2024:DHC:7943

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

\+ **W.P.(C) 14233/2024, CM APPL. 59596/2024 & CM APPL.59597/2024**

Date of Decision: **08.10.2024**

IN THE MATTER OF:

SHRI SIDDHI VINAYAK MEDICAL COLLEGE AND HOSPITAL SAMBHAL U.P.
RUN BY SHRI SIDDHI VINAYAK TRUST
UNDER PPP MODEL WITH THE GOVT, OF U.P
CHANDAUSI ROAD,
SAMBHAL-244302 (UTTAR PRADESH)
THROUGH ITS REGISTRAR
MR. RAJAT MEHROTRA

.....PETITIONER

Through: Mr. Amit Anand Tiwari, Sr. Advocate, Mr. Meenesh Dubey and Mr. Swatej Jetta, Advocates.

versus

UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF HEALTH & FAMILY WELFARE
NIRMAN BHAWAN, NEW DELHI

.....RESPONDENT NO. 1

NATIONAL MEDICAL COMMISSION
THROUGH ITS SECRETARY/CHAIRMAN
POCKET-14, SECTOR-8
DWARKA, PHASE-I,
NEW DELHI-110 075 .....RESPONDENT NO. 2

Through: Ms. Radhika Bishwajit Dubey, CGSC with Mr. Ankur Yadav, GP, Ms. Guleen Kaur and Ms. Drishti, Advocates for R-1.
Mr. T. Singhdev, Mr. Bhanu, Mr. Abhijit, Ms.Anum, Mr.Abhijit, Ms. Ramanpreet, Mr.Aabhaas, Mr. Tanishq and Mr. Sourabh, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (Oral)

1. The petitioner-College in the instant writ petition has prayed for the following reliefs: -

> *"(i) Issue a writ, order or direction to the Respondents directing to grant approval to the petitioner for 100 more MBBS seats i.e., 150 seats in total as applied by them for the academic session 2024-2025 as they are having adequate facility in their Medical College; and/or*
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> *(ii) issue a writ, order or direction in the nature of Mandamus calling for the records of the order dated 30.09.2024 passed by the Central Government on the Second Appeal preferred u/s 28(6) of the NMC Act, 2019; and/or*
>
> *(iii) Quash the aforesaid order dated 30.09.2024 passed by the Central Government on the Second Appeal preferred u/s 28(6) of the NMC Act and gran approval to the petitioner for 100 more MBBS seats i.e., 150 seats as applied by them for the academic session 2024-2025."*

SUBMISSIONS

Respondent no.2's submissions

2. Mr. T. Singhdev, learned counsel who appears for respondent no.2, at the outset, raises a preliminary objection with respect to the maintainability of the instant writ petition, contending that the cause of action has arisen outside the territorial jurisdiction of this Court. He submits that the petitioner-College is located in the State of Uttar Pradesh and any relief granted by this Court, specifically the approval for the intake capacity of 150 seats for the Bachelor of Medicine and Bachelor of Surgery (MBBS) as sought by the petitioner-College, will have direct implications in the State of Uttar Pradesh. He contends that the admissions and associated formalities shall necessarily take place in the State of Uttar Pradesh and therefore, there is no reason to entertain the instant petition.

3. To fortify his submissions, learned counsel has placed reliance on the decisions of this Court in the cases of ***Sterling Agro Industries Ltd. v. Union of India***[1], ***Chinteshwar Steel Pvt. Ltd. v. Union of India***[2], ***Ardra Joseph v. Union of India & Ors.***[3], ***Bharat Nidhi Ltd. v. SEBI***[4], ***Ashoka Marketing Limited & Anr v. Securities and Exchange Board of India & Ors***[5], ***White Medical College & Hospital v. Union of India***[6], ***Vemparala Srikant v. India Bulls Centrum Flat Owners' Welfare Coop. Society***[7], ***Supreeti Chahal v. Union of India***[8], and ***PDM Dental College and Research Institute v. Union of India & Anr.***[9]

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[1] 2011 SCC OnLine Del 3162
[2] 2012 SCC OnLine Del 5264
[3] W.P.(C) 14187/2023
[4] 2023 SCC OnLine Del 8073
[5] 2024 SCC OnLine Del 6731
[6] 2024 SCC OnLine Del 4712
[7] 2024 SCC OnLine Del 5423
[8] 2024 SCC OnLine Del 5883
[9] W.P.(C) No. 4291/2024

4. While placing reliance on the said decisions, learned counsel submits that the Court has maintained a consistent stance on the issue of territorial jurisdiction in entertaining the writ petitions. He asserts that unless it is demonstrated that the integral, essential and material aspects of the cause of action have arisen within the territorial jurisdiction of this Court, such writ petitions are not entertained. Learned counsel further invokes the doctrine of *forum conveniens*, emphasizing that when the core elements of the cause of action are found to have arisen in a specific jurisdiction, the parties should be relegated to the appropriate jurisdictional Court.

5. Upon expositing the doctrine of *forum conveniens,* learned counsel submits that if the facts and circumstances are appreciated in their right contextual setting, the same would indicate that the petitioner-College is situated beyond the territorial jurisdiction of this Court. Furthermore, the aspects pertinent to the controversy also fall beyond the territorial jurisdiction of this Court. He, therefore, emphasizes on the following factors to contend that only a slender part of cause of action arises within the jurisdiction of this Court:-

a) The location of the petitioner-College;

b) The essentiality certificate issued or to be issued by the concerned State Government;

c) The affiliation of the petitioner-College;

d) The inspection that needs to be carried out;

e) Counselling and related programs; and

f) The admission procedures.

6. Expounding the regulatory activities and procedures such as the inspection, counselling and admission to be conducted at the location of the petitioner-College, learned counsel argues that mere presence of the offices of the statutory authorities within the territorial jurisdiction of this Court does not suffice to confer jurisdiction for adjudicating the present controversy.

7. Drawing strength from the aforesaid submissions, learned counsel then submits that the respondent authorities i.e., the National Medical Commission ["**NMC**"] and Medical Assessment and Rating Board ["**MARB**"], exercise regulatory powers over all the medical colleges across India. Thus, it is contended that the location of the respondents' office should not be misconstrued to be the basis for conferment of jurisdiction.

8. Learned counsel further contends that if the presence of the respondents' offices within the territorial jurisdiction of this Court is considered sufficient to establish jurisdiction, according to him, the same would result in a situation where any controversy involving a respondent with an office in Delhi would compel parties to approach this High Court, solely on the basis of the respondent's head office being located in Delhi. Such a practice, according to learned counsel, would overburden this Court with cases that ought to be adjudicated by other jurisdictional Courts and consequently, it would also undermine the intent behind the genesis of doctrine of *forum conveniens*.

9. Learned counsel concludes his submissions by asserting that the petitioner-College is not precluded from seeking relief in the appropriate

jurisdictional High Court, which, according to him, is the appropriate forum for addressing the matter at hand.

