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

% **Reserved on: 12th May, 2011**
Date of decision: 1st August, 2011

\+ 1. **W.P.(C) No.6570/2010**

M/s. Sterling Agro Industries Ltd. … Petitioner
Through: Mr.M.P. Devnath with Mr. Manish Panda, Mr. Abhishek Anand and Mr. Tarun Jain, Advs.
Mr.Atul Nanda, Amicus Curiae.

Versus

Union of India & Ors. … Respondents
Through: Mr.A.S. Chandhiok, ASG with Ms. Sonia Sharma and Ms.Sandeep Bajaj, Advs. for UOI.
Mr.A.S. Chandhiok, ASG with Mr. Mukesh Anand with Mr. Shailesh Tiwari, Mr. Sumit Batra & Mr.R.C.S. Bhadoria, Mr. Jayendra Advs. for R-2 & R-3.

2. **W.P.(C) No.8399/2009**

Jan Chetna … Petitioner
Through: Mr. Sanjay Parikh with Mr.Ritwick Dutta and Mr. Rahul Choudhary, Advs.

Versus

Ministry of Environment and Forests & Ors. … Respondents
Through: Mr.D.K. Sharma, Adv. for R-1.
Ms.Yogmaya Agnihotri, Adv for R-2.
Mr.Ashwani Mata, Sr. Adv. with Mr.Rishi Agrawala, Mr.Akshay Ringe and Ms. Kanika Agnihotri, Ms. Misha Rohtagi, Mr. Vaibhav Agnihotri, Advs. for R-3.

Mr.A.S. Chandhiok, ASG with Mr. Sandeep Bajaj, Mr. G.S. Parwanda, Ms. Riya Kaul, Ms. Neha Rastogi, Advs. for UOI.

3. **W.P.(C) No.2447/2010**

Manu Jain … Petitioner

Through: Mr. R. Santhanam with Mr.A.P. Sinha, Advs.

Versus

Smt. Neerja Shah & Ors. … Respondents

Through: Mr.A.S. Chandhiok, ASG with Mr. Sandeep Bajaj, Mr. G.S. Parwanda, Ms. Riya Kaul, Ms. Neha Rastogi, Advs. for UOI.
Mr.A.S. Chandhiok, ASG with Mr. Mukesh Anand with Mr. Shailesh Tiwari, Mr. Sumit Batra & Mr.R.C.S. Bhadoria, Mr. Jayendra Advs. Department of Central Excise.

4. **W.P.(C) No.2448/2010**

M/s Bafna Healthcare Pvt. Ltd. & Ors. … Petitioners

Through: Mr. R. Santhanam with Mr.A.P. Sinha, Advs.

Versus

Commissioner of Central Excise Delhi-IV & Ors. … Respondents

Through: Mr.A.S. Chandhiok, ASG with Mr. Sandeep Bajaj, Mr. G.S. Parwanda, Ms. Riya Kaul, Ms. Neha Rastogi, Advs. for UOI.
Mr.A.S. Chandhiok, ASG with Mr. Mukesh Anand with Mr. Shailesh Tiwari, Mr. Sumit Batra & Mr.R.C.S. Bhadoria, Mr. Jayendra Advs. Department of Central Excise.

5. **W.P.(C) No.6953/2010**

The Commissioner of Trade Tax & Anr. … Petitioners
Through: Mr.A.S. Chandhiok, ASG with Mr. Sandeep Bajaj, Mr. G.S. Parwanda, Ms. Riya Kaul, Ms. Neha Rastogi, Advs. for UOI.

Versus

M/s. Ricoh India Ltd. & Ors. … Respondents
Through: None.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE MANMOHAN

1	Whether reporters of the local papers be allowed to see the judgment?	Yes
2	To be referred to the Reporter or not?	Yes
3	Whether the judgment should be reported in the Digest?	Yes

DIPAK MISRA, CJ

In view of the similitude of the principal controversy pertaining to the jurisdiction of the High Court of Delhi being involved in these writ petitions, they were heard analogously and as the said issue is the only question of reference, it is being adverted to and dealt with by a singular order. For the sake of convenience, we shall adumbrate the facts in W.P.(C) No.6570/2010.

