



2023:DHC:9156

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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**+ **W.P.(C) 7962/2023 and CM APPL. 30640/2023**

Between: -

**PUNE BUILDTECH PVT LTD**

ASSET AREA 13, DELHI AERO CITY,

IGI AIRPORT, NEW DELHI

THROUGH AUTHORIZED REPRESENTATIVE

SH. VICKY KEMLA

S/O BRAHM DUTT

R/O C 533, NATHU PURA,

NEW DELHI, DELHI - 110084

..... PETITIONER

(Through: *Mr. Vijay Aggarwal, Advocate with Ms.Rhythm Aggarwal, Mr. Yash Agrawal, Mr. Hardik Sharma and Mr.Mukul Malik, Advocates.*)

**AND****BANK OF INDIA**

ZONAL OFFICE, BANK OF INDIA, H-2,

CONNAUGHT CIRCUS, NEW DELHI,

DELHI - 110001

THROUGH ITS STANDING COUNSEL

..... RESPONDENT

(Through: *Mr. A. P. Singh and Mr. Shreyansh Rathi, Advocates.*)

+ **W.P.(C) 10525/2023 and CM APPL. 40848/2023****MAJESTIC INFRACON PVT. LTD.**

ASSET AREA 13, DELHI AERO CITY,

IGI AIRPORT, NEW DELHI

THROUGH AUTHORIZED REPRESENTATIVE

SH. VICKY KHEMLA

S/O BRAHM DUTT  
R/O C 533, NATHU PURA,  
NEW DELHI, DELHI - 110084

..... PETITIONER

(Through: Mr. Vijay Aggarwal, Advocate with Ms. Rhythm Aggarwal, Mr. Yash Agrawal, Mr. Hardik Sharma and Mr. Mukul Malik, Advocates.)

**AND**

**PUNJAB NATIONAL BANK**  
PLOT NO. 4, SECTOR 10 DWARKA,  
NEW DELHI – 1100075

..... RESPONDENT NO.1

**BANK OF INDIA**  
ZONAL OFFICE, BANK OF INDIA,  
H-2, CONNAUGHT CIRCUS,  
NEW DELHI, DELHI - 110001

..... RESPONDENT NO.2

(Through: Mr.Santosh Kumar Rout and Ms.Dharna Veragi,  
Advocates for R-1.  
Mr. A. P. Singh and Mr. Shreyansh Rathi, Advocates  
for R-2.)

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Pronounced on: 19.12.2023  
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### **J U D G M E N T**

1. The instant writ petitions are filed challenging the impugned action of the respondent-Bank of India (hereinafter 'BOI'), whereby, the petitioners' accounts have been declared as 'fraud' as per the Reserve Bank of India (RBI) Master Circular on the Classification and Reporting of Fraud dated 01.07.2016. This order shall decide a preliminary objection raised on behalf of the respondent-BOI on entertaining the instant writ petitions on the ground of lack of territorial jurisdiction and/or alternatively, on the ground of *forum non-conveniens*. The issue involved is common in both the writ

petitions; hence, a combined order is being passed.

**Factual Matrix**

2. In W.P.(C.) 7962/2023, the petitioner is a company incorporated under the Companies Act, 1956 having its registered office at DB Central, Maulana Azad Road Rangwala Compound, Jacob Circle, Mumbai 400011. The present dispute has arisen on account of certain credit facilities being availed by the petitioner from the respondent-BOI, Mumbai branch.

3. The respondent-BOI, has its head office at Star House, C-5, G Block, Bandra Kurla Complex, Bandra (East), Mumbai 400051. A branch office of the respondent-BOI at Mumbai Large Corporate *vide* its sanction letter dated 25.09.2013 ('sanction letter'), sanctioned credit facilities amounting to Rs.225 Crores ('credit facilities') to the petitioner company. In terms of the Sanction Letter, the petitioner company executed several security documents vis-à-vis Term Loan Agreement dated 30.09.2013 ('term loan agreement'), Guarantee Agreements dated 30.09.2013, Hypothecation cum Loan Agreement dated 30.09.2013 ('hypothecation'), Mortgage Deed dated 15.10.2013 ('mortgage deed'), Joint Deed of Mortgage dated 28.07.2014 ('joint mortgage deed'), Supplemental Term Loan Agreement dated 30.03.2015 ('supplemental term loan').

4. Due to the non-payment of the loan, the petitioner's account was declared as a Non-Performing Asset (hereinafter 'NPA') on 31.12.2015. Thereafter, numerous One Time Settlement (hereinafter 'OTS') proposals were exchanged between the parties but none of them culminated in the final settlement. In the meantime, the respondent-BOI filed a complaint in

Economic Offences Wing, Mumbai branch (hereinafter 'EOW') that the petitioner has committed fraud against the respondent-BOI to the tune of Rs.236.92 Crores. The EOW *vide* its letter dated 21.06.2022 informed the petitioner that the preliminary enquiry has been closed and no commission of cognizable offence was found. It is the contention of the petitioner that *vide* this letter by EOW, the petitioner came to know that their account is declared as 'fraud'.

5. In W.P.(C) 10525/2023, the petitioner is a company incorporated under the Companies Act, 1956 having its registered office at the 7<sup>th</sup> Floor, Resham Bhavan, Veer Nariman Road, Churchgate Mumbai – 400020. In September 2008, the petitioner approached the respondent-BOI to avail loan, pursuant to which, on 15.11.2008, the respondent-BOI approved and sanctioned a guarantee cum term loan of Rs.425 Crores. In June 2011, the petitioner expressed its inability to repay the credit facilities in light of the uncertainty faced by the telecom sector. Thereafter, in February 2012, the respondent-BOI reviewed the credit facilities and a revised sanction letter dated 02.02.2012 was issued to the petitioner company at the then outstanding sanctioned limit of Rs.246.33 Crores.

6. Since the petitioner could not repay the loan, the respondent-BOI declared the petitioner's account as NPA. Pursuant to the said declaration, various OTS proposals were sent by the petitioner, but they did not culminate into any settlement. Thereafter, the respondent-BOI declared the petitioner's account as 'fraud' in view of the RBI Master Circular on the Classification and Reporting of Fraud dated 01.07.2016.

**Submissions advanced by parties**

7. Learned counsel appearing on behalf of the respondent-BOI in W.P.(C) 7962/2023 and W.P.(C) 10525/2023 raises a preliminary objection with respect to the maintainability of these petitions on the ground of lack of territorial jurisdiction of this court. He submits that going by the pleadings made by the petitioner, no cause of action has arisen within the jurisdiction of this court. According to him, the only action under challenge is with respect to the declaration of the petitioners' accounts as 'fraud' and the same has taken place in Mumbai which was communicated to the regional office of Reserve Bank of India (RBI) at Bengaluru, which is also situated beyond the jurisdiction of this court.

