213) ELT 323 (SC).***
- (iv) ***Union of India v. Adani Exports Ltd., (2002) 1 SCC 567.***
- (v) ***Rajendran Chingaravelu v. R.K. Mishra, (2010) 1 SCC 457.***
- (vi) ***Mosaraf Hossain Khan v. Bhagheeratha Engineering Ltd. & Ors., (2006) 3 SCC 658.***

11. After taking note of these judgments, discussion proceeded on the concept of *forum non conveniens* which runs as under:

"30. From the aforesaid pronouncements, the concept of forum conveniens gains signification. In Black's Law Dictionary, forum conveniens has been defined as follows:

"The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses."

31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

(g) The conclusion of the earlier decision of the Full Bench in *New India Assurance Company Limited* (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."

12. What follows from the above is that the five-Judges Bench accepted the principle of forum conveniens which may be applicable in such cases. Explaining this concept, the Court observed that it is obligatory on the part of the Court to see the convenience of all the parties before it, be it in the form of 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 or such other ancillary aspects. It was also clarified that this principle of 'forum conveniens' takes within its sweep the concept of cause of action arising within the jurisdiction of the Court and would not itself constitute to be the determining factor, compelling the Court to entertain the matter. On this basis, Full Bench judgment of this Court in ***New India Assurance Company Ltd. v. Union of India & Ors., AIR 2010 Delhi 43 (FB)*** holding the view that merely because appellate authority which had passed the order is situated in Delhi, therefore, Delhi High Court would have jurisdiction to entertain the writ petition, was not accepted. What was emphasized was that even if part of cause of action has arisen in the aforesaid form, namely, order of the appellate authority located in Delhi, the Court can still refuse to exercise jurisdiction under Articles 226 and 227 of the Constitution of India if on the application of the concept of

'forum conveniens' it is found that other Courts would be more convenient.

13. Reverting back to the present case, what becomes clear is that even if a part of cause of action arises, as per ***Sterling Agro Industries Ltd. (supra)***, the Court can still refuse to entertain the petition applying the doctrine of *forum conveniens*. Arguments were advanced on this aspect by both the sides. According to us, it is not even necessary to go into this question, as we are of the opinion that even on the basis of principle laid down in ***New India Assurance (supra)***, this Court lacks the territorial jurisdiction to entertain this petition in the facts of the present case. As mentioned by us, each and every part of the cause of action has arisen in Rajasthan. Even the respondent No.3 who decided the matter against the writ petition filed, is appointed as Ombudsman of Rajasthan and Delhi insofar as in the present case is concerned, he was exercising his jurisdiction as Ombudsman of Rajasthan and not of Delhi. That is clear from the conjoint reading of Rule 13 and 10 as discussed above. Merely because he is an Ombudsman of Delhi as well would not mean that the cases decided by him in the capacity of Ombudsman in Rajasthan would be appealable within the jurisdiction in Delhi.
14. In such circumstance, even if he signed the award in question while sitting in the Office, that would not constitute cause of action in Delhi. In any case, even if we presume that it constitutes a part of cause of action in the facts of this case, principle of *forum non conveniens* shall clearly apply with this miniscule because of action of signing the order in Delhi would not make Delhi Court as more convenient.

15. Thus, from any angle the matter is looked into, we are of the opinion that this Court did not have the territorial jurisdiction. On this ground itself, this appeal is to be allowed and writ petition filed by the respondent No.1 is to be dismissed. We order accordingly. However, liberty is granted to the respondent No.1 to approach the High Court of Rajasthan, which is the competent Court of law to challenge the impugned award of the Ombudsman.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

FEBRUARY 17, 2012

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