Petitioner's submissions

10. Vehemently opposing the contentions advanced by learned counsel for the respondents, Mr. Amit Anand Tiwari, learned senior counsel assisted by Mr. Meenesh Dubey, learned counsel, appearing for the petitioner-College submits that under the scheme of Article 226 of the Constitution of India, it is evident that the High Courts are empowered to issue writs in relation to controversies where the cause of action has arisen, either wholly or in part.

11. Building on this premise, he asserts that the grievance of the petitioner-College is not against the State of Uttar Pradesh, its authorities or any functionaries located therein. The core issue, according to the learned senior counsel, is that the petitioner-College being a new institution seeking permission for 150 MBBS seats, has been granted approval for only 50 seats by the respondents. He further submits that while the inspection was carried out in Uttar Pradesh, the application, evaluation, and resultant decisions were all processed by the authorities situated in Delhi, specifically the MARB order and the decisions of the appellate forums thereto.

12. Moreover, learned counsel points out that the petitioner-College filed the first appeal under Section 28(5) of the NMC Act, 2019, before the NMC, which is also situated in Delhi. Upon rejection, the petitioner-College

preferred the second appeal, which also came to be decided by the Union of India, an entity, based within the jurisdiction of this Court.

13. Mr. Tiwari, therefore, contends that if the facts are minutely scrutinized, the same would indicate that the entire cause of action has arisen within the territorial jurisdiction of this Court. In essence, he submits that there is no need to relegate the petitioner-College to another High Court for the want of territorial jurisdiction.

14. One of the reasons advanced by Mr. Tiwari against being relegated to the jurisdictional High Court is the urgency on behalf of the petitioner-College to participate in the counselling process. He submits that the State of Uttar Pradesh has already published the counselling notification and the same is scheduled to be completed within a short period of time.

15. I have considered the submissions made by learned counsel appearing for the parties and have perused the record.

ANALYSIS

15. The solitary question that falls for consideration of this Court, at this stage, is whether the Court is clothed with the requisite territorial jurisdiction to entertain the instant writ petition and most importantly, whether this Court is the most convenient forum for the parties to agitate their grievance.

Dominus litis – the real master of the proceedings?

16. In order to appreciate the rival submissions, it is expedient to primarily advert to the concept of *dominus litis* which literally translates to

'master of the suit' and which sets the background for the plaintiff or the petitioner to establish his/her case. In lucid terms, the doctrine of *dominus litis*, which is referenced from the Code of Civil Procedure, 1908, refers to the principle that the person who initiates a legal proceeding is the master of the said litigation or the *'dominus'* of the case. The doctrine provides a significant autonomy to the petitioner, inasmuch as, it grants an authority to the party initiating the civil proceedings to control and manage various aspects of the litigation, including but not limited to choosing the appropriate jurisdiction, impleading the defendants/respondents, determining the nature of relief sought etc. In essence, the aforesaid doctrine is rooted in the principle that the party initiating the litigation should have the right to decide its course and the petitioner has a right to control its own lawsuit.

17. However, an ancillary but pertinent question which comes to the fore as an offshoot of the concept of *dominus litis* is whether the petitioner's right of choosing the appropriate forum to initiate any legal action is absolute which needs to be candidly accepted or the said decision of the petitioner is also subject to judicial scrutiny. To answer this query, it is germane to refer to the decision of the Supreme Court in the case of ***Krishna Veni Nagam v. Harish Nagam***[10], wherein, it was held that in a civil proceeding, the plaintiff is the *dominus litis* but if more than one court has jurisdiction, the Court can determine which is the convenient forum and lay down conditions in the interest of justice subject to which its jurisdiction may be availed. The relevant excerpt of the said decision is reproduced as under:-

[10] (2017) 4 SCC 150

"13. We have considered the above suggestions. In this respect, we may also refer to the doctrine of forum non conveniens which can be applied in matrimonial proceedings for advancing interest of justice. Under the said doctrine, the court exercises its inherent jurisdiction to stay proceedings at a forum which is considered not to be convenient and there is any other forum which is considered to be more convenient for the interest of all the parties at the ends of justice. In Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd. [Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd., (2003) 4 SCC 341] this Court observed : (SCC pp. 356-57, para 19)

> *"19. In Spiliada Maritime case [Spiliada Maritime Corpn. v. Cansulex Ltd., (1986) 3 All ER 843 : 1987 AC 460 : (1986) 3 WLR 972 (HL)] the House of Lords laid down the following principle : (All ER p. 844a)*
>
> > *'The fundamental principle applicable to both the stay of English proceedings on the ground that some other forum was the appropriate forum and also the grant of leave to serve proceedings out of the jurisdiction was that the court would choose that forum in which the case could be tried more suitably for the interests of all the parties and for the ends of justice.…'*
>
> *The criteria to determine which was a more appropriate forum, for the purpose of ordering stay of the suit, the court would look for that forum with which the action had the most real and substantial connection in terms of convenience or expense, availability of witnesses, the law governing the relevant transaction and the places where the parties resided or carried on business. If the court concluded that there was no other available forum which was more appropriate than the English court, it would normally refuse a stay. If, however, the court concluded that there was another forum which was prima facie more appropriate, the court would normally grant a stay unless there were circumstances militating against a stay. It was noted that as the dispute concerning the contract in which the proper law was English law, it meant that England was the appropriate forum in which the case could be more suitably tried."*
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> *(emphasis in original)*

> *Though these observations have been made in the context of granting anti-suit injunction, the principle can be followed in regulating the exercise of jurisdiction of the court where proceedings are instituted.* ***In a civil proceeding, the plaintiff is the dominus litis but if more than one court has jurisdiction, court can determine which is the convenient forum and lay down conditions in the interest of justice subject to which its jurisdiction may be availed [Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254, para 30] ."***

18. In ***Ambica Industries v. CCE***[11], while highlighting the practical constraints involved in the principle of *dominus litis*, the Supreme Court took the following view:-

> *"13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or courts or tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay."*

19. The interplay between the doctrine of *dominus litis* and *forum conveniens* was clearly elucidated in the decision of the Division Bench of this Court in ***Satish Ahuja v. Union of India***[12], wherein, it has been categorically held that though the petitioner has a liberty to approach either

[11] (2007) 6 SCC 769

of the Courts where the cause of action arises, however, the ultimate decision regarding the appropriate jurisdiction shall be taken by the High Court only. Paragraph no. 29 of the said decision is reproduced herein for reference:-

> ***"29. It emerges from these decisions that when cause of action arises in the territorial jurisdiction of two High Courts, the petitioner would have the liberty to approach either of the Courts to file the writ petition. However, in such an event the High Court before which the writ petition is filed would have the discretion to refuse jurisdiction on the basis of forum conveniens, i.e. when the Court is of the considered opinion that the other High Court in the case, is better equipped to deal with the matter.*** *In doing so the High Court must exercise its discretion judiciously and provide cogent reasons. The doctrine cannot be resorted to for mere 'lip service'."*

