

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**W.A. 68 of 2016**

**Bharat Kumar Ghosh,**  
son of late Krishna Ballabh Ghosh,  
resident of Thakur Dwara  
Brahmpuri, Jodhpur (Rajasthan),  
PIN : 342002, now residing at  
Salbagan B.S.F. Headquarters,  
Agartala, Tripura West

..... **Petitioner**

**- V e r s u s -**

1. **The Union of India,**  
through the Secretary, Ministry of  
Home Affairs, South Block, New  
Delhi
2. **The Commandant,**  
129<sup>th</sup> Bn BSF,  
Rampura, Fazilka-152123,  
Punjab
3. **The Inspector General,**  
Border Security Force,  
FTR Headquarter B.S.F.,  
Jalandhar Cantt.,  
Jalandhar-144005, Punjab
4. **The Deputy Inspector  
General,**  
Border Security Force,  
Sector HQ B.S.F. Azamgarh,  
Abohar-152116,  
District : Fazilka, Punjab
5. The Director General,  
FHQ B.S.F., C60 Complex,  
Lodhi Road, New Delhi-110001
6. No. 940768024 HC/LM Harendra  
Prasad, Border Security Force,  
FTR HQ Punjab attached with 51 BN  
BSF, Jalandhar, Punjab

..... **Respondents**

**BEFORE**  
**HON'BLE THE CHIEF JUSTICE**  
**THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	: Mr. S.K. Deb, Sr. Advocate. Mr. S. Datta, Advocate.
For the respondents	: Mr. Bidyut Majumder, CGC

Date of hearing : 12.07.2017  
Date of delivery  
of Judgment & Order : **31.10.2017**  
Whether fit for reporting : 

YES	NO
✓	

**JUDGMENT & ORDER**

***(S. Talapatra, J)***

This in-tra court appeal arises from the judgment and order dated 15.06.2016 delivered in W.P.(C) No. 429 of 2016 by the learned Single Judge. The appellant filed the writ petition being WP(C) No. 429 of 2016 challenging the order dated 09/10.03.2015 [Annexure-P/4 to the writ petition]. The petitioner urged this court for directing the respondents to refund the salaries deducted illegally from the petitioner in pursuance to the said order dated 09/10.03.2015.

2. While the petitioner was serving at the Border Security Force, the BSF in short, there was theft of properties of estimated value of Rs.4,00,000/- from the store-yard of 51 Bn. BSF, Rampura, Fazilka (Punjab). The said theft was reported under FIR No. 207 dated 13.11.2012 from the office of the Commandant, 51 Bn. BSF. In reference to the said incident, a Security Force Court was constituted to inquire into the charge of dereliction and consequential loss against the petitioner and on culmination of the inquiry, by the order dated 09/10.03.2015, the Commandant of 129 Bn. BSF, Rampura, Fazilka, Punjab directed that a sum of Rs. 1,59,854/- would be recovered from him by 24 installments. When the said theft was committed on 13.11.2012,

according to the petitioner he was under the movement order dated 15.07.2011 [Annexure-P/2 to the writ petition] to attend the Basic Recruit Training commencing from 3<sup>rd</sup> week of July, 2011 at Jodhpur, Rajasthan. His leave was also granted from 16.07.2011.

3. The Security Force Court assembled on 22.11.2012 to enquire into the circumstances of theft of properties estimated at Rs. 4,43,956/- from PAP store at BSF Campus, Rampura. The Security Force Court, recorded 33 witnesses but none of the witnesses implicated the petitioner in the said occurrence. (PW-6) Harendra Prasad of FTR HQ Punjab, attached with 51 Bn. BSF made a statement in the Security Force court, that apart, he produced the board proceeding notes (as Exbt. H). In the cross examination, he has specifically stated that he had checked the rear side of the store and found that a gap of approximate one foot in between two stands of permanent barbed fencing along the paddy fields. But the petitioner has admitted that keys of the office used to be kept in his possession during night. However, the petitioner thereafter tried to make distinction between the office and the PAP store. The petitioner was examined as (PW-25) and he was asked why he did not go to the main store in between 03.11.2012 and 10.11.2012. The petitioner replied that he was not asked by the store-in-charge to go to the PAP store. Secondly he used to do all office job as he knows how to operate computer and manage other related works. In addition, he was working as generator mechanic of 199 Bn. BSF and 51 Bn. BSF. The petitioner had stated in the Security Force Court that the keys

