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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11934/2023 and CM APPL. 46711/2023, CM APPL. 50052/2023**

Date of Decision: **26.09.2023**

IN THE MATTER OF:

ANGIKA DEVELOPMENT SOCIETY

REGD. OFFICE AT:

5/7 SARVAPRIYA VIHAR, NEW DELHI –
110016

..... PETITIONER

Through: Mr. Tanmay Mehta, Mr. Anurag
Sahay and Mr. Rohit Kumar,
Advocates.

Versus

UNION OF INDIA

THROUGH SECRETARY

DEPARTMENT OF FINANCIAL
SERVICES

MINISTRY OF FINANCE, NIRMAN

BHAWAN,

NEW DELHI – 110001

..... RESPONDENT NO.1

RESERVE BANK OF INDIA

THROUGH THE EXECUTIVE DIRECTOR,

6 SANSAD MARG, NEW DELHI,

110001

..... RESPONDENT NO.2

HDFC BANK PVT. LTD.

AT:

HDFC BANK LIMITED,

HDFC BANK HOUSE,

SENAPATI BAPAT MARG,

LOWER PAREL (WEST),



MUMBAI – 400013,
MAHARASHTRA
ALSO AT: BIMLA SADAN,
HOLDING NO. 801/432,
WARD NO. 37, EXHIBITION ROAD,
PATNA- 800 001, BIHAR

..... RESPONDENT NO.3

Through: Mr. Sushil Kumar Pandey, Sr.P.C for
R-1.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner is a charitable organisation registered under the Societies Registration Act, 1860. The petitioner claims to be running various educational institutions including Delhi Public School, Bhagalpur, Bihar.
2. The petitioner had borrowed a loan in the year 2015 from respondent no. 3, a private bank. The loan was secured by way of mortgage of land on which Delhi Public School, Bhagalpur (Bihar) is situated.
3. It is the case of the petitioner that due to flood, the entire campus of the school was submerged under water and consequently, the petitioner suffered a huge financial loss. The petitioner claims to be entitled for restructuring of loan in terms of the guidelines for organisations affected by natural calamity, issued by respondent no. 2-RBI.
4. Due to inability of the petitioner to revive financially, the petitioner requested respondent no.3 for restructuring of its loan account. However, the said request was not accepted by respondent no.3.
5. Since, the loan was not timely serviced by the petitioner, respondent no.3 had declared petitioner's loan account as a Non-Performing Asset



(hereinafter 'NPA') and subsequently, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter 'SARFAESI Act') was issued to the petitioner on 21.07.2023.

6. Being aggrieved by the actions of respondent no.3, the petitioner had filed the instant petition, *inter alia* praying for the following relief:-

"a. Issue a writ order or direction in the nature of certiorari quashing the impugned order dated-20.01.2021, passed by Shri R. S. Tanwar, Asst. P.F. Commissioner, Delhi- South, passed U/s-7Q of EPF & MP Act 1952.

b. Pass any other further order /relief as this Hon'ble Court deem fit and proper in favour of the petitioner and against the respondents in the present facts and circumstances of the case."

7. Having heard the learned counsel appearing on behalf of the petitioner, there is no doubt that a fraction of the cause of action does arise within the territorial jurisdiction of this court as the petitioner's society is registered at Delhi and Head Offices of some of the respondents are also situated within the territorial jurisdiction of this court. However, taking into consideration the fact that the area of operation of the petitioner-Society concerning the dispute in hand, is within the territorial jurisdiction of the Patna High Court; the loan facility was also availed within the territorial jurisdiction of the Patna High Court; the security to the loan i.e., the mortgage loan of the petitioner falls under the jurisdiction of the Patna High Court; the destruction of the school building as a result of natural calamity which led the petitioner claiming his right to restructure the debt took place within the jurisdiction of the Patna High Court, therefore, this court is not inclined to entertain the instant petition.

8. The law with regard to the discretionary power of the High Court to not entertain matter on the ground of doctrine of forum non-conveniens is



settled by the Hon'ble Supreme Court in the case of *Kusum Ingots & Alloys Ltd. vs Union of India and Another*¹. 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 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 & 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”

9. The same principle has been discussed by a five judge Bench of this court in the case of *Sterling Agro Industries Ltd. vs. Union of India & Ors.*² wherein the court has held that the court, while exercising jurisdiction under Article 226 of the Constitution of India, cannot be totally oblivious of the concept of forum conveniens as the mere fact of the situs of cause of action cannot itself be a determining factor compelling the court to entertain the matter. 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/revisional authority while completely

¹ (2004) 6 SCC 254

² 2011 SCC OnLine Del 3162



ignoring the concept of forum conveniens. Also, the court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. The relevant paragraphs are reproduced for the reference herein below:

“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 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/revisional authority is situate 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/revisional 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 revisional 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.”