20. Another facet of the *dominus litis* principle which merits consideration pertains to the extent of authority granted to the *dominus litis* in impleading the parties, which was explained by the decision of the Division Bench of this Court in the case of ***Kranti Arora v. DIGJAM Ltd.***[13] in the following words:-

> *"18. Dominus litis is the person to whom a suit belongs and is master of a suit and is having real interest in the decision of a case. The plaintiff being dominus litis cannot be compelled to fight against a person against whom he does not claim any relief. The plaintiff in a suit is required to identify the parties against whom he wants to implead as defendants and cannot be compelled to face litigation with the persons against whom he has no grievance. A third party is entitled to be impleaded as necessary party if that party is likely to suffer any legal injury due to outcome of the suit.* ***The doctrine of dominus litis should not be over stretched in impleading the parties. The court can order a person to be impleaded as necessary party if his***

[12] 2018 SCC OnLine Del 7693
[13] 2022 SCC OnLine Del 2023

> ***presence is required to decide real matter in dispute effectively. Merely because the, plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. The provisions of Order 1 Rule 10(2) CPC are having wide amplitude in operation."***

21. In the case of ***Pratap Singh v. Rahul Gupta***[14] also, this Court has taken a view that it is no more *res integra*, that in a case where the Court deems it necessary and proper, to implead any party depending upon the circumstances of the case, it is at the discretion of the Court to direct impleadment of such a party whose presence is found necessary and proper in effective and proper adjudication of the disputes against the wishes of the plaintiff, the *'dominus litis'* and therefore, it is not an indefeasible right.

22. It is thus safely discernible from the aforesaid discussion that as per the aforesaid doctrine, the petitioner's role as *dominus litis* includes the right to initiate litigation in a forum of his choice if the cause of action arises in more than one jurisdictions, provided that the chosen forum falls within the bounds of legally permissible jurisdictions. The choice made by the petitioner cannot be predicated on flimsy grounds, rather the same must adhere to the rules governing territorial jurisdiction and in event that the chosen forum does not satisfy the jurisdictional criteria, it can be challenged by the opposite party and accordingly, the Court is duly empowered to review the same. The underlying rationale behind the said rule of prudence is to eliminate any form of manipulation in choice of jurisdiction and to align the choice of the petitioner with the principles of justice, fairness and convenience. Therefore, the petitioner's right to choose a forum is not

[14] 2013 SCC OnLine Del 468

etched in stone, rather the same is subject to legal impediments that serve the larger interest of justice.

23. Having briefly traversed through the settled jurisprudence on the doctrine of *dominus litis*, the Court shall now proceed to test the objection raised by the respondents on the edifice of doctrine of *forum conveniens*, which is predominantly concerned with the accrual of essential, material and integral cause of action.

Cause of action vis-a-vis forum conveniens – a legal quagmire?

24. In the case of ***Bharat Nidhi,*** this Court had an occasion to deal with the pith and substance of the cause of action which forms the bedrock of an adjudication of challenge raised on the ground of *forum conveniens.* It was held that the cause of action means a bundle of facts, which is necessary for the plaintiff to prove in order to succeed in the proceedings. It does not completely depend upon the character of the relief prayed for by the plaintiff, rather the same depends upon the foundation upon which the plaintiff lays his/her claim before the Court to arrive at a conclusion in his/her favour. It depends on the right which the plaintiff has and its infraction. For the sake of completeness, the relevant discussion in the case of ***Bharat Nidhi*** pertaining to the cause of action needs to be relooked.

25. The generic definition of the term cause of action, which is found to be emanating from Section 20 of the Code of Civil Procedure, 1908, refers to the *"fact which is necessary to establish to support a right to obtain a judgment."*

26. The ‘cause of action’ has also been defined in *P. Ramanatha Aiyar* in Advanced Law Lexicon, 3rd Edition, Volume 1, as under:-

> *“‘Cause of action’ has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of the grievance founding the action, not merely the technical cause of action.”*

27. In Stroud’s Judicial Dictionary, “cause of action” is stated to be the entire set of facts that gives rise to an enforceable claim; in Words and Phrases (4th Edn.), the meaning attributed to the phrase “cause of action” in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf.

28. In Halsbury's Laws of England (4th Edn.) it was defined as:-

> *“Cause of action has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. Cause of action has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.”*

29. The Supreme Court, in the case of ***Bloom Dekor Ltd. v. Subhash Himatlal Desai***[15] observed that the cause of action consists of the bundle of facts which is necessary for the petitioner to prove its case.

30. The Supreme Court in the case of ***Om Prakash Srivastava v. Union of India***[16], has also ventured into the question as to what constitutes a 'cause of action' and has held as under:-

> *"11. It is settled law that "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. [See South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd. [(1996) 3 SCC 443]*
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> *12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means 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. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294].)"*

31. In the case of ***Kusum Ingots & Alloys Ltd. v. Union of India,***[17] the Supreme Court made a pertinent observation with respect to the cause of action, which reads as under:-

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[15] (1994) 6 SCC 322
[16] (2006) 6 SCC 207

> *"9.---*
> *Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts."*

32. Furthermore, whether the facts averred by the writ petitioner, in a particular case, constitute a part of the cause of action was decided by the Full Bench of the High Court of Judicature at Allahabad, in the case of ***Manish Kumar Mishra v. Union of India*** [18]. It was held that the same must be determined, on the basis of the test whether such facts constitute a material, essential or integral part of the *lis* between the parties; if it is, it forms a part of the cause of action and if it is not, it does not form a part of the cause of action. In determining the said question, the substance of the matter and not the form thereof has to be considered.

33. It was further held in the case of ***Manish Kumar Mishra*** that each and every fact pleaded by the parties shall not in itself constitute the cause of action, rather it shall be the facts which have a nexus with the *lis* that is involved in the case. Paragraph no. 148 of the said decision reads as under:

> *"148. In order to confer jurisdiction on the High Court to entertain a writ petition, the Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts constitute a cause so as to empower the Court to decide a dispute which has, at least in part, arisen within its jurisdiction. Each and every fact pleaded in the application may not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts are such which have a nexus or relevance with the lis that is involved in the case. Facts, which have no bearing with the lis or the dispute involved in the case would not give rise to a*

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[17] (2004) 6 SCC 254
[18] 2020 SCC OnLine All 535

> *"cause of action" so as to confer territorial jurisdiction on the Court concerned, and only those facts which give rise to a cause of action within a Court's territorial jurisdiction which have a nexus or relevance with the lis that is involved in that case, would be relevant for the purpose of invoking the Court's territorial jurisdiction, in the context of clause (2) of Article 226."*