8. Learned counsel, therefore, submits that merely on the basis of some agreements being signed (not executed) within the territorial jurisdiction of this court with respect to the availment of the loan facilities, the declaration of fraud of petitioners' accounts in the respondent-BOI, Mumbai branch cannot entitle the petitioners to invoke the jurisdiction of this court.

9. In response to the submissions made by the learned counsel appearing on behalf of the respondent-BOI, the learned counsel appearing on behalf of the petitioners submits that *firstly*, there is no objection in writing, *secondly*, the petitioners have not been even furnished with a copy of the order, whereby, the petitioners' accounts have been declared as 'fraud'. He submits that the petitioners have pleaded various aspects in the respective writ petitions to substantiate that at least a part of the cause of action has arisen within the territorial jurisdiction of this court.

10. Learned counsel has taken this court to page no.84 paragraph G of W.P.(C) 7962/2023 and page no.76 paragraph F of W.P.(C) 10525/2023 to submit that the petitioners have clearly averred as to how a part of the cause of action has arisen within the territorial jurisdiction of this court. While placing reliance on paragraph no.21 of the Full Bench decision of this court in the case of *Sterling Agro Industries Ltd. v. Union of India & Ors.*<sup>1</sup>, he submits that the Full Bench has considered various earlier pronouncements and has concluded that the question ‘whether a High Court has territorial jurisdiction to entertain a writ petition’ must be answered on the basis of the averments made in the petition; the truth or otherwise, whereof, is immaterial. According to him, the question of territorial jurisdiction must be decided on the facts pleaded in the petition and in this case, the petitioners have specifically averred as to how this court has territorial jurisdiction to entertain the instant writ petitions.

11. He has also placed reliance on another decision of this court dated 03.07.2009 in W.P.(CrI) 37/2009 titled as *Mrs. Malini Mukesh Vora v. Union of India and Ors.* While placing reliance on paragraph nos.17, 18 and 21 of the said decision, he submits that after amendment in Article 226(2) of the Constitution of India, the jurisdiction of the High Court has widened. According to him, the Hon’ble Supreme Court in the case of *Navinchandra N. Majithia v. State of Maharashtra and Ors.*<sup>2</sup> has observed that the introduction of Article 226(2) of the Constitution of India has widened the width of the area in respect of writ issued by different High Courts. He, therefore, submits that in view of the amendment in Article 226

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<sup>1</sup> 2011 SCC OnLine Del 3162.

(2) of the Constitution of India, this court has the requisite jurisdiction to issue a writ even against the parties which are located outside the territorial jurisdiction of this court.

12. Learned counsel has also placed reliance on a decision of this court in the case of ***Vishnu Security Services v. Regional Provident Fund Commissioner***<sup>3</sup> to contend that in the absence of any plea of *forum non-conveniens*, the rejection of the writ petition would not be proper. While placing reliance on the various paragraphs of the said decision, learned counsel submits that the concept of *forum conveniens* has to be considered in the context of various circumstances such as the appropriateness of bringing the *lis* before the court, the interest of the parties and witnesses etc. He, accordingly, submits that the concept of *forum non-conveniens* fundamentally means that it is obligatory on the part of the court to see the convenience of the parties before it.

13. According to him, the petitioners have already resorted to filing the petition within the territorial jurisdiction of this court, therefore, the present court is the most convenient forum for them to ventilate their grievance. He submits that the respondents have offices throughout the country and in the present scenario, it would not be difficult for the respondents to defend their action before this court. According to him, the effect of the declaration of the petitioners' accounts as 'fraud' has pan-India implications and therefore, the respondents cannot deny the aspect of accrual of at least a part of the cause of action before this court.

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<sup>2</sup> (2000) 7 SCC 640.

<sup>3</sup> 2012 SCC OnLine Del 1024.

14. While extensively reading paragraph no.5 onwards of the decision in the case of *Vishnu Securities (supra)*, he submits that this court has consistently held that the choice of the party, who approaches the court should be respected and be given due precedence. Learned counsel then submits that the decision in the case of *Vishnu Securities (supra)* has been consistently followed in all subsequent decisions and to substantiate his submissions, he has also placed reliance on the decisions of this court in W.P.(C.) 6354/2022 titled as *M/s. INCRED Financial Services Ltd. v. Deputy Director, Directorate of Enforcement* and in W.P.(C.) 3460/2022 titled as *Geetika Mallan & Anr. v. Deputy Director, Directorate of Enforcement, New Delhi & Ors.*

15. Learned counsel further places reliance on the decision in the case of *Sunil Mehdiratta v. Union of India*<sup>4</sup>, and while reading paragraph no.8, he submits that the discretion whether to entertain a writ petition or otherwise will have to be decided on the basis of sound principles of law such as the principles laid down by the Hon'ble Supreme Court and this court to entertain writ petitions, even when a part of cause of action arises within the jurisdiction of a particular High Court.

16. While distinguishing the decision of this court in the case of *Angika Development Society v. Union of India & Ors.*<sup>5</sup>, he submits that even this court has also noted the principle that even if a small part of the cause of action arises within the territorial jurisdiction of the High Court, although the same by itself may not be considered to be a determinable factor, the

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<sup>4</sup> 2001 ILR DEL 2 554.

<sup>5</sup> 2023:DHC:7362.

court has to take into consideration various aspects and then only it can exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*.

17. Lastly, he has relied on the decision in the case of ***Amarjeet Sharma v. Serious Fraud Investigation Office***<sup>6</sup>, to submit that even a small difference of fact may make a world of difference between the conclusions to be reached in two cases. He has read over paragraph no.29 of the said decision to submit that each case will have to be considered depending upon the facts and circumstances therein and no decision can be relied upon blindly, without taking into consideration various facts and circumstances.

### **Analysis**

18. Having considered the submissions advanced by the learned counsel appearing on behalf of the parties, this court finds it appropriate to primarily delve into the ‘cause of action’ in both these petitions to decide the challenge to the jurisdiction.

19. The generic definition of the term ‘cause of action’, as provided by Section 20 of the Civil Procedure Code, 1908, refers to the “*fact which is necessary to establish to support a right to obtain a judgment.*”

20. The ‘cause of action’ has also been defined in *P. Ramanatha Aiyar* in Advanced Law Lexicon, 3rd Edition, Volume 1, as under:-

“ ‘Cause of action’ has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The

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<sup>6</sup> 2022 SCC OnLine Del 3633.

*phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of the grievance founding the action, not merely the technical cause of action."*

21. The Hon'ble Supreme Court, in the case of ***Bloom Dekor Ltd. v. Subhash Himatlal Desai***<sup>7</sup> observed as under:

*"28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (Cooke v. Gill [1873 LR 8 CP 107 : 42 LJCP 98] ).*

22. The Hon'ble Supreme Court in the case of ***Om Prakash Srivastava v. Union of India***<sup>8</sup>, has also ventured into the question as to what constitutes a 'cause of action' and held as under:-

*"11. It is settled law that "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. [See South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd. [(1996) 3 SCC 443] ]*

*12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to*

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<sup>7</sup>(1994) 6 SCC 322.