2. Expressing doubt with regard to the correctness and soundness of the decision in ***New India Assurance Company Limited v. Union of India and***

others, AIR 2010 Delhi 43 (FB), a Division Bench thought it appropriate to refer the matter for reconsideration by a Full Bench and, accordingly, a Full Bench was constituted and the Full Bench thought it appropriate that the matter should be considered by a larger Bench and, accordingly, the larger Bench has been constituted and the matter has been placed before us for the aforesaid purpose.

3. Before we proceed to analyze and appreciate the ratio decidendi in ***New India Assurance Company Limited*** (supra), it is seemly to exposit the necessitous primary facts averred in the present writ petition. The petitioner, in invocation of the jurisdiction under Article 226 of the Constitution of India, has called in question the legal substantiality and sustainability of the order No.214-15/10-Cus dated 9.7.2010, Annexure-1, passed by the Revisionary Authority, Government of India, Ministry of Finance, Department of Revenue, whereby the revision application preferred by the petitioner has been dismissed concurring with the view expressed by the Commissioner (Appeal-I), Customs & Central Excise, Indore whereby the appellate authority has given the stamp of approval to the order passed by the Assistant Commissioner of Customs ICD, Malanpur who had expressed the view that no drawback facility is admissible to the petitioner as it had, by

way of procuring duty free inputs under Rule 19(2) of the Central Excise Rules, 2002, contravened clause (ii) of the second proviso to Rule 3(1) of the Central Excise Drawback Rules, 1995 and also condition No.7(F) of the notification No.68/2007-Cus (NT) and condition No.8(F) of the notification No.103/2008-Cus (NT).

4. It is the admitted position that the petitioner – industry is situate at Industrial Area, Q-5-6, Ghirongi, Dist. – Bhind, Malanpur in the State of Madhya Pradesh. The initial order was passed on 30.5.2009 by the Assistant Commissioner of Customs ICD, Malanpur, Dist. Bhind (M.P.). The appellate order was passed by the Commissioner (Appeals)-I, Customs and Central Excise & Service Tax at Indore (M.P.).

5. Being dissatisfied with the order passed by the revisional authority, the petitioner has invoked the inherent jurisdiction of this Court under Article 226 of the Constitution of India solely on the foundation that the revisional authority, namely, the office of the Joint Secretary to the Government of India, is in Delhi and, therefore, this Court has the territorial jurisdiction to deal with the lis in question. It is proponed in the petition that it is the Joint Secretary who is answerable to justify his order and, ergo, this Court can and should dwell upon the controversy. In the grounds

enumerated in the writ petition, reliance has been placed on the decision rendered in ***New India Assurance Company Limited*** (supra).

6. We have heard the learned counsel for the parties and Mr.Atul Nanda, learned senior counsel as the Amicus Curiae.

7. At this juncture, we think it apposite to refer to the history of Article 226 of the Constitution of India. Initially, Article 226 of the Constitution of India read thus:

> "226. (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
>
> (2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."

8. On the basis of the aforesaid constitutional provision, a strict construction was placed and the plea of cause of action or forum conveniens was not given acceptance by the Apex Court in ***Election Commission India***

v. Saka Venkata Rao, AIR 1953 SC 210. Their Lordships opined in the said case as follows:

> "The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority "within the territories" in relation to which the High Court exercises jurisdiction."

