

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 742 OF 2025

Trustcap Private Limited ...Petitioner
Versus
Income Tax Officer Ward 2(1), Kolkatta ...Respondent

Ms Kinjal Bhutia, for the Petitioner.
Ms Shilpa Goel, for the Respondent.

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 15 April 2025

PC:-

1. Heard learned counsel for the parties.
2. This petition challenges, inter alia, the order dated 27 August 2024 made under Section 148A(d) and notice dated 27 August 2024 issued under Section 148 of the Income Tax Act, 1961 by the Income Tax Officer, Kolkatta, and the Chief Commissioner of Income Tax, Kolkatta.
3. Ms. Goel learned counsel for the Respondent/Revenue submits that the entire cause of action has arisen at Kolkatta and therefore, this Court may not have territorial jurisdiction to entertain this petition. She relies on *Lt. Col. Khajoor Singh Vs Union of India*¹, *Principal Commissioner of Income Tax-I Vs ABC Papers Limited*² and *Sterling Agro Industries Ltd. Vs Union of India*³ in support of her contention.

¹ AIR 1961 Supreme Court 532

² (2022) 9 SCC 1

³ (2011) 10 GSTR 20

4. Ms Kinjal Bhutia, learned counsel for the Petitioner, however submitted that the petitioner has its registered office in Mumbai and this address is updated in the PAN database of the IT Department. She submitted that the petitioner had already applied for the surrender of PAN in 2007, and only because no decision had been taken were impugned notices issued by the Kolkata officials. In such circumstances, she submits that a substantial portion of the cause of action has accrued in Mumbai; therefore, this court has territorial jurisdiction to entertain this petition. She relies on ***Wills India Insurance Brokers (P) Ltd. Vs Insurance Regulatory & Development Authority***⁴ and ***Kusum Ingots & Alloys Ltd. Vs Union of India***⁵ in support of her contention.

5. We have considered the rival contentions, but we are satisfied that it would be appropriate if the petitioner is relegated to avail of its remedies at Kolkata. Brief reasons for this conclusion are set out hereafter.

6. In paragraph 8 of the petition, the petitioner has pleaded the following:

The Petitioner says and submits that it has its registered office in Mumbai and this address is also updated in the PAN database of the Income Tax Department and further submits that the Respondent Nos. 1 & 2 have their offices at Kolkata issued a notice to the Petitioner at the registered office address in Mumbai. Therefore, a part of the cause of action has arisen within the jurisdiction of this Hon'ble Court as such this Hon'ble Court has jurisdiction to entertain, try and determine the writ Petition under Article 226(2) of the Constitution.

⁴ (2012) 22 taxmann.com 154 (Bom.)

⁵ AIR 2004 Supreme Court 2321

7. Thus, the main emphasis is that the petitioner has its registered office in Mumbai, which is the address updated in the IT Department's PAN database. Ms Bhutia submitted that the petitioner's business is in Mumbai, and the impact of the impugned order/notices is felt in Mumbai.

8. The fact that the petitioner has a registered office in Mumbai may not be very relevant. In any event, even if we assume that the minuscule portion of the cause of actions could be said to have arisen in Mumbai, that, by itself, is not a factor based upon which the petitioner can compel this Court to exercise its discretionary jurisdiction under Article 226 of the Constitution and entertain this petition.

9. Admittedly, the impugned order/notices were issued by the Income-tax officials in Kolkata. The case papers and other materials based on which the notices are issued are at Kolkata. The Petitioner's assessing authorities are based at Kolkata. Thus, a substantial portion of the cause of action has accrued at Kolkata. Applying the principle of *forum conveniens*, it would be appropriate if the petitioner was relegated to availing of the remedies at Kolkata.

10. The decision in *Kusum Ingots (supra)* was considered by the Full Bench (of five judges) of the Delhi High Court in the case of *Sterling Agro Industries Ltd. (supra)*, wherein the Full Bench held that even if a small portion of the 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 merits. In an appropriate case, the Court may refuse to

exercise the 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 (1945) 49 CWN 357; AIR 1949 Cal 495 Bharat Coking Coal Ltd. v. Jharia Talkies and Cold Storage P. Ltd. [1997] CWN 122; S. S. Jain and Co. v. Union of India [1994] CHN 445 and New Horizons Ltd. v. Union of India, AIR 1994 Delhi 126; (1997) 89 C-C 785].

11. The Full Bench explained that the concept of *forum conveniens* fundamentally means that it is obligatory on the part of the Court to see the convenience of all the parties before it. The convenience would include the existence of a more appropriate forum, expenses involved, the law relating to the lis, verification of specific facts which are necessary for just adjudication of controversy and other ancillary aspects. The balance of convenience is also to be taken note of.

