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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA No. 960 OF 2011

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Judgment Reserved on: 05.12.2011

Judgment Delivered on: 17.02.2012

VISHNU SECURITY SERVICES

... APPELLANT

Through :

Mr. A.K. Singh, Advocate

VERSUS

REGIONAL PROVIDENT FUND
COMMISSIONER AND ANR.

... RESPONDENTS

Through:

Mr. Keshav Mohan, Advocates.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. By one paragraph order, the learned Single Judge on 30th September, 2011, dismissed the writ petition filed by the appellant herein observing that this Court has no territorial jurisdiction to entertain the writ petition in view of five-Judges Bench judgment dated 1st August, 2011 rendered by this Court in WP(C) No. 6570/2010 entitled *Sterling Agro Industries Ltd. v. Union of India*. The learned Single Judge has opined that merely because Employees Provident Fund Appellate Tribunal (hereinafter referred to as the Appellate Tribunal) is located in Delhi, it had decided the appeal and that was the subject matter of challenge in the writ petition, would not be a ground to

entertain the writ petition in the High Court of Delhi. This order is assailed in the present appeal preferred by the appellant.

2. The appellant is an establishment (since closed) which was the sole proprietorship concern of Mr. Neerav Khera. This establishment was providing security services and was having its office in Vadodara, Gujarat. It started its operation in the year 2002 and in October, 2002, the appellant applied for Provident Fund code number to the Employees Provident Fund Organization (EPFO). Code number was allotted by the EPFO on 31.10.2002 with effect from 18.10.2002. According to the appellant, since it did not get any response from the market nor could get any business, in October, 2002 itself, the appellant relieved all the employees from their services and closed down the establishment in November, 2002. It is further the case of the appellant that he himself took employment with M/s SYSCON Engineering Pvt. Ltd. and is working there since November, 2002. However, unaware of the fact that with the closure of establishment, he was also required to surrender the Provident Fund code, he did not take any step in this direction. On 14.7.2006, the proprietor received summons from the Office of the Regional Provident Fund Commissioner (RPFC), Vadodara, Gujarat directing him to appear before him in person on 31.7.2006. He appeared and informed the RPFC about the closure of the establishment. However, the RPFC, Vadodara passed orders under Section 7A of the Provident Fund Act dated 18.8.2006 directing the appellant to pay the provident fund dues to the tune of Rs.2,90,417/-. The appellant felt aggrieved by this order and he preferred appeal before the Appellate Tribunal which is located in Delhi. This appeal

was dismissed by the Appellate Tribunal vide orders dated 4th July, 2011 holding that the information obtained shows that the appellant was having business and was still functioning and further that once the establishment comes within the ambit of Provident Fund Act, it continues to be covered by the Act until it is proved that the establishment no more exists. It is this order dated 4th July, 2011 which was assailed by the appellant by filing the writ petition in this Court which has met the fate as aforesaid, namely, dismissal thereof for want of territorial jurisdiction permitting the appellant to approach the appropriate forum.

3. The question which arises for consideration, in these circumstances, is as to whether this Court has territorial jurisdiction to entertain the writ petition and in the process it needs to be determined as to whether the principle laid down by five-Judges Bench in *Sterling Agro* (supra) have been correctly followed. In this context, it would be apposite to start discussion with the judgment of *Sterling Agro* (supra) before we refer to other judgments cited by learned counsel for the appellant. In this judgment rendered by the five-Judges Bench, most of earlier judgments available on the question of jurisdiction rendered by the Supreme Court and many decisions of various 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.***

4. After taking note of these judgments, discussion proceeded on the concept of ‘forum 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 malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide 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.”

5. 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 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 who had passed the order is situated in Delhi and, 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.

6. The first question would be as to whether the learned Single Judge has correctly applied the ratio of the aforesaid judgment while dismissing the writ petition. As pointed out above, the learned Single Judge has merely referred to the judgment and stated that in view of the judgment, Delhi High Court has no territorial jurisdiction to entertain the petition. We may reproduce the entire order of the learned Single Judge, subject matter of present appeal, for this purpose:

“1. In view of the decision of a five-Judge Bench of this Court dated 1st August 2011 in W.P.(C) No.6570 of 2010 (*Sterling Agro Industries Limited v. Union of India*), this Court is not inclined to entertain the present writ petition only for the reason that the Employees Provident Fund Appellate Tribunal is located in Delhi.