9. In ***Ltd. Col. Khajoor Singh v. Union of India, AIR 1961 SC 532***, a Division Bench of Jammu and Kashmir High Court had upheld the preliminary objections raised before it and had held that it had no jurisdiction to issue a writ against the Union of India and to arrive at the said conclusion, the High Court had placed reliance on the decisions in ***Saka Venkata Rao*** (supra) and ***K.S. Rashid and Son v. The Income Tax Investigation Commission etc., AIR 1954 SC 207***. It was contended before the Apex Court that the aforesaid two decisions were distinguishable from the factual matrix therein inasmuch as in the earlier cases, the Election Commission and the Income Tax Investigation Commission were statutory bodies which have their location in Delhi and, therefore, the view was expressed in that manner. The majority posed two questions, namely, (i) whether the Government of India as such can be said to have a location in a

particular place, that is, New Delhi, irrespective of the fact that its authority extends over all the States and its officers function throughout India; and (ii) whether there is any scope for introducing the concept of cause of action as the basis for exercise of jurisdiction under Article 226. Their Lordships, while dealing with the first aspect, opined thus:

> "It would, therefore, in our opinion be wrong to introduce in Article 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 Article 226. The introduction of such a concept may give rise to confusion and conflict of jurisdiction."

10. Thereafter, it has been held as follows:

> "There can, therefore, be no escape from the conclusion that these words in Article 226 refer not to the place where the Government may be functioning but only to the place where the person or authority is either resident or is located. So far therefore as a natural person is concerned, he is within those territories if he resides there permanently or temporarily. So far as an authority (other than a Government) is concerned, it is within the territories if its office is located there. So far as a Government is concerned it is within the territories only if its seat is within those territories."

11. Their Lordships then answered the second question in the following terms:

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

such, and that may be a reason for making a suitable constitutional amendment in Art. 226."

12. After the said decision came into the field, the Parliament brought the 15th Amendment and inserted Clause (1A) in the Constitution by the 15th Amendment Act, 1963. Clause (1A) read as follows:

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

13. By the 42nd constitutional amendment, Clause (1A) was renumbered as Clause (2) and in the present incarnation, it reads as follows:

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

14. From the aforesaid chronological narration of the growth of Article

226 of the Constitution, the concept of cause of action arising wholly or in part came into existence for the exercise of power under the said Article.

15. Regard being had to the aforesaid historical backdrop, we shall presently proceed to deal with the Full Bench decision in ***New India Assurance Company Limited*** (supra) to perceive how it has dealt with the concept of jurisdiction in the context of the conception of cause of action and the appreciation of the ratio of various citations by the Full Bench referred to by it. It is worth noting that the matter travelled to the Full Bench by reference made by the Division Bench while hearing a letters patent appeal from an order of the single Judge who had dismissed the writ petition summarily on the ground that significant part of the cause of action could not have been said to have arisen within the territorial jurisdiction of this Court and merely because the order under challenge had been passed by the appellate authority located within the territorial jurisdiction, the same could not be sufficient enough for conferment of jurisdiction. The learned single Judge, to arrive at the said conclusion, had placed reliance on the decisions in ***Ambica Industries v. Commissioner of Central Excise, 2007 (213) ELT 323(SC), Bombay Snuff (P) Ltd. v. Union of India, 2006 (194) ELT 264 (Del), Rajkumar Shivhare v. Assistant Director of Enforcement, Mumbai***

154 (2008) DLT 28 and ***West Coast Ingots (P) Ltd. v. Commissioner of Central Excise, New Delhi, 2007 (209) ELT 343 (Del)***. The Full Bench referred to the arguments canvassed at the Bar, took note of the legislative history of Article 226 of the Constitution of India and referred to the decisions of the Apex Court in ***Collector of Customs, Calcutta v. East India Commercial Co. Ltd., Calcutta and others, AIR 1963 SC 1124, Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254, Sri Nasiruddin v. State Transport Appellate Tribunal, (1975) 2 SCC 671*** and ***Navinchandra N. Majithia v. State of Maharashtra, AIR 2000 SC 2966***, the decision of the High Court of Bombay in ***Kishore Rungta and ors. v. Punjab National Bank and ors., 2003 (151) ELT 502 (Bom)*** and the decision of the High Court of Delhi in ***Indian Institute of Technology v. P.C. Jain and Ors., 45 (1991) DLT42*** and eventually held thus:

