IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4820 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

and
HONOURABLE MS. JUSTICE NISHA M. THAKORE
==

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

==
BHAVENDRA HASMUKHLAL PATADIA
Versus
UNION OF INDIA THROUGH SECRETARY
==
Appearance:
MR TEJ SHAH(5743) for the Petitioner(s) No. 1
MR MR BHATT SENIOR COUNSEL WITH MR KARAN SANGHANI, ADVOCATE FOR M R BHATT & CO.(5953) for the Respondent(s) No. 2
SERVED BY RPAD (N) for the Respondent(s) No. 1
==

CORAM:**HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 27/04/2022

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 By this writ application under Article 226 of the Constitution of

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India, the writ applicant has prayed for the following reliefs;

> *"(a) A Writ of certiorari or any other writ, order or direction in the nature of certiorari quashing the impugned notice under section 148 of the Act dated 31-03-2021 issued by the respondent for the assessment year 2015-16;*
>
> *(b) A writ of certiorari or any other writ, order or direction in the nature of certiorari quashing the impugned order passed by the respondent herein dated 24-02-2022 rejecting the objections to assumption of jurisdiction under section 148 for the assessment year 2015-16;*
>
> *(c) Pending the admission and final disposal of this petition, restrain the respondent from proceeding with reassessment for the assessment year 2015-16 pursuant to the impugned notice dt. 31-03-2021 and the order dt. 24-02-2022;*
>
> *(d) Provide for cost of this petition;*
>
> *(e) Pass any other order(s) as this Hon'ble Court may deem to be fit and more appropriate in order to grant interim relief to the petitioner"*

2 The subject matter of challenge is the legality and validity of the notice issued by the ITO, Ward 1(1), Cuttack (State of Orissa) under Section 148 of the Income Tax Act, 1961 (for short, "the Act, 1961") seeking to reopen the assessment for the A. Y. 2015-16 under Section 147 of the Act, 1961.

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3 At the outset, Mr. M. R. Bhatt, the learned Senior Counsel appearing for the Revenue raised a preliminary objection as regards the maintainability of the present writ application on the ground of the territorial jurisdiction of this High Court to entertain the present writ application.

4 Mr. Bhatt first invited the attention of this Court to page : 8 of the paper book. At page : 8 of the paper book, the writ applicant has annexed the impugned notice issued under Section 148 of the Act, 1961

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dated 31st March 2021. The perusal of the impugned notice is indicative of the fact that the same was issued to the writ applicant at his address at Orrissa.

5 Mr. Bhatt, thereafter, invited the attention of this Court to page : 9 of the paper book. At page : 9 of the paper book, the return of income filed by the writ applicant for the A. Y. 2015-16 has been annexed. It is evident from the perusal of the return of income that the same was filed at Cuttack (Orrissa). Thereafter, Mr. Bhatt invited the attention of this Court to page : 17 of the paper book. At page : 17 of the paper book, the writ applicant has annexed the assessment order dated 29th December 2017. The assessment order has been passed by the Income Tax Officer, Ward 1(1), Cuttack.

6 As against the aforesaid, Mr. Tej Shah, the learned counsel appearing for the writ applicant invited the attention of this Court to page : 22 of the paper book. At page : 22 of the paper book, the writ applicant has annexed a notice dated 18th December 2021 served upon him under Section 143(2) of the Act, 1961. This notice came to be issued to the writ applicant at Ahmedabad at the address stated therein. Mr. Tej Shah would submit that since the notice under Section 143(2) of the Act, 1961 came to be issued to his client in Ahmedabad and reply to the same was also filed with the department at Ahmedabad, this Court may entertain this writ application as some part of the cause of action could be said to have arose within the territorial jurisdiction of this High Court.

- **ANALYSIS:**

7 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether we should entertain this writ application or relegate the writ applicant to file an appropriate writ

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application in the High Court of Orissa at Cuttack.

