

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

Reserved on: 11.01.2018
Pronounced on: 12.03.2018

+ **LPA 498/2016, C.M. APPL.32921/2016**

SATISH AHUJA

.... Appellant

Through: Sh. Pranav Sachdeva, Advocate.

versus

UNION OF INDIA AND ORS.

.... Respondents

Through: Ms. Mrinalini Sen and Sh. Shatrajit Banerji,
Advocates, for UOI.

Sh. M.M. Kalra and Ms. Sonali Kumar, Advocates, for
IOC.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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Facts

1. The appellant is aggrieved by a judgment of a Single Judge dismissing his writ petition for want of territorial jurisdiction. An order dated 12.08.2016 dismissing the subsequent review petition, too has been impugned.
2. The appellant entered into a dealership agreement dated 06.03.1992 with the Indian Oil Corporation Ltd. ('IOCL'), whereby the Appellant was appointed 'dealer' for the sale and supply of certain petroleum products. IOCL is represented through its officers, the second to fourth respondents. The retail outlet allotted to the petitioner, located in Ghaziabad was owned by the Ghaziabad Development Authority ('GDA') and had been leased to IOCL. The lease expired in 2008. Subsequent efforts by IOCL to renew the lease were unsuccessful. The Petitioner was therefore served with an eviction

notice relating to the dealership on 24.09.2012. He alleges to have continued to maintain the outlet and provide security for it after it was closed down by orders of the GDA in November 2012. He resigned from the dealership agreement with IOCL vide letter dated 25.09.2013, stating therein that he felt compelled to resign as he was unable to bear maintenance and security costs of a closed outlet. In accordance with the resignation letter, the IOCL terminated the dealership agreement by termination letter dated 17.12.2013.

3. The Appellant thereafter, through representations made to IOCL sought revival of his erstwhile dealership or re-sitement, in accordance with the guidelines on “*Reconstitution, re-sitement and Revival of retail outlets*” issued by the Ministry of Petroleum and Natural Gas, through letter dated 17.11.2005. As his representations were of no avail, he approached this court under Article 226 of the Constitution of India. IOCL contended that this court ought not to exercise jurisdiction and instead, dismiss the writ petition, allowing the appellant to approach the concerned High Court since the cause of action and the outlet fell outside the territorial jurisdiction of this court. The single judge, by the impugned order therefore, dismissed the writ petition.

Contentions of the Parties

4. The appellant argues that the single judge erred in law in rejecting the writ petition. It is contended that the dealership agreement dated 06.03.1992, entered into between the appellant and IOCL, provided for the jurisdiction of the courts at New Delhi, to entertain any suit, application or other proceeding in respect of any claim or dispute arising under the agreement. It is urged that this court has exclusive jurisdiction over the matter and if recourse had been made to the Allahabad High Court, the petition would have been dismissed

for want of territorial jurisdiction. He places reliance on the decision of the Hon'ble Supreme Court in *M/s Swastik Gases P. Ltd. v. Indian Oil Corporation* (2013) 9 SCC 32, to contend that exclusive jurisdiction has been conferred by agreement onto the Courts at Delhi.

5. The learned counsel for the appellant, urges that the principle of *dominus litis* be applied, placing reliance on the decisions in *Indian Institute of Technology v. P.C Jain and Ors.*, 45 (1991) DLT 42, and *Sri Nasiruddin v. State Transport Appellate Tribunal*, (1975) 2 SCC 671. He further contends that it is only in very rare cases that the court overlooks *dominus litis* of the petitioner and rejects the petition on grounds of inappropriateness of jurisdiction, such as, when jurisdiction has been invoked with *malafide* intent. He argues that such a situation warranting rejection of *dominus litis* does not exist in the present matter. Additionally, relying on *Kusum Ingots & Alloys Ltd. v. Union of India* (2004) 6 SCC 254, it is argued that the High Court will have jurisdiction in the matter even if a fraction of the cause of action accrued within the territory of the High Court, and in the present case a large part of the cause of action arose in Delhi owing to the dealership agreement having been entered into at Delhi, as well as its clause 66 specifically provide for jurisdiction of the courts at New Delhi.