34. In ***Eastern Coalfields Ltd. v. Kalyan Banerjee***[19], the following meaning was attributed to the phrase 'cause of action':-

> *7. "Cause of action", for the purpose of Article 226(2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. It means a bundle of facts which are required to be proved. The entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed.*

35. Reference can be made to the decision of this Court in the case of ***Heiza Boilers (I) Pvt. Ltd. v. Union of India***[20], whereby, while summarizing the principle regarding material and essential facts in the bundle of facts constituting the cause of action, the Court held that what is to be seen is whether a particular fact is a material, integral or essential part of the *lis* between the parties. The relevant paragraph reads as under:-

> *"14. The principles are these; Facts which have no bearing on 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 a Court. What is to be seen is whether a particular fact is of substance and can be said to be material, integral or essential part of the list between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. In determining the question the substance of the mater, and not the form thereof, is to be considered. The answer to the question whether the service of a notice is an integral part of the*

[19] (2008) 3 SCC 456
[20] 2009 SCC OnLine Cal 2754

> *cause of action within the meaning of Article 226(2) must depend upon the nature of the impugned order or action giving rise to the cause of action, and the test to ascertain this is whether for questioning the order or action it is necessary to plead the fact of service of the notice in the writ petition and prove it.* ***Only those facts without the proof of which the action must fail are material and essential facts in the bundle of facts constituting the cause of action. Hence a fact without the proof of which a writ petition will not fail is not an integral part of the cause of action, and, accordingly, it cannot be said that a part of the cause of action has arisen at the place where the event concerning the fact has happened."***

36. In the case of ***Shristi Udaipur Hotels v. Housing and Urban Development Corp.***[21] a Coordinate Bench of this Court has also dealt with the question of whether the 'cause of action' arises within the jurisdiction of this Court when the registered office of the respondent is situated in Delhi. The Court noted that since the most vital or significant part of the cause of action arises outside the territorial jurisdiction of this Court, thus, mere presence of the registered office in Delhi will have no implication to determine the question of jurisdiction of the Court. The relevant part of the said decision is reproduced herein for reference:-

> *"30. In the present case, the mere location of the registered office of the respondent/Corporation in Delhi, cannot be a ground to canvass that the cause of action has arisen within the territorial jurisdiction of this Court, unless and until* ***the petitioner has been able to point out that some material decision had been taken at the office of the respondent that would have a bearing on the present petition. A bald submission made to the effect that ordinarily a decision to recall a loan from a client is taken at the head office of the respondent/Corporation would not be of much assistance to the petitioner. As would be apparent from a bare perusal of the writ petition, the petitioner's grievance is directed against the act of the regional office of the respondent/Corporation in***

[21] W.P.(C) 1517/2014

> ***issuing the impugned loan recall notice dated 20.01.2014 and admittedly, the said regional office is not located within the territorial jurisdiction of this Court, but is based at Jaipur.*** *Similarly, the Sub-Lease Deed dated 11.1.2008 in respect of the project land was executed by the petitioner with the sub-lessor at Udaipur and the project land is also located in Udaipur.*
>
> *31. To conclude, this Court is of the view that the facts relating to jurisdiction that have been pleaded in the application and for that matter, in the writ petition, can hardly be stated to be either essential or material, much less integral for constituting a part of the cause of action, as envisaged under Article 226(2) of the Constitution of India, for vesting territorial jurisdiction on this Court.* ***On the contrary, as noted above, the most vital parts of the cause of action have arisen in Jaipur and the mere presence of the registered office of the respondent/Corporation in Delhi or the facility extended to the petitioner to address any correspondence to the respondent/Corporation and/or remit moneys due or payable under the Loan Agreement at Delhi, would have to be treated as irrelevant factors, being a miniscule part of the cause of action. By no stretch of imagination can these factors be treated as conclusive for determining the territorial jurisdiction of this Court.***
>
> *32. In the given facts and circumstances of the case, this court is inclined to accept the submission made by learned counsel for the respondent/Corporation that neither the factors mentioned by the petitioner, nor the circumstances would by themselves confer territorial jurisdiction on this court for maintaining the petition in Delhi. Rather, this Court is of the opinion that it would be inconvenient for it to entertain the present petition and the High Court of Rajasthan would be better equipped to deal with the issues raised in the present petition. Accordingly, this Court declines to exercise the discretionary jurisdiction vested in it under Article 226 of the Constitution of India. Resultantly, the present application is dismissed, while leaving the parties to bear their own costs."*

37. In the case at hand, it is observed that the petitioner-College has strenuously relied upon the order passed by the NMC and the appellate authority to contend that the essential, integral and material part of cause of action has arisen in the territorial jurisdiction of this Court. However, before

deciding upon the actual place of accrual of essential, material and integral facts from the bundle of facts giving rise to the cause of action, the Court deems it appropriate to sail through the jurisprudential stream of *forum conveniens* which flows from Article 226 of the Constitution of India and most intricately connected to the concept of cause of action.

38. The Court in ***Bharat Nidhi***, while considering the amendment brought in Article 226 of the Constitution of India which paved the way for the applicability of the concept of cause of action, accentuated on the scheme of the amended provision and noted that though the power of judicial review cannot be circumscribed by the location of the authority against whom the writ is issued, however, the same does not mean that the constitutional mandate enshrined under Article 226 (1) can be completely neglected or whittled down. The relevant paragraphs of the said decision read as under:-

> *"61. The rationale behind the Constitution (Fifteenth Amendment) Act, 1963, which paved the way for the applicability of the concept of 'cause of action' which was earlier rejected to be read into Article 226(1), is captured in the Statement of Objects and Reasons appended to the Constitution (Fifteenth Amendment) Bill, 1962 and the same reads as under:*
>
> > *"Under the existing article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend article 226 so that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arise may also have jurisdiction to issue appropriate directions, orders or writs."*

62. In the words of Sh. A.K. Sen, the then Law Minister, while introducing the Fifteenth Amendment Bill, the intention behind introducing the then Article 226(1A) which is the present-day Article 226(2) was as under:

> *"We are amending Article 226 which has become very necessary in view of certain decisions of the Supreme Court that any application for the issue of writ under Article 226 against the Union of India can only be made in the Punjab High Court because Delhi, which is the headquarters of the Union of India happens to be within the jurisdiction of the Punjab High Court. So that, an ordinary man who wants to sue the Union of India in Kerala or Assam or Bengal or in far off places, has to travel all the way to Delhi and file his application in the Punjab High Court. In most cases for the common man whose resources are slender, it becomes an impossible thing. This demand has now arisen from everywhere. Though the original intention was never to make only the Punjab High Court the High Court against the Union of India, and it was contemplated that all the High Courts would have a similar jurisdiction, by a judicial decision of the Supreme Court, this unfortunate result has been brought about. Before the Constitution, the Privy Council took a different view altogether. They held in the Parlakimidi case and also in the case of Howrah Municipality that the seat of authority or Government was not material, so that, even if the seat, let us say, of the Union of India was Delhi, you could not sue in Delhi the Union of India for the issue of one of the writs unless the cause of action arose within the jurisdiction of this High Court also. They took quite a different view, quite the opposite view to what the Supreme Court has taken. When the law was in that state, this Constitution was framed thinking that every High Court will have jurisdiction within whose jurisdiction or territorial jurisdiction the cause of action had arisen. Therefore, we are trying to restore the position as it was in the contemplation of the framers of the Constitution in the Constituent Assembly, so that that man has not got to travel to Delhi with such scarce accommodation as is there."*

