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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO.6730 OF 2019

Mr. Prashant Shashi Ruia & Anr. Petitioners
 V/s.
 State Bank of India & Anr. ... Respondents

WRIT PETITION (ST.) NO.6732 OF 2019

Mr. Prashant Shashi Ruia & Anr. Petitioners
 V/s.
 Canara Bank & Ors. ... Respondents

WRIT PETITION (ST.) NO.6734 OF 2019

Mr. Prashant Shashi Ruia & Anr. Petitioners
 V/s.
 State Bank of India & Ors. ... Respondents

WRIT PETITION (ST.) NO.6736 OF 2019

Mr. Prashant Shashi Ruia & Anr. Petitioners
 V/s.
 State Bank of India & Ors. ... Respondents

WRIT PETITION (ST.) NO.6738 OF 2019

Mr. Prashant Shashi Ruia & Anr. Petitioners
 V/s.
 State Bank of India & Ors. ... Respondents

Mr. Mihir Thakur, Senior Counsel, with Mr. Keyur Gandhi, Mr. Vishal Maheswari, Ms. Zainab B. and Ms. Asha Thakar i/b. V.M. Legal for the Petitioners.

Mr. Ravi Kadam, Senior Counsel with Mr. Nitesh Jain and Parth Gokhale i/b. Shardul Amarchand Mangaldas & Co. for Respondent No.1.

Mrs. M.S. Srivastava, AGP for State in all the Petitions.

CORAM: **A.A.SAYED &
RIYAZ I. CHAGLA, JJ.**
DATE: **6TH MARCH, 2019.**

PC:-

1. Heard learned Senior Counsel for the Petitioners and the learned Senior Counsel for the Respondent Bank.
2. At the request of learned Senior Counsel for the Petitioners, we grant leave to amend the Petition to delete the challenge to the orders dated 5th February, 2019 and 19th February, 2019. Amendment to be carried out forthwith.
3. The limited challenge that remains in the Petition is to the oral order dated 1st March, 2019. By that order DRAT, Mumbai refused to grant circulation for listing the Appeal for urgent ad-interim / interim relief.
4. An Original Application No.648 of 2018 has been filed before the DRT, Ahmedabad, by the Respondent - Bank against the Petitioners. In the said Original Application, an order dated 5th February, 2019 has been passed by DRT, Ahmedabad, which reads as follows:

Bank has filed compliance purshish of order dated 05.01.2019 and also filed rejoinder and suit claim affidavit. Same are taken on record. Today Mr. Rajesh Pushpangadhan, Officer of the Applicant Bank produced original documents and proved on record photocopies of said documents as Exh. AW1/2 to AW1/14. Original documents seen and returned.

Ld. Counsel for the defendant No.4 inspected the documents to his satisfaction and sought adjournment to file counter affidavit. Mr. Kunal

orally submitted that till date bank has not provided copy of Resolution Plan to defendants Nos.1 and 2 and he further submitted that even defendants sent notice to this effect to Ld. Counsel for the Applicant Bank and COC also. I have considered the submission so made and I am of the opinion that the defendants may avail appropriate remedy available to them under the provision IBC code if they have any grievances against bank or COC regarding non compliance of provisions of IBC code and it is not the proper forum to agitate such issues.

Defendants No.1 and 2 may file counter affidavit within 10 days. Case is adjourned to 19th February 2019 for final hearing.

Case is adjourned to 19.02.2019.

5. On 19th February, 2019, the DRT, Ahmedabad rejected the adjournment application of the Petitioners and directed them to file Counter Affidavit. The DRT also imposed costs of Rs.1 lac upon the Petitioners. We are informed that the Counter Affidavit has since been filed by the Petitioners.

6. Aggrieved by the orders dated 5th February, 2019 and 19th February, 2019, the Petitioners approached the High Court of Gujarat by filing Special Civil Application No.3835 of 2019. According to the Petitioners at the relevant time, the Chairperson, DRAT, Mumbai, was on leave and was to resume on 25th February, 2019 and therefore the Petitioners were constrained to approach the High Court of Gujarat. By order dated 22nd February, 2019, the High Court of Gujarat did not entertain the

Petition in view of the alternate remedy before the DRAT, Mumbai, and the Petition was disposed of. The High Court *inter alia* observed that if an application for adjournment was preferred by the Petitioners, the same would be considered by the DRT sympathetically. Accordingly, on 25th February, 2019, the DRT, Ahmedabad adjourned the Original Application to 7th March, 2019 (i.e. tomorrow).