were kept in the drawer of a table in the office till the theft was reported. Before the order dated 09/10.03.2015, no order was passed by the competent authority. The petitioner made several representations for review of the said order but without any positive yield.

4. The petitioner received a communication dated 02.03.2013 where it had been stated that the keys of the store was with the petitioner. He had left the daily cash and the custody of PAP store. For that reason, a sum of Rs. 4,43,965/-[all inclusive] was stolen in a planned manner. The petitioner, however, denied the said allegation. On 22.03.2013 from the office of the Commandant, the petitioner received the said letter [Annexure P/6] which was marked confidential. In the said letter, it was stated that after closure of the office/store, the in-charge of every sections of the Bn. Head Quarters were depositing the duplicate keys in the Key Box of the Quarters guard on making entry in the key in-out register. Against the entry, the in-charges were putting their signature. The petitioner was grossly careless in observing that procedure. A warning was sounded by the said letter dated 22.03.2013 [Annexure P/6 to the writ petition].

5. In the para 10 of the writ petition, the petitioner has averred that on 15.07.2011, he proceeded for training and returned on 12.05.2012. Thereafter, he took ten days' casual leave with effect from 22.07.2012 and returned on 12.08.2012. The petitioner had proceeded again for fifteen days' earned leave from 06.10.2012 and he resumed duty on 23.10.2012. The petitioner has stated that he had proceeded on five days casual

leave from 10.11.2012 and during that time, the said occurrence theft took place and the petitioner had therefore disputed that for his carelessness the said theft could be planned and executed. There is no evidence of the petitioner's carelessness or his involvement in the theft in any manner including collaborating with the real culprits.

6. The respondents before filing the reply raised the question of maintainability of the writ petition contending that this High Court does not have the territorial jurisdiction as no part of cause of action arose within the territorial jurisdiction of this court. Learned single judge by the impugned judgment has entertained the said objection by observing as under :

**"16. To invoke the jurisdiction of the High Court in a writ petition under Article 226 of the Constitution the petitioner is to make out a prima facie case showing the cause of action that the same has arisen within the jurisdiction of the Court or at least a part or fraction of the cause of action has arisen within the jurisdiction of this court. It is not material at all as to whether the person or authority against whom the relief is sought is residing within the territorial jurisdiction of the High Court or not. The petitioner has to make out the cause of action or any part thereof has arisen within the territorial jurisdiction of the Court. Simply because the petitioner is now attached with Salbagan BSF Unit in the State of Tripura, this Court cannot usurp jurisdiction in respect of a proceeding initiated against the petitioner for a bundle of facts arisen in the State of Punjab.**

**Further, a writ petition is decided on the basis of the pleadings and materials placed in support of the pleadings. In my considered opinion, there shall be a clear pleading in the writ petition itself as to how the jurisdiction of the Court is attracted to adjudicated upon the issues raised in the writ petition. Unfortunately, the petitioner simply stated about the fact in respect of the Security Force Court's proceeding initiated against him, the punishment imposed pursuant to the said proceeding and in respect of his subsequent representation, etc. and nothing else. There is no specific and clear pleading in the writ petition about cause of action to attract the jurisdiction of this Court in deciding the writ petition. In the absence of any such pleading showing the cause of action to attract jurisdiction of the Court, I think this Court should not entertain the writ petition on the ground of territorial jurisdiction."**

7. In support of this observation made by the learned single judge, a decision of the apex court in **Nawal Kishore Sharma versus Union of India** reported in **(2014) 9 SCC 329** has been referred extensively. Another decision of the apex court in **NavinChandra N. Majithia versus State of Maharashtra and Others** reported in **(2000) 7 SCC 640** had been considered by the learned single judge.