8 For answering the aforesaid question we would like to consider the provision of Article 226 of the Constitution as it stood prior to amendment. Originally, Article 226 of the Constitution read as under:-

> *"**Article 226. Power of High Courts to issue certain writs. -** (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 or 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".*

9 While interpreting the aforesaid provision, the Constitution Bench of the Supreme Court in the case of **Election Commission, India v. Saka Venkata Rao, AIR 1953 SC 210**, held that the writ court would not run beyond the territories subject to its jurisdiction and that the person or the authority affected by the writ must be amenable to court's jurisdiction either by residence or location within those territories. The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issued under Article 226 of the Constitution which makes no reference to any cause of action or where it arises but insist on the presence of the person or authority within the territories in relation to which the High Court exercises jurisdiction. In another Constitutional Bench judgment of the Supreme Court in the case of **K. S. Rashid and Son v. Income-tax Investigation Commission etc., AIR 1954 SC 207,** the Supreme Court took the similar view and held that

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the writ court cannot exercise its power under Article 226 beyond its territorial jurisdiction. The Court was of the view that the exercise of power conferred by Article 226 was subject to a two-fold limitation viz., first, the power is to be exercised in relation to which it exercises jurisdiction and secondly, the person or authority on whom the High Court is empowered to issue writ must be within those territories. These two Constitutional Bench judgments came up for consideration before a larger Bench of seven Judges of the Supreme Court in the case of **Lt. Col. Khajoor Singh v. Union of India and another, AIR 1961 SC 532.** The Bench approved the aforementioned two Constitutional Bench judgments and opined that unless there are clear and compelling reasons, which cannot be denied, a writ court cannot exercise jurisdiction under Article 226 of the Constitution beyond its territorial jurisdiction.

10 The interpretation given by the Supreme Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke the writ jurisdiction. As a result, Clause 1(A) was inserted in Article 226 by the Constitution (15th) Amendment Act, 1963 and subsequently renumbered as Clause (2) by the Constitution (42nd) Amendment Act, 1976. The amended Clause (2) now reads as under:-

> *"226. Power of the High Courts to issue certain writs - (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 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*

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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.

(3) xxxxx

(4) xxxxx"

11 On a plain reading of the amended provisions in Clause (2), it is clear that now the High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. The cause of action for the purpose of Article 226 (2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression “cause of action” has not been defined either in the Code of Civil Procedure or the Constitution. “Cause of action” is a bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed.

12 The term 'cause of action' as appearing in Clause (2) came for consideration time and again before the Supreme Court.

13 In the case of State of **Rajasthan and others v. M/s. Swaika Properties and another, (1985) 3 SCC 217 : (AIR 1985 SC 1289)**, the facts were that the respondent-Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur city. It was served with a notice for acquisition of land under the Rajasthan Urban Improvement Act, 1959. Notice was duly served on the Company at its registered office at Calcutta. The Company, first appeared before the Special Court and finally the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came

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before the Supreme Court to answer a question as to whether the service of notice under Section 52(2) of the Act at the registered office of the Respondent in Calcutta was an integral part of cause of action and was it sufficient to invest the Calcutta High Court with a jurisdiction to entertain the petition challenging the impugned notification. Answering the question the Supreme Court held:-

> *"7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.*
>
> *8. The expression "cause of action" is tersely defined in Mulla's Code of Civil Procedure:*
>
> > *"The 'cause of action' means 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, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government*

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free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

14 Article 226(2) was again considered by the Supreme Court in the case of **Oil and Natural Gas Commission v. Utpal Kumar Basu and others, (1994) 4 SCC 711 : (1994 AIR SCW 3287).** In this case, the petitioner Oil and Natural Gas Commission (ONGC) through its consultant Engineers India Limited (EIL) issued an advertisement in the newspaper inviting tenders for setting up of the Kerosene Recovery Processing Unit in Gujarat mentioning that the tenders containing offers were to be communicated to the EIL, New Delhi. After the final decision was taken by the Steering Committee at New Delhi, the respondent NICCO moved the Calcutta High Court praying that the ONGC be restrained from awarding the contract to any other party. It was pleaded in the petition that the NICCO came to know of the tender from the publication in the "Times of India" within the jurisdiction of the Calcutta High Court. The Supreme Court by setting aside the order passed by the Calcutta High Court came to the following conclusion :-

"6. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words 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 being

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immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

15 In **Kusum Ingots and Alloys Ltd. v. Union of India and another, (2004) 6 SCC 254 : (AIR 2004 SC 2321 : 2004 AIR SCW 2766),** the Supreme Court elaborately discussed Clause (2) of Article 226 of the Constitution, particularly the meaning of the word 'cause of action' with reference to Section 20(c) and Section 141 of the Code of Civil Procedure and observed:-

"9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. 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.

