IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

BEFORE:-

THE HON'BLE JUSTICE RAJASEKHAR MANTHA

W.P.A. No. 12067of 2021
With
CAN 1 of 2021

Kamsco Industries Private Limited and Others
Versus
Union of India and Others

Mr. Ratnanko Banerjee, Senior Advocate
Mr. D.K. Sarkar
Mr. A. Deb
Ms. A. Daga
... For the Petitioners.

Mr. Y. J. Dastoor, ASG
Mr. Rudraman Bhattacharyya
Mr. Rajashree Venket Kundalia
... For the UOI.

Mr. Sudipto Sarkar, Senior Advocate
Mr. Paritosh Sinha
Ms. A. Agnihotri
Mr. Saubhik Chowdhury
Mr. Vividh Tandon
Mr. R.V. Goutham
Mr. Dripto Majumdar
Ms. Ayusmita Sinha
Ms. K. Kapadia
Mr. D. Das
... For the Respondent No.4.

Mr. Anubhav Sinha
Mr. Dipan Kr. Sarkar
... For the Respondent No.5.

Mr. S.K. Sinha
Mr. Debashis Saha
Ms. Dipika Banu
Ms. Namrata Chatterjee
Mr. Souvik Dian
... For the applicants for addition of parties.

Hearing Concluded On : 7th December 2021

Judgment On : 13th December 2021

Rajasekhar Mantha, J.

15.12.2021

The judgment dated December 13, 2021 is mentioned for correction.

In view of a large number of typographical errors in the said judgment, the following judgment shall be read in its place and stead. The reasoning and conclusion remains unaltered.

CAN 1 of 2021

This application has been filed for addition of parties. The applicant is State Bank of India for itself and as a leader of a consortium of lenders to, inter alia, M/s. KAL. The applicants are necessary and proper parties. Hence, CAN 1/2021 is allowed. The said applicants shall be added as party-respondents to the instant writ petition.

Learned advocate on record of the applicants shall make necessary amendments in the cause title of the writ petition in course of the day.

CAN 1 of 2021 is allowed and disposed of.

W.P.A. No. 12067of 2021

1. By order dated 12th August, 2021, a Co-ordinate Bench, reserving the point of maintainability to be decided in course of final hearing, called for affidavits from the parties. This matter has been listed before this Court as a motion. The principal Respondents have not filed affidavits.
2. The respondent No. 4 has used affidavit-in-opposition. The Union as well as the State Bank of India prayed that this Court should first decide on the maintainability of the writ petition on the question of territorial jurisdiction. It is submitted that affidavits are not needed for deciding the preliminary issue. The parties were duly notified and have made detailed submissions.
3. The facts of the case are, inter alia, that OA 766 of 2013 was filed by the State Bank of India against, 'Kingfisher Airlines', the 'United Breweries (Holdings) Limited', Dr. Vijay Mallya, Kingfisher Finvest (India) Ltd. and five others before the Debt Recovery Tribunal-II at Bengaluru in the State of Karnataka. The said OA was decreed for a sum of Rs.6203,35,03,879.42/-.
4. An amended Recovery Certificate being RC No. 11395 of 2017 dated 10th April, 2017 came to be issued.
5. In the mean time, FIRs came to be lodged against defendant Nos. 1 to 4 in OA No. 766 of 2013. On 11th June, 2016 and 3rd September, 2016 the Enforcement Directorate (ED) issued Provisional Orders attaching certain assets of M/s. UBL and UBHL under the provisions of PMLA Act, inter alia, held by the writ petitioners. On 7th January, 2019, the Recovery Officer of DRT at Bengaluru passed orders of

attachment of the shares held by the petitioners in M/s. UBL, United Spirits Limited and McDowell Holdings Limited. In the meantime the corporate debtor UBHL was directed to be wound up by the Hon'ble Karnataka High Court on 7th February 2017.

6. The said attached shares of the petitioners were put up sale in the Recovery Proceedings of the DRT. By a Sale Proclamation dated 7th June, 2021, the Recovery Officer of the DRT sold 3,96,44,346 equity shares in UBL to the 4th respondent M/s. Heineken N.V. in a block deal on the Bombay Stock Exchange duly approved by the SEBI.