8. Appearing for the appellant-writ petitioner, Mr. S. Deb, learned senior counsel has labelled the impugned judgment to be an outcome of not considering the attendant facts giving rise to part of the cause of action. Mr. Deb, learned senior counsel has submitted that in the writ petition, the petitioner has asserted that the subject matter of the dispute has arisen within the jurisdiction of this court. Hence, this court has got the territorial jurisdiction to decide the controversy laid before it. Mr. Deb, learned senior counsel has drawn notice of this court to the fact that the impugned order dated 09/10.03.2015 was served on the petitioner within the jurisdiction of this court. That apart, the ratio as enunciated in **Nawal Kishore Sharma (supra)** and **Navin Chandra N. Majithia (supra)** was misconstrued by the learned single judge. Mr. Deb, learned senior counsel while contending that the service of the impugned order gives rise cause of action in part within the territorial jurisdiction of this court. He has referred few decisions in this regard.

9. Mr. Deb, learned senior counsel has submitted that in **Dinesh Chandra Gahtori versus Chief of Army Staff and**

**Another** reported in **(2001) 9 SCC 525** the apex court has observed as under :

"3. The appellant filed a writ petition before the High Court at Allahabad to quash a communication sent to his wife which stated that the appellant had been tried by a Summary court Martial and had been found guilty of using criminal force against his superior officer and awarded the sentence of dismissal from service. The High Court dismissed the writ petition at the admission stage by holding :

"In view of the fact that the summary court-martial proceedings were conducted in the State of Punjab and orders were also passed in Punjab by the West Command, we are of the view that this Court has got no territorial jurisdiction to entertain this writ petition."

4. The writ petition was filed in 1992. The impugned order was passed in 1999. This is a fact that the High Court should have taken into consideration. More importantly, it should have taken into consideration the fact that the Chief of Army Staff may be sued anywhere in the country. Placing reliance only on the cause of action, as the High Court did, was not justified."

10. Mr. Deb, learned senior counsel in this respect reasserted the proposition as laid down in **Navin Chandra N. Majithia (supra)** where the apex court on consideration of **Oil & Natural Gas Commission versus Utpal Kumar Basu and Others** reported in **(1994) 4 SCC 711**, **K. Bhaskaran versus Sankaran Vaidhyan Balan and Another** reported in **(1999) 7 SCC 510**, **Satvinder Kaur versus the State(Govt. of NCT of Delhi)** and **Another** reported in **(1999) 8 SCC 728** and **H.V. Jayaram versus and Industrial Credit & Investment Corpn.of India Ltd. and Others** reported in **(2000) 2 SCC 202** has observed that the unequivocal principle as laid down in those cases was not properly appreciated in the judgment of the High Court which was under challenge in that case. It has been observed thereafter :

" The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition, on the ground of

lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurize the petitioner the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High Court."

11. Mr. S. Deb, learned senior counsel appearing for the appellant has contended in the context of amendment that has been carried out in Clause (2) of Article 226 of the Constitution of India by the constitution (44<sup>th</sup>) Amendment Act, 1978 whereby it has been provided that 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 of the resident of such person is not within those territories as referred in the following passage from **NavinChandra N. Majithia (supra)**:

**"37. The object of the amendment by inserting clause (2) in the article was to supersede the decision of the Supreme Court in Election Commission v. Saka Venkata Subba Rao and to restore the view held by the High Courts in the decisions cited above. Thus 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 amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts."**

[Emphasis added]