2. Accordingly, the writ petition and the pending application are dismissed. The petitioner is at liberty to approach the appropriate forum against the impugned order of the Appellate Tribunal.”

7. Even in *Sterling Agro* (supra), it was nowhere said by the Court that Delhi Court will have no jurisdiction at all. We state at the cost of repetition that as per conclusion (b) contained in para 33 of *Sterling Agro* (supra), the Court accepted that 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. It was stated that order of the appellate tribunal constitutes a part of cause of action to make writ petition maintainable in the High Court within whose jurisdiction the appellate authority is constituted. However, what was clarified thereafter was that that should not be the singular factor to compel the High Court to decide the matter on merits and discretion lies with the High Court which may refuse to exercise its jurisdiction by invoking the doctrine of forum non conveniens. In the present case, when it is found that the appellate authority, whose decision was challenged in this Court, is located in Delhi and therefore the conclusions (b) and (c) of para 33 would be applicable. Thus, order of the tribunal has furnished cause of action in Delhi and, therefore, writ petition is maintainable. In such a case, if the High Court

still would not like to exercise the discretionary jurisdiction on the application of doctrine of forum conveniens, the learned Single Judge was required to furnish some reasons as to why it was not appropriate to exercise the discretion. In conclusion (f) of para 33, this aspect is highlighted, namely, “*depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra)*”. The High Court is required to scrutinize the matter for the application of doctrine of forum conveniens (or forum non conveniens). Therefore, order of the learned Single Judge needs to be set aside on this ground itself. Normally in such a situation, we could have referred the matter back to the learned Single Judge for appropriate consideration of the issue in the light of the aforesaid principle stipulated in ***Sterling Agro*** (supra). However, some thought-provoking arguments were advanced by Mr. A.K. Singh, learned counsel appearing for the appellant and, therefore, we would be failing in our duty if we do not take note thereof as we are of the opinion that those arguments may necessitate some elaboration and clarification of the judgment in ***Sterling Agro*** (supra).

8. Mr.A.K. Singh, learned counsel submitted that in ***Kusum Ingots*** (supra) itself, the Supreme Court had very categorically held that when the regional authority is situated at one place and the appellate authority is situated at another place, the writ petition would be maintainable at both the places. He referred to the following discussion from the said judgment on this aspect:

“25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.

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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.

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29. In view of Clause 2 of Article 226 of the Constitution of India now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh (supra) has, thus, no application.

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30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See Bhagat

Singh Bagga v. Dewan Jagbir Sawhany, AIR 1941 Cal 670; Mandal Jalan v. Madanlal, AIR 1949 Cal 495; Bharat Coking Coal Limited v. Jharia Talkies & Cold Storage (P) Ltd., 1997 CWN 122; S.S. Jain & Co. v. Union of India, (1994) 1 CHN 445 and New Horizon Ltd. v. Union of India, AIR 1994 Del 26]”

9. He also referred to another judgment of the Apex Court in ***Sri Nasiruddin v. State Transport Appellate Tribunal, AIR 1976 SC 331*** wherein it was held that “*an adverse appellate order might be the cause of action*”. The Court went on to say that “*the sole cause of action for the writ petition is the order of the appellate authority*”. On this basis, learned counsel argued that if the doctrine of ‘forum conveniens’ is to be invoked, the place where the appellate authority is located becomes the forum conveniens. He specifically referred to the following portion of the aforesaid judgment:

“36. The, conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well- known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus

litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action.

37. To sum up, our conclusions are as follows.

.....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.....

38. Applications under Article 226 will similarly lie either at Lucknow or at Allahabad as the applicant will allege that the whole of cause of action or part of the cause of action arose at Lucknow within the specified areas of Oudh or part of the cause of action arose at a place outside the specified Oudh areas.”