<sup>8</sup>(2006) 6 SCC 207.

*support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294].)*"

23. Furthermore, in the case of ***Kusum Ingots & Alloys Ltd. v. Union of India***,<sup>9</sup> the Hon'ble Supreme Court made a pertinent observation with respect to the doctrine of 'cause of action', which reads as under:-

"9.---

*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."*

24. Recently, this court in a case being W.P. (C) no.15556/2023 titled as ***Bharat Nidhi Limited v. Securities Exchange Board of India & Ors.*** has held as under:-

*"The 'cause of action' means a bundle of facts, which is necessary for the plaintiff to prove in order to succeed in the proceedings. The cause of action does not completely depend upon the character of the relief prayed for by the plaintiff. It is rather the foundation upon which the plaintiff lays his/her claim before the court to arrive at a conclusion in his/her favour. It depends on the right which the plaintiff has and its infraction."*

25. It is significant to advert to the extensive discussion in the case of ***Bharat Nidhi*** (*supra*) on the nature and scope of Article 226 of the Constitution of India vis-à-vis the doctrine of *forum non-conveniens*. The relevant paragraphs of the said decision read as under:-

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<sup>9</sup> (2004) 6 SCC 25.

55. *Before proceeding to analyse the law relating to forum conveniens and to appreciate the facts in the present petitions, it is pertinent to briefly embark upon the journey of the amendments in Article 226 of the Constitution of India to understand the objective and rationale behind the said enactment, more particularly about Clause 2 of Article 226, as it stands today.*

56. *Article 226 of the Constitution of India, as originally adopted before the amendments, reads as under:*

*“226. ....*

*(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

*(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.”*

57. *The Hon’ble Supreme Court had an occasion to construe the original unamended Article 226 in the case of **Election Commission, India v. Saka Venkata Rao**, wherein, a strict and restrictive construction was accorded to Article 226.*

58. *Thereafter, the issue once again came up for consideration before the Hon’ble Supreme Court in the case of **Lt. Col. Khajoor Singh v. Union of India**, whereby, the decision in the case of **Saka Venkata Rao** (supra) was approved and it was unequivocally settled that functioning or the effects of the action of the government would not confer the jurisdiction upon the High Court. It was held that the power of the High Court to issue writs was subject to two-fold limitations. Firstly, such writs cannot run beyond the territories subject to its jurisdiction and secondly, it was settled that the person or authority to whom the writ may be issued must be amenable to the jurisdiction of the High Court either by residence or location within territories subject to its jurisdiction.*

59. *While ruling upon the scope of introducing the concept of cause of action as a condition for the exercise of jurisdiction under*

Article 226, in the case of **Lt. Col. Khajoor Singh** (*supra*), it was held as under:

*“16. Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Article 226 are not suits; they provide for extraordinary remedies by a special procedure and give powers of correction to the High Court over persons and authorities and these special powers have to be exercised within the limits set for them. These two limitations have already been indicated by us above and one of them is that the person or authority concerned must be within the territories over which the High Court exercises jurisdiction. Is it possible then to overlook this constitutional limitation and say that the High Court can issue a writ against a person or authority even though it may not be within its territories simply because the cause of action has arisen within those territories? It seems to us that it would be going in the face of the express provision in Art. 226 and doing away with an express limitation contained therein if the concept of cause of action were to be introduced in it. Nor do we think that it is right to say that because Art. 300 specifically provides for suits by and against the Government of India, the proceedings under Art. 226 are also covered by Art. 300. It seems to us that Art. 300 which is on the same line as S. 176 of the Government of India Act, 1935, dealt with suits as such and proceedings analogous to or consequent upon suits and has no reference to the extraordinary remedies provided by Art. 226 of the Constitution. The concept of cause of action cannot in our opinion be introduced in Art. 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to person residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Art. 226.”*

60. *In order to remedy the practical constraints due to the restrictive interpretation of Article 226 after the aforesaid judgment, the Constitution (Fifteenth Amendment) Act was brought in 1963, which inserted Clause (1A), which was subsequently renumbered as Clause (2) vide Forty-second Constitutional Amendment, 1976. Clause 2 of Article 226 of the Constitution of India reads as under:*

*“226. ....*

*.....*

*(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”*

61. *The rationale behind the Constitution (Fifteenth Amendment) Act, 1963, which paved the way for the applicability of the concept of ‘cause of action’ which was earlier rejected to be read into Article 226(1), is captured in the Statement of Objects and Reasons appended to the Constitution (Fifteenth Amendment) Bill, 1962 and the same reads as under:*

*“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 arise may also have jurisdiction to issue appropriate directions, orders or writs.”*

62. *In the words of Sh. A.K. Sen, the then Law Minister, while introducing the Fifteenth Amendment Bill, the intention behind introducing the then Article 226(1A) which is the present-day Article 226(2) was as under:*

*“We are amending Article 226 which has become very necessary in view of certain decisions of the Supreme Court that any application for the issue of writ under Article 226 against the Union of India can only be made in*

*the Punjab High Court because Delhi, which is the headquarters of the Union of India happens to be within the jurisdiction of the Punjab High Court. So that, an ordinary man who wants to sue the Union of India in Kerala or Assam or Bengal or in far off places, has to travel all the way to Delhi and file his application in the Punjab High Court. In most cases for the common man whose resources are slender, it becomes an impossible thing. This demand has now arisen from everywhere. Though the original intention was never to make only the Punjab High Court the High Court against the Union of India, and it was contemplated that all the High Courts would have a similar jurisdiction, by a judicial decision of the Supreme Court, this unfortunate result has been brought about. Before the Constitution, the Privy Council took a different view altogether. They held in the Parlakimidi case and also in the case of Howrah Municipality that the seat of authority or Government was not material, so that, even if the seat, let us say, of the Union of India was Delhi, you could not sue in Delhi the Union of India for the issue of one of the writs unless the cause of action arose within the jurisdiction of this High Court also. They took quite a different view, quite the opposite view to what the Supreme Court has taken. When the law was in that state, this Constitution was framed thinking that every High Court will have jurisdiction within whose jurisdiction or territorial jurisdiction the cause of action had arisen. Therefore, we are trying to restore the position as it was in the contemplation of the framers of the Constitution in the Constituent Assembly, so that that man has not got to travel to Delhi with such scarce accommodation as is there.”*

63. According to DD Basu, *Commentary on the Constitution of India*, 8<sup>th</sup> Ed., Vol. 10, Articles 214-226 (Contd.), the rationale behind the amendments is explained in the following words:

**“Objects of Amendments**

*As a result of the view taken by the Supreme Court in Election Commn. v. Venkata and subsequent cases, it was location or residence of the respondent which gave territorial jurisdiction to a High Court under Article 226, the situs of the cause of action being immaterial for this purpose. The decision of the Supreme Court led to the result that only the High Court of Punjab would*

