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

+ **W.P.(C) 11553/2024**

RUCHITA KAUSHIK

.....Petitioner

Through: Mr. Rajat Navet, Adv.

versus

INDIAN RAILWAY WELFARE ORGANIZATION

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **21.08.2024**

CM APPLs. 47887-88/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 11553/2024

3. The facts of the case would indicate that the petitioner's father, late Shri Dinesh Chandra Sharma and the petitioner's mother Smt. Girish Sharma were jointly allotted a flat bearing No.16, Type IV, Block A-4, Railway Vihar, Indira Puram, Ghaziabad, Uttar Pradesh by the respondent, which is a society registered under Societies Registration Act, 1860. A conveyance deed dated 21.10.2011 came to be executed by respondent No.1 in favour of late Shri Dinesh Chandra Sharma and Smt. Girish Sharma.
4. It appears that after passing of petitioner's father, Smt. Girish Sharma



gifted and bequeathed the said flat in favour of the petitioner on 03.10.2023 by way of a registered gift deed. Thereafter, on 18.03.2024, Smt. Grish Sharma as well as the petitioner filed an application before the respondent for issuance of a No Objection Certificate and they also requested for transfer of the said flat. However, *vide* impugned communication dated 08.05.2024, the respondent desired for submission of probate order by the petitioner for processing his case.

5. Being aggrieved by the said communication, the petitioner seeks to assail the same on various grounds including the ground that the demand of probate order is without jurisdiction.

6. It is, however, noted that the flat in question is situated in Ghaziabad, Uttar Pradesh. The petitioner also resides in Noida, Uttar Pradesh. The effect of the impugned communication is also felt by the petitioner outside the territorial jurisdiction of this Court. Thus, the fact that the head office of the respondent situates within the territorial jurisdiction of this Court cannot be the sole determinative factor to entertain the instant writ petition. In essence, material, essential and integral part of cause of action which have a bearing on the instant *lis* does not arise within this Court's jurisdiction.

7. This Court *vide* order dated 04.07.2024 in W.P. (C) 8891/2024 titled as ***Ramnath Singh Sikarwar v. Election Commission of India*** has considered various judgments passed by the Supreme Court and this Court on the aspect of territorial jurisdiction and has held as under:-

*“14. While dealing with the decision in the cases of **Alchemist Limited and Anr. (supra)** and **M/s Kusum Ingots (supra)**, this Court in the case of **Ardra Joseph (supra)** vide order dated 01.11.2023 has held as under:-*

“8. It is seen that the petitioner is the resident of District Malappuram,



*Kerala and her principle cause of action is against respondent no.3-State Medical Council of Kerala. The petitioner has approached this court only for the reason that the offices of respondent no.1-Union of India and respondent no.2-National Medical Commission are situated within the territorial jurisdiction of this court. **However, merely because the offices of some of the respondents are situated within the territorial jurisdiction of this Court cannot be the sole reason to entertain the instant writ petition.***

*9. The Hon"ble Supreme court in the case of **Kusum Ingots & Alloys Ltd. v. Union of India** has held 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. Recently, a similar view has been reiterated by the Hon"ble Supreme Court in the case of **State of Goa v. Summit Online Trade Solutions (P) Ltd.***

*15. In the case of **Ardra Joseph (supra)**, the Court has held that some of the arrayed official respondents therein had pan-India jurisdiction, however, the reason that the policies and circulars were issued from Delhi could not be the sole ground to entertain the petition by this Court. It has also been held that neither the petitioner therein was incapacitated to approach the jurisdictional High Court nor the concerned High Court lacked jurisdiction to issue appropriate writ to the arrayed respondents.*

*16. In another decision in the case of **Bharat Nidhi Limited v. Securities and Exchange Board of India & Ors.**, while dealing with the aspect of entertainability of a writ petition and the territorial jurisdiction, this Court, while taking into consideration catena of judicial pronouncements and analysing the law pertaining to Article 226(1) and 226(2) of the Constitution of India, has held as under:-*

“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.