7. On 28 February 2019, the Petitioners preferred Appeal (L) No.232 of 2019 before the DRAT, Mumbai, challenging the orders dated 5th February, 2019 and 19th February, 2019. It is the case of the Petitioners that on 1st March, 2019, the Petitioners moved the DRAT by way of praecipe to seek urgent circulation for the Appeal to be listed on 5th March, 2019 as the Original Application before the DRT, Ahmedabad, was scheduled to come up on 7th March, 2019. However, by the impugned oral order dated 1st March, 2019, the DRAT, Mumbai, rejected the request for circulation of the Appeal. Hence the present Petition.

8. It is submitted by the Senior Counsel for the Respondent Bank that ordinarily both the Courts i.e. the High Court of Gujarat as well as this Court may have jurisdiction to entertain a Petition challenging orders of DRAT, Mumbai, however, in the facts of the present case this Court ought not to entertain the Petition and the

Petitioners ought to approach the High Court of Gujarat since the Petitioners had approached the High Court of Gujarat on an earlier occasion and had invoked the jurisdiction of that Court.

9. Learned Senior Counsel for the Respondent Bank relied upon a 3 – Judge Bench decision of the Supreme Court in ***Kamini Jaiswal Vs. Union of India and Anr.***¹ to contend that the Petitioners are guilty of forum shopping. Reliance is placed upon a 3 – Judge Bench decision of Supreme Court in ***Kusum Ingots & Alloys Ltd. Vs. Union of India & Anr.***² by both the Senior Counsel. Paragraphs 24 and 30 of the said judgment read as under:-

“24. Learned counsel for the appellant in support of his argument would contend that situs of framing law or rule would give jurisdiction to Delhi High Court and in support of the said contention relied upon the decisions of this Court in *Nasiruddin vs. STAT* (AIR 1976 SC 331) and *U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow vs. State of U.P. and others* (1995) 4 SCC 738. So far as the decision of this Court in *Nasiruddin vs. STAT* is concerned it is not an authority for the proposition that the situs of legislature of a State or the authority in power to make subordinate legislation or issue a notification would confer power or jurisdiction on the High Court or a Bench of the High Court to entertain a petition under Article 226 of the Constitution. In fact this Court while construing the provisions of United Provinces High Courts (Amalgamation) Order, 1948 stated the law thus: (SCC p. 683, para 37).

1 (2018) 1 Supreme Court Cases 156.

2 (2004) 6 Supreme Court Cases 254.

“37. 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 part within specified areas in Oudh and part 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.”

“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 Bhagar Singh Bagga v. Dewan Jagbir Sawhany, AIR 1941 Cal; Madanlal Jalan v. Madanlal, (1945) 49 CWN 357; Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. (1997) CWN 122; S.S.Jain & Co. & Anr. v. Union of India & Ors. (1994) CHN 445; M/s. New Horizon Ltd. v. Union of India, AIR 1994 Delhi 126).”

10. We find that on the earlier occasion when the Petitioners had approached the High Court of Gujarat, the DRAT, Mumbai, was vacant at the relevant time and it is in these circumstances the Petitioner had approached High Court of Gujarat. Upon perusal of the order of the High Court of Gujarat it is seen that the High Court had not entertained the Petition and had relegated the Petitioners to the alternate remedy of Appeal before the DRAT, Mumbai. In the circumstances, in our view the Petitioners would not be precluded from invoking the writ jurisdiction of this Court against the impugned oral order of DRAT, Mumbai, refusing to grant circulation and listing of the matter for urgent interim or ad-interim orders. The contention that the Petitioners are indulging in forum shopping cannot be accepted and the judgment in ***Kamini Jaiswal (Supra)*** would not apply to the facts of the present case.

11. Inasmuch as the statutory Appeal of the Petitioners is pending before the DRAT, Mumbai, we are not inclined to go into the merits of the matter. We are of the view that the Petitioners ought to be granted an opportunity to seek appropriate orders in the Appeal / Application/s, if any, before the DRAT, Mumbai.

12. Taking an overall view of the matter, in our opinion, the following order will meet the ends of justice.

ORDER

1. DRT, Ahmedabad shall adjourn Original Application which is now scheduled to come up tomorrow i.e. 7th March, 2019, some time in the first week of April, 2019.

2. The Petitioners are granted liberty to move the DRAT, Mumbai for circulation and for listing of the Appeal along with Application/s, if any, for consideration of ad-interim or interim reliefs.

3. The DRAT Mumbai shall list the Appeal / Application/s if any, and either dispose of the Appeal or to pass appropriate ad-interim or interim orders on Application/s, if any, on or before 31 March, 2019.

4. The Petitions to stand disposed of in the above terms.

(RIYAZ I. CHAGLA J.)

(A.A.SAYED, J.)