6. Counsel for the appellant distinguished *Sterling Agro v. UOI* (2011) DLT 658, relied on in the impugned orders, by contending that the facts of the case are starkly different from the present matter at hand. He urges that in *Sterling Agro* the petitioner, being dissatisfied with the Order of the Ministry of Finance, challenged the sustainability of the order, invoking the jurisdiction of the Delhi High Court, based on the fact that the revisional authority for the said order (Office of the Joint Secretary to the GOI) was

located in Delhi. On the other hand, in the present matter, the premise for invoking the jurisdiction of this Court is that the appellant is a resident of Delhi, the dealership agreement was executed in Delhi and provides for the exclusive jurisdiction of the courts at Delhi.

7. It is argued moreover that the single judge erred in recording that the petitioner is seeking revival of his previous outlet at Ghaziabad. It is contended to the contrary, stating that he requested for re-sitement in Delhi and not revival of the erstwhile outlet at Ghaziabad, as he is a resident of Delhi. He alleges that the only outlets available in NCR, are those ones in Delhi and that he is seeking implementation of the guidelines framed by the Union Ministry of Petroleum and Natural Gas, which is in Delhi. Accordingly, the Appellant seeks to distinguish the decision in *Jagdambay Auto Station and Anr. V. UOI and Others*, WP(C) 6398/2010, decided on 1st November, 2012, relied on by the impugned order. It is contended that there the order of IOCL terminating the dealership was issued at Chandigarh and the petitioner sought restoration of his dealership situated at Jalandhar, whereas, in the present matter, the appellant is seeking resitement at Delhi and not revival of his dealership at Ghaziabad. The reliance- by the impugned order, on *Vishnu Security Services v. Regional Provident Fund Commissioner & Anr.* (Judgment dated 17.02.12 in L.P.A. 960/2011), *Sterling Agro (Supra)* and *Chinteshwar Steel Pvt. Ltd. v. Union of India & Ors.*, LPA 801/2012, decided on 26th November, 2013, which propound the doctrine of *forum convieniens*, is impugned by stating that it fails to record reasons why some other court would be better suited to decided the present matter. In this regard the learned counsel for the Appellant further places reliance on *Jan Chetna v. Ministry of Environment and Forests* 189 (2012)

DLT 550 (DB), wherein it was held that *“for ousting the jurisdiction of the court on the doctrine of forum non-conveniens, a case of another Court being better equipped and Convenient for all parties concerned has to be made out and the Court cannot refuse to exercise jurisdiction by mere lip service to the said doctrine”*.

8. In response, the learned counsel for IOCL argues that no cause of action has arisen in the territory of Delhi, thereby the jurisdiction of this court is precluded. IOCL argues that the appellant's dealership was located in Ghaziabad, the appellant of his own volition resigned from the dealership agreement by letter dated 25. 09. 2013, subsequent to which, the letter terminating the dealership, dated 17. 12 .2013, was issued from Ghaziabad. It is contended that territorial jurisdiction cannot be conferred by agreement. IOCL contends that the Resitement policy, namely policy no. 205-10/2012 in Clause 1.4, provides *“Resitement with state/UT boundaries can be allowed in cases...(ii)in all such cases, onus to provide land will be on the dealer”* and in Clause 2.2, provides that *“change of location at LOI stage as per Clause 2.1 will be permitted within the same district.”*

9. IOCL argues that, in accordance with the policy, re-sitement within the state can only be allowed by the land agency, i.e. the Ghaziabad Development Authority and the onus is on the Appellant to provide the land. The learned counsel for IOCL thereby urges that there is no nexus between the cause of action, which rests in the resitement policy, and the dealership agreement on the basis of which the Appellant seeks to invoke the jurisdiction of this Court.

Decision and reasoning

10. Before the court considers the rival merits of the parties' cases, it is

necessary to notice clause 66 of the dealership agreement which confers jurisdiction on this Court:

“66. This agreement has been made in New Delhi and all payments there under shall be due and made in New Delhi, unless otherwise directed by the Corporation. The Courts in the city of New Delhi alone shall have jurisdiction to entertain any suit application or other proceeding in respect of any claim or dispute arising under this agreement.”

