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HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 3730 of 2011**

- Smt. Sadhana Nivsarkar, aged about 41 years, W/o Shri Santosh Nivsarkar, R/o 738, Sindhiya Nagar, S.A.F. Line, Near Kalibadi Temple, Durg, Tahsil and District Durg (CG)

---- Petitioner**Versus**

1. Registrar Of Companies, Madhya Pradesh and Chhattisgarh, Gwalior (Madhya Pradesh)
2. Advise Solution Private Limited, Jagdish Ujala's House, Ujala Bhavan, Station Road, Santra-Badi, Durg – 491001 (Chhattisgarh India)
3. Senior Superintendent Of Police, Durg Tahsil & District Durg (CG)
4. Smt. Bhagyashri S. Modak
5. Shri Shrikant D. Modak
6. Shri Shantanu S. Modak
7. Ku. Dhanshri Modak

Respondents 4 to 7, Directors M/s Advice Solutions Private Limited, Jagdish Ujala's House, Ujala Bhavan, Station Road, Santa Badi, DURG – 491001 (CG) India

Respondents 4 to 7 Resident of:- Shankar Sadan, 219, Vidyut Nagar, Behind Dwivedi Complex, DURG, Tahsil and District Durg (CG)

8. Shri Abhishek Sharma, S/o Shri Sushil Kumar Sharma, Resident of :- E.H. 46, Scheme No.54, Vijay Nagar, Indore (Madhya Pradesh)

---- Respondent**And****WPCR No. 3733 Of 2011**

- Smt. Sadhana Nivsarkar aged about 41 years, W/o Shri Santosh Nivsarkar, R/o 738, Sindhiya Nagar, S.A.F. Line, Near Kalibadi Temple, Durg, Tahsil and District Durg (CG)

---- **Petitioner**

Vs

1. Registrar Of Companies, Madhya Pradesh and Chhattisgarh, Gwalior (Madhya Pradesh)
2. Advise Solution Private Limited, Jagdish Ujala's House, Ujala Bhavan, Station Road, Santra-Badi, Durg – 491001 (Chhattisgarh India)
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Respondents 4 to 7, Directors M/s Advice Solutions Private Limited, Jagdish Ujala's House, Ujala Bhavan, Station Road, Santa Badi, DURG – 491001 (CG) India

Respondents 4 to 7 Resident of:- Shankar Sadan, 219, Vidyut Nagar, Behind Dwivedi Complex, DURG, Tahsil and District Durg (CG)

8. Shri Sachin Sharma, S/o Shri Om Prakash Sharma, Resident of 7/2 South Tuko Ganj, Behind Hotel Balwas, Indore (Madhya Pradesh)

---- **Respondent**

And

WPCR No. 4744 Of 2011

- Smt. Sadhana Nivsarkar, aged about 41 years, W/o Shri Santosh Nivsarkar, R/o 738, Sindhiya Nagar, S.A.F. Line, Near Kalibadi Temple, Durg, Tahsil and District Durg (CG)

---- **Petitioner**

Vs

1. Deleted.
2. Advise Solution Private Limited, Jagdish Ujala's House, Ujala Bhavan, Station Road, Santra-Badi, Durg – 491001 (Chhattisgarh India)

3. Deleted.
4. Smt. Bhagyashri S. Modak
5. Shri Shrikant D. Modak
6. Shri Shantanu S. Modak
7. Ku. Dhanshri Modak

Respondents 4 to 7, Directors M/s Advice Solutions Private Limited, Jagdish Ujala's House, Ujala Bhavan, Station Road, Santa Badi, DURG – 491001 (CG) India

Respondents 4 to 7 Resident of:- Shankar Sadan, 219, Vidyut Nagar, Behind Dwivedi Complex, DURG, Tahsil and District Durg (CG)

8. Smt. Rajshri Sharma, W/o Shri Sachin Sharma, R/o 7/2, South Tuko Ganj, Behind Hotel Balwas, Indore (M.P.)

---- Respondent

And

WPCR No. 4737 Of 2011

- Smt. Sadhana Nivsarkar, aged about 41 years, W/o Shri Santosh Nivsarkar, R/o 738, Sindhiya Nagar, S.A.F. Line, Near Kalibadi Temple, Durg, Tahsil and District Durg (CG)

---- Petitioner

Vs

1. Deleted.
2. Advise Solution Private Limited, Jagdish Ujala's House, Ujala Bhavan, Station Road, Santra-Badi, Durg – 491001 (Chhattisgarh India)
3. Deleted.
4. Smt. Bhagyashri S. Modak
5. Shri Shrikant D. Modak
6. Shri Shantanu S. Modak
7. Ku. Dhanshri Modak

