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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Abhijit Gangopadhyay

WPA 3975 of 2020

Krishna Kumar Singhania

-Versus-
Assistant Provident Fund Commissioner & Ors.

For the Petitioner	: Mr. Rajesh Upadhyay
For the State	: Mr. Susanta Pal Mr. Ananda Dulal Sarkar
Heard on	: 15.12.2020 & 18.12.2020
Judgment on	: 18.12.2020.

Abhijit Gangopadhyay, J.

1. This writ application is directed against the respondent nos.1, 2 and 3 being the Assistant Provident Fund Commissioner whose office is at Dhanbad, the Recovery Officer, Employees' Provident Fund Organisation (EPF) whose office is also at Dhanbad and Official Liquidator whose office is at Delhi. The main prayer praying mandamus being prayer (b) of the writ application is as follows:-

“b) A writ of or in the nature of Mandamus be passed directing the respondent no.2 and 3 to set aside and/or cancelling the impugned communication dated 23rd January, 2020 and the impugned warrant of arrest dated January 23, 2020”.

2. It is to be noted that no mandamus has been prayed against other two respondents in this matter i.e. the Commissioner of Police, Kolkata and the Officer-in-Charge of Tiljala Police Station.

3. The petitioner in respect of warrant of arrest dated January 23, 2020 sent one reply dated 20th February, 2020 to the Recovery Officer at Dhanbad which is Annexure "P-6".

4. The question on which this Court wanted to be satisfied was relating to the territorial jurisdiction of this Court in entertaining this writ application.

5. Learned advocate appearing for the petitioner shows paragraph 62 of the writ application in support of his submission that part of cause of action arose within the territorial jurisdiction of this court as a notice has been sent to the petitioner in Kolkata i.e. within territorial jurisdiction of this Court and an arrest warrant has been sent to the petitioner also in Kolkata. The petitioner says that the notice and the arrest warrant have been received in Kolkata. The arrest warrant is to be executed within the territorial jurisdiction of this court unless due amount and costs are paid to the provident fund authority by the petitioner.

6. These are the cause of action upon which the petitioner prays for mandamus for setting aside one notice and one arrest warrant both dated 23rd January, 2020.

7. Now we are to see the integral facts of the present matter.

The case of the petitioner is that he is not liable to pay the due provident fund amount and it is claimed from him wrongly, which appears from the facts stated in the writ application which are as follows :

- i) On 12th November, 1990 the Official Liquidator of High Court of Delhi published a sale notice for sale of assets of M/s. Nagrath Fire Bricks & Pottery (P) Ltd.
- ii) On 5th April 1991 the Hon'ble High Court of Delhi confirmed the sale in favour of Maruti (India) International.
- iii) On 13th May, 1991 the Official Liquidator at Delhi handed over possession of M/s. Nagrath Fire Bricks & Pottery (P) Ltd. to the petitioner.
- iv) In the year 2003 and 2005 the petitioner transferred title of said properties and handed over and alienated the same.
- v) After such sale he is in no manner associated and/or involved in respect to the said factory premises and the petitioner has no association with the said Company.
- vi) Having purchased the properties by way of auction sale which was confirmed to be free from all encumbrances by Official Liquidator he cannot have purported liability accruing for a period prior to such sale particularly in terms of Section 17(b) of the EPF and MP Act.

8. In support of his submission the petitioner has placed reliance on the judgement passed by the Hon'ble Supreme Court in Nawal Kishore Sharma

-vs- Union of India & Ors. **(Reported in (2014) 9 SCC 329)**. The material facts of this judgement of the Supreme Court are required to be taken note of.

The writ application by Nawal Kishore Sharma was filed in Patna High court which was dismissed for want of territorial jurisdiction. The application was for getting certain financial benefit including 100% disability compensation and other pecuniary damages. From paragraph 17 of the said judgement it is found that writ petitioner was issued an order dated 12 April 2011 cancelling registration as a seaman and a copy of that letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. The other factual aspect mentioned in the said paragraph is that the authority rejected his claim for disability compensation and thereafter he made all claims and filed representations from his home address at Gaya in Bihar and those representations were entertained by the respondent and replied and the decision of those representation were communicated to him of his home state in Bihar.

On the basis of such fact the Supreme Court held that the part of cause of action arose within the territorial jurisdiction of Patna High Court.

9. I have already noted the integral facts of the present matter that are to be proved by the petitioner to get a relief. None of those facts as has been referred to above arose within the territorial jurisdiction of this High Court.

Now the question arises relating to the notice and the warrant of arrest dated 23rd January, 2020 as to whether receipt of these two documents can be held as part of cause of action which arose within the territorial jurisdiction of this Court.

It is found that for non-payment of the provident fund dues those two notices have been issued. The notice to the petitioner and the warrant of arrest sent to the Commissioner of Police are wholly separate part which are not at all an integral part of cause of action but are consequence of the integral facts. What is necessary to prove is the material facts, not all the facts in a bundle of facts. If the integral facts here are proved the notice and the warrant will be of no effect as those are consequential only. Such consequential facts cannot be held as part of the integral facts. Integral fact here is non-payment of provident fund money and denial thereof for certain reasons shown by the petitioner. While deciding territorial jurisdiction truth or falsity of such reasons are not required to be tested.

10. In this respect one judgement delivered by a three Judges Bench of the Hon'ble Supreme Court in *Kusum Ingots & Alloys Ltd. -vs- Union of India & Anr.* (reported in **(2004) 6 SCC 254**) is required to be taken into account.

The relevant paragraphs which have discussed the principles relating to arising of part of cause of action in the territorial jurisdiction of a High Court in a matter are set out herebelow :

“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 judgement of the Court. Negatively put, it would mean that everything which if not proved, gives the defendant an immediate right to judgement, 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.

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) Civil Procedure Code 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.

(Emphasis mine).

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.

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.”

(ONGC case : (1994) 4 SCC 711)

In Union of India v. Adani Exports Ltd. it was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction.

(Adani case : (2002) 1 SCC 567)

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

a cause of action which would confer jurisdiction on the Court.

11. In Nawal Kishore Sharma's case the final decision as to withdrawal of licence as seamen of the writ petitioner was sent to his residence within the territorial jurisdiction of Patna High Court. Other facts above like entertaining the representations and reply to those representations and sending those to his address within the territorial jurisdiction of Patna High Court were noted by the Hon'ble Supreme Court. In this case there is no such exchange of letters etc.

12. On a reading of the principles enunciated by the Supreme Court in the Kusum Ingots matter, I hold that the integral facts of the case of the petitioner and the facts of the case decided by the Supreme Court in Nawal Kishore Sharma does not have any similarity or resemblance. Nawal Kishore Sharma's case does not help the petitioner.

13. Whether the petitioner can avoid such payment of provident fund dues or not is a matter to be decided on merit for which this Court does not have territorial jurisdiction.

14. For want of territorial jurisdiction in the matter the writ application is dismissed.

No costs.

(Abhijit Gangopadhyay, J.)