It is imperative to first determine, whether the question of jurisdiction, is to be determined *de hors* or within the aforementioned clause 66.

11. At the outset, it is apparent that Clause 66 of the dealership agreement is only applicable to disputes ‘arising under the agreement’. In *Heyman v. Darwins Ltd.*, [(1942) AC 356 (111 LJ KB 241)], Lord Dunedin propounded; *“If a party has to have recourse to the contract. That dispute is a dispute under the contract.”* In *Tarapore and Company v. Cochin Shipyard Ltd and Anr.* [1984] 2 SCC 680] the Supreme Court, while dealing with an arbitration agreement, expounded the nature and scope of these terms;

“39. [...] Phrases such as “claim arising out of contract” or “relating to the contract” or “concerning the contract” on proper construction would mean that if while entertaining or rejecting the claim or the dispute in relation to claim may be entertained or rejected after reference to the contract, it is a claim arising out of contract.”

12. Furthermore, the decision in *Jai Ganesh Petroleum* (Writ Petition (C) No. 5133/2005); *Khutar Filling Station* (Writ Petition (C) No. 5167/2005) and *M/s Annapurna Filling station* (Writ Petition (C) No. 16946/2004) decided by a common judgment dated 23.12.2005, relied on by IOCL, contemplates the same question. The learned Single Judge therein, made

reference to the decision in *Hilal Filling Station v. Indian Oil Corporation limited* 109 (2004) DLT 410, which has also been relied upon by the Respondents.

*“6. [...] In construing the expression “arising out of” in the context of an arbitration clause contained in an agreement, the Supreme Court in the case of **Union of India v. Salween Timber Construction(India) &Ors.**, 1969 (2) SCR 224 laid down the following test: “In our opinion the claim made by the respondent firm was a claim arising out of the contract. The test for determining the question is whether recourse to the contract by which both the parties are bound is necessary for the purpose of determining whether the claim of the respondent firm is justified or otherwise. If it is necessary to take recourse to the terms of the contract for the purpose of deciding the matter in dispute it must be held that the matter is within the scope of the arbitration clause and the arbitrators have jurisdiction to decide the case.” Does the issue raised in the present petition fall within the expression “claim or dispute arising under this agreement” appearing in Clause 68 of the said agreement? The test for determining the question is whether recourse to the said agreement is necessary for the purpose of deterring these issues? Recourse to the agreement is not necessary for considering the incident of the inspection. Recourse to the agreement is not necessary while taking up the issue of drawing of samples and the correct procedure therefor. Recourse to the agreement is also not necessary for deciding the question as to whether the show cause notice dated 16.8.2003 is valid and legal. Clause 68 of the said agreement is not at all attracted.”*

These decisions clarify that for the *claim or dispute to arise under the agreement*, recourse must necessarily be had to the agreement, in order to determine the merits of the matter.

13. In the present case, a careful examination of the averments in the writ

petition shows that the appellant sought revival of his erstwhile dealership outlet located at Ghaziabad and in the alternative re-sitement, in accordance with the Policy of the Ministry of Petroleum and Natural Gas, issued by circular dated 17.11.2005. Furthermore, he sought decision of whether the dealership agreement dated 06.03.1992 had been terminated in a wrongful and arbitrary manner. The appellant contended throughout that the Single Judge erroneously recorded that he sought revival of the dealership located at Ghaziabad, whereas he sought resitement. The appellant's averments, in the writ petition, render this contention unacceptable. It is apparent that the appellant in his petition sought both revival and in the alternative re-sitement of the retail dealership.