> "29. As held in Nasiruddin's case, even where part of the cause of action arose, it would be open to the litigant, who is the dominus litis to have his forum conveniens. In the present case, since the Appellate Authority is situated at New Delhi, the Delhi High Court has the jurisdiction under Article 226 of the Constitution of India and, therefore, there was no occasion for the learned single Judge to apply the principle of forum conveniens to refuse to exercise the jurisdiction. The principle of forum nonconveniens originated as a principle of international law, concerned with Comity of Nations. A domestic court in which jurisdiction is vested by law otherwise

ought not to refuse exercise of jurisdiction for the reason that under the same law some other courts also have jurisdiction. However, the remedy under Article 226 being discretionary, the court may refuse to exercise jurisdiction when jurisdiction has been invoked mala fide. There is no such suggestion in the present case. Nothing has been urged that it is inconvenient to the contesting respondent to contest the writ before this Court. The counsel for the contesting respondent has not disputed the jurisdiction of this Court; his main contention is of possibility of conflict. We do not find any merit in this contention of the counsel for the contesting respondent. First, that is not the case in hand. The contesting respondent is not aggrieved by the order of the appellate authority and has not assailed the same before any High Court. Thus, there is no possibility of conflicting judgments or confusion in the present case. Secondly, even if in a given case such a situation were to arise, the same is bound to be brought to the notice of the court and the likelihood of both courts proceeding with the writ petition and conflicting judgments is remote. In such a situation, following the principle in Section 10 of the Code of Civil Procedure, the subsequently filed petition may be stayed in view of the earlier petition entailing similar questions or the court may ask the petitioner to approach the High Court where the earlier petition has been filed. In our opinion, it will be inappropriate to refuse to exercise jurisdiction merely on the basis of possibility of conflict of judgments, particularly in view of the clear language of Article 226(2).

30. Having held that this Court has jurisdiction, it cannot be said that only an insignificant or miniscule part of the cause of action has accrued within the jurisdiction of this Court or that the substantial cause of action has accrued within the jurisdiction of the High Court of Andhra Pradesh. In fact, the sole cause of action for the writ petition is the order of the appellate authority

and which cause of action has accrued entirely within the jurisdiction of this Court and this Court would be failing in its duty/function if declined to entertain the writ petition on the ground of the contesting respondent being situated within the jurisdiction of the High Court of Andhra Pradesh. Though the petition has been filed under Article 226 of the Constitution, it cannot be lost sight of that jurisdiction in such cases under Article 226 is overlapping with Article 227. Article 227 is clear in this regard. The power of superintendence over Tribunals is vested in the High Court within whose jurisdiction the Tribunal is situated. In that light of the matter also, it cannot be said that only insignificant or miniscule part of the cause of action has accrued within the jurisdiction of this Court. The appellate authority in the present case having passed the order which is impugned in the petition, being situated within the jurisdiction of this Court, even if the cause of action doctrine were to be invoked, substantial part of the cause of action has accrued within the jurisdiction of this Court only. Even the language of the impugned order giving rise to the cause of action in the writ petition, discloses significant cause of action to have accrued within the jurisdiction of this Court. This Court while deciding this writ petition is not required to issue any direction, order or writ to any person outside its jurisdiction. Section 110H of the Insurance Act provides for appeal to the Central Government, seat whereof is admittedly within the jurisdiction of this Court.

CONCLUSION

31. For the foregoing reasons, we hold that where an order is passed by an appellate authority or a revisional authority, a part of cause of (sic action) arises at that place. When the original authority is situated at one place and the appellate authority is situated at another, a writ petition would be maintainable at both the places. As the order of appellate authority constitutes a part of

> cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the petitioner is dominus litis to choose his forum, and that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens."
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> [Emphasis added]

16. On a nuanced scrutiny of the decision of the Full Bench, it is clear as day that it has expressed the view which can be culled out in seriatim as follows:

(i) Once the Court comes to hold that it has jurisdiction, the plea that only an insignificant or miniscule part of the cause of action has accrued within the jurisdiction of the Court or that the substantial cause of action has accrued in another State is inconsequential.

