M/S. KUSUM INGOTS AND ALLOYS LTD. A

v.

UNION OF INDIA AND ANR.

APRIL 28, 2004

[V.N. KHARE, CJ., S.B. SINHA AND S.H. KAPADIA, JJ.] B

Constitution of India, 1950: Article 226(2).

"Cause of action"—Meaning of—Held: The material facts which are imperative for the plaintiff/petitioner to allege and prove in order to obtain C *a judgment in his favour constitute the cause of action—However, the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before a petitioner can obtain a decree is the material facts also known as integral facts.*

"Cause of action"—Accrual of—Appellate or revisional order—Place D *where passed—Held: As the order of the appellate authority constitutes a part of the cause of action, a writ petition or suit is maintainable at both the places i.e. the place where the original order was passed and also the place where the appellate or revisional authority is constituted.*

E

"Cause of action"—"Wholly or in part"—Forum convenience—Choice of forum—Held: Indisputably even if a small fraction of the cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter—But the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits—However, when a part of the cause of action arises within the F *jurisdiction of one or the other High Court, it is for the petitioner to choose his forum.*

"Cause of action"—Situs of—Legislation/subordinate legislation/ delegated legislation—Validity of—Challenge to—Parliamentary Act— G *Constitutionality of—Writ petition filed before the High Court of Delhi—Questioning of—Maintainability of—Held: A distinction between a legislation and an executive action must be borne in mind while determining whether a cause of action arose at a particular place—Passing of a legislation by itself does not confer any such right to file a writ petition—Situs of office of*

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A *Parliament, legislature of a State or authorities empowered to make a subordinate legislation would not by itself constitute a cause of action—It is well settled that a writ court would not determine a constitutional question in a vacuum—Hence, such a writ petition not maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi.*

B *Territorial jurisdiction—Facts necessary to decide—Writ petition—Entertaining of—Held: The question whether the Court has territorial jurisdiction to entertain a writ petition or not must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial.*

C *Writ petition—Questioning the constitutionality of a Parliamentary Act—Order passed by High Court—Applicability of—Held: Whether such an order is interim or final, keeping in view the provisions contained in Art. 226(2), it will have effect throughout the territory of India, subject of course to the applicability of the Act.*

D *Code of Civil Procedure, 1908:*

Section 20(c)—Interpretation of—Decisions rendered by Supreme Court on—Applicability to writ petition—Held: S. 20(c) and Art. 226(2), being in **pari materia**, *the decisions of the Supreme Court rendered on the interpretation* E *of S. 20(c) shall apply to writ proceedings also.*

Words & Phrases:

"Cause of action"—Meaning of—In the context of Art. 226(2) of the Constitution of India, 1950.

F *Doctrines:*

Doctrine of Forum Conveniens—Invoking of.

The appellant was a company registered under the Companies Act, 1956. G **It obtained a loan form the Bhopal Branch of the State Bank of India. Respondent No. 2 issued a notice for repayment of the said loan purported to be in terms of the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.**

Questioning the vires of the said Act, a writ petition was filed before H **the Delhi High Court by the appellant, which was dismissed on the ground of**

lack of territorial jurisdiction. Hence the appeal. A

On behalf of the appellant, it was contended that as the constitutionality of a Parliamentary Act was in question, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition.

On behalf of the respondent, it was contended that as no cause of action arose within the territorial jurisdiction of the High Court of Delhi, the writ petition had rightly not been entertained. B

The following question arose before the Court :-

Whether the seat of the 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? C

Dismissing the appeal, the Court

HELD:

D

Cause of action:

1. Cause of action implies a right to sue. The material facts, which are imperative for the suitor to allege and prove, constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted, *inter alia*, to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything, which, if not proved, gives the defendant an immediate right to judgment, would be part of the cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be shall be rejected summarily. [847-H; 848-A-B] E F