14. While arguing that the present dispute does not arise under the dealership agreement, IOCL relied on *Phool Service Station v. Indian Oil Corporation Ltd.* [2003 (71) DRJ], where the petitioner's outlet was located in the State of Uttar Pradesh and the dispute pertained to the sampling procedure adopted by the respondents. The Court therein held that the dispute did not arise 'under the agreement' and hence the jurisdiction clause of the agreement would not be applicable. The decisions of *Hilal Filling Station(supra)* and *Phool Service Station(supra)* have been considered by this Court in *Jai Ganesh Petroleum (supra)*, which was also relied upon by the respondent. There, the Court examined the facts of each case and held that the existence of a clause conferring jurisdiction of the courts at Delhi was not sufficient to entitle the petitioners in those cases to approach this Court under Article 226 of the Constitution of India. In *Jai Ganesh Petroleum (supra)*, the action had arisen due to an inspection carried out at the retail outlet which was located in U.P., the samples drawn therefrom had been tested and had

failed, it was thus held that the cause of action arose in U.P. and the dispute had not arisen under the dealership agreement. Similarly, in *Khuttar Filling Station (supra)*, the dealership agreement was entered in Delhi for setting up a petrol pump in Uttar Pradesh. The dispute once again related to the method of taking samples from the petrol pump of the petitioner, the Court held therein, that the dispute did not arise under the dealership agreement and that no part of the cause of action arose in Delhi. The facts of *Annapurna Filling Station (supra)* were similar in nature, therein it was held,

“51. I have noticed the authoritative judicial pronouncements afore stated to the effect that the dispute relating to violation of Marketing Discipline Guidelines, short supplies etc. do not arise under the agreement and as such a party could not place reliance on Clause 68 of the agreement in support of the submission that the courts in the city of Delhi alone could have jurisdiction to entertain any suit, application or other proceedings in respect of such claim. Furthermore, the retail outlet of the petitioner is located on Mainpuri in the city of Uttar Pradesh which is beyond the territorial jurisdiction of this court. The show cause notice has been issued from Uttar Pradesh and the reply was sent by the petitioner to Uttar Pradesh. The order was passed after consideration thereof at Uttar Pradesh. Such order has been impugned in the present writ petition. I find, therefore that no material fact having a nexus with the lis has arisen within the territorial jurisdiction of this court.”

15. This Court in *Jagdambay Auto Station and Anr. v. UOI and Others*, [WP (C) 6398/2010] further considered the above decisions. There the dispute resulted from an inspection carried out by the Anti Adulteration Team of the respondent, at the petitioner's petrol pump, located at Jalandhar. This resulted in the issuance of a show cause notice and subsequently an

order, passed by the IOCL in Chandigarh, terminating the dealership of the petitioner. The above decisions involved disputes concerning inspection and sampling carried out at the retail outlets and subsequent irregularities. It was accordingly held that these disputes did not arise under the dealership agreement and as the inspections/sampling were carried out at the location of the retail outlets, it was held that the cause of action arose therein and not within the territorial jurisdiction of this Court. However, the same reasoning cannot be applied to the facts of the matter at hand. In the present matter, the dispute pertains to the termination of the dealership agreement, revival of this agreement, and re-sitement. It is our considered view that in order to effectively decide the merits of these claims, recourse would have to be made to the dealership agreement-containing clause 66. The policy of Revival and re-sitement i.e. the policy enumerated by circular dated 17.11.2005 of the Ministry of Petroleum and Natural Gas is premised on the original dealership agreement. To determine the question whether the termination was arbitrary, recourse must be made to terms of the dealership agreement. Revival of a dealership takes into regard the grounds for termination and only comes into play for individuals who previously had valid, subsisting dealership agreements with IOCL. Clause 3.1 and 3.2 of this policy enumerate that re-sitement is only available at the LOI (Letter of Intent) stage and for a commissioned dealership, respectively, thus the very basis to consider the plea of resitement is the dealership agreement. The present dispute therefore arises, under the dealership agreement and the question of jurisdiction must be decided keeping in mind Clause 66, which confers jurisdiction on the Courts of Delhi.

16. It is well settled law that parties cannot by agreement confer

jurisdiction on a Court which otherwise lacks jurisdiction under the Code. [See *Hakkam v. Gammon* AIR 1971 SC 740; *Globe transport Corporation v. Triveni Engineering Works* (1983) 4 SCC 707]. Therefore, the subsequent question which warrants determination is whether, this Court has jurisdiction over the present matter, outside the jurisdiction clause contained in the dealership agreement. To determine this question, it becomes appropriate to recount Section 20 of the CPC, 1908.

“20. Other suits to be instituted where defendants reside or cause of action arises. - Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b)[...]

