



\$~38

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

Date of decision: 14th MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 11375/2022**

VEMPARALA SRIKANT AND ANR.

..... Petitioners

Through: Mr. Harsh Vibhore Singhal,
Advocate.

versus

GENERAL SECRETARY, INDIA BULLS CENTRUM FLAT
OWNERS WELFARE CO-OPERATIVE SOCIETY, HYDERABAD

..... Respondent

Through: Mr. Anil Kr. Chundururu and Mr.
Neeraj Kumar Jha, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner has approached this Court challenging the Order dated 22.03.2022 passed by the National Consumer Disputes Resolution Commission (NCDRC) in Review Application No.RA/118/2021 and IA/10098/2021 and the Order dated 31.03.2021 passed by the NCDRC in RP 205/2021 and IA 1001/2021 filed against the Order dated 19.01.2021 passed by the State Consumer Disputes Redressal Commission (SCDRC), Hyderabad in FA No.641/2018 which was filed against the Order dated 31.10.2018 passed by the District Consumer Disputes Redressal Forum-II, (DCDRF), Hyderabad in C.C. No.137/2017.

2. The facts of the case leading to filing of the instant writ petition are that the Petitioners herein are joint owners of a residential flat bearing No. 207 in Block "C" in India Bulls Centrum, Lower Tank Bund, Hyderabad - 500 080 comprising of 154 flats built by Indiabulls Wholesale Services



("Builder"). The Petitioners were liable to pay monthly maintenance charges to the builder. The monthly maintenance charges were payable @ per sq. ft. basis to the builder and after one year, the builder was to hand over the maintenance of the Society along with the corpus fund to the OP-Society. It is stated that the action of the Respondents in charging monthly common area maintenance charges on per sq. ft. basis is against the law laid down by the High Court of Bombay which was to effect the maintenance charges on flat-wise basis and not on area basis.

3. The Petitioners filed a complaint before the District Consumer Disputes Redressal Forum-II, (DCDRF), Hyderabad. The District Forum *vide* its Order dated 30.10.2018 allowed the complaint of the Petitioners. The Respondent/builder, who was running the cooperative society, challenged the Order dated 30.10.2018 passed by the District Forum before the State Consumer Disputes Redressal Commission (SCDRC), Hyderabad. The State Commission *vide* its Order dated 19.01.2021 set aside the Order dated 30.10.2018 passed by the District Forum and allowed the appeal. The State Commission allowed the appeal primarily on the ground that there are 154 flats in the complex consisting of 18 different sizes ranging from 1281 sq. ft. to 3270 sq. ft. and that uniform maintenance charges for each flat irrespective of its size was unreasonable. The State Commission was of the view that it would be unfair to collect a flat rate for maintenance charges in a gated community comprising 154 flats each having different dimensions and a person occupying the lesser area would have to pay the same maintenance charges as compared to one who occupies a larger area. The Petitioners, thereafter, challenged the Order dated 19.01.2021 passed by the State Commission by filing a revision petition being RP 205/2021 before the Ld. NCDRC. However, *vide* Order dated 31.03.2021, the said revision petition



was dismissed by the Ld. NCDRC. Against the said Order dated 31.03.2021 passed by the Ld. NCDRC, the Petitioners, thereafter, filed a review application being No.RA/118/2021 which was also dismissed by the Ld. NCDRC *vide* its Order dated 22.03.2022. Both the Orders dated 31.03.2021 and 22.03.2022 passed by the Ld. NCDRC have been challenged in the instant writ petition.

4. Notice was issued in the writ petition on 01.08.2022.

5. A preliminary objection has been raised by the learned Counsel for the Respondent that this Court would not have the territorial jurisdiction to entertain the present writ petition and that the same should have been filed before the High Court of Telangana. This Court on 08.04.2024 had directed the learned Counsel for the Respondent to produce judgments before this Court to substantiate his contention of territorial jurisdiction. However, no judgments have been filed by the learned Counsel for the Respondent.

6. Heard learned Counsel appearing for the parties and perused the material on record.

7. At this juncture, this Court is limiting itself only to the question as to whether the Petitioners should be directed to approach the High Court of Telangana or whether the present writ petition should be entertained only because the Bench of Ld. NCDRC is in Delhi.

8. The facts as narrated above disclose that a consumer dispute has arisen in Hyderabad and it is a dispute between the flat owners in a society and the Respondent which is a maintenance society. The consumer dispute was instituted before the District Consumer Forum in Hyderabad which allowed the complaint against which an appeal was preferred before the State Consumer Forum in Hyderabad which allowed the appeal and which has been upheld by the Ld. NCDRC.



9. The issue which arises for consideration is whether this Court should entertain the instant writ petition only because the Revisional Authority i.e., NCDRC happens to be in Delhi. This issue is no longer *res integra* and has been decided by the Bench of Five Judges of this Court in Sterling Agro Industries Ltd. v. Union of India, **2011 SCC OnLine Del 3162**. The Bench of Five Judges of this Court, after analysing various judgments laid down by the Apex Court and this Court on this issue, has held as under:

“33. 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 and Alloys Ltd. v. Union of India (2004) 120 C-C 672 ; (2004) 6 SCC 254, Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd. (2006) 130 C-C 390 ; (2006) 3 SCC 658 and Ambica Industries v. CCE (2007) 213 ELT 323 ; [2009] 20 VST 1 (SC), 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.

34. 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. v. Union of India, AIR 2010 Delhi 43 ; (2011) 166 Comp Cas 87 (Delhi), 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.

35. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Co. Ltd. v. Union of India, AIR 2010 Delhi 43 ; [2011] 166 C-C 87 (Delhi) 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 minuscule 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. v. State Bank of Sikkim (2007) 136 C-C 665 ; (2007) 11 SCC 335.

(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 mala fide manner is too restricted/constricted as the exercise of the power under article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

*(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinised by the High Court depending upon the factual matrix of each case in view of what has been stated in *Ambica Industries v. CCE* (2007) 213 ELT 323 ; [2009] 20 VST 1 (SC) and *Union of India v. Adani Exports Ltd.* (2002) 1 SCC 567.*

*(g) The conclusion of the earlier decision of the Full Bench in *New India Assurance Co. Ltd. v. Union of India*, AIR 2010 Delhi 43 ; (2011) 166 C-C 87 (Delhi) (page 115) : ". . . 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.

(emphasis supplied)

10. As stated earlier, in the facts and circumstances of the present case, every part of the cause of action has arisen in Hyderabad, Telangana. The only part of the cause of action which arises in Delhi is that the impugned orders are passed by a Bench of the Ld. NCDRC which happens to be in Delhi. Applying the law laid down by the Bench of Five Judges of this Court in the aforementioned judgment, this alone will not confer jurisdiction on this Court to entertain the present writ petition in view of the law laid down by this Court in Sterling Agro (supra). It will be much easier for the Parties to contest their case in the High Court of Telangana which will have the jurisdiction to entertain the matter.

11. Learned Counsel appearing for the Petitioner has placed reliance upon a judgment passed by the Apex Court in L. Chandra Kumar v. Union of India, (1997) 3 SCC 261. The said judgment has no relevance to the issue raised in the present writ petition. Therefore, this Court is not inclined to entertain the present writ petition only on the ground of territorial jurisdiction.

12. Resultantly, the writ petition is dismissed, along with pending application(s), if any. It is made clear that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

MAY 14, 2024

S. Zakir