63. According to DD Basu, Commentary on the Constitution of India, 8th Ed., Vol. 10, Articles 214-226 (Contd.), the rationale behind the amendments is explained in the following words:

"Objects of Amendments

As a result of the view taken by the Supreme Court in Election Commn. v. Venkata and subsequent cases, it was location or residence of the respondent which gave territorial jurisdiction to a High Court under Article 226, the situs of the cause of action being immaterial for this purpose. The decision of the Supreme Court led to the result that only the High Court of Punjab would have jurisdiction to entertain petitions under Article 226 against the UOI and those other bodies which were located in Delhi.

The object of clause (1A), inserted by the 15th Amendment Act, 1963, was to restore the view taken by the High Court and to provide that the High Court within which the cause of action arises wholly or in part, would also have jurisdiction to entertain a petition under Article 226 against the UOI or any other body which was located in Delhi. The Amendment thus supersedes the Supreme Court decisions to the contrary.

The effect of the amendment is that it made the accrual of cause of action an additional ground to confer jurisdiction to a High Court under Article 226. As Joint Committee observed: "This clause would enable the High Court within whose jurisdiction the cause of action arises to issue direction, orders or writs to any Government, authority or person, not withstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feels that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction. (Report of Joint Committee—Clause 8)."

The Constitution (Fifteenth Amendment) came into force on 5th October, 1963. However, as seen above, this clause does not confer new jurisdiction on a High Court, but provides an additional ground and extends its jurisdiction beyond the boundaries of the State if the cause of action arose within its territory."

> *64. A perusal of Clause 2 of Article 226 indicates that the writ jurisdiction can be exercised by the High Court primarily in relation to the territories within which the cause of action, wholly or in part arises. However, the location of such Government or authority or residence of such person, outside the territories of the High Court will not deter the High Court from issuing the appropriate writ.*
>
> ***65. The introduction of Clause (2) in Article 226 of the Constitution of India widened the width of the area for issuance of writs by different High Courts, however, the same cannot be construed to completely dilute the original intent of the Constitution makers which is succinctly encapsulated in Clause (1) of Article 226. Rather, Clause (2) is an enabling provision, which supplements Clause (1) to empower the High Courts to ensure an effective enforcement of fundamental rights or any other legal right. Therefore, the power of judicial review cannot be circumscribed by the location of the authority against whom the writ is issued, however, the same does not mean that the constitutional mandate enshrined under Article 226 (1) can be completely neglected or whittled down."***

39. While analysing the scope and extent of Article 226(2) of the Constitution of India and surveying a catena of judgments passed by the Supreme Court and this Court, the Court in ***Bharat Nidhi*** has reached the following conclusions:-

> *"67. Thus, the salient aspects which emerge out of the aforesaid discussion can be delineated forthwith as:*
>
> > *(i) Article 226(2) does not take away the right of a High Court to dismiss a case on grounds of forum non-conveniens. The principles of forum non-conveniens and that of Article 226(2) operate in different field, where Article 226(2) (originally Article 226(1A)) was inserted to solve the problem of a litigant needing to go to a High Court where the seat of government authority was present.*
> >
> > *(ii) In other words, merely because Article 226(2) allows jurisdiction to be conferred on a High Court in the absence of the seat of a government authority being*

> *under its jurisdiction; this does not in itself mean that the presence of a seat shall automatically grant jurisdiction.*
>
> *(iii) Article 226(2) allows jurisdiction to be conferred if the cause of action, either in part or whole, had arisen in the jurisdiction of a High Court, however, where the purported cause of action is so minuscule so as to make a particular High Court non- convenient, it is then that the concept of forum non-conveniens applies."*

40. The aforenoted conclusions in ***Bharat Nidhi*** can be illustratively explained while taking the example of different Benches of the High Courts across the concerned States, say the States of Uttar Pradesh, Maharashtra, Madhya Pradesh, Tamil Nadu, Karnataka, Rajasthan etc. Generally, the State capital city hosts head offices of various State Public Sector Undertakings, besides the Government Secretariat and regulatory authorities; meaning thereby, all important orders are issued from the State capital city only. In almost all the litigations against such authorities, the validity of those orders is the primary challenge. However, the aforesaid fact in itself does not confer the jurisdiction to the Principal seat of the concerned High Court or its Bench to entertain all such cases. The jurisdiction of the Principal seat and the Benches is determined not solely on the basis of the location/situs of the authority who passes the order but the place of accrual of integral, essential and material cause of action is also predominantly borne in mind. If the said illustration is to be construed in light of the arguments raised by the petitioner herein, then the situs of the aforesaid authorities in the State capital cities would *ipso facto* grant jurisdiction to such Principal seat or Bench of the concerned High Courts under which the capital city falls, for all the actions taken by any authority in the territorial

limits of the State capitals. Such an argument, however, cannot be countenanced in law.

41. Notably, the decision rendered by this Court in the case of ***Bharat Nidhi*** was carried in LPA 47/2024, wherein, the Division Bench of this Court in its final decision dated 15.01.2024 affirmed the view taken in ***Bharat Nidhi*** and has held as under:-

> *"21. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India to entertain a writ petition, in addition to examining its territorial jurisdiction also examines if the said Court is the forum conveniens to the parties. The issue of forum conveniens is seen not only from the perspective of the writ petitioner but it is to be seen from the convenience of all the parties before the Court. In the facts of this case, as is evident from the record that the forum conveniens for the both the parties is Mumbai. The Appellants since the year 2020 have been appearing in Mumbai before SEBI in the SCN proceedings. In W.P.(C) 15556/2023 (as well as the other writs) the writ petitioner has sought a direction for summoning the records of SEBI for examining the legality and validity of the Impugned Revocation Order. In these facts, therefore, the objection of SEBI that Mumbai is the forum conveniens for the parties has merit. The obligation of the Court to examine the convenience of all the parties has been expressly noted by the Full Bench of this Court in Sterling Agro Industries Ltd. (supra)…"*

42. One of the earliest references to the principle of *forum non-conveniens* can be traced to the *locus classicus* of ***Tehran v. Secretary of State for the Home Department***[22], wherein, the House of Lords has explained the said principle in the following words:-

> *"The doctrine of forum non conveniens is a good example of a reason, established by judicial authority, why a court should not exercise a jurisdiction that (in the strict sense) it*

[22] [2006] UKHL 47

> *possesses.* ***Issues of forum non conveniens do not arise unless there are competing courts each of which has jurisdiction (in the strict sense) to deal with the subject matter of the dispute. It seems to me plain that if one of the two competing courts lacks jurisdiction (in the strict sense) a plea of forum on conveniens could never be a bar to the exercise by the other court of its jurisdiction."***

43. The authoritative pronouncement of the Supreme Court in the case of ***Kusum Ingots***, has explicitly held in no uncertain terms 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.*

44. In the case of ***Alchemist Ltd.***, the Supreme Court took a view that for the purpose of deciding whether the facts averred by the petitioner 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.