(c) the cause of action, wholly or in part, arises.

Explanation: A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

It is thereby, imperative to determine whether the cause of action, wholly or in part, arose within the territorial jurisdiction of this Court.

17. The appellant relies on *Alchemist & Anr. v. State Bank of Sikkim & Anr.* (2007) 11 SCC 335, where it was held,

“[...] for the purpose of deciding whether facts averred by the

petitioner/appellant, 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. It is no doubt true that even if a small fraction of the cause of action 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."

18. The appellant also places reliance on *Ambica Industries v. Commissioner Central Excise* (2007) 6 SCC 769, to contend that this Court has jurisdiction, if even a miniscule part of the cause of action, namely the execution of the dealership agreement, took place within its territorial jurisdiction. It was held therein,

"Keeping in view the expression "cause of action" used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the Jurisdiction of the Court, the Court will have Jurisdiction in the matter though the doctrine of forum conveniens may also have to be considered." "[...] the cause of action has no relation whatsoever to the defense which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour."

19. IOCL, in turn, relies on *Union of India v. Adani Exports Ltd.*, (2002) 1 SCC 567, where it was held,

"17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower

the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned.”

20. It is therefore, necessary to determine which facts pleaded by the parties are integral to the present dispute and relate to the *lis*, thereby, elucidating whether the cause of action wholly or in part, arose within the territorial jurisdiction of this Court. The appellant's argues the dealership agreement was entered into at Delhi, all payments under it were to be made at New Delhi and it provided that the courts at Delhi were to have jurisdiction over any dispute or claim arising under the agreement. The regional office of IOCL is located at Barakhamba Road in Delhi, within the jurisdiction of this court. He further contends that he is a resident of Delhi and is seeking re-sitment within Delhi. The Respondents argue that the Policy contemplates grant of re-sitment only within the same state, which in the present case is Uttar Pradesh and further that such re-sitment can only be allowed by the land agency, namely the Ghaziabad Development Authority, and therefore the cause of action arose in Ghaziabad beyond the territorial jurisdiction of this Court.

21. This court is un-persuaded by IOCL's contention that the dispute is outside its jurisdiction as resitment is to be granted by the Ghaziabad Development Authority, which is not in the territorial jurisdiction of this

Court. Here the court notes that Article 226 (2) of the Constitution, provides that the High Court can issue a writ even when the authority against whom such writ is issued is outside the territorial jurisdiction of such court, if the cause of action wholly or partially arises within the territorial jurisdiction of the court. Moreover, the location of the erstwhile dealership outlet in relation to which the present matter arises, in Ghaziabad also leads to the conclusion that a part of the cause of action arises in Ghaziabad. However this does not *per se* preclude the cause of action, having in part arisen in Delhi. The appellant's contention that the cause of action arose within the territorial jurisdiction of this Court he resides in Delhi and seeks resitment in Delhi, however is irrelevant. In the considered opinion of this court the act of signing and executing the dealership agreement within the territorial jurisdiction of this court containing a jurisdiction clause, providing for the exclusive jurisdiction of this court is pertinent to the dispute at hand. The questions of whether or not the termination was wrongful, whether revival or resitment can be granted to the appellant have to be decided on the basis of the said agreement. Thus we find that the cause of action arose, in part within the territorial jurisdiction of this Court and in part, in Ghaziabad.

22. Furthermore this court has jurisdiction owing to the fact that the regional office of IOCL is located at Barakhamba Road in New Delhi, thereby placing it within the territorial jurisdiction of this Court. Section 20 (a) of the CPC, 1908 in clause (a) to (c), provides the plaintiff with a choice of forum to institute the suit. Under the explanation to Section 20, a suit can be filed against a corporation where its subordinate office is situated, when the cause of action in whole or in part arose at such place. [See, *Thompson Press India Ltd. v. U.P. State Road Corporation*, 2002 (86) DLT 85; *Indian*