10. When we read the judgment in *Kusum Ingots* (supra) in the manner suggested by the learned counsel and take into consideration the combined effect of paras 25 to 27 of the said judgment, what follows is that when the original authority is constituted at one place and the appellate authority is constituted at another, not only the writ petition is maintainable at both places, it is further specifically held by the Supreme Court that in such a case, it will be for the petitioner to choose his forum (see para 25). Once the Supreme Court gave choice to the petitioner, the question would be as to whether the Court can still non-suit him invoking the doctrine of forum conveniens. To answer this, let us again analyze in detail what *Kusum Ingots* (supra) holds. We have to bear in mind that in *Kusum Ingots* (supra), the issue of territorial jurisdiction was raised in the context of challenge to the law, namely, judicial review of legislative action, viz., provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Court was considering the question whether the seat of Parliament or the Legislature of a State would be a relevant factor for determining the territorial jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution of India. The writ petition was filed in Delhi High Court which was dismissed on the ground of lack of territorial jurisdiction. In appeal, the contention was that since the SARFESI was a parliamentary Act and the seat of Parliament was in New Delhi, Delhi High Court had the jurisdiction. This contention was rejected and discussion qua this is contained in paras 19 to 26 of the judgment which would demonstrate laying down the following principles:

- (a) The passing of a legislation does not itself give rise to a cause of action;
- (b) No writ can be entertained and no constitutional question can be determined in a vacuum, that is to say, in the absence of a cause of action; and
- (c) An order passed in a writ petition questioning the constitutionality of a Parliamentary Act will have the effect throughout the territory of India.

11. It is thereafter that the Court went further and expounded the doctrine of forum conveniens with reference to a situation where original authority is in one State and the seat of the appellate authority is located in another State. Once it is categorically held in paras 25 to 27 that in such a case, the writ would be maintainable in both the Courts and also that it is the petitioner which has right to choose his forum, we are of the view that primacy to the freedom given to the petitioner needs to be respected. Therefore, we clarify that normally in such circumstances, writ would be maintainable at both the places and only in extreme cases where the Court finds that it is totally inconvenient for a Court to entertain the writ petition and the other High Court may be better equipped to deal with such a case then the doctrine of forum conveniens has to be applied. The directions of the *Sterling Agro* (supra) have to be understood in that manner alone, otherwise it would be negation of the principle stated in *Kusum Ingots* (supra), particularly paras 25 to 27 thereof. Though the doctrine of forum conveniens is accepted by the Supreme Court in *Kusum Ingots* (supra) which has binding force under Article 141 of the Constitution, we would also like to make some observations about this doctrine for the simple reason that once the Court has

to apply this doctrine in a given situation as indicated above, there should be a proper application thereof. This necessitates exemplifying the said doctrine.

12. The principle was succinctly stated by Lord President in ***Clements v. Macaulay*, 4 Macph. 593**. His Lordship stated the general principle relating to jurisdiction, namely, when jurisdiction is competently vested in a particular court as per law, normally the court has no discretion whether it shall exercise its jurisdiction or not, but is bound to award the justice which a suiter comes to ask. This is founded on Latin maxim *Judex tenetur impertiri judicium suum* which means a Judge must exercise discretion in every case in which he is seized of it. Lord President also emphasised that the plea of forum non conveniens must not be stretched so as to interfere with the aforesaid general principle of jurisprudence. Forum non conveniens is applicable where the Court is satisfied that another Court of Law is also having jurisdiction over the matter and the case can be tried more suitably for the interest of the parties and for the ends of justice in the other court. Thus, while exercising the discretion, the Court has to satisfy not only with the fact that it is a forum non conveniens but the other forum is more convenient and in the comparative conveniens (or the non conveniens), the yardstick is to see as to which Court, out of the two, is more suitable for the interest of the parties as well as for the ends of justice. These twin requirements are to be kept in mind. In ***Tehrani v. Secretary of State for the Home Department*, [2006] UK HL 47**, the House of Lords expounded the doctrine in the following manner:

“The doctrine of forum non conveniens is a good example of a reason, established by judicial authority, why a court

should not exercise a jurisdiction that (in the strict sense) it possesses. Issues of forum non conveniens do not arise unless there are competing courts each of which has jurisdiction (in the strict sense) to deal with the subject matter of the dispute. It seems to me plain that if one of the two competing courts lacks jurisdiction (in the strict sense) a plea of forum non conveniens could never be a bar to the exercise by the other court of its jurisdiction.”

We may also quote the following passage from the judgment of US Supreme Court in ***Gulf Oil Corporation v. Gilbert*: 330 U.S. 501**:

“The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even where jurisdiction is authorised by the letter of a general venue statute. These statutes are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy. But the open door may admit those who seek not simply justice but perhaps justice blended with some harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself.”