12. Mr. Deb, learned senior counsel has placed reliance on **South East Asia Shipping Co. Ltd. versus Nava Bharat Enterprises Pvt. Ltd. and Others** reported in **(1996) 3 SCC 443** to elicit the meaning and impart of the phrase 'part of the cause of action'. In **South East Asia Shipping Co. Ltd. (supra)** the only controversy that fell for the consideration of the apex court that whether the Delhi high Court had jurisdiction to entertain the suit. It was an admitted position notwithstanding the dispute that the contract was executed in Bombay. It was also an admitted position that the performance of obligations and liabilities under the contract was required to be done in Bombay inasmuch as cargo of livestock was to be transported in the ship from Kandla to Damman or Jeddah. It was also an admitted position that in furtherance of the execution of the contract at Bombay, the respondents had executed the bank guarantee at Delhi and had transmitted it to Bombay for performance of the contract. The question, therefore, was whether any part of the cause of action had arisen in Delhi. It was argued before the apex court having referred **A.B.C. Laminart (P) Ltd. versus A.P. Agencies** reported in **(1989) 2 SCC 163** that a part of cause of action had in the context arisen in Delhi and hence the high court on its original side had jurisdiction to entertain the suit. But the said contention was not wholly accepted by the apex court.

13. Mr. Deb, learned senior counsel in order to buttress his contention has placed further reliance on **Patel Roadways Limited, Bombay versus Prasad Trading Company etc.** reported in **(1991) 4 SCC 270**. In **Patel Roadways Limited,**

**Bombay (supra)**, the apex court having referred to Section 20 of the code of civil procedure, the CPC in short, particularly to its explanation to Clause (a) had occasion to observe that :

**"The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case fails within the latter part of the Explanation it is not the court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".**

[Emphasis added]

14. Even though Mr. Deb, learned senior counsel has referred to **Election Commission, India versus Saka Venkata Rao** reported in **AIR (1953) SC 210** and **Lt. Col. Khajoor Singh versus Union of India and Another** reported in **AIR (1961) SC 532**, but those decisions have lost their relevance in view of the amendment as carried out in Clause (2) of Article 226 of the Constitution of India. But **Lt. Col. Khajoor Singh (supra)** is relevant for its certain observations viz.

**"It is not permissible to read Article 226, the residence or location of the persons affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the persons affected can have**

no relevance on the question of the High Court's jurisdiction."

[Emphasis added]

In this regard, there cannot be any controversy inasmuch as distinction between Section 20 of the CPC and the Clause (2) of Article 226 of the Constitution thus has been well laid. Even after amendment, the said principle remained unscathed.

15. In **Saka Venkata Rao (supra)** in the context of the pre-amendment provisions of Article 226, the apex court had occasion to observe as follows:

**"The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writ 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 exercise jurisdiction."**

16. As stated earlier that the said principle as laid by the apex court has lost its relevance for the said Amendment Act. Clause (2) of Article 226 was wholly restructured by inserting the words "the cause of action, wholly or in part" even the Clause (2) of Article 226 provides that notwithstanding that the seat of such government or authority or the resident of such person is not "within those territories."

17. Even reliance has been placed on **Nawal Kishore Sharma (supra)** where the apex court having considered its earlier decisions in **Oil & Natural Gas Commission versus Utpal Kumar Basu and Others** reported in **(1994) 4 SCC 711** and **Kusum Ingots & Alloys Ltd. versus Union of India and Another** reported in **(2004) 6 SCC 254** has observed that there cannot be any doubt that the question whether or not cause of

action wholly or in part for filing a writ petition has arisen within the territorial limit of any high court has to be decided in the light of the nature and character of the proceeding under Article 226 of the Constitution. In order to maintain a writ petition that the petitioner has to demonstrate that his right has been infringed by the respondents within the territorial limit of the court's jurisdiction.