45. The exposition of law in ***Kusum Ingots*** and ***Alchemist Ltd.*** was followed by a Special Bench of this Court in the case of ***Sterling Agro***, wherein, this Court ruled that while exercising jurisdiction under Article 226 of the Constitution of India, the doctrine of *forum conveniens* can be applied. It was further observed therein that the situs of the cause of action cannot be the sole determinative criteria to confer the jurisdiction on this Court and the cause of action would depend upon the factual matrix of each case. The relevant paragraphs of the said decision read as under:-

"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 situated 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."*

46. Furthermore, the Division Bench of this Court in the case of ***Sachin Hindurao Waze v. Union of India***[23], has held that two essential elements must be considered by the Court when determining jurisdiction to decide a writ petition under Article 226 of the Constitution of India. *Firstly*, whether any part of the cause of action arises within its territorial jurisdiction; and *secondly*, whether the said court serves as the *forum conveniens* for adjudicating the matter, ensuring convenience and fairness for all parties involved. The relevant portion of the said decision reads as under:-

> *"**12.** On a broad holistic assessment of decisions cited by the petitioner would show that there are practically two elements which have to be considered by any court while accepting jurisdiction to decide a writ petition under Article 226 of the Indian Constitution - firstly, if any part of the cause of action arises within its territorial jurisdiction; and secondly if the said court is the forum conveniens. Only a mere shred or an iota of a cause of action potentially clothing a particular High Court with jurisdiction [per Article 226(2) of the Constitution of India] to adjudicate a writ petition, ought not to encourage a court to accept such jurisdiction completely divorced and dehors an assessment of forum conveniens. This has been categorically articulated in decisions of this Court. A Special Bench comprising 5 judges of this Court [Chief Justice Dipak Misra,*

[23] 2022 SCC OnLine Del 3287

Vikramajit Sen, J. A.K. Sikri, J. Sanjiv Khanna, J. and Manmohan, J.] in Sterling Agro (supra) after traversing the law relating to territorial jurisdiction in context of Article 226 of the Constitution of India emphasized that the High Court must not only advert to the existence of a cause of action but also remind themselves about the doctrine of forum conveniens also. In this regard the following paragraphs of the judgment of the Special Bench are instructive which are reproduced as under for easy reference:

> *"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.*
>
> *(emphasis added)"*

47. The Supreme Court in the case of the ***State of Goa v. Summit Online Trade Solutions (P) Ltd.***[24] has also applied the doctrine of *forum non-conveniens* and ruled that despite the fact that a part of the cause of action arose within the territorial jurisdiction of the High Court, the party has to disclose that integral facts pleaded in support of the cause of action constitutes a cause which empowers the High Court to decide the dispute and it must have a nexus with the subject-matter of the case. The relevant part of the said decision is culled out as under:-

> *"17. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action.* ***In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted.*** *Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests."*

[24] (2023) 7 SCC 791

48. Reliance can also be placed upon the decision in the case of ***Union of India (UOI) v. Adani Exports Ltd.***[25], wherein, the Supreme Court ruled that:-

> *"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.****"*

49. The situs of the cause of action *vis-a-vis* the doctrine of *forum conveniens* was also discussed in the case of ***Nasiruddin v. STAT***[26], wherein, the Supreme Court while construing the provisions of the United Provinces High Courts (Amalgamation) Order, 1948, has held that:-

> *"37. 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 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*

[25] (2002) 1 SCC 567
[26] (1975) 2 SCC 671

> *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. Similarly, if the cause of action can be said to have arisen part within specified areas in Oudh and part outside 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."***

50. In the case of ***Pune Buildtech (P) Ltd. v. Bank of India***[27], it was contended that since loan agreement was signed in Delhi, respondent bank has its head office in Delhi, therefore, this Court can exercise the territorial jurisdiction. This Court, while applying the doctrine of *forum conveniens* took a view that the substance of a matter is significant in determining the material, essential or integral part of the cause of action and the Constitutional Courts are saddled with a duty to prevent the abuse of jurisdiction by the parties. In the said case, the petitioners therein had approached the Court primarily on the ground that certain agreements with respect to loan transaction in question were allegedly executed in Delhi. It was, however, observed that the essential, material and integral facts i.e., place of declaration of fraud, initiation of complaint, registered offices of the

[27] 2023:DHC:9156

parties etc. were all present outside the territorial jurisdiction of this Court. The relevant paragraphs of the said decision read as under:-

> *"56. Considering the discussion hereinabove, it is crystallised that in order to confer jurisdiction to the constitutional courts under Article 226 of the Constitution, a material, essential or integral part of the cause of action must arise within their jurisdiction. To determine a material, essential or integral part of the cause of action, it is the substance of the matter that becomes relevant. Also, the objection to the jurisdiction of this court can be raised at any stage of proceedings, as has been held by the Hon'ble Supreme Court in the case of Jagmittar Sain Bhagat v. Health Services, Haryana.*
>
> *57. It is to be noted that the germane issue in both the petitions is the decision of the petitioners' accounts being declared as „fraud". It is seen that the impugned action is taken from the respondent-BOI's Mumbai branch. Also, the communication of the said decision to the RBI regional office in Bengaluru also occurred outside the jurisdiction of this court. Furthermore, all the consequent actions under the provisions of the SARFAESI Act were also taken from the Mumbai branch of the respondent-BOI.*
>
> ***
>
> *62. It is pertinent to mention that as per the legislative intent and constitutional scheme enshrined under the provisions of Article 226 of the Constitution of India, it is crystallised that the cardinal duty imposed on the constitutional courts is to prevent the abuse of their jurisdiction by the parties and relegate back the parties to the forum where a material, essential or integral part of cause of action has arisen."*

51. In another case of ***Ardra Joseph***, the petitioner therein belonged to the State of Kerala and the principal grievance was against the State Medical Council, Kerala. The petitioner in the said case was essentially seeking directions against the State Medical Council, Kerala, while drawing strength from the policy circulars issued by certain respondents situated in Delhi. This Court, while dismissing the petition, held that since offices of some of the official respondents having pan-India jurisdiction are situated in Delhi,

this fact alone would not warrant this Court to entertain the writ petition as the material, essential and integral part of cause of action does not arise within the territorial jurisdiction of this Court. The relevant observations of this Court in the said case read as under:-