(ii) The "sole" cause of action emerges when an order by the appellate authority situated within the territorial jurisdiction of Delhi is passed and when the "sole" cause of action accrues entirely within the jurisdiction of this Court, declining to entertain the writ petition would amount to failure of duty of the Court.

(iii) This Court has jurisdiction under Article 227 since it has the

power of superintendence over tribunals situated within its jurisdiction and judged in that light, it cannot be said that only an insignificant or miniscule part of the cause of action has accrued within the jurisdiction of this Court.

(iv) Even if the doctrine of cause of action is adopted or invoked, the substantial part of the cause of action arises because the order under assail is that of the appellate authority / tribunal which is situated in Delhi.

(v) As the original order merges into the appellate order, the place where the appellate authority is located is also the forum conveniens.

(vi) The remedy under Article 226 being discretionary, the Court may refuse to exercise jurisdiction only when jurisdiction has been invoked with malafide intent.

Be it noted, the Full Bench had also observed that as the appellate authority is situate at New Delhi, the Delhi High Court has the jurisdiction under Article 226 of the Constitution of India and, therefore, there was no occasion for the learned Single Judge to apply the principle of forum conveniens to refuse exercise of jurisdiction.

17. Presently, we shall proceed to advert to the authorities that have been referred to and relied upon by the Full Bench for the simon pure reason that understanding of the principles exposited therein would enable us to appreciate the enunciation of the law by the Full Bench and also refer to certain authorities that have been cited before us.

18. In the case of ***Sri Nasiruddin*** (supra), it has been held thus:

> "…the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well-known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court…"

19. In ***Kishore Rungta and ors.*** (supra), a writ petition was filed challenging the order passed by the Debt Recovery Appellate Tribunal, Mumbai dismissing an order of the Debt Recovery Appellate Tribunal, Jaipur. A preliminary objection was raised regarding the jurisdiction of the High Court of Bombay. The Division Bench of the High Court of Bombay referred to the decisions in ***East India Commercial Co. Ltd., Calcutta and others*** (supra), ***Damomal Kausomal Raisinghani v. Union of India, AIR 1967 Bom 355, Navinchandra N. Majithia*** (supra) and ***Sita Ram Singhania v. Bank of Tokyo-Mitsubishi Ltd. and ors, AIR 2000 SC 2180*** and came to opine thus:

> "16. Mr. Tulzapurkar lastly submitted that a part of the cause of action having arisen in Mumbai, this Court has jurisdiction to entertain the Petition in view of Article 226(2) of the Constitution. We are in agreement with Mr. Tulzapurkar. The 15th amendment to the Constitution which introduced clause 2 in Article 226 was intended to widen the ambit of the area for reaching the writs issued by the High Court. Clause 2 of Article 226 is as under:
>
> > "(2) The power conferred by clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause, of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

> In this connection Mr. Tulzapurkar relied upon the judgment of the Supreme Court in the case of Navinchandra N. Majithia v. State of Maharashtra, The Supreme Court held that the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising Jurisdiction in relation to the territories within which the cause of action, wholly or in part arises and it is no matter that the seat of the Authority concerned is outside the territorial limits of the jurisdiction of that High Court. The Supreme Court further held that the amendment was aimed at widening the width of the area for reaching the writs issued by different High Courts. The Supreme Court also held that the words "cause of action wholly or in part arises" seem to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the Courts."