18. The similar view was expressed by the apex court in **Alchemist Limited and Another versus State Bank of Sikkim and Others** reported in **AIR 2007 SC 1812** on having considered in **Union of India and Others versus Oswal Woollen Mills Ltd, and Others** reported in **AIR 1984 SC 1264**, **State of Rajasthan and Others versus M/s Swaika Properties and Another** reported in **(1985) 3 SCC 217**, **Utpal Kumar Basu (supra)**, **CBI versus Narayn Diwakar** reported in **(1999) 4 SCC 656**, **Union of India and Others versus Adani Exports Ltd. and Another** reported in **(2002) 1 SCC 567**, and **Kusum Ingots & Alloys Limited (supra)**. It was observed in **Alchemist Ltd.(supra)** as under :

**"35. Negating 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;**

**"A distinction between a legislation and executive action should be borne in mind while determining the said question ". Referring to ONGC, 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 Consitution.**

**36. In National Textile Corporation. Ltd. & Ors. V. Haribox Swalram & Ors, (2004) 9 SCC 786 : JT 2004 (4) SC 508, referring to earlier cases, this Court stated that "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."

37. From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner appellant, 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."

[Emphasis added]

19. Mr. B. Majumder, learned CGC appearing for the respondents has in order to repel the submission made by Mr. S. Deb, learned senior counsel appearing for the appellant-petitioner has contended that no part or fraction of cause of action arose within the territorial limit of this court. According to him, communication of the order within the territorial limit of this court cannot be treated as part of the cause of action having arisen within the territorial limit.

20. Mr. Majumder, learned CGC has succinctly submitted that no averment has been made in the writ petition wherefrom this court can gather that a part of the cause of the action has arisen within its territorial limit for exercise of jurisdiction under Article 226 of the Constitution of India. In this regard he has referred a decision of the apex court in **State of Rajasthan and Others versus M/s Swaika Properties and Another** reported in **AIR 1985 SC 1289**, where it has been observed as under:

**"8. The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure:**

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under s. 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under s. 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Art. 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under s. 52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under s. 52(2) for the grant of an appropriate writ, direction or order under Art. 226 of the Constitution for quashing the notification issued by the State Government under s. 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under s. 52(1) of the Act by a petition under Art. 226 of the Constitution, the remedy of the respondents of the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

[Emphasis added]

21. Based on the said observation, Mr. Majumder, learned CGC has contended that the cause of action as interpreted by the apex court in **M/s Swaika Properties(supra)** does not exist in the present case inasmuch as cause of action means only those facts which would be necessary for the plaintiff to prove in order to support his right or to have a judgment of the court in his favour. Mere communication of the impugned order cannot give rise to a cause of action or part thereof.

22. Mr. Majumder, learned CGC has placed reliance on the decision of the apex court in **Adani Exports Ltd.(supra) : AIR 2002 SC 162, M/s Swaika Properties(supra) : AIR 1985 SC 1289**. In order to consolidating the construct of cause of action the apex court has observed having particular regard to **Utpal Kumar Basu (supra)** that the High Court can exercise the jurisdiction in relation to the territories within which the cause of action wholly or in part, arises. The said provision in the constitution [Clause (2)] had come for consideration in number of cases before the apex court. In order to confer jurisdiction on a High Court for entertaining a writ petition or a special civil application, as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court invoke the jurisdiction under Article 226 for deciding a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above decision 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 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.

23. An illustration has been provided in **Adani Exports Ltd.(supra)** from **Utpal Kumar Basu (supra)** where the apex court negated the contention advanced on behalf of the respondents therein that either the acquisition of knowledge made through media at a particular place or owing and having an office or property or residing at a particular place, receiving of a fax message at a particular place, receiving telephone calls and maintaining statements of accounts of business, printing of letterheads indicating branch offices of the firm, booking of orders from a particular place are not the factors which would give rise either wholly or in part cause of action conferring territorial jurisdiction to courts. In the said case, the apex court has clearly held that the mere service of notice is not a relevant fact to determine the cause of action, unless that notice is an integral part of the cause of action.

24. Mr. B. Majumder, learned CGC has also referred **Lt. Col. Khajoor Singh (supra)** but for the same reason as above stated, this court is persuaded to hold that for purpose of having the meaning of cause of action or part thereof, the said decision does not have any relevance any more with the exception as dissected, in view of the said amendment carried out in Clause (2) of Article 226 of the Constitution of India.