Performing Rights Society Ltd. v. Sanjay Dalia, (2015) 10 SCC 161]. Cumulatively considering that the cause of action, in part arose in Delhi and that the regional Office of the Respondents 2-4 is located in Delhi, it is our determination that this Court has jurisdiction over the present dispute. It is settled by way of judicial decisions that, where there are two or more courts which can entertain a suit consequent upon a part of the cause of action having arisen therewith, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves, the agreement would be valid. [*Shriram City Union Finance Corp. Ltd. v. Eama Mishra*, AIR 2002 SC 2402]. *Swastik Gases (P) Ltd* held *inter alia*, as follows:

“55. It will be seen from the above decisions that except in A.B.C. Laminart [A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163] where this Court declined to exclude the jurisdiction of the courts in Salem, in all other similar cases an inference was drawn (explicitly or implicitly) that the parties intended the implementation of the exclusion clause as it reads notwithstanding the absence of the words “only”, “alone” or “exclusively” and the like. The reason for this is quite obvious. The parties would not have included the ouster clause in their agreement were it not to carry any meaning at all. The very fact that the ouster clause is included in the agreement between the parties conveys their clear intention to exclude the jurisdiction of courts other than those mentioned in the clause concerned. Conversely, if the parties had intended that all courts where the cause of action or a part thereof had arisen would continue to have jurisdiction over the dispute, the exclusion clause would not have found a place in the agreement between the parties.”

23. Following the decision in *Swastik Gases*, it is clear that the jurisdiction clause in Clause 66 of the dealership agreement was included with the

intention to confer exclusive jurisdiction on the courts in Delhi, in case of any dispute or claim arising under the agreement, and to oust the jurisdiction of all other courts in such a scenario. It therefore follows, that this Court has jurisdiction over the dispute.

24. The Appellant argues that the courts in the present case must apply the principle of *dominus litis*. and relied on *Nasiruddin*(supra), to contend that the litigant has the right to go to a court where part of his cause of action arises. We find that in light of the applicability of the jurisdiction clause in the dealership agreement and the cause of action arising in part within the territorial jurisdiction of the Courts at Delhi, there does not arise any requirement to seek additional recourse in the aforementioned principle.

25. Both the parties make reference to and rely on the decisions in *Sterling Agro (Supra)*, *Vishnu Security Services v. Regional Provident Fund Commissioner & Anr. (supra)*, *Chinteshwar Steel Pvt. Ltd. v. Union of India & Ors.*, LPA 801/2012 and the Appellant also relies on *Jan Chetna v. Ministry of Environment and Forests (supra)*. The court holds that the said decisions relied on by the parties propound the doctrine of *forum conveniens*. The court agrees with the single judge in his order dated 27.04.2016, in as much as, the decision of the Full Bench of this Court in *Sterling Agro (supra)* was explained by the division bench of this court in *Vishnu Security Services (supra)*, and furthermore, that the decisions in *Jan Chetna v. Ministry of Environment and Forests (supra)* and *Vishnu Security Services (supra)* were further explained in *Chinteshwar Steel Pvt. Ltd. v. Union of India & Ors.*, (supra). It was held therein,

“8. Keeping in view the aforesaid judgment as well as the judgment cited by learned senior counsel for the appellant, this

Court is of the view that when original authority is situated in one High Court and appellate authority is situated in the jurisdiction of another High Court, undoubtedly writ petition is maintainable in both the High Courts as a part of cause of action has arisen in both the courts. The petitioner would have the liberty to choose where he would like to file his writ petition. But even in such an eventuality, the High Court before whom the said writ petition is filed would have the discretion to refuse to entertain it on the ground of forum conveniens. Needless to say, the discretion to refuse to entertain the writ petition would have to be exercised on sound judicial principles.

9. Appellant's submission that the decision in Vishnu Security Services and Jan Chetna (supra) are contrary and do not accept the ratio propounded in Sterling Agro Industries Ltd. (supra), is ill founded and cannot be accepted. We do not find any conflict between the said judgments and the ratio in Sterling Agro Industries Ltd. (supra). Even if there is any conflict, the law laid down by a larger Bench is binding on us, as it is for any Bench of lesser or co-equal strength. The Supreme Court in Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673 has held that the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