*have jurisdiction to entertain petitions under Article 226 against the UOI and those other bodies which were located in Delhi.*

*The object of clause (1A), inserted by the 15th Amendment Act, 1963, was to restore the view taken by the High Court and to provide that the High Court within which the cause of action arises wholly or in part, would also have jurisdiction to entertain a petition under Article 226 against the UOI or any other body which was located in Delhi. The Amendment thus supersedes the Supreme Court decisions to the contrary.*

*The effect of the amendment is that it made the accrual of cause of action an additional ground to confer jurisdiction to a High Court under Article 226. As Joint Committee observed: "This clause would enable the High Court within whose jurisdiction the cause of action arises to issue direction, orders or writs to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feels that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction. (Report of Joint Committee—Clause 8)."*

*The Constitution (Fifteenth Amendment) came into force on 5th October, 1963. However, as seen above, this clause does not confer new jurisdiction on a High Court, but provides an additional ground and extends its jurisdiction beyond the boundaries of the State if the cause of action arose within its territory."*

64. *A perusal of Clause 2 of Article 226 indicates that the writ jurisdiction can be exercised by the High Court primarily in relation to the territories within which the cause of action, wholly or in part arises. However, the location of such Government or authority or residence of such person, outside the territories of the High Court will not deter the High Court from issuing the appropriate writ.*

65. *The introduction of Clause (2) in Article 226 of the Constitution of India widened the width of the area for issuance of*

writs by different High Courts, however, the same cannot be construed to completely dilute the original intent of the Constitution makers which is succinctly encapsulated in Clause (1) of Article 226. Rather, Clause (2) is an enabling provision, which supplements Clause (1) to empower the High Courts to ensure an effective enforcement of fundamental rights or any other legal right. Therefore, the power of judicial review cannot be circumscribed by the location of the authority against whom the writ is issued, however, the same does not mean that the constitutional mandate enshrined under Article 226 (1) can be completely neglected or whittled down.

66. On this aspect, it is significant to advert to a decision of the Co-ordinate Bench of this Court in the case of **Jayaswals Neco Limited v. Union of India and Others**, wherein, it was held that Article 226(2) has only extended the jurisdiction of the High Courts beyond its territorial limits but it does not supplant Article 226(1). The relevant paragraph of the said decision reads as under:

“20. ---

This amendment introduced the concept of cause of action which the Supreme Court had earlier refused to read into Article 226 (1). However, this does not mean that the concept of territorial jurisdiction under Article 226 (1) was supplanted by Article 226 (2). The decision of the Supreme Court in *Election Commission, India v. Saka Venkata Subba Rao* (supra) and *Khajoor Singh* (supra) were rendered in the context of Article 226 (1) and in the absence of any provisions of the nature of Article 226 (2). The introduction of Article 226 (2), as observed in the case of *Navinchandra N. Majithia* (supra) widened the width of the area in respect of writs issued by different High Courts. In fact, Article 226(2) can be construed as an exception to the limitations mentioned in *Election Commission, India* (supra) and approved in *Khajoor Singh* (supra). The power conferred on the High Courts under Article 226 could now be as well exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, in whole or in part, arose and it was no matter that the seat of the authority concerned was outside the territorial limits of the jurisdiction of that High Court. This distinction between the provisions of Article 226 (1) and 226 (2) has to be maintained. While Article 226 (1) empowers a High Court to issue writs to a person, authority or government within its territorial limits de hors the question of where the cause of action arose, Article 226 (2) enables High Courts to issue writs to persons, authorities or governments located beyond its territorial limits provided a cause of action arises (in whole or in part) within the territorial

*extent of the said High Court. What Article 226 (2) has done is to extend the jurisdiction of the High Courts beyond their territories in cases where part of the cause of action arises within its territories. Therefore, Article 226 (2) extends and does not supplant Article 226 (1). The decision of the Supreme Court in the case of State of Rajasthan and Ors. v. Swaika Properties and Anr.:1985 (3) SCC 217, Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors.: 1994 (4) SCC 711 as well as Adani Exports (supra) and Kusum Ingots (supra) all pertain to Article 226 (2) of the Constitution and have reference to the question of cause of action. It is true, as observed in Kusum Ingots (supra), that the decision in Khajoor Singh (supra) would not be relevant insofar as the argument of cause of action is concerned inasmuch as Khajoor Singh (supra) was a decision rendered prior to the 15th Amendment of the Constitution. But, this does not mean that what Khajoor Singh (supra) has decided in respect of Article 226 (1) can be whittled down or ignored. That is a decision of seven judges of the Supreme Court and, with regard to the provisions of Article 226 (1), it is definitive.*

[Emphasis supplied]

67. Thus, the salient aspects which emerge out of the aforesaid discussion can be delineated forthwith as:

- (i) Article 226(2) does not take away the right of a High Court to dismiss a case on grounds of forum non-conveniens. The principles of forum non-conveniens and that of Article 226(2) operate in different field, where Article 226(2) (originally Article 226(1A)) was inserted to solve the problem of a litigant needing to go to a High Court where the seat of government authority was present.
- (ii) In other words, merely because Article 226(2) allows jurisdiction to be conferred on a High Court in the absence of the seat of a government authority being under its jurisdiction; this does not in itself mean that the presence of a seat shall automatically grant jurisdiction.
- (iii) Article 226(2) allows jurisdiction to be conferred if the cause of action, either in part or whole, had arisen in the jurisdiction of a High Court, however, where the purported cause of action is so minuscule so as to make a particular High Court non- convenient, it is then that the concept of forum non-conveniens applies.”

26. It was further held in the case of *Manish Kumar Mishra v. Union of India & Ors.*<sup>10</sup> that every fact pleaded in the writ petition will not form a part of the bundle of facts in order to answer a determinative question as to whether the cause of action arises within the jurisdiction of the court or not. The relevant paragraph reads as under:

*“148. In order to confer jurisdiction on the High Court to entertain a writ petition, the Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts constitute a cause so as to empower the Court to decide a dispute which has, at least in part, arisen within its jurisdiction. Each and every fact pleaded in the application may 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 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 would not give rise to a “cause of action” so as to confer territorial jurisdiction on the Court concerned, and only those facts which give rise to a cause of action within a Court's territorial jurisdiction which have a nexus or relevance with the lis that is involved in that case, would be relevant for the purpose of invoking the Court's territorial jurisdiction, in the context of clause (2) of Article 226.”*

*[Emphasis supplied]*

27. It was further held in the case of *Bharat Nidhi* (*supra*) that the doctrine of ‘cause of action’ in relation to Article 226 of the Constitution, hence, becomes limited to the integral facts of the case and the *situs* of the cause of action then is construed as the *situs* where the material, essential and integral facts arose.