10. Keeping in view the expressions used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter."

Their Lordships further observed as under:-

"29. In view of Clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh has, thus, no application.

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

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appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens."

16 In the case of **Union of India and others v. Adani Exports Ltd. and another, (2002) 1 SCC 567 : (AIR 2002 SC 126 : 2001 AIR SCW 4690)**, the Supreme Court held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction. Each and every fact pleaded by the respondents in their 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 i.e. involved in the case. This Court observed:

"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 the 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. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

17 In **Om Prakash Srivastava v. Union of India and another (2006) 6 SCC 207 : (AIR 2007 SC (Supp) 1834 : 2006 AIR SCW 3823),** answering

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a similar question the Supreme Court observed that on a plain reading of Clause(2) of Article 226 it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose if the cause of action in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territory. In para 7 the Supreme Court observed:-

> *"7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof."*

18 In the case of **Rajendran Chingaravelu v. R.K. Mishra, Additional Commissioner of Income-tax and others, (2010) 1 SCC 457 : (2009 AIR SCW 7558)**, the Supreme Court while considering the scope of Article 226(2) of the Constitution, particularly the cause of action in maintaining a writ petition, held as under:

> *"9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.*
>
> *xxxxxx*

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11. Normally, we would have set aside the order and remitted the matter to the High Court for decision on merits. But from the persuasive submissions of the appellant, who appeared in person on various dates of hearing, two things stood out. Firstly, it was clear that the main object of the petition was to ensure that at least in future, passengers like him are not put to unnecessary harassment or undue hardship at the airports. He wants a direction for issuance of clear guidelines and instructions to the inspecting officers, and introduction of definite and efficient verification/investigation procedures. He wants changes in the present protocol where the officers are uncertain of what to do and seek instructions and indefinitely wait for clearances from higher-ups for each and every routine step, resulting in the detention of passengers for hours and hours. In short, he wants the enquiries, verifications and investigations to be efficient, passenger-friendly and courteous. Secondly, he wants the Department/officers concerned to acknowledge that he was unnecessarily harassed."

[See : Nawal Kishore Sharma v. Union of India, 2014 (5) Supreme 689]

19 While the scope and purport of the expression "cause of action" has been explained in a catena of Judgments of the Supreme Court and several High Courts, it, nonetheless, continues to remain the subject matter of immense debate and is in issue in this writ petition also. It is, therefore, necessary to note how the expression "cause of action" has been construed by the Supreme Court and High Courts and explained in the authoritative texts.

20 Thus, "Cause of action" is 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. It does not comprise of every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. (Read (1888) Vol. XXII QBD 128, C.P. Agencies,). In other words, a bundle of facts which taken with the law applicable to them gives the plaintiff a right to 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. In a generic and wide sense, (as in Section 20 of the Civil Procedure Code, 1908), "cause

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of action" means every fact, which it is necessary to establish to support a right to obtain a judgment, 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. These are all those essential facts without the proof of which the plaintiff must fail in his suit. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.

21 The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a Tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (Black s Law Dictionary). In Stroud s Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; In Words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

22 In **Halsbury's Laws of England (4th Edn.):**

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 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 a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance

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founding the action, not merely the technical cause of action.

The collocation of the words "cause of action, wholly or in part, arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of Courts. Although in view of Section 141 of the Code of Civil Procedure, the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure, and Clause (2) of Article 226, being in *pari materia,* the decisions of the Supreme Court rendered on an interpretation of Section 20(c) CPC apply to writ proceedings also. [**(Ambica Industries,; Kusum Ingots & Alloys Ltd. (2004) 6 SCC 2542**].

