

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

% **Judgment delivered on: 14th February, 2019**

+ **FAO. No. 547/2018**

STATE BANK OF INDIA,
(Through its General Manager -Legal)
Linking Road Branch, Plot No. 533, Patwardhan House,
Linking Road, Bandra (West), Mumbai - 400052. ...Appellant

Through: Mr. Sudhir Nandrajog Sr.
Advocate with Mr. Rajiv Kapur and
Ms. Khushboo Kapur, Advocates.

versus

1. Mr. CHANDER KALANI
R/o 16, Shiv Dham Building, South Avenue,
Ram Krishna Mission Road, Mumbai - 400054.
2. Mrs. ROMI KALANI
R/o 16, Shiv Dham Building, South Avenue,
Ram Krishna Mission Road, Mumbai - 400054. ...Respondents

Through: Mr. Nikhil Singhvi, Ms.
Nikita Pandey and Mr. Mohit Seth,
Advocates.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The instant appeal is arising from impugned order in Cyber Appeal No. 13/2015 dated 31.07.2018 passed by learned Telecom Disputes Settlement and Appellate Tribunal, New Delhi.
2. The brief facts stated are that the respondents are Senior Citizens and

are NRIs residing in Nigeria. They hold joint NRE Account No. 10206290511 with Appellant State Bank of India (Linking Road branch, Mumbai) and were having 6 fixed deposits with different maturity dates. One unknown fraudster sent several communications to the officials of Appellant Bank branch for breaking of two FDs of Respondents. The officials of the Appellant bank provided information pertaining to the FDs of the Respondent to the unknown fraudster without maintaining reasonable security measures and the procedures of due verification. Appellant further broke two fixed deposit accounts and transferred amount to the tune of 63 lakhs to overseas account. The factum of the incident was brought to the knowledge of the Respondent No.1 only when he himself visited the concerned bank for updating his passbook.

3. Thereafter, respondents made complaint in P.S. Khar, Mumbai and subsequently filed a complaint bearing No.1/2014 before Adjudicating Officer (Principal Secretary, IT, Government of Maharashtra) under Sections 43(a) and 43 of the Information Technology Act, 2000. The Adjudicating Officer directed the Appellant Bank to pay compensation of Rs. 40 Lakhs alongwith interest at rate of 12% p.a. thereon. The Appellant challenged the said order dated 12.01.2015 by way of Writ in WP. No. 930/2015 before the High Court of Bombay.
4. The High Court of Bombay in the aforesaid Writ Petition directed the Appellant to approach Telecom Dispute Settlement and Appellate Tribunal at New Delhi by order dated 12.01.2015 and Telecom

Dispute Settlement and Appellate Tribunal passed the impugned order, hence the present Statutory Appeal under Section 62 of Information Technology Act, 2000 before this Court.

5. The question in the instant appeal is

Whether the appeal filed is maintainable before the High Court of Delhi at New Delhi ?

6. The learned Senior counsel Mr. Sudhir Nandrajog has submitted that Telecom Dispute Settlement and Appellate Tribunal, New Delhi is situated at New Delhi and is subject to superintendence of High Court. Learned Senior counsel has pointed out that it is open to the litigant who is *dominus litis* to have his *forum conveniens*. The power of superintendence is vested in High Courts. The appellate authority is situated within the jurisdiction of Delhi High Court and impugned order dated 31.07.2018 is passed at Delhi and even if cause of action doctrine is to be invoked, substantial part of the cause of action lies at Delhi High court, therefore, present appeal is maintainable before this Court.

7. The impugned order appealed is neither a decree nor an order appealable under the Code of Civil Procedure, but a statutory appeal under Section 62 of Information Technology Act, 2000. Hence, provisions of CPC would not apply and the question of cause of action cannot be dealt when Statutory Appeal is filed.