28. The *situs* of the cause of action vis-à-vis the doctrine of *forum conveniens* was also discussed in the case of *Nasiruddin v. STAT*<sup>11</sup>, wherein, the Hon’ble Supreme Court has held as under:

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<sup>10</sup> 2020 SCC OnLine All 535.

<sup>11</sup> (1975) 2 SCC 671.

*“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.**”*

*[Emphasis supplied]*

29. It is to be noted that the reliance can be placed on the decision in the case of *State of Goa v. Summit Online Trade Solutions Pvt. Ltd.*<sup>12</sup>, wherein the Hon’ble Supreme Court while deciding the challenge to the government notification by the company based in Sikkim, examined the issue of ‘cause of action’ and held that:-

*“This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. The Constitutional mandate of clause (2) is that the ‘cause of action’, referred to therein, must at least arise in part*

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<sup>12</sup> (2023) 7 SCC 791.

*within the territories in relation to which the high court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories. The expression 'cause of action' has not been defined in the Constitution. However, the classic definition of 'cause of action' given by Lord Brett in Cooke vs. Gill[(1873) 8 CP 107] that "cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court", has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. **However, in the context of a writ petition, what would constitute such 'cause of action' is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the high court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the high court to decide the dispute and that, at least, a part of the cause of action to move the high court arose within its jurisdiction.** Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests."*

30. At this stage, it is pertinent to note that the petitioner in W.P.(C.) 7962/2023, while pleading that this court has the requisite jurisdiction to decide this matter, has made the following averments:-

*"G.I. At the very outset, it is stated that due to the large sums of money required for the construction and operation of the various facilities of the Petitioner Company, the required funds were sourced through a Catena of Loan & Hypothecation Agreements, which were further supplemented by a number of 'Supplementary/Corrigendum Agreements', many of which were signed and executed in Delhi..."*

***G.2. That the execution of the above mentioned agreements was an integral part of the credit sanctioning process adopted by the consortium of Banks led by the Respondent Bank, which is itself having it's zonal offices of the Recovery Department at Connaught Circle, New Delhi.***

***G.3. That this Hon'ble Court in the matter of Malini Mukesh Vora vs Union of India, Criminal Writ Petition No. 34/2009 while deciding upon the extents of the writ jurisdiction, regarding the exercise of its powers as a Constitutional Court, in matters that have partly arisen/occurred outside the territory of Delhi, relied upon a catena of decisions by the Hon'ble Supreme Court and other High Courts, to hold that Article 226(2) permits the High Courts to issue writs to persons, authorities or governments located beyond the territory of the State in which the High Court is located, provided a cause of action, in whole or in part, arises within the territory of the State."***

31. Furthermore, in W.P.(C) 10525/2023, while dealing with the issue of jurisdiction of this court, the petitioner has made the following specific averments that:-

***"F.1. At the very outset, it is stated that due to the large sums of money required for the construction and operation of the various facilities of the Petitioner Company, the required funds were sourced through a Catena of Loan & Hypothecation Agreements, which were further supplemented by a number of 'Supplementary/Corrigendum Agreements', which were all executed at the behest of the Respondent No. 1 Bank which is headquartered in Delhi.***

***F.2. That the execution of the above mentioned agreements was an integral part of the credit sanctioning process adopted by the consortium of Banks led by the Respondent No. 2 Bank , which is itself having it's zonal offices of the Recovery Department at Connaught Circle, New Delhi.***

***F.3. That this Hon'ble Court in the matter of Malini Mukesh Vora vs Union of India, Criminal Writ Petition No. 34/2009 while deciding upon the extents of the writ jurisdiction, regarding the exercise of its powers as a Constitutional Court, in matters that have partly arisen/occurred outside the territory of Delhi, relied upon a catena of decisions by the Hon'ble***

*Supreme Court and other High Courts, to hold that Article 226(2) permits the High Courts to issue writs to persons, authorities or governments located beyond the territory of the State in which the High Court is located, provided a cause of action, in whole or in part, arises within the territory of the State.”*

32. A perusal of the aforementioned averments made by the petitioners in both the writ petitions would exhibit that, according to them, the basis to exercise jurisdiction of this court is due to the following factors:-

- i. Loan agreement and other documents etc. being signed in Delhi.
- ii. Respondent-PNB has its headquarters in Delhi.
- iii. Respondent-BOI has its zonal office in Delhi.

33. Furthermore, the respondent-BOI while retorting to the abovementioned averments and objecting to the jurisdiction of this court distinctly submits that neither any cause of action nor any part of it has arisen within the jurisdiction of this court. The relevant paragraphs of the written submission filed on behalf of the respondent-BOI in W.P.(C) 7962/23 are as follows:-

*“7. That owing to various irregularities, siphoning off of various funds and other misuses apart from defaults in payment, account of the Petitioner was reviewed by fraud monitoring Group of the Respondent Bank, in Mumbai and was declared fraud. Pursuant, to Fraud Monitoring return dated 20.09.2019 was generated wherein inter-alia it was shown that out of the sanctioned limit of Rs.22.50 crores, the balance outstanding as on the date of report was Rs 23.692 crores. The said report was further submitted online to the RBI Regional Office.*

*8. That from the above said documents submitted by the Petitioner, it is clear that neither any cause of action nor any part of it has arisen within the jurisdiction of this Hon’ble Court. The Petitioner for reasons best known to it, is trying to avoid Courts at Mumbai where other similar*

*cases with regard to the Petitioner, its promoter and other group companies are pending/likely to be pending...*

.....

***11. That the present petition has no reasonable, justifiable, causal link within the jurisdiction of this Hon'ble Court. Even if, some representation request has been filed by the Petitioner from Delhi, to be entertained by the Corporate Large Branch Mumbai of the Respondent,-the same would not give any cause of action. It is pertinent to note that even the authorised representative of the Petitioner is a resident of Mumbai and had to travel to Delhi to sign the present petition.***

.....

*13. That the Respondent is a Public Sector Bank and most of the records, files, officers are at or have worked at Mumbai. The Respondent would have to spend lot of public money and time for conducting the present matter at Delhi."*

34. Similarly, the relevant paragraphs of the written submission filed on behalf of the respondent-BOI in W.P.(C) 10525/23 are as follows:-

*"7. That owing to various irregularities, siphoning off of various funds and other misuses apart from defaults in payment, account of the Petitioner was reviewed by fraud monitoring Group of the Respondent Bank, in Mumbai and was declared fraud. Pursuant, to Fraud Monitoring return dated 12.11.2020 was generated wherein inter-alia it was shown that out of the sanctioned limit of Rs.62.50 crores, the balance outstanding as on the date of report was Rs 68.11 crores. The said report was further submitted online to the RBI Regional Office.*

*8. That from the above said documents submitted by the Petitioner, it is clear that neither any cause of action nor any part of it has arisen within the jurisdiction of this Hon'ble Court. The Petitioner for reasons best known to it, is trying to avoid Courts at Mumbai where other similar cases with regard to the Petitioner, its promoter and other group companies are pending/likely to be pending...*

.....