23 In order to exercise jurisdiction to entertain a writ petition, 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 the court to decide a dispute which has, at least in part, arisen within its jurisdiction. *(Union of India v. Adani Exports Ltd., AIR 2002 SC 126).* Each and every fact pleaded in the writ petition 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 are such which have a nexus or relevance with the *lis* that is involved in the case. Facts which have no bearing on the *lis* or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. *(Union of India v. Adani Exports Ltd.; National Textile Corporation Ltd.)*. Similarly, the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court. *(Kusum Ingots & Aloys Ltd.,; Eastern Coalfields Ltd.,90 CWN*

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438).

24 What is necessary to be proved, before the petitioner can obtain a decree, are material facts. The expression material facts is also known as integral facts. *(Ambica Industries,; Kusum Ingots & Alloys Ltd.,).* The test is whether a particular fact (s) is (are) of substance and can be said to be material, integral or essential part of the *lis* between the parties. If it is, it forms a part of 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 matter and not the form thereof has to be considered. (Alchemist Limited,). High Courts should exercise caution not to transgress into the jurisdiction of other High Courts merely on the ground that some insignificant event, trivial and unconnected with the cause of action has taken place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. (Utpal Kumar Basil,; Navinchandra N. Majithia,).

25 The question whether "cause of action", either in whole or in part has arisen within the territorial jurisdiction of a particular High Court must only be decided on the basis of the pleadings. In determining the objection regarding lack of territorial jurisdiction, the court must take all the facts pleaded in support of the cause of action into consideration, albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words, 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 being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the writ petition. In the absence of an averment that the cause of

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action, or a part of it, has arisen within the territorial jurisdiction of the concerned High Court the writ petition would be rejected.

26 In fact, the Supreme Court in **Mosaraf Hossain Khan v. Bhagheeratha Engg Ltd and others [2006 (3) SCC 658]** after referring to *Navinchandra N. Majihia v. State of Maharastra & others [2000 (7) SCC 640]* has held as under :-

> *"16. In Navinchandra N. Majithia [(2000) 7 SCC 640 : 2001 SCC (Cri) 215] a contract was entered into by and between a company, Indian Farmers Pvt. Ltd. (IFPL) and Chinar Export Ltd. (CEL). The appellant therein was the Managing Director of IFPL Company. CEL entered into an agreement with IFPL for purchase of the entire shares of IFPL for which it paid earnest money. It, however, failed to fulfil its commitment to pay the balance purchase price within the specified time. IFPL terminated the agreement. A suit was filed by CEL in the High Court of Bombay for specific performance of the said agreement. Two shareholders of CEL took over the management and control of the Company as Directors and they formed another company named J.B. Holdings Ltd. ("JBHL") at Shillong in the State of Meghalaya. Later the said suit was withdrawn upon the appellant returning the amount paid by CEL which was earlier forfeited by the appellant. Pursuant to the said agreement JBHL made payments for the purchase of shares of IFPL. But the appellant therein contended that as JBHL committed default in making the balance payment and thereby committed breach of the agreement, the said agreement stood terminated and the earnest money stood forfeited as stipulated in the agreement. In the aforementioned situation a complaint was filed by JBHL against the appellant at Shillong. The maintainability of the said complaint came to be questioned by Majithia by filing a writ petition before the Bombay High Court which was dismissed. Writ jurisdiction under Article 226 of the Constitution was invoked on the ground that the entire transaction on which the complaint was based had taken place at Mumbai and not at any other place outside the said town, much less at Shillong. It was further contended that the jurisdiction to investigate into the contents of the complaint was only with the police/courts in W.P.(CRL.) 1546/2013 Page 9 of 17 Mumbai. The prayers made in the said writ petition were: (SCC p. 644, para 3) "3. (a) to quash the complaint lodged by JBHL or in the alternative to issue a writ of mandamus directing the State of Meghalaya to transfer the investigation being conducted by the officers of CID at Shillong to the Economic Offences Wing, General Branch of CID, Mumbai or any other investigating agency of the Mumbai Police, and*

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(b) to issue a writ of prohibition or any other order or direction restraining the Special SP Police, CID, Shillong and/or any investigating agency of the Meghalaya Police from taking any further step in respect of the complaint lodged by JBHL with the police authorities at Shillong."