20. In ***Alchemist Ltd. and Anr. v. State Bank of Sikkim and ors., (2007) 11 SCC 335***, after referring to the decisions in ***A.B.C. Laminart (P) Ltd. v. A.P. Agencies, AIR 1989 SC 1239, Union of India v. Oswal Woollen Mills Ltd., (1984) 2 SCC 646, State of Rajasthan v. Swaika Properties, AIR 1985 SC 1289, Oil and Natural Gas Commission v. Utpal Kumar Basu and others, (1994) 4 SCC 711, CBI, Anti-Corruption Branch v. Narayan Diwakar, (1999) 4 SCC 656, Union of India v. Adani Exports Ltd., (2002) 1 SCC 567, Kusum Ingots & Alloys Ltd.*** (supra) and ***National Textile Corpn. Ltd. v. Haribox Swalram, (2004) 9 SCC 786***, the Supreme Court expressed the view as follows:

"34. In *Kusum Ingots & Alloys Ltd. v.* Union of India, (2004) 6 SCC 254 : JT (2004) Supp 1 SC 475, the appellant was a Company registered under the Companies Act having its head office at Mumbai. It obtained a loan from the Bhopal Branch of the State Bank of India. The Bank issued a notice for repayment of loan from Bhopal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The appellant Company filed a writ petition in the High Court of Delhi which was dismissed on the ground of lack of territorial jurisdiction. The Company approached this Court and contended that as the constitutionality of a parliamentary legislation was questioned, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition.

35. Negativing the contention and upholding the order passed by the High Court, this Court ruled that passing of a legislation by itself does not confer any such right to file a writ petition in any Court unless a cause of action arises therefor. The Court stated: (*Kusum Ingots case,* SCC p. 261, para 20*)*

> "20. A distinction between a legislation and executive action should be borne in mind while determining the said question".

Referring to *ONGC v. Utpal Kumar Basu, (1994) 4 SCC 711 : JT (1994) 6 SC 1*, it was held that all necessary facts must form an "integral part" of the cause of action. The fact which is neither material nor essential nor integral part of the cause of action would not constitute a part of cause of action within the meaning of Clause (2) of Article 226 of the Constitution.

36. In *National Textile Corporation Ltd. v. Haribox Swalram, (2004) 9 SCC 786 : JT (2004) 4 SC 508*, referring to earlier cases, this Court stated that: (SCC p. 797, para 12.1)

> "12.1 …the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained."
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> 37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant- petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a *material, essential, or integral* part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.
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> 38. In the present case, the facts which have been pleaded by the Appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of "cause of action" within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition." [Emphasis added]

21. In ***Utpal Kumar Basu and others*** (supra), a three-Judge Bench of the Apex Court, while dealing with the territorial jurisdiction in the backdrop of Article 226(2), has opined thus:

> "5. Clause (1) of Article 226 begins with a non-obstante clause-notwithstanding anything in Article 32 -

and provides that 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, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories 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 territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

6. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour v. Partab Singh ILR (1889) 16 Cal 98, 102 Lord Watson said:

> "...the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. 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."
>
> 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 immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition."
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> [Emphasis added]

22. In ***Kusum Ingots & Alloys Ltd.*** (supra), the Apex Court posed the question whether the seat of Parliament or the legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India. Their Lordships not only referred to clause (2) of Article 226 of the Constitution of India but also to the facet of cause of action as stated in ***Chand Kour v. Partab Singh ILR (1887-88) 15 IA 156, Utpal Kumar Basu and others*** (supra), ***Swaika Properties*** (supra), ***Aligarh Muslim University v. Vinay Engg. Enterprises (P) Ltd., (1994) 4 SCC 710, Union of India v. Adani Exports Ltd., (2002) 1 SCC 567*** and ***Haribox Swalram*** (supra) and

came to hold as follows:

> "19. Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefor.
>
> 20. A distinction between a legislation and executive action should be borne in mind while determining the said question.
>
> 21. A parliamentary legislation when receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled would not determine a constitutional question in a vacuum.
>
> 22. The court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final, keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act."