Respondents 4 to 7, Directors M/s Advice Solutions Private Limited,
Jagdish Ujala's House, Ujala Bhavan, Station Road, Santa Badi, DURG
– 491001 (CG) India

Respondents 4 to 7 Resident of:- Shankar Sadan, 219, Vidyut Nagar,
Behind Dwivedi Complex, DURG, Tahsil and District Durg (CG)

8. Smt. Krishna Sharma, W/o Shri Sachin Sharma, R/o 7/2, South Tuko
Ganj, Behind Hotel Balwas, Indore (M.P.)

---- Respondent

For Petitioner : Shri V.G. Tamaskar, Advocate.
For Respondent No.1 : Shri NK Vyas, Assistant Solicitor General.
For Respondent No.2 : Shri Kshitij Sharma, Advocate.
For Respondent/State : Shri Adhiraj Surana, Deputy Govt. Advocate.
For Respondents 4 to 7 : Shri Prateek Sharma, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on : 04/02/2016

1. This order shall govern the disposal of above writ petitions as common question of law is involved for adjudication in these writ petitions.
2. For the purpose of disposal, reference is being made to the facts and grounds pleaded in WP(CR) No.3730/2011.
3. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashment of the summons issued to an accused person and the proceeding initiated against the petitioner in Criminal Case No.9198/2011 pending in the Court of Shri D.K. Singh, Judicial Magistrate First Class, Indore (MP) by issuing a writ of certiorari or any other writs, as also for direction to respondent No.1 to

make report under Section 235 of the Companies Act, 1956 to the Central Government about fraud committed by respondents 2, 4 to 7 in respect of inclusion of the petitioner's name as share holder and one of the Directors in Memorandum of Association and Articles of Association, Advise Solutions Private Limited.

4. In each of the matter, the complainant has filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner and respondent No.2, which is the company and respondents 4 to 7 who are Directors like the petitioner on account of cheque issued by the Company having been dishonoured.
5. It is argued by learned counsel for the petitioner that initially the Company was incorporated in the name of S.D. Modak, Management and Insurance Consultants Private Limited, however, subsequently the name of the Company was changed as Advise Solutions Private Limited without information to the petitioner and without obtaining her signatures on any of the papers. The petitioner had not at all signed any papers consenting her to be the Director of the new Company, therefore, she is not at all liable for any of the illegality or criminality committed by the Company or other Directors.
6. Learned counsel for the respondents would object to the maintainability of the writ petition on the ground that summons have been issued by the JMFC, Indore, which is beyond territorial jurisdiction of this Court,

therefore, the writ petition is not maintainable.

7. Shri Vyas, learned ASG for respondent No.1 would additionally submit that the petitioner had signed over the documents at the time of incorporation of the Company which is clearly reflected in Articles of Association (Annexure-R/4) filed with the return. Under Clause-60 of the Memorandum of Articles and Association, the subscriber shall be the first Director of the Company and thus, they are permanent Directors, not liable to retire by rotation. The Company has also filed its annual return vide Annexure-R/6.
8. In respect of maintainability of the writ petition before this Court, it is to be seen that the complainant has filed a complaint under Section 138 of the Negotiable Instruments Act before the Court at Indore (M.P.). To challenge such criminal proceeding or summons issued by the criminal Court located in a different State, the petitioner should have preferred writ petition before the High Court having jurisdiction over the matter.
9. In the matter of **State of Rajasthan and others Vs. M/s Swaika Properties and Another**¹, the writ petitioner had preferred a writ petition before the Calcutta High Court to challenge the land acquisition proceeding initiated in the State of Rajasthan. Dealing with the issue of territorial jurisdiction, the Supreme Court held in paras-7 & 8 thus:-

“7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the

¹ (1985) 3 SCC 217

territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

8.

.....

If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52 (1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.”

10. In relation to the cause of action for preferring a writ petition before particular High Court, the issue has been dealt with recently by this Court in the matter of **Ramendra Kishore Prasad Vs. S. Bhattacharya, Chairman and Managing Director, CIL & Others** {WPS No.2184/2015, decided on 16.7.2015} wherein it was held in paras 5 to 13 thus:-

“5. The issue concerning the territorial jurisdiction of a High Court under Article 226 of the Constitution of India has fallen for consideration on 'n'-number of occasions before the Supreme Court. Reference to some of them would be necessary to conclude the fate of the present writ petition.