17. The said writ petition, as indicated hereinbefore, was dismissed by the Bombay High Court. This Court reversed the said order opining that the entire cause of action arose within the jurisdiction of the High Court of Bombay. Upon noticing some earlier decisions of this Court, it was observed: (SCC pp. 650-51, para 27) "27. Tested in the light of the principles laid down in the cases noted above the judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition, on the ground of lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurise the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may W.P.(CRL.) 1546/2013 Page 10 of 17 be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High Court."

xxxx xxxx xxxx xxxx

26. In Kusum Ingots & Alloys Ltd v. Union of India [(2004) 6 SCC 254] a three-Judge Bench of this Court clearly held that with a view to determine the jurisdiction of one High Court vis-á- vis the other the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be made and the facts which have nothing to do therewith cannot give rise to a cause of action to invoke the jurisdiction of a court. In that case it was clearly held that only because the High Court within whose jurisdiction a legislation is passed, it would not have the sole territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction..............

xxxx xxxx xxxx xxxx

28. We have referred to the scope of jurisdiction under Articles 226 and 227 of the Constitution only to highlight that the High Courts should not

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ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of the subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution unless it is established that the earlier cause of action arose within the jurisdiction thereof.

27 A Five Judges Bench of the Delhi Court in **Sterling Agro Industries Ltd. v. Union of India & others [2011 (181) DLT 658]** after considering a number of judgments including *Ambica Industries Vs. Commissioner of Central Excise, [(2007) 6 SCC 769]* has held as under:-

"31. 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 in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

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

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(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 malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide 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.

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

28 From the aforesaid, it is apparent that the concept of forum conveniens has been recognised by the Courts and cause of action for determining territorial jurisdiction has been held to be a bundle of facts which the petitioner must prove to entitle him to a judgment in his favour.

29 The "Cause of action", for the purpose of Article 226 (2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. It means a bundle of facts which are required to be proved. The entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed. **[See Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, (2008) 3 SCC 456]**.

30 The principle of forum conveniens also makes it obligatory on the part of the Court to see the convenience of all the parties before it. Be it the existence of a more appropriate forum, expenses, law relating to the lis, convenience of the witnesses, verification and examination of the facts for adjudication of the controversy and other similar and ancillary aspects. The Court has further held that even in a scenario where a part cause of action has arisen within one High Court's territorial jurisdiction, that High Court can still refuse to exercise jurisdiction under Article 226 on account of other considerations as defined under the concept of forum conveniens.

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31 A learned Single Judge of this Court in the case of **Rahul Gupta v. State of Rajasthan [2009(3) GLR 2148]** held as under:

> *"6. The above discussion of relevant dicta on the issue makes it amply clear that decision on the issue of territorial jurisdiction of the High Court exclusively depends upon the cause of action, wholly or partly, arising within the territorial jurisdiction of the High Court concerned and the seat of Government, or authority or residence of the person against whom a writ or direction is sought is not material; and the 'cause of action' means every fact which it would be necessary for the petitioner to prove, if traversed, in order to support his right to judgment of the Court."*
>
> *"8. The cause or causes for making a complaint at a particular place must not be confused with the cause of action for filing a petition for quashing that complaint. As seen earlier, even if a fraction of the cause for filing a complaint has arisen in Rajasthan, an FIR could be lodged at Jaipur. And even assuming that such filing of the FIR in Rajasthan was mala fide, the cause of action for filing a petition for quashing such FIR could arise only in Rajasthan and not at all places where parts of causes for filing the FIR may have arisen and where the FIR could have been lodged and investigated and where the ensuing criminal case could have been tried. In other words, the cause of action for filing a criminal complaint is different from the cause of action for quashing the complaint. The provisions of Sections 177 and 178 of Cr. P.C. therefore, could not and ought not to be applied for determining the issue of territorial jurisdiction of the High Court, which has to only consider the provisions of Article 226 of the Constitution. The arguments that the petitioners are unnecessarily and with ulterior motives dragged to face the authorities in Rajasthan and that it is a calculated move to choose the legal forum in Rajasthan cannot be accepted so as to usurp territorial jurisdiction and undermine the authority and jurisdiction of another High Court.*
>
> *8.1 In another set of petitions calling for decision on the same issue, this Court has made following further observations :*
>
> > *".........Besides that; the petitions have thrown up a larger and more interesting issue of several accused persons approaching several High Courts in a case where the cause of action could be traced to events and actions taking place in more than one State. If all the High Courts within whose territorial jurisdiction any of the acts constituting the offences have taken place and all the High Courts assume extraordinary writ jurisdiction for intervention in a criminal case registered in any one of the States, a distinct possibility of several High Courts taking*