2.1. Although in view of Section 141 of the Code of Civil Procedure, 1908, the provisions thereof would not apply to a writ proceedings, the phraseology used in Section 20(c) of CPC and Article 226(2), being in *pari materia*, the decisions of this Court rendered on the interpretation of Section 20(c) of CPC shall apply to the writ proceedings also. [848-F] G

2.2. The entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can cbtain a decree, is the material facts. The expression material facts is also known as integral facts. [848-G]

H

A **3. Keeping in view the expressions used in Article 226(2) of the Constitution of India, indisputably even if a small fraction of the cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter. [848-H; 849-A]**

4.1. The question as to whether the Court has a territorial jurisdiction B **to entertain a writ petition, must be arrived at on the basis of averment made in the petition, the truth or otherwise thereof being immaterial. [849-C]**

Oil & Natural Gas Commission **v.** *Utpal Kumar Basu,* **[1994] 4 SCC 711, relied on.**

C **4.2. All necessary facts must form an integral part of the cause of action. [849-D]**

Oil & Natural Gas Commission **v.** *Utpal Kumar Basu,* **[1994] 4 SCC 711,** *State of Rajasthan* **v.** *Swaika Properties,* **[1985] 3 SCC 217 and** *Aligarh Muslim University* **v.** *Vinay Engineering Enterprises (P) Ltd.,* **[1994] 4 SCC** D **710, relied on.**

Mussummat Chand Kaur **v.** *Partap Singh,* **15 IA 156, referred to.**

5.1. In order to confer jurisdiction on a High Court to entertain a writ E **petition, it must be disclosed 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 that the entire or part of it arose within its jurisdiction. [850-C-D]**

Union of India **v.** *Adani Exports Ltd.,* **[2002] 1 SCC 567 and** *National* F *Textile Corpn. Ltd.* **v.** *Haribux Swalram,* **JT (2004) 4 SC 508, relied on.**

5.2. 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. [850-F]

G *Lt. Col. Khajoor Singh* **v.** *Union of India,* **[1961] 2 SCR 828, relied on.**

6.1. Passing of a legislation by itself does not confer any right to file a writ petition unless a cause of action arises therefor. [850-G]

H **6.2. A distinction between a legislative and executive action should be**

borne in mind while determining whether a cause of action arose at a particular place or not. [850-G] A

7.1. A Parliamentary legislation when it receives the assent of the President of India and published in an 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 vacuum. [850-H; 851-A-B] B C

7.2. 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 Article 226(2) of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act. [851-C] D

Situs of the office of the respondents - whether relevant?:

8. A writ petition, however, questioning the constitutionality of a Parliamentary Act, shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. [851-D] E

Abdul Kafi Khan v. *Union of India,* AIR (1979) Cal. 354, approved.

U.P. Rashtriya Chini Mill Adhikari Parishad v. *State of U.P.,* [1995] 4 SCC 738, overruled. F

Nasiruddin v. *State Transport Appellate Tribunal,* AIR (1976) SC 331, held inapplicable.

9. The place from where an appellate order or a revisional order is passed, may give rise to a part of a cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum. [852-E] G

10. A legislation, it is trite, is not confined to a statute enacted by the Parliament or Legislature of a State, which would include delegated legislation H

A and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instruction issued in this behalf shall also come within the purview thereof. Situs of office of the Parliament, Legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action on cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof. [852-G-H; 853-A]

11. When an order, however, is passed by a Court or Tribunal or an executive authority whether under the provisions of a statute or otherwise, a part of the 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 the cause 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. [853-B-C]

Forum Conveniens:

12. Even if a small part of a cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [854-C]

Bhagar Singh Bagga v. *Dewan Jagbir Sawhany,* **AIR (1941) Cal.,** *Mandal Jalan* v. *Madan Lal,* **(1946) 49 CWN 357,** *Bharat Coking Coal Limited* v. *Jharia Talkies & Cold Storage Pvt. Ltd.,* **(1987) CWN 122,** *S.S. Jain* v. *Union of India,* **(1994) CHN 445 and** *New Horizon Ltd.* v. *Union of India,* **AIR (1994) Del. 126, referred to**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9159 of 2003.