6. In **Election Commission, India v. Saka Venkata Rao**², the Constitution Bench of the Supreme Court held that the writ Court would not run beyond the territories subject to its jurisdiction and that the person or the authority affected by the writ must be amenable to Court's jurisdiction either by residence or location within those territories.

7. A similar view was taken by another constitution Bench of the Supreme Court in **K.S. Rashid and Son v. Income Tax Investigation Commission and others**³.

8. These two constitution Bench judgments came up for consideration before a larger Bench of seven judges of the Supreme Court in **Lt. Col. Khajoor Singh v. Union of India and another**⁴. Approving the two previous constitution Bench judgments, their Lordships of the Supreme Court held that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Their Lordships further held that the effect of an order by whomsoever it is passed can have no relevance in determining the jurisdiction of the High Court which can take action under Article 226. Functioning of a Government is really nothing other than giving effect to the orders passed by it. Therefore, it would not be right to introduce in Article 226 the concept of the functioning of Government when determining the meaning of the words 'any person or authority within those territories'. By introducing the concept of functioning in these words we shall be creating the same conflict which would arise if the concept of the place where the order is to have effect is introduced in Article 226. It further said, Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Article 226 are not suits; they

2 AIR 1953 SC 210

3 AIR 1954 SC 207

4 AIR 1961 SC 532

provide for extra ordinary remedies by a special procedure and give powers of correction to the High Courts over persons and authorities and these special powers have to be exercised within the limits set for them.

9. After the judgment in **Lt. Col. Khajoor Singh** (supra), the Parliament introduced clause (1-A) in Article 226 by the Constitution (Fifteenth) Amendment Act, 1963 and subsequently, renumbered as clause (2) by the Constitution (Forty-Second) Amendment Act, 1976. The present provision contained in Article 226, clause (1) (2) are reproduced hereunder :

“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 exercise 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, prohibitions, 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.”

10. Thus, after insertion of clause (2), the High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the Court's territorial jurisdiction.

11. I would not refer to the other judgments because I have the advantage of more recent judgments on the issue.

12. In **Alchemist Ltd. and Another v. State Bank of**

Sikkim and others⁵ the Supreme Court held that the expression 'cause of action' has neither been defined in the Constitution nor in CPC, however, it may be described as a bundle of necessary facts to prove before he can succeed. It held, for the purpose of deciding whether facts averred by the petitioner would or would not constitute a part of cause of action, one has to consider whether such facts constitute a material, essential, or integral part of the cause of action. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. In determining the said question, the substance of the matter and not the form thereof has to be considered.

13. In a very recent judgment, the Supreme Court in **Nawal Kishore Sharma v. Union of India and others**⁶, had an occasion to deal with the issue and having referred to its previous judgments rendered in the matters of **State of Rajasthan and Others v. Swaika Properties and Another**⁷, **Oil and Natural Gas Commission v. Utpal Kumar Basu and Others**⁸, **Kusum Ingots & Alloys Ltd. v. Union of India and Another**⁹, **Union of India and Others v. Adani Exports Ltd. and Another**¹⁰, **Om Prakash Srivastava v. Union of India and Another**¹¹ and **Rajendran Chingaravelu v. R.K. Mishra, Additional Commissioner of Income Tax and Others**¹², held that the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction. In the case at hand, the *lis* brought before the Court is not about infringement of any of the legal right of the petitioner, but he seems to agitate the issue concerning of appointment of respondent No.1, who according to the petitioner is an usurper of the office and needs to be ousted by issuance of writ of *quo warranto*.”

11. In the present case also, cause of action for challenging the judicial proceeding has arisen at Indore within the jurisdiction of the Madhya

5 (2007) 11 SCC 335

6 (2014) 9 SCC 329

7 (1985) 3 SCC 217

8 (1994) 4 SCC 711

9 (2004) 6 SCC 254

10 (2002) 1 SCC 567

11 (2006) 6 SCC 207

12 (2010) 1 SCC 457

Pradesh High Court. Merely because summons were served at Durg (Chhattisgarh), this Court would have no jurisdiction to entertain the writ petition.

12. Insofar as second relief for a direction to the respondents to investigate the affairs of respondent No.2, the petitioner may prefer a duly constituted application/representation before respondent No.1 in terms of Section 206 (4) of the Companies Act, 2013. On such representation being preferred, respondent No.1 shall take steps in accordance with law.

13. In view of the above, all the writ petitions stand disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

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