***11. That the present petition has no reasonable, justifiable, causal link within the jurisdiction of this Hon'ble Court. Even if, some representation request has been filed by the Petitioner from Delhi, to be***

*entertained by the Corporate Large Branch Mumbai of the Respondent,-the same would not give any cause of action. It is pertinent to note that even the authorised representative of the Petitioner is a resident of Mumbai and had to travel to Delhi to sign the present petition.*

.....

*13. That the Respondent is a Public Sector Bank and most of the records, files, officers are at or have worked at Mumbai. The Respondent would have to spend lot of public money and time for conducting the present matter at Delhi.”*

35. It is pertinent to note that in both these writ petitions, the cause of action arose when the petitioners’ accounts were declared as ‘fraud’ by the respondent-BOI Mumbai branch. Amongst all the bundle of facts, this is the fact which is germane for exercising the jurisdiction under Article 226(2) of the Constitution. It is the petitioners’ contention that due to-some of the loan agreements signed at Delhi or the respondent PNB's headquarters situated in Delhi, the petitioners have the right to approach this court. However, it is palpably seen that the integral issue in the entire dispute is with respect to the declaration of the petitioner’s account as ‘fraud’ by the respondent-BOI Mumbai branch, which is not situated within the territorial jurisdiction of this court.

36. At this juncture, this court while pondering over the jurisdictional issue raised in the instant petitions, deems it appropriate to determine the scope and applicability of the doctrine of *forum non-conveniens*.

37. As an academic exercise, this court looked into the various jurisdictions in order to understand the application of the doctrine of *forum non-conveniens*. It is to be noted that the origin of this doctrine can be traced back to Scotland where the court applied this doctrine as an extension to the

plea of *forum non-competens* as the parties were not residents of Scotland as it been held in the case of *Vernor v. Elvies*.<sup>13</sup>

38. Thereafter, in American jurisprudence as well, this doctrine finds acceptance wherein, the trial courts refused to entertain cases on the point that the residents belong to another state in the United States. Reference can be made to the decisions of *Pierce v. Equitable Life Assurance Society*<sup>14</sup>, *Molony v. Dows*<sup>15</sup>, *Ferguson v. Neilson*<sup>16</sup>. Taking a cue from the American and Scottish jurisprudence, the reference can be made to the decision of *Logan v. Bank of England*<sup>17</sup>, where in England as well, the courts had also started using this doctrine of *forum non-conveniens* where the plaintiff's choice of forum was vexatious and worked as an unnecessary hardship on the defendant.

39. It is pertinent to note that the House of Lords in the case of *Tehran v. Secretary of State for the Home Department*<sup>18</sup> explained the doctrine in the following manner:

*“The doctrine of forum non conveniens is a good example of a reason, established by judicial authority, why a court should not exercise a jurisdiction that (in the strict sense) it possesses. Issues of forum non conveniens do not arise unless there are competing courts each of which has jurisdiction (in the strict sense) to deal with the subject matter of the dispute. It seems to me plain that if one of the two competing courts lacks jurisdiction (in the strict sense) a plea of forum on conveniens could never be a bar to the exercise by the other court of its jurisdiction.”*

40. Furthermore, the United States Supreme Court while dealing with the

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<sup>13</sup> 6 Dict. of Dec. 4788 (1610).

<sup>14</sup> (1887) 145 Mass. 56, 12 N. E. 858.

<sup>15</sup> (1859) 8 Abb. Pr. 316.

<sup>16</sup> (1890) 11 N. Y. Supp. 524

<sup>17</sup> [1906] 1 K.B. 141.

doctrine of *forum non-conveniens* in the case of **Gulf Oil Corporation v. Gilbert**,<sup>19</sup> held that :-

*“The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even where jurisdiction is authorised by the letter of a general venue statute. These statutes are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy. **But the open door may admit those who seek not simply justice but perhaps justice blended with some harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself.**”*

41. Coming to the Indian jurisprudence, this doctrine is widely applied by the courts throughout the country. The Hon’ble Apex Court considered the scope of *forum non-conveniens* in the landmark case of **Kusum Ingots (supra)** wherein it was held that the court is not obliged to entertain cases where even a small part of the cause of action arises within its territorial jurisdiction, as the same cannot be construed to be a determinative factor which may compel the court to decide the case. The doctrine of *forum conveniens* in appropriate cases entitles the court to exercise its discretionary jurisdiction and refuse to entertain such cases. The relevant paragraph is reproduced for the reference herein below:-

*“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 Bhagat Singh Bugga v. Dewan Jagbir Sawhany. AIR 1941 Cal 670, Madanlal Jalan v. Madanlal. AIR 1949 Cal 495, Bharat Coking Coal Limited v. Jharia Talkies &*

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<sup>18</sup> [2006] UKHL 47.

<sup>19</sup> 330 U.S. 501.

*Cold Storage (P) Ltd., 1997 CWN 122, S.S. Jain & Co. v. Union of India. (1994) 1 CHN 445 and New Horizon Ltd. v. Union of India.”*

42. Consequently, in the case of ***Alchemist Ltd. v. State Bank of Sikkim***<sup>20</sup>, it was held that:

*“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.”*

43. The same principle was also upheld in the case of ***Sterling Agro Industries Ltd. v. Union of India & Ors.***<sup>21</sup>, wherein this Court ruled that while exercising jurisdiction under Article 226 of the Constitution of India, the doctrine of *forum conveniens* can be applied. Also, the court observed that the site of the cause of the action cannot be the sole determinative criteria to confer the jurisdiction of this court. Further, the court has laid down that the cause of action depends upon the factual matrix of each case and cannot be totally based on the *situs* of the tribunal/appellate authority/revisonal authority while completely ignoring the concept of *forum conveniens*. In paragraph 32 of the said decision, this court held that:-

*“32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the*

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<sup>20</sup> (2007) 11 SCC 335.

<sup>21</sup> 2011 SCC OnLine Del 3162.

concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

33. In view of the aforesaid analysis, we are inclined to modify, the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisonal authority is situated and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisonal authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisonal authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

**(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).**

(g) *The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) “that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens” is not correct.*

(h) *Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled.”*

44. It is pertinent to refer to the decision of the Calcutta High Court in the case of ***Heiza Boilers (I) Pvt. Ltd. v. Union of India***<sup>22</sup>, whereby, while summarizing the principle regarding material and essential facts in the bundle of facts constituting the cause of action, the court held that what is to be seen is whether a particular fact is a material, integral or essential part of the lis between the parties. The relevant paragraph reads as under:-

*“14. The principles are these; Facts which have no bearing on 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 a Court. What is to be seen is whether a particular fact is of substance and can be said to be material, integral or essential part of the list between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. In determining the question the substance of the mater, and not the form thereof, is to be considered. The answer to the question whether the service of a notice is an integral part of the cause of action within the meaning of Article 226(2) must depend upon the nature of the impugned order or action giving rise to the cause of action, and the test to ascertain this is whether for questioning the order or action it is necessary to plead the fact of service of the notice in the writ petition and prove it. **Only those facts without the proof of which the action must fail are material and essential facts in the bundle of facts constituting the cause of action. Hence a fact without the proof of which a writ petition will not fail is not an integral part of the cause of action, and, accordingly, it cannot be said that a part of the cause of action has arisen at the place where the event concerning the fact has happened.**”*

*[Emphasis supplied]*

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<sup>22</sup> 2009 SCC OnLine Cal 2754.