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inconsistent views and issuing conflicting directions may arise. Therefore, judicial discipline requires and expediency demands that only the High Court within whose territorial jurisdiction the complaint is filed or criminal case is pending entertains the petitions arising therefrom".”

32 We may also refer to and rely upon a decision of the Bombay High Court in the case of **HSBC Holdings PLC vs. Deputy Commissioner of Income-tax-1 reported in [2019] 417 ITR 74 (Bombay),** wherein it has been observed as under:

> *“6. On the other hand, we notice that Calcutta High Court in case of Ispat Industries Ltd. v. Dy. CIT [2002] 123 Taxman 756/253 ITR 474 examine the question of territorial jurisdiction of the High Court where the assessee had been served a notice of reopening of assessment under Section 148 of the Act. The learned Judge held that this would not be sufficient to give the High Court territorial jurisdiction to entertain the writ petition. Following observations were made:-*
>
> > *Now so far the challenge to the order under Section 148 of the Act it appears that the notice has been served on the petitioner to file return under Section 148 of the said Act by respondent No. 1 who is having his office at Mumbai. The order if any passed by the said authority, appeal will also have to be filed at Mumbai and further the return also to be filed by the petitioner as an agent under Section 148 of the said Act is also at Mumbai. Notice has been served upon the petitioner only treating the petitioner as a representative assessee and not in its own identity but as an agent of the said foreign firm, who has been assessed at Mumbai, and the return to be filed on behalf of the said firm before respondent No. 2 at Mumbai who has the jurisdiction in the matter. There cannot be any reason to accept the contention that the Assessing Officer of the petitioners shall have the jurisdiction. Therefore, it cannot be said that any integral part of the cause of action has arisen within the jurisdiction of this High Court.*
> >
> > *In my opinion, the judgments cited before me by Mr. Bajoria will not extend any help to him on this aspect. Furthermore, as the Supreme Court has held in State of Rajasthan v. Swaika Properties, , mere service of a notice at Calcutta does not constitute an integral part of the cause of action sufficient to acquire jurisdiction by this High Court and to entertain a petition under article 226 of the Constitution. Therefore, I do not have any hesitation to hold in this matter that the service of the notice*

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> *under Section 148 of the said Act or under Section 163 of the said Act or the order communicated at Calcutta cannot give any jurisdiction to the petitioner to file this writ application in this High Court and I hold that service of the notice in the instant application cannot constitute any part of the cause of action to entertain this application. Accordingly, on that ground this application must be dismissed.*

7. This was reiterated in a decision in case of CESC Ltd v. Dy. CIT [2004] 138 Taxman 148 / [2003] 263 ITR 382 (Cal.)

8. Learned Single Judge of Madras High Court in case of C. G. Shanmugham v. Union of India [1995] 215 ITR 2017 (Mad) considered a case where the notice for recovery of tax was issued by the Recovery Officer at Mumbai to the legal representatives of the owner of property residing in Madras. The Court held that the Madras High Court had no jurisdiction to entertain the petition.