> *"12. If the facts of the present case are perused, the major grievance of the petitioner lies against respondent no.3 i.e., State Medical Council which is located in Kerala and therefore, the substantial cause of action would not arise within the jurisdiction of this Court.*
>
> *13. It is seen that some of the arrayed official respondents have pan-India jurisdiction. The reason that the policies and circulars are issued from Delhi cannot be the sole ground to entertain the petition by this Court. Neither the petitioner is incapacitated to approach the jurisdictional High Court nor the concerned High Court lacks jurisdiction to issue appropriate writ to the arrayed respondents.*
>
> *14. In view of the aforesaid, this court is not inclined to entertain the instant writ petition as this Court would be a forum non-conveniens in the present case."*

52. In the case of ***Chinteshwar Steel***, while dismissing the writ petition on the ground of substantive part of cause of action arising beyond the territorial jurisdiction of this Court, the Court took a view that in case of pan-India Tribunals, or Tribunals/statutory authorities having jurisdiction over several States, the situs of the Tribunal would not necessarily be the marker for identifying the jurisdictional High Court.

53. The decision rendered in ***Chinteshwar Steel*** was carried in appeal before the Division Bench of this Court *vide* LPA 801/2012, wherein, while sustaining the objection raised on the ground of territorial jurisdiction, the Court held that in eventuality where the jurisdiction is conferred upon two different High Courts by virtue of the situs of the original and appellate

authorities in territorial jurisdiction of two distinct High Courts, the High Court before whom the said writ petition is filed would have the discretion to refuse to entertain it on the ground of *forum conveniens*. It was further held that no doubt the petitioner is *dominus litis*, but when the choice is motivated by temptation/strategy to force the petition at an inconvenient place, the Court has the power to step in. The relevant paragraphs of the said decision are reproduced as under:-

> *"8. Keeping in view the aforesaid judgment as well as the judgment cited by learned senior counsel for the appellant, this Court is of the view that when original authority is situated in one High Court and appellate authority is situated in the jurisdiction of another High Court, undoubtedly writ petition is maintainable in both the High Courts as a part of cause of action has arisen in both the courts. The petitioner would have the liberty to chose where he would like to file his writ petition. But even in such an eventuality, the High Court before whom the said writ petition is filed would have the discretion to refuse to entertain it on the ground of forum conveniens. Needless to say, the discretion to refuse to entertain the writ petition would have to be exercised on sound judicial principles.*
>
> ***
>
> ***10. In fact, the two decisions in Vishnu Security Services and Jan Chetna (supra) elucidate when and in what circumstances judicial discretion should not be exercised on the ground of forum conveniens. In Vishnu Security Services (supra), the Division Bench observed that though the writ petition may be maintainable in two High Courts, but when the High Court finds that it is inconvenient to entertain the writ petition as other High Court is better equipped to deal with the case, doctrine of forum conveniens would be attracted. Thereafter, reference was made to English authorities wherein it has been held that in judging the comparative convenience or non-convenience of the forum, the test to be applied is which Court out of the two is more suitable in the interest of the parties as well as ends of justice. Reference was also made to a U.S. decision wherein it has been observed that courts have open doors to those who seek***

> ***justice, but when justice is blended with some harassment, it needs to be checked. Undoubtedly, the petitioner is dominus litis, but when the choice is motivated by temptation/strategy to force the petition at an inconvenient place, the Court has the power to step in.*** *We are also in agreement with the view of learned Single Judge in the impugned order that the Division Bench in Vishnu Security Services (supra) overruled the judgment of learned Single Judge only on the ground that no reason had been given by the learned Single Judge in that case to come to the conclusion that this Court was not the convenient forum. Similarly, in Jan Chetna (supra), the Division Bench observed that though the issue raised was purely legal relating to an object in another State, yet as the issue raised had no local flavour at all, the said doctrine need not be invoked. Consequently, in our opinion the judgments of Vishnu Security Services (supra) and Jan Chetna (supra) have neither deviated nor could have deviated from the judgment of five Judges of this Court in Sterling Agro Industries Ltd. (supra).”*

54. The Division Bench of this Court *vide* decision dated 05.08.2024 in ***Vemparala Srikant***, after considering the authoritative pronouncement of the Supreme Court in ***Universal Sompo General Insurance Co. Ltd. v. Suresh Chand Jain***[28], held that all the foundational facts necessary to constitute a cause of action arising within the local limits of a High Court would confer upon such High Court the necessary jurisdiction to exercise its powers under Articles 226 or 227 of the Constitution of India. Furthermore, the Court observed that if the contention of the respondents therein is accepted then consumer who is agitating for his rights at far off places like Assam, Manipur or any other distant part of the country would have to necessarily travel to Delhi for such redressal since the Appellate Authority is situated in Delhi. The relevant observations of this Court in ***Vemparala Srikant*** is reproduced as under:-

[28] 2023 SCC OnLine SC 877

> *"6. In our considered opinion, the words "concerned High Court or jurisdictional High Court" would imply a High Court, within whose local limits of the territorial jurisdiction, the original cause of action has arisen. We are also of the opinion that all the foundational facts necessary to constitute a cause of action arising within the local limits of a High Court would confer upon such High Court the necessary jurisdiction to exercise its powers under Articles 226 or 227 of the Constitution of India.*
> ***
> *8. In the present case, it is not disputed that all the foundational facts giving rise to the cause of action to the appellant to approach the Consumer Fora arose within the State of Telangana. It is undisputed that the appellant had approached the District Consumer Forum in Hyderabad and then the SCDRC in the State of Telangana. In that view of the matter, coupled with the aforesaid observations, it is apparent that it could only be the High Court of State of Telangana which would be the "concerned High Court or the jurisdictional High Court".*
> *9. Besides, in case this Court were to agree with the contentions of the learned counsel for the appellant, the resultant situation would be absurd. In that, if one were to consider the situation of an ordinary consumer, it would be, as a fall out of such interpretation, that a consumer who is agitating for his rights in far of places like Assam, Manipur or any other distant part of the country would have to necessarily travel to Delhi for such redressal. This interpretation cannot be countenanced, particularly in view of the doctrine of "forum conveniens"*

55. Similarly, in the case of ***Regional Provident Fund Commissioner v. M/S BSC-C and CJV***[29], it was contended that since the office of Central Government Industrial Tribunal is situated in Delhi, therefore, this Court would have territorial jurisdiction to entertain the writ petition. The Court *vide* judgement dated 03.10.2023 held that mere fact that the appellate authority is situated in Delhi would not *ipso facto* give rise to the territorial jurisdiction of this Court.