45. A Coordinate Bench of this court in the case of *Shristi Udaipur Hotels v. Housing and Urban Development Corp.*<sup>23</sup> has also dealt with the question of whether the ‘cause of action’ arises within the jurisdiction of the court when the registered office of the respondent is situated in Delhi. The court noted that the most vital or significant part of the cause of action arises outside the territorial jurisdiction of this court and thus, a mere presence of the registered office in Delhi will have no implication to determine the pertinent question of jurisdiction of the court. The relevant part of the said decision is reproduced herein for reference:-

*“30. In the present case, the mere location of the registered office of the respondent/Corporation in Delhi, cannot be a ground to canvass that the cause of action has arisen within the territorial jurisdiction of this Court, unless and until the petitioner has been able to point out that some material decision had been taken at the office of the respondent that would have a bearing on the present petition. A bald submission made to the effect that ordinarily a decision to recall a loan from a client is taken at the head office of the respondent/Corporation would not be of much assistance to the petitioner. As would be apparent from a bare perusal of the writ petition, the petitioner's grievance is directed against the act of the regional office of the respondent/Corporation in issuing the impugned loan recall notice dated 20.01.2014 and admittedly, the said regional office is not located within the territorial jurisdiction of this Court, but is based at Jaipur. Similarly, the Sub-Lease Deed dated 11.1.2008 in respect of the project land was executed by the petitioner with the sub-lessor at Udaipur and the project land is also located in Udaipur.*

*31. To conclude, this Court is of the view that the facts relating to jurisdiction that have been pleaded in the application and for that matter, in the writ petition, can hardly be stated to be either essential or material, much less integral for constituting a part of the cause of action, as envisaged under Article 226(2) of the Constitution of India, for vesting territorial jurisdiction on this Court. On the contrary, as noted above, the most vital parts of the*

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<sup>23</sup> 2014 SCC OnLine Del 2892.

*cause of action have arisen in Jaipur and the mere presence of the registered office of the respondent/Corporation in Delhi or the facility extended to the petitioner to address any correspondence to the respondent/Corporation and/or remit moneys due or payable under the Loan Agreement at Delhi, would have to be treated as irrelevant factors, being a miniscule part of the cause of action. By no stretch of imagination can these factors be treated as conclusive for determining the territorial jurisdiction of this Court.*

32. In the given facts and circumstances of the case, this court is inclined to accept the submission made by learned counsel for the respondent/Corporation that neither the factors mentioned by the petitioner, nor the circumstances would by themselves confer territorial jurisdiction on this court for maintaining the petition in Delhi. Rather, this Court is of the opinion that it would be inconvenient for it to entertain the present petition and the High Court of Rajasthan would be better equipped to deal with the issues raised in the present petition. Accordingly, this Court declines to exercise the discretionary jurisdiction vested in it under Article 226 of the Constitution of India. Resultantly, the present application is dismissed, while leaving the parties to bear their own costs”

46. A similar view was also taken by this court in the case of **Chand Sahu Bala & Ors. v. Ministry of Human Resource Development & Ors.**<sup>24</sup>, wherein it was held that since all the necessary parties were situated outside of Delhi, thus the court became the court of *forum non-conveniens*.

47. The Hon’ble Supreme Court in the case of **State of Goa (supra)** has also applied the doctrine of *forum non-conveniens* and ruled that the fact that a part of the cause of action arose within the territorial jurisdiction of the High Court, the party has to disclose that integral facts pleaded in support of the cause of action constitutes a cause which empowers the High Court to decide the dispute and it must have a nexus with the subject-matter of the case. The relevant part of the said decision is culled out as under:-

*“17. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.”*

48. Reliance can also be placed upon the decision in the case of *Union of India (UOI) and Ors. v. Adani Exports Ltd. and Ors.*<sup>25</sup>, wherein the Hon’ble Apex Court ruled that:-

*“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 to 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.”*

49. Furthermore, this court in the case of *Angika Development Society v.*

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<sup>24</sup> 2017 SCC OnLine Del 6981.

<sup>25</sup> (2002) 1 SCC 567.

*Union of India & Ors.*<sup>26</sup>, has also held as under:

**“16. When admittedly a major part of cause of action arises within the territorial jurisdiction of a different High Court and only a minuscule cause of action arises within the jurisdiction of this court, the doctrine of forum non-conveniens will have full application. The said doctrine also assumes significance when the petitioner has an adequate alternative forum.”**

*[Emphasis supplied]*

50. It is to be noted that the Hon’ble Division Bench of this court in the case of *Sachin Hindurao Waze v. Union of India and Ors.*<sup>27</sup>, has also propounded on the doctrine of *forum non-conveniens* and explained the cursors to be considered while exercising the writ jurisdiction under Article 226 of the Constitution of India and held as under:-

**“12. On a broad holistic assessment of decisions cited by the petitioner would show that there are practically two elements which have to be considered by any court while accepting jurisdiction to decide a writ petition under Article 226 of the Indian Constitution - firstly, if any part of the cause of action arises within its territorial jurisdiction; and secondly if the said court is the forum conveniens. Only a mere shred or an iota of a cause of action potentially clothing a particular High Court with jurisdiction [per Article 226(2) of the Constitution of India] to adjudicate a writ petition, ought not to encourage a court to accept such jurisdiction completely divorced and de hors an assessment of forum conveniens. This has been categorically articulated in decisions of this Court.”**

51. Also, the reliance placed by the petitioner on the case of *Navinchandra N. Majithia (supra)* does not come to rescue the case of the petitioner in the given set of facts as the impugned action is the executive action taken by the respondent-BOI, given the RBI Master Circular on the Classification and Reporting of Fraud dated 01.07.2016. Reference can be

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<sup>26</sup> 2023:DHC:7362.

made to the judgement of this court in the case of *Sonu Sardar v. Union of India*<sup>28</sup>, wherein this court while alluding to the concept of cause of action drew a particularity between a situation where criminal investigation was pending and where the challenge was merely to an executive action. The relevant extract of this decision is reproduced herein for reference:-