7. The petitioners are aggrieved by the order of proclamation and attachment and sale of the said shares. The writ petition has been filed in July, 2021. The petitioners have assailed the order of attachment dated 7th January, 2019, the order of Sale Proclamation dated 7th June, 2021 and the Recovery Certificate being RC No. 11395 of 2017 issued by the Recovery Officer of DRT at Bengaluru.

8. Counsel for the petitioners, Mr. Ratnanko Banerjee, would argue that the writ petitioners are located at and have their registered offices at Kolkata. The order of attachment of the shares of the petitioners was received and its effect felt at Kolkata. The writ petitioners are neither borrowers nor guarantors to the State Bank of India or any financial institution. The petitioners are separate corporate entities and Juristic persons and it, therefore, cannot be said that the petitioners are proxies for Dr. Vijay Mallya, the principal promoter of M/s. KAL.

9. In support of the territorial jurisdiction of this Court to entertain the writ petition, Senior Counsel for the petitioners would rely upon the

judgments of the Supreme Court in the case of **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr**. reported in (**2004) 6 SCC 254**, particularly paragraph 6 and 10 thereof. **Nawal Kishore Sharma Vs. Union of India and Others** reported in **(2014) 9 SCC 329** particularly paragraphs 10 and 16 thereof. Reliance has also been placed on an unreported decision of a Co-ordinate Bench dated 20th May, 2011 in WP No. 388 of 2003 **[Hongkong and Shanghai Banking Corporation Limited Vs. Union of India]**.

10. Mr. Rudraman Bhattacharya, Learned Counsel appearing for the Union submits that no part of the cause of action of the petitioners arose within the jurisdiction of the High Court of Calcutta and the writ petitioners are in essence aggrieved by the orders dated 7th January, 2019 and 7th June, 2021. The said two orders have been passed by the Recovery Officer of the DRT No.-II at Bengaluru in the State of Karnataka. The shares in question belong to M/s. UBL whose registered office is in Bengaluru. The principal debtors, guarantors and other co-obligants towards the banks are all located at Bengaluru. No part of the cause of action, therefore, arose within the jurisdiction of the High Court at Calcutta.

11. The Union also argues that the principal debtor, KAL and each of the petitioners are the alter egos of one and another and are controlled entirely by the said Dr. Vijay Mallya and his family members. Therefore, even if the statements in the writ petition are taken to be true and correct, this Court cannot have territorial jurisdiction to receive, entertain or try the instant writ application. Reference was

made to the decisions of the Supreme Court in the case of **State of Rajasthan & Ors. Vs. Swaika Properties & Anr.** reported in **(1985) 3 SCC 217**and in the case of **M/s. Ambica Industries Vs. Commissioner of Central Excise** reported in **(2007) 6 SCC 769** particularly paragraph 40 and 41 thereof.

12. Mr. Sudipto Sarkar, Senior Advocate, representing respondent No. 4 would submit that his client is nowhere connected with or concerned with the disputes between the writ petitioners and the other respondents or the Enforcement Directorate at New Delhi and the Authorities of the PMLA Act or the proceedings before the DRT. It is submitted that that the 4th respondent had purchased enblock 3,96,44,346 number of shares of M/s. UBL at the Bombay Stock Exchange under the aforesaid Recovery Certificate.

13. It is also argued that this Court does not have jurisdiction to receive entertain or try the instant writ petition as the said shares of M/s. UBL, located at Bengaluru, have been sold at the Bombay Stock Exchange, with the consent and approval of the SEBI (Securities and Exchange Board of India) located at Mumbai.

14. Counsel for the State Bank of India, Mr. Sinha and Mr. Saha, would submit that the petitioners are the alter ego and benamidars of Dr. Vijay Mallya and his family members and companies/trusts promoted by him. The shares held by the petitioners in M/s. UBL are in fact, the shares of the said Dr. Vijay Mallya, certificate debtor. The orders impugned in the writ petition passed by the Recovery Officer, are appealable before the DRT at Bengaluru. The writ petition even

otherwise cannot be entertained for availability of efficacious and effective remedy. The Territorial Jurisdiction of the Court has also been challenged.

15. This Court has carefully considered the arguments advanced by the parties. The expression, 'cause of action' would essentially mean the entire bundle of facts that are required to be proved for the purpose of availing of a judicial remedy. The expression, 'cause of action' in the context of under Article 226 of the Constitution of India has been explained in the decision of **Alchemist Limited and Another Vs. State Bank of Sikkim and Others** reported in (**2007) 11 SCC 335** at paragraph 16 and 20.