8. In a given case when the original authority is situated at one place and appellate authority is constituted at another, the appeal would be maintainable at both the places.
9. 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 situated having regard to the fact that the petitioner is *dominus litis* to choose his forum, and that since the original order merges into the Appellate order, the place where the Appellate Authority is located is also having jurisdiction to entertain the Appeal. Declining to entertain the Appeal would amount to failure of duty of the Court. Appellant bank relied upon ***Sterling Agro Industries Ltd. & Ors. v. Union of India & Ors.*** 2011 (124) DRJ 633 (FB) and on ***J.Sekar & Ors. v. Union of India & Ors.***
10. Per contra the counsel of the Respondents has submitted that the appeal of the appellant is not maintainable and further submitted that no cause of action has arisen at Delhi. The appeal filed by the Appellant is under Section 62 of IT Act and since it is a statutory appeal, the same lies at the Bombay High Court and relied on ***Ambica Industries v. Commissioner of Central Excise*** (2007) 6 SCC 769 and ***Dharampal Premchand Ltd. v. Commissioner of Central Excise*** (2011) 182 DLT 654 (DB).
11. Instant appeal at the instance of the Appellant is filed under Section 62 of IT Act, 2000. Section 62 reads as under:

"Any person aggrieved by any decision or order of the Cyber Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Cyber Appellate Tribunal to him on any question of fact or law arising out of such order

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

12. Section 62 of Information Technology Act, 2000 does not specify a particular High Court where the appeal of Telecom Dispute Settlement and Appellate Tribunal would lie. Further, it does not talk whether the jurisdiction would be determined on the basis of:
 - a. Statutory Provision,
 - b. The Doctrine of *Dominus Litis*,
 - c. Situs of Forum or
 - d. Place where cause of action arisen between the parties
13. In the instant appeal:
 - i. There is no dispute raised from either of the parties that the respondents were not having the fixed deposits with the Appellant Bank at Linking Road Branch, Mumbai.
 - ii. The dispute/cause of action between the parties arisen on 13.12.2013 at State Bank of India, Linking Road Branch, Mumbai for the first time when the respondents came to know the factum of breaking of their fixed deposit accounts with the Appellant bank by the employees of the said bank branch in

collusion with fraudsters in violation of reasonable security measures and due verification.

- iii. The Respondents took consequential step for lodging of complaint at P.S. Khar, Mumbai.
- iv. Further, the Respondents made Complaint No.1/2014 to the Adjudicating Officer, Government of Maharashtra (Principal Secretary, IT, Government of Maharashtra) for relief under Section 43(a) and 43 of IT Act.
- v. In pursuance to complaint order dated 12.01.2015 passed by Adjudicating Officer.

Both the parties have not challenged the jurisdiction for the purposes of complaint No.1/2014 before the Adjudicating Officer.

- vi. The Appellant aggrieved from the order of Adjudicating Officer dated 12.01.2015 preferred to file writ, WP. No. 930/2015 before High Court of Bombay under Article 226.

Before the High Court of Bombay, both the parties have not raised any dispute regarding the jurisdiction of Bombay High Court rather took further step in compliance of the order of the Bombay High Court to file appeal in Telecom Dispute Settlement and Appellate Tribunal, New Delhi.

- vii. Aggrieved from the final order of Telecom Dispute Settlement and Appellate Tribunal, all of a sudden the Appellant preferred to file the present Statutory Appeal in this court rather than approaching Bombay High Court.

The dispute pertains to the original jurisdiction of the first forum i.e. Adjudicating Officer, Government of Maharashtra and said forum is under dominance and superintendence of Bombay High Court and **both the parties have neither challenged the jurisdiction of Adjudicating Officer nor challenged the jurisdiction of Bombay High Court.** Therefore, appellant should have filed the appeal before the Bombay High Court rather than before this court.

14. The preliminary objections raised by the respondents, succeeds. Invocation of territorial jurisdiction as *Forum Conveniens* is not allowed.
15. The judgment relied upon *Sterling Agro (supra)* and on *J. Sekar (supra)* by the Appellant Bank is of no help to them in the light of the discussions made above.
16. Consequently, this appeal shall stand returned to the appellant for presentation before appropriate Court. No order as to costs.

I.S.MEHTA
(JUDGE)

FEBRUARY 14, 2019