9. It can thus be seen that the issue of the High Court where the assessee was served with a notice of reopening of the assessment getting territorial jurisdiction to entertain a petition challenging such notice, is not free from doubt. In the present case, we are not inclined to thrash out this legal issue for our final opinion. This is so because even if we accept the contention of the counsel of this Court, we are of the opinion that the Court should not exercise such jurisdiction such jurisdiction and instead allow the petitioner to file appropriate petition before the High Court which has jurisdiction over the Assessing Officer at Hyderabad. The assessee is being assessed to tax consistently at Hyderabad. The assessee has a PAN card at such place. The assessee has never applied for transfer of PAN card. Addmittedly, therefore against the assessments that may be made by the Deputy Commissioner of Income Tax, Hyderabad, appeals would lie before the Income Tax Appellate Tribunal, Telangana. Section 269 of the Act defines the High Court as to mean in relation to any State the High Court for that State. Any challenge to the orders of Assessing Officer, Appellate Commissioner or the Tribunal in the present case would lie before the High Court of Telangana (previously High Court of Andhra Pradesh). The Assessing Officer and the Appellate Authorities therefore would be bound by the law propounded by the said High Court.

10. In central legislations such as the Income Tax Act, High Courts give due respect to the pronouncements of another High Court, in order to avoid difference of opinion in central legislations. On rate occasions diversion of views between the High Courts is inavitable. If we entertain this petition merely because a small part of the cause of action may have arisen within the jurisdiction of this Court, we would be giving rise to possibility of different legal principles being applied in case of the same assessee on the same issue and possibly in relation to the

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same assessment year. Any appeal against the original assessment (if all done) for the assessment year 2011-12 would be governed by the law laid down by Telangana High Court. In the context of challenge to the notice of reassessment, this Court would apply the decisions of Bombay High Court. This would be wholly undesirable.

11. It is not unknown to law that in the context of territorial jurisdiction of the High Court, even if it is found that a small portion of the jurisdiction may have arisen within the High Court, the Court would on the principle of convenience may refuse to entertain the jurisdiction. In case of Serious Fraud Investigation Office v. Rahul Modi [2019] 103 taxmann.com 408/153/ SCL 474 (SC), the Supreme Court observed that in case of an offence which is triable by the Special Court established or designated for an area in which registered office of the company in relation to which the offence is committed, proper jurisdiction High Court would be the Court which has territorial jurisdiction over such Special Court. Though jurisdiction of the High Court where arrest and detention may have taken place, would not be completely ousted, the Court should not entertain the challenge even if the arrests were made within the jurisdiction of such court.

12. In case of Madhya Pradesh State Mining Corpn. Ltd v. Sanjeev Bhaskar [2013] 12 SCC 326 the Supreme Court observed as under:-

> *"23. Admittedly, the third party rights were created in the meantime in favour of the Mining Corporation pursuant to the order of Madhya Pradesh High Court dated 16th July, 1986. The order passed by the Madhya Pradesh High Court was not challenged in any appeal. The Delhi High Court also failed to notice the aforesaid fact and failed to decide the jurisdiction of the High Court to entertain the appeal against the order passed in favour of the Mining Corporation which was passed pursuant to the direction of the Madhya Pradesh High Court. In this background, it was not desirable for the Delhi High Court to entertain the writ petition. Even though the revisional order was passed by the Central Government, the Delhi High Court ought to have asked the first respondent to move before the Madhya Pradesh High Court for appropriate relief.""*

33 Thus, just because a notice under Section 143(2) of the Act, 1961 came to be issued to the writ applicant at his residential address at Ahmedabad, State of Gujarat, by itself, will not confer jurisdiction to this High Court, more particularly, when the writ applicant is being assessed to tax consistently at Cuttack. The writ applicant has a PAN card at such place. The impugned notice under Section 148 of the Act, 1961 was also

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issued at Cuttack. The return of income for the A. Y. 2015-16 was also filed at Cuttack. The final assessment order dated 29th December 2017 for the A. Y. 2015-16 was also passed at Cuttack.

34 In such circumstances referred to above, we are of the view that we should not entertain this writ application and relegate the writ applicant to file an appropriate writ application before the High Court of Orrissa at Cuttack.

35 We take notice of the fact that while issuing notice, an ad-interim relief in terms of para 7(c) was granted. Let this ad-interim relief continue for a period of two weeks from today to enable the writ applicant to avail an appropriate legal remedy before the appropriate forum in accordance with law.

36 With the aforesaid, this writ application stands rejected. We clarify that we have otherwise not expressed any opinion on the merits of the case.

सत्यमेव जयते
THE HIGH COURT
OF GUJARAT
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(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

CHANDRESH

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