> **"…16.** It may be stated that by the Constitution (Forty-second Amendment) Act, 1976, Clause (1-A) was renumbered as Clause (2). The underlying object of amendment was expressed in the following words:
>
> > "Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226 so that when any relief is sought against any Government, authority or person for any action taken, *the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs.*"
> >
> > (emphasis supplied)
>
> The effect of the amendment was that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under Article 226 of the Constitution.
>
> **20**.It may be stated that the expression "cause of action" has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of *essential* facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit."

16. At paragraph 22, 25, 35 and 37 of the decision of Alchemist (supra), the Hon'ble Supreme Court has held as follows:

> **"...22.** For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.
>
> For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.
>
> **25.** The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the *lis* between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.
>
> **35.** Negativing the contention and upholding the order passed by the High Court, this Court ruled that passing of a legislation by itself does not confer any such right to file a writ petition in any court unless a cause of action arises therefor. The Court stated: (*Kusum Ingots case* [(2004) 6 SCC 254 : JT (2004) Supp 1 SC 475] , SCC p. 261, para 20)
>
> > "*20.* A distinction between a legislation and executive action should be borne in mind while determining the said question."
>
> Referring to *ONGC* [(1994) 4 SCC 711 : JT (1994) 6 SC 1] , it was held that all necessary facts must form an "integral part" of the cause of action. The fact which is neither material nor essential nor integral part of the cause of action would not constitute a part of cause of action within the meaning of Clause (2) of Article 226 of the Constitution."

17. After discussing the earlier decision in the case of *M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr.* reported in *(2004) 6 SCC 254, Union of India and Ors. Vs. Adani Exports Limited and Anr.* reported in *(2002) 1 SCC 576, ONGC Vs. Utpal Kumar Basu* reported in *(1994) 4 SCC 711, A. B. C. Laminart Pvt. Ltd. & Anr. Vs. A. P. Agencies* reported in *(1989) 2 SCC 163* and *State of Rajasthan & Ors. Vs. Swaika Properties & Anr.* reported in *(1985) 3 SCC 217* the Hon'ble Supreme Court has held at Paragraph 37 as follows:-

> **"37.** From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner

> 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. In **Nawal Kishore (supra)** decision, it has been held that in order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limits of the Court's jurisdiction. In the said case, it was held that a letter of rejection of disability pension received at native place of petitioner where he was forced to stay due to disability, the cause of action of the petitioner must be deemed to have a reason of the native place of the writ petitioner. The said decision is distinguishable and cannot be applied in the instant case.

19. In **Ambica Industries (supra)** decision the Hon'ble Supreme Court has held at paragraph 17 as follows:

> **"17.** There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also Clause (2) of Article 226 thereof, the High Court would exercise its discretionary jurisdiction as also power to issue writ of certiorari in respect of the orders passed by the subordinate courts within its territorial jurisdiction or if any cause of action has arisen there within but the same tests cannot be applied when the appellate court exercises a jurisdiction over a tribunal situated in more than one State. In such a situation, in our opinion, the High Court situated in the State where the first court is located should be considered to be the appropriate Appellate Authority. The Code of Civil Procedure did not contemplate such a situation. It provides for jurisdiction of each court. Even a District Judge must exercise its jurisdiction only within the territorial limits of a State. It is inconceivable under the Code of Civil Procedure that the jurisdiction of the District Court would be exercisable beyond the territorial jurisdiction of the district, save and except in such matters where the law specifically provides therefor."

20. Applying the tests in the aforesaid cases in the instant case, it is seen that the petitioner is primarily aggrieved by the orders passed by the

Recovery Officer, in RC Case No. 11295 of 2017 attached to the DRT-II at Bengaluru. The said recovery proceeding was to execute a decree and certificate passed by the DRT II at Bengaluru. The shares, sold by the Recovery Officer, were of M/s. UBL and M/s. USL and McDowell Holdings Limited located at, inter alia, Bengaluru. The sale of shares was affected at the Bombay Stock Exchange and sale approved by the SEBI at Mumbai, outside the jurisdiction of the Calcutta High Court.

21. Hence, no part of the cause of action of the petitioner, much less any integral part, has arisen within the jurisdiction of the High Court of Calcutta.

22. The writ petition is therefore dismissed for want of territorial Jurisdiction.

23. There shall be no order as to costs.

24. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)