From the Judgment and Order dated 25.7.03 of the Delhi High Court in Civil Writ Petition No. 4609 of 2003.

S. Borthakur and Sunil Kumar Jain for the Appellants.

Rajiv Shakdhar, Ms. V. Mohana, Ms. Sushma Suri, Sanjay Kapur, Sanjeev Kumar and Rajiv Kapur for the Respondents. A

The Judgment of the Court was delivered by

S.B. SINHA, J : INTRODUCTION

B

Whether the seat of the 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, is the question involved in this appeal which arises out of a judgment and order dated 25.7.2003 passed by the High Court of Delhi in C.W.P. No. 4609 of 2003 holding that the said Court has no jurisdiction. C

BACKGROUND FACTS

The appellant is a company registered under the Indian companies Act. Its registered office is at Mumbai. It obtained a loan from the Bhopal Branch of State Bank of India. The respondent No. 2 issued a notice for repayment D of the said loan from Bhopal purported to be in terms of the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Questioning the vires of the said Act, the said writ petition was filed E before Delhi High Court by the appellant herein which was dismissed on the ground of lack of territorial jurisdiction.

Submissions

The only submission made on behalf of the appellant before the High F Court as also before us is that as the constitutionality of a parliamentary act was in question, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition.

On the other hand, the contention of the learned counsel appearing on behalf of the respondent is that as no cause of action arose within the G territorial jurisdiction of the High Court of Delhi, the writ petition has rightly not been entertained.

Cause of Action :

Cause of action implies a right to sue. The material facts which are H

A imperative for the suitor to allege and prove, constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part
B of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

Clause (2) of Article 226 of the Constitution of India reads thus :

C

> "(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
D Government or authority or the residence of such person is not within those territories."

Section 20 (c) of the Code of Civil Procedure reads as under :

> "20 *Other suits to be instituted where defendant reside or cause of*
E *action arises.*
>
> Subject to the limitation aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction —
>
> (c) the cause of action, wholly or in part, arises."

F Although in view of Section 141 of the Code of Civil Procedure, the provisions thereof would not apply to a 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) of CPC, shall apply to the writ proceedings also. Before
G 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.

Keeping in view the expressions used in Clause (2) of Article 226 of the
H 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. A

In *Mussummat Chand Kour* v. *Partap Singh,* (15 IA 156), it was held:

> ".....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 ground 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." B

This Court in *Oil and Natural Gas Commission* v. *Utpal Kumar Basu and Ors.,* [1994] 4 SCC 711, held that the question as to whether the court has a territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial. C

This Court in *Oil and Natural Gas Commission's* case (supra) held that all necessary facts must form an integral part of the cause of action. It was observed : D

> "So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action..." E

In *State of Rajasthan and Ors.* v. *M/s Swaika Properties and Anr.,* [1985] 3 SCC 217, this Court opined that mere service of a notice would not give rise to any cause of action unless service of notice was integral part of the cause of action. The said decision has also been noticed in *Oil and Natural Gas Commission* (supra). This Court held : F

> "The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Art. 226(2) of the Constitution, must depend upon the nature of the impugned order giving rise to a cause of action." G

In *Aligarh Muslim University and Anr.* v. *Vinay Engineering Enterprises (P) Ltd. and Anr.,* [1994] 4 SCC 710 this Court lamented ;

> "2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely H

A no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised B jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation C filed in the Calcutta High Court was thoroughly unsustainable."

In *Union of India and Ors.* v. *Adani Exports Ltd. Anr.*, [2002] 1 SCC 567 it was 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 D decide the dispute and the entire or a part of it arose within its jurisdiction.