*“The concept of cause of action in respect of criminal proceedings cannot apply sensu stricto to the present proceedings as the same are not a continuation of the judicial proceedings but premised upon executive orders. Accordingly, the judgments of the Supreme Court in Navinchandra N. Majitha (supra) and Manoj Kumar Sharma (supra) do not come to the aid of the applicant as in both the cases the criminal investigation was pending; while the present proceedings have arisen as a consequence of executive actions and by no means can be said to be an extension of the criminal proceedings, which have attained finality.”*

52. Considering the case in hand, in W.P.(C) 7962/2023, the petitioner is a company having its registered office in Pune and it availed loan from the respondent bank's branch office situated in Mumbai. It is, therefore, clear that both the parties are based outside the territorial jurisdiction of this court. Additionally, the real estate project in question, for which the petitioner has availed the credit facilities is also based in Maharashtra i.e., outside the territorial jurisdiction of this court. At this juncture, it is to be noted that as per the mortgage deed dated 15.10.2013, the mortgaged properties are also situated in Maharashtra. In addition, the letter dated 21.06.2022 by EOW regarding the preliminary inquiry on the basis of the respondent's complaint, on which the petitioner heavily relied upon, is also from the EOW Mumbai branch. Consequently, the respondent-BOI Mumbai branch declared the

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<sup>27</sup> 2022 SCC OnLine Del 3287.

<sup>28</sup> 2016 SCC OnLine Del 6206.

petitioner's account as 'fraud' in view of the RBI circular.

53. Furthermore, in W.P.(C) 10525/2023, the petitioner company has its registered office situated in Mumbai and it availed a loan facility from the respondent-BOI, Mumbai branch to the tune of Rs. 425 Crores *vide* the sanction letter dated 15.11.2008. In order to avail the said credit facilities, the security pledged by the petitioner in the form of a mortgage of land is also situated at Malad, i.e., outside the jurisdiction of this court. Thereafter, numerous OTS proposals were sent by the petitioner to the respondent banks but none of them could be settled. Consequently, the respondent-BOI Mumbai branch declared the petitioner's account as 'fraud' in view of the RBI circular.

54. In both the writ petitions, the petitioners have challenged the action of the respondent-BOI of declaring their account as 'fraud' as per the RBI Master Circular on the Classification and Reporting of Fraud dated 01.07.2016.

55. This court *vide* order dated 30.11.2023 directed the respondent-BOI to produce the communication *vide* which the accounts of the petitioners have been declared as 'fraud'. In pursuance of the said direction, the respondent-BOI produced the Fraud Monitoring Return (FMR) report dated 20.09.2019 in W.P.(C) 7962/2023 and the FMR report dated 12.11.2020 in W.P.(C) 10525/2023 and a perusal of the same indicates that the impugned action has been communicated from Mumbai to the RBI regional office situated at Bengaluru. None of the aforesaid facts would confer jurisdiction upon this court.

56. Considering the discussion hereinabove, it is crystallised that in order to confer jurisdiction to the constitutional courts under Article 226 of the constitution, a material, essential or integral part of the cause of action must arise within their jurisdiction. To determine a material, essential or integral part of the cause of action, it is the substance of the matter that becomes relevant. Also, the objection to the jurisdiction of this court can be raised at any stage of proceedings, as has been held by the Hon'ble Supreme Court in the case of *Jagmittar Sain Bhagat v. Health Services, Haryana*<sup>29</sup>.

57. It is to be noted that the germane issue in both the petitions is the decision of the petitioners' accounts being declared as 'fraud'. It is seen that the impugned action is taken from the respondent-BOI's Mumbai branch. Also, the communication of the said decision to the RBI regional office in Bengaluru also occurred outside the jurisdiction of this court. Furthermore, all the consequent actions under the provisions of the SARFAESI Act were also taken from the Mumbai branch of the respondent-BOI.

58. Moreover, it is also clear that the loan agreements that the petitioner has been relying upon were only signed in Delhi but not executed in Delhi. The entire execution of the said agreement happened outside the territorial jurisdiction of the court. Assumingly, even if the part of the cause of action arises in Delhi due to the said agreements being signed in Delhi, this Court still would not have jurisdiction to entertain these writ petitions as the material, essential or integral part of the cause of action in both petitions arose outside the territorial jurisdiction of this court. As per the rulings

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<sup>29</sup> (2013) 10 SCC 136.

discussed above, it is clear that the contention of the petitioner that the respondent-PNB is headquartered in Delhi is of no relevance for deciding the jurisdiction of the court as the impugned action is taken from the respondent-BOI Mumbai branch and all the consequent actions were also taken from the Mumbai branch of BOI.

59. The most vital part of the cause of action i.e., the declaration of the petitioners' accounts as 'fraud' has been taken outside the jurisdiction of this court and the minuscule part i.e., the loan agreements being signed in Delhi, the respondent-PNB having its headquarters in Delhi or respondent-BOI having its zonal office in Delhi will have no relevance in deciding the jurisdiction of this court. Therefore, merely an iota of cause of action being arisen in Delhi, could not in itself be sufficient to encourage this court to accept such jurisdiction completely detached from the assessment of *forum conveniens*.

60. With respect to the plea raised by the petitioners regarding this court being the most convenient forum for them, it is significant to refer to the decision of this court in ***Bharat Nidhi*** (*supra*), wherein, it was held as under:-

*“68. With respect to the averment that this court is the most convenient forum for the petitioners, it would be inappropriate and myopic to assume that while determining the jurisdiction, only the convenience of the aggrieved party approaching the court has to be looked into. In fact, with the advent of technology in contemporary times, the courts have transcended the geographical barriers and are now accessible from remote corners of the country. **Therefore, the convenience of the parties cannot be the sole criterion for the determination of jurisdiction considering the broader perspective of dynamism of technology and increased access to justice. The determination of cause of action and territorial jurisdiction has to***

**be in line with the constitutional scheme envisaged under Article 226 of the Constitution of India.”**

*[Emphasis supplied]*

61. All the other facts pleaded in the respective petitions i.e., the loan agreement being signed in Delhi, respondent-BOI having their zonal office in Delhi or respondent-PNB having its headquarters in Delhi are ostensibly irrelevant while deciding the jurisdiction of this court.

62. It is pertinent to mention that as per the legislative intent and constitutional scheme enshrined under the provisions of Article 226 of the Constitution of India, it is crystallised that the cardinal duty imposed on the constitutional courts is to prevent the abuse of their jurisdiction by the parties and relegate back the parties to the forum where a material, essential or integral part of cause of action has arisen.

63. In view of the aforesaid, this court is not inclined to entertain the instant writ petitions. The same are, accordingly, dismissed alongwith all pending application(s), if any. The parties are, however, at liberty to approach the jurisdictional High Court.

64. Needless to state that this court has not expressed any opinion on the merits or demerits of the instant cases.

**PURUSHAINDRA KUMAR KAURAV, J.**

**DECEMBER 19, 2023**

*p/am*