23. Thereafter, in paragraphs 27 and 29, their Lordships stated thus:

> "27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the

> appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.
>
> X X X X
>
> 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 (supra) has, thus, no application."
>
> [Emphasis added]

24. After so stating, in paragraph 30, their Lordships held thus:

> "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, AIR 1994 Del 126."
>
> [Emphasis supplied]

25. In ***Ambica Industries*** (supra), their Lordships have expressed thus:

> "40. 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 material facts. The expression material facts is also known as integral facts.
>
> 41. Keeping in view the expression "cause of action" used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of forum conveniens may also have to be considered."
>
> [Emphasis added]

26. At this juncture, we may profitably refer to the decision in ***Adani Exports Ltd.*** (supra) wherein their Lordships, after referring to the decision in ***Utpal Kumar Basu and others*** (supra), have held thus:

> "17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower to court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion

> that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in Paragraph 16 of the petition, in our opinion, fall 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."

27. In ***Rajendran Chingaravelu v. R.K. Mishra*, (2010) 1 SCC 457,** the appellant, a Computer Engineer, with the intention to buy a property at Chennai, identified a prospective seller at Chennai and proceeded from Hyderabad with a large sum of money to Chennai and when his baggage was checked at the Hyderabad airport by the security personnel, he was allowed to leave Hyderabad. However, at Chennai, some officers of the Income Tax Investigation Wing rushed in and he was pulled out of the aircraft and taken to the office on the first floor of the airport. He was questioned there about the money he was carrying. After certain enquiry and investigation, as nothing was found to be amiss or irregular, the seized money was returned to him, but without any interest. Being aggrieved by the action of the department, he filed a writ petition in the High Court of Andhra Pradesh seeking certain reliefs. The High Court of Andhra Pradesh declined to

interfere and directed the appellant therein to approach the appropriate court at Chennai. The said order was the subject matter of appeal by special leave before the Apex Court. In that context, their Lordships have held thus:

> "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.
>
> 10. In this case, the genesis for the entire episode of search, seizure and detention was the action of the security/intelligence officials at Hyderabad Airport (in Andhra Pradesh) who having inspected the cash carried by him, alerted their counterparts at Chennai Airport that the appellant was carrying a huge sum of money, and required to be intercepted and questioned. A part of the cause of action therefore clearly arose in Hyderabad. It is also to be noticed that the consequential income tax proceedings against him, which he challenged in the writ petition, were also initiated at Hyderabad. Therefore, his writ petition ought not to have been rejected on the ground of want of jurisdiction."
>
> [Underlining is by us]

28. On a scrutiny of the aforesaid emphasized lines, it is vivid that their Lordships have opined that a part of the cause of action arose at Hyderabad

as the officers at Hyderabad had alerted their counterparts at Chennai airport and further consequential income tax proceedings were also initiated at Hyderabad. In our humble view, the concept of cause of action which has been referred to in the said decision falls within the concept of cause of action as explained and elucidated in ***Alchemist Ltd.*** (supra).

29. In ***Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. & Ors.,*** **(2006) 3 SCC 658**, the Apex Court referred to the decision in ***Kusum Ingots & Alloys Ltd.*** (supra) and observed as follows:

> "26 …with a view to determine the jurisdiction of one High Court vis-à-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…"

Thereafter, their Lordships reproduced paragraphs 27 and 28 of the said decision and a passage from ***Adani Exports Ltd.*** (supra) and proceeded to state as follows:

> "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 ordinarily interfere with an order taking cognisance 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.
> 29. The High Courts, however, must remind themselves about the doctrine of *forum non conveniens* also. [See *Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express*, (2006) 3 SCC 100: (2006) 2 Scale 30]" [Underlining is by us]

30. From the aforesaid pronouncements, the concept of *forum conveniens* gains signification. In Black's Law Dictionary, *forum conveniens* has been defined as follows:

> "The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses."

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:

(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.

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

34. *Ex consequenti*, we answer the reference by partially overruling and clarifying the decision in ***New India Assurance Company Limited*** (supra) in the above terms. Matters be listed before the appropriate Division Bench for appropriate consideration.

CHIEF JUSTICE

VIKRAMAJIT SEN, J.

A.K. SIKRI, J.

SANJIV KHANNA, J.

MANMOHAN, J.

AUGUST 1, 2011
dk