10. In fact, the two decisions in Vishnu Security Services and Jan Chetna (supra) elucidate when and in what circumstances judicial discretion should not be exercised on the ground of forum conveniens. In Vishnu Security Services (supra), the Division Bench observed that though the writ petition may be maintainable in two High Courts, but when the High Court finds that it is inconvenient to entertain the writ petition as other High Court is better equipped to deal with the case, doctrine of forum conveniens would be attracted. Thereafter, reference was made to English authorities wherein it has been held that in judging the comparative convenience or non-convenience of the forum, the test to be applied is which Court out of the two is more suitable in the interest of the

parties as well as ends of justice. Reference was also made to a U.S decision wherein it has been observed that courts have open doors to those who seek justice, but when justice is blended with some harassment, it needs to be checked. Undoubtedly, the petitioner is dominus litis, but when the choice is motivated by temptation/strategy to force the petition at an inconvenient place, the Court has the power to step in. We are also in agreement with the view of learned Single Judge in the impugned order that the Division Bench in Vishnu Security Services (supra) overruled the judgment of learned Single Judge only on the ground that no reason had been given by the learned Single Judge in that case to come to the conclusion that this Court was not the convenient forum. Similarly, in Jan Chetna (supra), the Division Bench observed that though the issue raised was purely legal relating to an object in another State, yet as the issue raised had no local flavour at all, the said doctrine need not be invoked. Consequently, in our opinion the judgments of Vishnu Security Services (supra) and Jan Chetna (supra) have neither deviated nor could have deviated from the judgment of five Judges of this Court in Sterling Agro Industries Ltd. (supra).”

26. It emerges from these decisions that when cause of action arises in the territorial jurisdiction of two High Courts, the petitioner would have the liberty to approach either of the Courts to file the writ petition. However, in such an event the High Court before which the writ petition is filed would have the discretion to refuse jurisdiction on the basis of *forum conveniens*, i.e. when the Court is of the considered opinion that the other High Court in the case, is better equipped to deal with the matter. In doing so the High Court must exercise its discretion judiciously and provide cogent reasons. The doctrine cannot be resorted to for mere ‘lip service’.

27. The Appellant sought to distinguish the Learned Single Judge’s application of *Sterling Agro Industries (supra)* to the present matter on the

basis of difference in facts. He contends that the petitioner therein, being dissatisfied with the order of the Ministry of Finance, challenged the same by invoking the inherent jurisdiction of the Delhi High Court under Article 226 of the Constitution of India, based solely on the fact that the appellate authority was located within the territorial jurisdiction of this Court. On the contrary, he contends that in the present case, the cause of action arose within the territorial jurisdiction of this Court. He further argued that that the Learned Single Judge in his order dated 27.04.2016, failed to provide cogent reasons as to why some other High Court would be better suited to determine the matter.

28. The Single Judge, correctly placed reliance on the decision of the full bench in *Sterling Agro* (supra) and *Chinteshwar Steels* (supra) to determine the allegation raised by the appellant therein that, the decision in *Jagdambay Auto Station* (supra) was contrary to the decision of the division bench of this Court in *Vishnu Security Services* (supra). It is our opinion that the Learned Single Judge, in the order dated 27.04.2016, having determined that no part of the cause of action arose within the jurisdiction of this Court, did not feel compelled to rely on the doctrine of *forum conveniens*, and made reference to the same in the limited context of determining whether it was contrary to the decision in *Jagdambay Auto Station* (supra). Thus this particular contention of the Appellant is rejected.

29. After having considered and weighed the contentions of the parties, keeping in mind all the principles of law the principles that emerge, it is clear that the dispute has arisen under the dealership agreement, and that part of the cause of action arose within the territorial jurisdiction of this Court, thereby attracting the jurisdiction clause in the said agreement. Furthermore, that

under these circumstances, the parties could and did, by agreement, confer exclusive jurisdiction onto the Courts at Delhi. Consequently, this court is of opinion that the learned single Judge erred in dismissing the petition for want of territorial jurisdiction and that this Court has jurisdiction over the matter.

30. The parties are accordingly directed to be present before the concerned learned Single Judge on 22.03.2018, who shall proceed to hear the writ petition on its merits and decide it expeditiously in accordance with law.

31. For the foregoing reasons, this letters patent appeal is allowed; there shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

MARCH 12, 2018

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