13. It would be of interest to note that there is a debate as to whether doctrine of forum non conveniens is applicable domestically, i.e. in Municipal Laws or it is a concept of International Law and is to be applied only when two Courts of competent jurisdiction situate in two different jurisdictions/countries. Learned counsel for the appellant argued that it was a principle applicable only in international field. He referred to the Division Bench judgment of this Court in ***Horlicks Ltd. v. Heinz India (Pvt.) Ltd.*, 164 (2009) DLT 539 (DB)** holding that the principle of forum non conveniens is

applicable only to foreign forums/courts. However, we are not indulging into this discussion in detail as in *Kusum Ingots* (supra), the principle is made applicable to domestic laws though we may record that this aspect, as to whether such principle is to be applied only in international law and not while dealing with the jurisdiction of two courts in the same country, did not invite the attention of the Supreme Court. Be as it may, since *Kusum Ingots* (supra) has held so and under Article 141 of the Constitution it binds us, it is not necessary for us to discuss this aspect any further.

14. Mr. Singh also tried to give altogether different twist in the matter by pointing out another aspect. He argued that once the appeal is decided by the appellate authority, the order of the original authority gets merged in the order of the appellate authority even when appellate authority affirms the order of the original authority without any modification of the order passed by the original authority. Thus, for the purpose of cause of action and forum conveniens, order of the original authority no more remains and it is the order of the appellate authority which prevails and, therefore, the seat of the appellate authority becomes determinative factor, was his submission. In support of this submission, he referred to the following discussion contained in the judgment of the Apex Court in *Collector of Customs, Calcutta v. East India Commercial Co. Ltd.*, [1963] 2 SCR 563:

“4. The question therefore turns on whether the order of the original authority becomes merged in the order of the appellate authority even where the appellate authority merely dismisses the appeal without any modification of the order of the original authority. It is obvious that when an

appeal is made, the appellate authority can do one of three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the appellate authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the appellate authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the appellate authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the appellate authority and the third kind of order passed by it. In all these three cases after 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 law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification. Therefore, if the appellate authority is beyond the territorial jurisdiction of the High Court it seems difficult to hold even in a case where the appellate authority has confirmed the order of the original authority that the High Court can issue a writ to the original authority which may even have the effect of setting aside the order of the original authority when it cannot issue a writ to the appellate authority which has confirmed the order of the original authority. In effect, by issuing a writ to the original authority setting aside its order, the High Court would be interfering with the order of the appellate authority which had confirmed the order of the original authority even though it has no territorial jurisdiction to issue any writ to the appellate authority. We therefore feel that on principle when once an order of an original authority is taken in appeal to the appellate authority which is located beyond the territorial jurisdiction of the High Court, it is the order after

the appeal is disposed of; and as the High Court cannot issue a writ against the appellate authority for want of territorial jurisdiction it would not be open to it to issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of, though it may be that the appellate authority has merely confirmed the order of the original authority and dismissed the appeal.

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7. We have therefore no hesitation in holding consistently with the view taken by this Court in *Mudaliar's* case [1956] 29 ITR 349(SC) as well as in *Messrs. Amritlal Bhogilal's* [1958] 34 ITR 130(SC) that the order of the original authority must be held to have merged in the order of the appellate authority in a case like the present and it is only the order of the appellate authority which is operative after the appeal is disposed of. Therefore, if the appellate authority is beyond the territorial jurisdiction of the High Court it would not be open to it to issue a writ to the original authority which is within its jurisdiction so long as it can not issue a writ to the appellate authority. It is not in dispute in this case that no writ could be issued to the appellate authority and in the circumstances the High Court could issue no writ even to the original authority....”

15. However, it may not be possible to accept the aforesaid contention for the simple reason that the larger Bench in *Sterling Agro* (supra) has specifically looked into the same and in conclusion (g) of para 33 provided answer to the aforesaid argument which is reproduced hereagain for the sake of clarity:

(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.

16. On the application of the aforesaid legal principles to the facts of this case, we find that since the impugned orders are passed by the appellate tribunal in Delhi and this Court has the territorial jurisdiction to deal with the matter and no case of forum non conveniens of this Court (or for that matter forum conveniens of Gujarat High Court) is made out, therefore, this Court is competent to deal with the writ petition filed by the petitioner. Order of the learned Single Judge is set aside and the matter is remitted back for disposal of the writ petition on merits.

17. Writ Petition be listed before the Roster Bench on 30th April, 2012.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

FEBRUARY 17, 2012
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