25. Finally, Mr. Majumder, learned CGC has referred to **Nawal Kishore Sharma (supra)** for contending that on plain reading of the amended provision as incorporated in Clause (2), it is clear that now the High Court can issue a writ to a



person or the authority against whom the writ is issued is located or relocated outside its territorial jurisdiction, if the cause of action wholly or partly arises within the court's territorial jurisdiction. The cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose, must be assigned the same meaning as envisaged under Section 20(c) of the Code of CPC. The expression cause of action has neither been defined either in the CPC or in the Constitution. The cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed. The term "cause of action" as appearing in clause (2) came up for consideration time and again before the apex court. It is not at all necessary to make reference to those reports as the meaning has been unequivocally crystallized by means of interpretation.

26. Having referred to **M/s Swaika Properties (supra)** it has been held that the 'cause of action' is tersely defined in Mulla's Code of Civil Procedure. If the respondents **(M/s Swaika Properties)** in that case felt aggrieved by the acquisition of their land situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution the remedy by means of grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench where the cause of action wholly or in part arose.

27. Having appreciated the submissions made by the learned counsel appearing for the parties, this court finds that the basic question that emerges for decision of this court is whether a part of cause of action arose within the territorial limit of this court. If the part or fraction of cause of action arose within the territorial limit of this court, this court can exercise its power by issuing the appropriate writ against a person who might have been residing or having managing his office beyond the territorial limit of this court. As already noted, that neither in the CPC nor in the Constitution the word 'cause of action' has not been defined.

28. In **Nawal Kishore Sharma (supra)** the apex court has observed that 'cause of action' for purpose of invoking the jurisdiction of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the CPC. Section 20(c) after its amendment as carried out by the CPC (Amendment) Act, 1976 with effect from 01.02.1977 reads as under :

**“(C). Cause of action wholly or in part arises.”**

There is no definition as such. but the distinguish commentator **Sir Dinshaw Fardunji Mulla** in his commentaries on Code of Civil Procedure has explained cause of action in the following terms:

**“Cause of action’ means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court. It does not comprise every piece of**

evidence which is necessary to be proved to entitle the plaintiff to a decree. Everything which if not proved would give the defendant a right to an immediate judgment, must be a part of the cause of action. It is, in other words a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit. It 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. The cause of action must be antecedent to the institution of the suit. So, when the plaintiff filed his suit for ejectment fifteen days before he was entitled to possession, he failed for want of a cause of action. A Court enjoys jurisdiction in a suit if the cause of action arises within the local limits of its jurisdiction as provided under s. 20(c). If there is no cause of action, the plaint will be rejected by the Court. Even if a part of the cause of action arises within the local limits of jurisdiction of a Court, it has the jurisdiction to try the suit."

[Emphasis added]

When Sir Mulla has referred Section 20(c) in the above part, we cannot be oblivious that such comment was made on the basis of pre-amended provision which existed before 01.02.1977.

29. The pre-requisite for determination of cause of action or part thereof is the averments made in the writ petition based on which the petitioner has urged reliefs before this court. There cannot be any amount of dispute that except the communication of the final order issued by the competent authority no other 'fact' is relatable to the territories over which this court has its jurisdiction. The pertinent question therefore is that whether that fact of communication constitutes part or fraction of cause of action. As explained by Sir Mulla that every fact which if traversed would be necessary for the plaintiff in order to support his right to the judgment of the court gives

rise to the cause of action. Whether such communication by itself gives rise to the cause of action is the ultimate question we are to decide.

30. As we have considered a series of decisions by virtue of meaningful assistance provided by the learned counsel for the parties we have come across **Kusum Ingots & Alloys Ltd.(supra)** where the apex court in no uncertain terms has observed that the 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. The cause of action is not defined in any statute. It has, however, been judicially interpreted to mean 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 cause of action. Its importance is beyond any doubt so far the question of territorial jurisdiction is concerned. 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. 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 judgment is the material fact. The expression, material facts, is also known as integral facts. All necessary facts must form an integral part of the cause of action.

