

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1575 of 2016****Judgment reserved on 01-09-2016****Judgment delivered on 23-12-2016**

1. Scania Steels & Power Ltd. A Private Company Incorporated Under The Provisions Of Companies Act, 1956, Having Its Registered Office At 22 Km Stone, Gharghoda Road, Punjipatra, Raigarh, Chhattisgarh 496011 Through Its Director Shri Kanhoo Charan Sahoo, S/o Shri Chakradhar Sahoo, Aged About 30 Years.

---- Petitioner**Versus**

1. State Bank Of India, SME Branch, Bisra Chowk, Rourkela, District Sundergarh, Odisha, Through Its Assistant General Manager
2. State Bank Of India Stressed Assets Management Branch, Bhubaneshwar, District Bhuneshwar, Odisha, Through Its General Manager,
3. Indian Overseas Bank, Madhusudan Marg Rourkela, District Sundergarh Odisha, Through Its Assistant General Manager.

---- Respondent

For PetitionerShri Vishal Dhagat & Shri Sanjay Kumar
Agrawal, Advocates

For Respondents No.1&2

Shri Abhishek Sinha, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. In this petition under Article 226 of the Constitution of India the petitioner has prayed for issuance of a direction to the respondents No.1 to 3 to consider the request of the petitioner for restructuring of the loan amount within suitable time frame and allow holding on operations to operate an account for operations outside consortium with further prayer to restrain the respondents from taking any coercive action against the petitioner till such final decision is taken by the respondents on the petitioner's request for restructuring of its loan account.
2. Since admittedly the petitioner's Head Office/Corporate Office is at Rourkela (Odisha) and all the respondents are at Sundergarh & Bhubaneswar (Odisha), the petition was heard on maintainability *vis-à-vis* this Court's territorial jurisdiction.
3. It is argued by Shri Vishal Dhagat, learned counsel appearing for the petitioner, that the petitioner's plant and machinery are also situated at Raigarh in the State of Chhattisgarh, therefore, any coercive action by the respondents against the petitioner would effect the operations within the State of Chhattisgarh,

therefore, the writ petition is maintainable. Shri Dhagat would place reliance upon the decisions of the Supreme Court rendered in **Nawal Kishore Sharma v. Union of India & Others**¹ and **Kusum Ingots & Alloys Ltd. v. Union of India & Another**².

4. Per contra, Shri Abhishek Sinha, learned counsel appearing for the respondents No.1 & 2, would object to the maintainability of the writ petition before this Court with further submission that even otherwise the relief prayed for is not admissible in favour of the petitioner because request for restructuring of the loan amount is a continuous financial process, therefore, writ jurisdiction may not be invoked in favour of the petitioner.
5. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.
6. The issue concerning territorial jurisdiction of a High Court under Article 226 of the Constitution of India has been dealt with by the Supreme Court in 'n' number of decisions, prior to

1 (2014) 9 SCC 329

2 (2004) 6 SCC 254

and after the Constitution (Fifteenth) Amendment Act, 1963 and Constitution (Forty-Second) Amendment Act, 1976.

7. In **Election Commission, India v. Saka Venkata Rao**³, 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.
8. 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**⁴.
9. 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**⁵. 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

3 AIR 1953 SC 210

4 AIR 1954 SC 207

5 AIR 1961 SC 532

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 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.

10. 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.”

11. After the 42nd amendment Act, 1976 the Supreme Court has consistently held that the High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its jurisdiction, if the cause of action wholly or partially arises within the Court’s territory. It is, therefore, required to be considered as to what is the cause of action in a particular petition.

12. In **Kusum Ingots & Allots Ltd.** (supra) the Supreme Court held thus at paras 6, 9, 10, 12, 13, 14, 15, 17, 18 & 22 :

6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in

Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

12. This Court in *Oil & Natural Gas Commission v. Utpal Kumar Basu* held that the question as to whether the Court has a territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial.

13. This Court in *Oil and Natural Gas Commission case* held that all necessary facts must form an integral part of the cause of action. It was observed: (SCC p. 719, para 8)

“So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action.”

14. In *State of Rajasthan v. Swaika Properties* this Court opined that mere service of a notice would not give rise to any cause of action unless service of notice was an integral part of the cause of action. The said decision has also been noticed in *Oil and*

Natural Gas Commission. This Court held: (SCC p. 223, para 8)

“The 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.”

15. In *Aligarh Muslim University v. Vinay Engg. Enterprises (P) Ltd.* this Court lamented: (SCC p. 711, para 2)

“2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable.”

17. Recently, in *National Textile Corpn. Ltd. v. Haribox Swalram* a Division Bench of this Court held: (SCC p. 797, para 12.1)

“12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed.”

18. The 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 which would confer jurisdiction on the Court.

22. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.

13. In a very recent judgment, the Supreme Court in **Nawal Kishore Sharma** (supra), had an occasion to deal with the issue and having referred to its previous judgments rendered in **State of Rajasthan and Others v. Swaika Properties and**

Another⁶, Oil and Natural Gas Commission v. Utpal Kumar Basu and Others⁷, Kusum Ingots & Alloys Ltd. v. Union of India and Another⁸, Union of India and Others v. Adani Exports Ltd. and Another⁹, Om Prakash Srivastava v. Union of India and Another¹⁰ and Rajendran Chingaravelu v. R.K. Mishra, Additional Commissioner of Income Tax and Others¹¹, 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.

14. In the case at hand, the only averment relatable to the petitioner's plant at Raigarh (Chhattisgarh) has been made at para 8.2 in the following manner :

8.2 That, the petitioner company has established its Steel Plant in Village Punjipathara at Gharghoda Road, Raigarh, with an Induction Furnace 1 x 8 MT and 1 x 6 MT, a 4 & 100 TPD Sponge Iron Kiln and 60000 TPA Rolling Mill.

15. It is, thus, apparent that the petitioner has not made any averment about the infringement of any of its legal right *vis-à-vis* its plant at Punjipathara, Gharghoda Road, Raigarh

6 (1985) 3 SCC 217

7 (1994) 4 SCC 711

8 (2004) 6 SCC 254

9 (2002) 1 SCC 567

10 (2006) 6 SCC 207

11 (2010) 1 SCC 457

(Chhattisgarh). Elsewhere, in the entire petition, the reference is to the loan agreement and transactions between the petitioner and the respondents, either at Sundergarh (Odisha) or at Bhubaneswar (Odisha). A cause of action is bundle of facts and not one stray or isolated fact, therefore, merely because the petitioner's plant or factory is stationed in the State of Chhattisgarh, this Court would not have the territorial jurisdiction over the matter because the entire loan transaction including all the correspondence between the parties has taken place at Rourkela (Head Office/ Corporate Office), Sundergarh & Bhubaneswar (Odisha).

16. In view of the above, in my considered view, this Court lacks territorial jurisdiction over the matter and the writ petition is not maintainable.

17. As an upshot, the writ petition is dismissed, as not maintainable before this Court.

Sd/-

Judge
Prashant Kumar Mishra

Gowri