Recently, in *National Taxtile Corpn. Ltd. and Ors.* v. *M/s Haribox Swalram and Ors.*, JT (2004) 4 SC 508, a Division Bench of this Court held:

"As discussed earlier, the mere fact that the writ petitioner carries on E 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 petitioner and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed..."

F

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.

G Passing of a legislation by itself in our opinion do not confer any such right to file a writ petition unless a cause of action arises therefor.

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

H A parliamentary legislation when receives the assent of the President

of India and published in an 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 vacuum.

The court must have the requisite territorial jurisdiction. An order passed on 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.

Situs of office of the Respondents — whether relevant?

A writ petition, however, questioning the constitutionality of a Parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. (See *Abdul Kafi Khan* v. *Union of India and Ors.*, AIR (1979) Cal 354)

Learned counsel for the appellant in support of his argument would contend that situs of framing law or rule would give jurisdiction to Delhi High Court and in support of the said contention relied upon the decisions of this Court in *Nasiruddin* v. *State Transport Appellate Tribunal,* AIR (1976) SC 331 and *U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow* v. *State of U.P. and Ors.*, [1995] 4 SCC 738. So far as the decision of this Court in *Nasiruddin* v. *State Transport Appellate Tribunal* (supra) is concerned, it is not an authority for the proposition that the situs of legislature of a State or the authority in power to make subordinate legislation or issue a notification would confer power or jurisdiction on the High Court or a bench of the High Court to entertain petition under Article 226 of the Constitution. In fact this Court while construing the provisions of United Provinces High Courts (Amalgamation) Order, 1948 stated the law, thus :

> "The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because 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

A 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 B have jurisdiction. If the cause of action arises wholly 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 C 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. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside D the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action."

E The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.

F The view taken by this Court in *U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow* (supra) that situs of issue of an order or notification by the Government would come within the meaning of expression 'cases arising' in clause 14 of the (Amalgamation) Order is not a correct view of law for the reason hereafter stated and to that extent the said decision is overruled. In fact, a legislation, it is trite, is not confined to a statute enacted by the G Parliament or Legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instruction issued in this behalf shall also come with within the purview thereof. Situs of office of the Parliament, H Legislature of a State or authorities empowered to make subordinate legislation

would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof. A

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 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. B C

Lt. Col. Khajoor Singh v. *The Union of India and Anr.*, [1961] 2 SCR 828 whereupon the learned counsel appearing, on behalf of the appellant, placed strong reliance was rendered at a point of time when clause (2) of Article 226 had not been inserted. In that case the Court held that the jurisdiction of the High Court under Article 226 of the Constitution of India, properly construed, depends not on the residence or location of the person affected by the order but of the person or authority passing the order and the place where the order has effect. In the latter sense, namely, the office of the authority who is to implement the order, would attract the territorial jurisdiction of the Court, was considered having regard to Section 20(c) of the Code of Civil Procedure as Article 226 of the Constitution thence stood stating : D E

> "...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 persons 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. But the argument of inconvenience, in our opinion, cannot affect the plain language of Art. 226, nor can the concept of the place of cause of action be F G H

A introduced into it for that would do away with the two limitations on the powers of the High Court contained in it."

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 *Khjoor Singh* (supra) B has, thus, no application.

Forum Conveniens

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 C 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 *Bhagar Singh Bagga* v. *Dewan Jagbir Sawhany,* AIR (1941) Cal; *Mandal Jalan* v. *Madanlal,* (1945) 49 CWN 357; *Bharat Coking* D *Coal Ltd.* v. *M/s Jharia Talkies & Cold Storage Pvt. Ltd.,* (1997) CWN 122; *S.S. Jain & Co. and Anr.* v. *Union of India and Ors.,* (1994) CHN 445 and *M/s. New Horizon Ltd.* v. *Union of India,* AIR (1994) Delhi 126)

Conclusion

E For the aforementioned reasons, there is no merit in this appeal which is dismissed accordingly. No costs.

V.S.S. Appeal dismissed.