10. The Division Bench of this court in the case of **Sachin Hindurao Waze vs UOI and Ors.**³ has relied upon the above-mentioned judgements and has laid down two elements which have to be considered by any court while accepting jurisdiction to decide a writ petition under Article 226 of the Constitution of India. Firstly, if any part of the cause of action arises within its territorial jurisdiction; and secondly if the said court is the forum conveniens. The relevant paragraph is reproduced below:

“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. A Special Bench comprising 5 judges of this Court [Chief Justice Dipak Misra, Vikramajit Sen, J. A.K. Sikri, J. Sanjiv Khanna, J. and Manmohan, J.] in Sterling Agro (supra) after traversing the law

³ 2022 SCC OnLine Del 3287



relating to territorial jurisdiction in context of Article 226 of the Constitution of India emphasized that the High Court must not only advert to the existence of a cause of action but also remind themselves about the doctrine of forum conveniens also. In this regard the following paragraphs of the judgment of the Special Bench are instructive which are reproduced as under for easy reference.....”

11. Recently, the Hon’ble Supreme Court in the case of ***State of Goa vs Summit Online Trade Solutions Pvt. Ltd.***⁴ has again reiterated the settled legal position of the doctrine of forum conveniens and has laid down some guiding tests. The fact that a part of cause of action arose within the territorial jurisdiction of the High Court, the party has to disclose that integral fact pleaded in support of 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. It is further held that the facts which are not germane for the grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. The relevant paragraph is reproduced for the reference herein below:

*“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.**”*

⁴ (2023) 7 SCC 791



12. The Coordinate Bench of this court in the case of *Shristi Udaipur Hotels v. Housing and Urban Development Corp.*⁵ has declined to entertain the petition by observing that the situs of the Head Office cannot be the sole ground to argue that the Delhi High Court has jurisdiction. It was observed by the court that the most vital parts of the 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 remit moneys due or payable under the Loan Agreement at Delhi, would have to be treated as irrelevant factors, being a minuscule part of the cause of action. Therefore, it was held that it would be convenient for the High Court of Rajasthan to deal with the issues raised in the that petition. The relevant paragraphs are reproduced for the reference herein below:

“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

⁵ 2014 SCC OnLine Del 2892



territorial jurisdiction on this Court. On the contrary, as noted above, the most vital parts of the 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”

13. On the perusal of the above discussion, it is settled that the court has discretionary power under Article 226 of the Constitution of India to entertain or refuse to entertain writ petition in cases where the petitioner has alternative and more appropriate and convenient High Court to approach. It is also settled that if only a part of cause of action arises in the territorial jurisdiction of the court, then the court is not obliged to entertain the matter if the court is of opinion that it is not the forum conveniens.

14. In the present case, as noted in preceding paragraphs, the major part of cause of action has not arisen within the territorial jurisdiction of this court. Integral part of cause of action such as avilment of loan facility; area of operation of school for which loan was availed; the place of mortgaged property; respondents’ office where all action has taken place; the natural calamity which resulted into the security being compromised and upon



which the petitioner's claim for restructuring of debt rests; non-payment of loan; resultant action under SARFAESI ACT, 2002; etc., all have taken place beyond the territorial jurisdiction of this court. Therefore, as a natural corollary, any interference or non-interference will also have major impact outside the territorial jurisdiction of this court.

15. To determine material, essential or integral part of the cause of action, it is the substance of the matter that becomes relevant. In the instant case, all important events, as noted in the preceding paragraphs, have taken place outside territorial jurisdiction of this court. The petitioner is not incapacitated to approach the jurisdictional High Court.

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.

17. In view of the aforesaid, this court is not inclined to entertain the instant petition. The same is accordingly dismissed alongwith pending applications. Needless to state that the petitioner would be at liberty to approach the appropriate forum seeking redressal of this grievance in accordance with law.

PURUSHAINdra KUMAR KAURAV, J

SEPTEMBER 26, 2023/p/vg