*91. On the above conspectus, it is clearly seen that the question whether cause of action has arisen within the territorial jurisdiction of a court, has to be answered based on the facts and circumstances of the case. **The cause of action, thus, does not comprise of all the pleaded facts; rather it has to be determined on the basis of the integral, essential and material facts which have a nexus with the lis.***

***92. It is also a settled proposition of the law that the location where the tribunal/appellate authority/revisional authority is situated would not be the sole consideration to determine the situs of the accrual of cause of action, ignoring the concept of forum conveniens in toto.** Hence, even if a small part of the cause of action is established, and the same is found to be non-integral or non-material to the lis, the court may invoke the doctrine of forum non-conveniens and decline to exercise its writ jurisdiction, if an alternative, more efficacious forum for the same exists.*

93. A perusal of paragraph no. 10 of the decision in the case of State of Goa (supra), would signify that one of the prayers related to a challenge against the notification issued by the State of Sikkim. Also, in the said case, the petitioner company's office was also located in the State of Sikkim. However, the Hon'ble Supreme Court while considering that a slender part of the action has arisen, held that the High Court of Sikkim was not clothed with the requisite jurisdiction to entertain the petition as the major part of the cause of action has arisen in another High Court. It can be safely concluded that neither the notification issued by the concerned government, nor the location of the



office were considered to be the material facts to determine the cause of action.

113. Merely because some of the writ petitions were entertained respondent-SEBI by the respondent companies therein and issues arising out of consequential settlement application, that in itself would not determine the integral, essential and material part of the cause of action as the pendency of the writ petition before this court has no relation with the impugned revocation order which has taken place subsequent to the said writ petition. The law relating to the doctrine of forum conveniens, as discussed above, already makes it explicitly clear that the jurisdiction has to be determined on the facts and circumstances of each case.

114. 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]

*17. In the case of **Pune Buildtech (P) Ltd. v. Bank of India**, this Court took a view that the substance of a matter is significant in determining the material, essential or integral part of the cause of action and the Constitutional Courts are saddled with a duty to prevent the abuse of jurisdiction by the parties. The relevant paragraphs of the said decision read as under:-*

“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.

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.

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."

[Emphasis supplied]

18. It is reckoned from the aforementioned decisions that the question whether the cause of action has arisen within the territorial jurisdiction of a Court has to be answered based on the facts and circumstances of each case. The cause of action does not comprise of all the pleaded facts rather, it has to be determined on the basis of the integral, essential and material facts which have a nexus with the lis.

*19. In the instant case, the integral and material facts which have the relation with the relief sought for would essentially include the place where the elections were conducted and the place where the infringement of any of the alleged right has taken place. It is to be noted that the decision rendered by this Court in the case of **Bharat Nidhi Limited (supra)** was carried in LPA 47/2024, wherein, the Division Bench of this Court in its final decision dated 15.01.2024 affirmed the view taken in **Bharat Nidhi Limited (supra)** and held as under:-*

"21. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India to entertain a writ petition, in addition to examining its territorial jurisdiction also examines if the said Court is the forum conveniens to the parties. The issue of forum conveniens is seen not only from the perspective of the writ petitioner but it is to be seen from the convenience of all the parties before the Court. In the facts of this case, as is evident from the record that the forum conveniens for the both the parties is Mumbai. The Appellants since the year



2020 have been appearing in Mumbai before SEBI in the SCN proceedings. In W.P.(C) 15556/2023 (as well as the other writs) the writ petitioner has sought a direction for summoning the records of SEBI for examining the legality and validity of the Impugned Revocation Order. In these facts, therefore, the objection of SEBI that Mumbai is the forum conveniens for the parties has merit. The obligation of the Court to examine the convenience of all the parties has been expressly noted by the Full Bench of this Court in Sterling Agro Industries Ltd. (supra)..."

[Emphasis supplied]

20. It is thus seen that with regards to the arguments raised by the petitioners that since a part of cause of action arises within the jurisdictional limits of this Court and the forum conveniens has to be seen from the petitioners' perspective, this Court has categorically rejected the aforesaid arguments and has held that the issue of forum conveniens is not to be observed only from the perspective of the petitioner but it depends on the convenience of all the parties before the Court."

(emphasis supplied)

8. In view of the aforesaid, the Court is not inclined to entertain the instant writ petition. Accordingly, the petition stands dismissed.

9. However, the petitioner is granted liberty to approach the jurisdictional High Court. All rights and contentions of the parties are left open.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 21, 2024/p