12. The Court noted that the Hon'ble Supreme Court, in the cases of *Kusum Ingots (supra)*, *Musaraf Khan Vs Bhagheeratha Engg Ltd.*⁶ and *Ambica Industries Vs CCE*⁷ addressed the applicability of the doctrine of *forum conveniens*, stating that part of the cause of action could entitle the High Court to entertain the Writ Petition if it is maintainable. This principle encompasses the notion that the "cause of action" arising within the Court's jurisdiction does not, by itself, serve as a determining factor that compels the Court to hear the matter while exercising its jurisdiction. Additionally, under Articles 226 and 227 of the Constitution,

⁶ (2006) 3 SCC 658

⁷ (2007) 213 ELT 323

the Court cannot be entirely oblivious to the concept of *forum conveniens*.

13. Besides, we find that certain observations in *ABC papers Ltd. (supra)* and *Lt. Col. Khajoor Singh (supra)* would also support Ms. Goel's contention that this is a fit case in which the petitioner should be relegated to the remedies in Kolkatta.

14. The petitioner's entire case is on the premise that the petitioner feels the effects of the impugned order/notice in Mumbai. Therefore, the court in Mumbai is appropriate for dealing with this petition. Ms Bhutia submitted that the petitioner's registered office is in Mumbai, which is an additional factor that gives rise to at least a part of the cause of action in Mumbai.

15. In *Lt. Col. Khajoor Singh (supra)* the Hon'ble Supreme Court observed that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order within those territories, and the affected person's residence or location cannot be relevant to the question of the High Court's jurisdiction. The Hon'ble Supreme Court, in paragraph 13, gave an illustration, which is transcribed below for the convenience of reference.

".....The relevant words of Art. 226 are these-

"Every High Court shall have power to issue to any person or authority within those territories..."

So far as a natural person is concerned, there can be no doubt that he can be within those territories only if he resides therein either permanently or temporarily. So far as an authority is concerned, there can be no doubt that if its

office is located therein it must be within the territory. But do these words mean with respect to an authority that even though its office is not located within those territories it will be within those territories because its order may affect persons living in those territories? Now it is clear that the jurisdiction conferred on the High Court by Art. 226 does not depend upon the residence or location' of the person applying to it for relief; it depends only on the person or authority against whom a writ is sought being within those territories. It seems to us therefore that it is not permissible to read in Art, 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, rest is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Art. 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Art. 226. The introduction of such a concept may give rise to confusion and conflict of jurisdictions. Take, for example, the case of an order passed by an authority in Calcutta, which affects six brothers living, say, in Bombay, Madras, Allahabad, Jabalpur, Jodhpur and Chandigarh. The order passed by the authority in Calcutta has thus affected persons in six States Can it be said that Art 226 contemplates that all the six High Courts have jurisdiction in the matter of giving relief under it is the answer must obviously be 'No', if one is to avoid confusion conflict of jurisdiction. As we read the relevant words of Art 226 (quoted above) there can be no doubt that the jurisdiction conferred by that Article on a High Court is with respect to the location or residence of the person or authority passing the order and there can be no question of introducing the concept of the place where the is to have effect in order to determine which High Court can give relief under it is true that this Court will give such meaning to the

words used in the Constitution as would help towards its working smoothly. If we were to introduce in Art 226 the concept of the place where the order is to have effect we would not be advancing the purposes for which Art 226 has been enacted, On the other hand, we would be producing conflict of jurisdiction between various High Courts as already shown by the illustration given above. Therefore, the effect of an order by whomsoever it is passed can have no relevance in determining the jurisdiction of the High Court which can take action under Art. 226. “

16. Therefore, in this case, even if we proceed on the basis that the minuscule part of the cause of action may have arisen in Mumbai, that will not be a determinative or compelling factor to exercise the discretion under Article 226 for entertaining this petition.

17. In *Wills India Insurance Brokers (P) Ltd. (supra)*, the court found that a part of the cause of action had significantly arisen in Bombay, and based on that finding, the petition was considered. *Kusum Ingots (supra)* has been clarified by the Full Bench of the Delhi High Court. *Kusum Ingots (supra)* itself discusses the principles of *forum conveniens*, which is applicable in the present case.

18. In the context of appeals under Section 260A of the Income-tax Act, the Hon'ble Supreme Court, in the case of *ABC Papers Ltd. (supra)* has held that the appellate jurisdiction of the High Court is exercisable by the High Court within whose territorial jurisdiction the assessing officer is located. Thus, even the location of ITAT is held not to be determinative. The location of the assessing officer is crucial. However, this was the decision in the context of an appeal under Section 260A and not a Writ petition under Articles 226

and 227 of the Constitution.

Still, for all the above reasons, we are satisfied that the interest of justice will be met if the petitioner is relegated to avail of the remedies at Kolkata.

19. Accordingly, we decline to entertain this petition but leave the petitioner free to avail of the remedies at Kolkata. All parties' contentions on merits are left open.

20. The petition is disposed of with liberty in the above terms and without any order for cost.

21. All concerned may act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)