31. In **Adani Exports Ltd.(supra)** the similar view has been approved by the apex court. In **Utpal Kumar Basu (supra)** where the apex court has more categorically embedded that unless the service of such notice is an integral part of the cause of action, mere receipt of such notice within the territorial limit of the High Court, would not confer the jurisdiction to issue rule NISI.

32. In **Alchemist Limited (supra)**, having approvingly reproduced a passage from **A.B.C. Laminart (P) Ltd. (supra)** it has been observed that a cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right but it includes all the material facts on which it is founded. It does not comprise the evidence, necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatsoever 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.

33. The apex court has observed in **Ambica Industries (supra)** as follows :

**"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.**

**42. In Mussummat Chand Kour v. Partab Singh, it was held : (IA pp. 157-58)**

**"[T]he 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 "".**

34. We have extensively dwelt on the propositions made in **Navin chandra N. Majithia (supra)** where a Queen's Bench Division decision has been relied by the apex court. In **Read versus Brown : (1888) 22 QBD 128, Lord Esher** , M.R., adopted the definition for the phrase "cause of action" consolidating that it meant:

**"Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."**

**[Emphasis added]**

This part has been extensively used by Sir Mulla while proposing a workable definition of "cause of action" in his treaty as stated. "Even in the context of Article 226(2) of the constitution the apex court has adopted the same interpretation to the expression "cause of action", wholly or in part, arises."

35. In **Swaika Properties (supra)** and in **Utpal Kumar Basu (supra)** by enunciating that it is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, to entitle him to a judgment.

36. It has been observed in **Utpal Kumar Basu (supra)** very significantly that :

"If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule."

37. In **Adani Exports Ltd. (supra)** it has been succinctly held that each and every fact 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.

38. In **Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. & Ors.**, reported in **(2006) 3 SCC 658** the apex court has observed as under :

"26. .... with a view to determine the jurisdiction of one High Court vis-a-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.”**

39. According to us, for sifting the relevant facts giving rise to the cause of action or part thereof, even a fraction, this principle is the essential tool to segregate the relevant fact from the irrelevant fact or from the insignificant or frivolous facts. Thus the touchstone would be that the fact having nexus or relevance with the lis, inasmuch as those facts are the media upon which the plaintiff asked the court to arrive at a conclusion in his favour. Thus, the delivery of the impugned order within the territorial jurisdiction is the only fact that has been pressed by the appellant-petitioner to assert that a fraction of cause of action arose within the territorial limit of this court but whether that facts has anything to do with the lis or the dispute involved in the case. The dispute in the case hinges on the manner in which the petitioner has been saddled with the liability to pay a sum of Rs.1,59,845/- in 24 (twenty four) equal instalments for loss caused by his dereliction of duty by the order dated 09/10.03.2015 [Annexure-P/4 to the writ petition]. Thus the communication or delivery of the said order dated 09/10.03.2015 is not a relevant fact for determining the cause of action.

40. Viewed in that perspective, this court is unable to accept the contention of Mr. Deb, learned senior counsel that for delivery or communication of the said order dated 09/10.03.2015 a fraction of cause of action arose within the territorial limit of a court. The said communication cannot be



treated as an integral fact giving rise to the cause of action  
**(see National Textile Corporation Ltd. Vs Haribox  
Swalram: (2004) 9 SCC 786, Para 12.1.)** Thus the well  
entrenched principle of forum conveniens cannot be applied in  
this case.

41. Having observed thus, we, though for different  
reasons, hold that this court does not have the territorial  
jurisdiction to decide the controversy as unfolded by the writ  
petitioner before us.

42. Hence, we find no reason whatsoever to interfere  
with the impugned judgment. As consequence thereof, this  
appeal stands dismissed. The dismissal of this appeal will not  
disentitle the appellant-petitioner to approach the High Court of  
competent jurisdiction for remedy.

There shall be no order as to costs.

**JUDGE**

**CHIEF JUSTICE**

Sabyasachi B