[29] 2023:DHC:7379

56. In a decision passed by this Court in ***Ramnath Singh Sikarwar v. Election Commission of India***[30], the petitioner sought for the video footage of the elections conducted in the Fatehpur Lok Sabha Constituency in the State of Uttar Pradesh. The entire premise of the petitioner's argument regarding the territorial jurisdiction of this Court rested on the fulcrum that since the ECI has its head office in Delhi, therefore, this Court would have the territorial jurisdiction of this Court. The Court, while rejecting the above contention held that the issue of *forum conveniens* cannot be looked into from the perspective of the petitioners only, rather the convenience of all the parties needs to be taken care of. The pertinent observations of this Court in the said case reads as under:-

> *"20. It is thus seen that with regards to the arguments raised by the petitioners that since a part of cause of action arises within the jurisdictional limits of this Court and the forum conveniens has to be seen from the petitioners' perspective, this Court has categorically rejected the aforesaid arguments and has held that the issue of forum conveniens is not to be observed only from the perspective of the petitioner but it depends on the convenience of all the parties before the Court.*
>
> *21. As already noted hereinabove, the office of RO where the record is maintained and available to be furnished also situates outside the jurisdiction of this Court. Evidently, none of the facts put forth by the petitioners to establish jurisdiction upon this Court constitute essential, integral and material facts out of the bundle of facts in the present lis."*

57. In ***Aasma Mohd. Farooq v. Union of India***[31], this Court was posed with a question of maintainability on the pretext of lack of territorial jurisdiction in the factual circumstances, wherein, the complaint was filed with the adjudicatory authority which was located in Delhi. The Court held

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[30] W.P.(C) 8891/2024
[31] 2018 SCC OnLine Del 12800

that though the complaint has been filed in Delhi and the adjudicating authority is present herein, however, it encompasses all the facts which have arisen in Mumbai. Paragraph no.11 of the said decision reads as under:-

> *"11. Mr. Chaudhri may be right in contending that the notice under Section 8 of the Act has been issued by the Authority in Delhi, so jurisdiction is there for this Court to entertain the writ petition.* ***But merely because a part of cause of action has arisen under the jurisdiction of this Court, whether this Court needs to exercise its jurisdiction is the question need to be answered. This Court is of the view "that it should not", for more than one reason; that it is not in dispute that the petitioner is based in Mumbai. The provisional attachment order has been passed in Mumbai. The complaint though, filed before the adjudicating authority in Delhi, it encompasses all the facts that have arisen in Mumbai. The properties are in Mumbai.*** *It is only after filing of the original complaint as contemplated under Section 5(5) of the Act before the adjudicating authority, which is located in Delhi that the impugned notice has been issued from Delhi but the fact remains that nothing has happened in Delhi. Only notice to show cause has been issued. After the adjudicating authority decides the issue, there is a forum of appeal available to the petitioner. Even thereafter, the remedy of appeal to the High Court is also available under Section 42 of the Act, which has already been enumerated above. In other words, in the case in hand, if an order is passed by the Appellate Authority it shall be the Bombay High Court, which shall have the jurisdiction for both, i.e. the person aggrieved and the Central Government against the order is passed by the Appellate Authority. Therefore, in view of the aforesaid factual/legal aspect, this Court is of the view that instead of two Courts considering set of facts originating in Mumbai and leading to issuance of a provisional attachment order/complaint before the adjudicating authority, it should be the High Court, which is more convenient and where if a party aggrieved against the orders passed by the Appellate Authority shall approach, in terms of Section 42 of the Act, shall be the "forum conveniens". In this case, it shall be the Bombay High Court and accordingly this Court is of the view that it should not entertain the present writ petition. The petitioner shall be at liberty to approach the Bombay High Court for appropriate relief. Accordingly, we refrain from going into the merits of the case."*

58. Reliance can also be placed upon the decision of the Division Bench of this Court in the case of ***Rajkumar Shivhare v. Assistant Director of Enforcement***[32], wherein it was held as under:-

> ***"4.*** *Various Division Benches of the Delhi High Court, inter alia, in Suraj Woolen Mills v. Collector of Customs, Bombay, 2000 (123) E.L.T. 471 (Del.), Bombay Snuff Pvt. Ltd. v. Union of India, 2006 (194) E.L.T. 264 (Del.) and Commissioner of Central Excise v. Technological Institute of Textile, 1998 (47) DRJ 667 (DB) have clarified that the High Court should not exercise jurisdiction only because the Tribunal whose order is in appeal before it, is located within its territorial boundaries. In Seth Banarsi Pass Gupta v. CIT, (1978) 113 ITR 817 and Birla Cotton & Spinning Mills Ltd. v. CIT, Rajasthan, (1980) 123 ITR 354 this Court declined to exercise jurisdiction because both the assesses resided and carried on business outside Delhi.* ***On a reading of Article 226(1) of the Constitution it will be palpably clear that without the next following provision, a High Court may not have been empowered to issue a writ or order against a party which is not located within the ordinary territorial limits of that High Court. The power to issue writs against any person or Authority or government even beyond the territorial jurisdiction of any High Court is no longer debatable. The rider or prerequisite to the exercise of such power is that the cause of action must arise within the territories of that particular High Court. It does not logically follow, however, that if a part of the cause of action arises within the territories over which that High Court holds sway, it must exercise that power rather than directing the petitioner to seek his remedy in any other High Court which is better suited to exercise jurisdiction for the reason that the predominant, substantial or significant part of the cause of action arises in that Court. In other words any High Court is justified in exercising powers under Article 226 either if the person, Authority or Government is located within its territories or if the significant part of the cause of action has arisen within its territories. The rationale of Section 20 of the Code of Civil Procedure would, therefore, also apply to Article 226(2). These considerations are aptly encapsulated in the term forum conveniens which refers to the situs where the legal action be most appropriately***

[32] 2008 SCC OnLine Del 1091

brought, considering the best interests of the parties and the public (see Black's Law Dictionary).The writ Court should invariably satisfy itself that its choosing is not malafide or an example of forum shopping.

5. *This question has now been authoritatively settled by the* ***Supreme Court in Ambica Industries v. Commissioner of Central Excise, (2007) 6 SCC 769*** *where several of the above quoted decisions have been reviewed. The Petitioner/Assessee in that case carried on business at Lucknow where it was also assessed. It approached the CESTAT, New Delhi which exercised jurisdiction in respect of the States of Uttar Pradesh, Maharashtra and the National Capital Territory of Delhi. The Appeal filed in the Delhi High Court was rejected on the ground of lack of territoriality, and the Appeal to the Supreme Court turned out to be a sterile exercise.* ***Their Lordships observed that "the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or courts or tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay. … It would give rise to the issue of forum shopping For example, an assessee affected by an assessment order in Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it which may be contrary to the judgments of the High Court of Bombay".***

59. In LPA no. 729/2023 titled as ***Riddhima Singh through her Father Shailendra Singh v. CBSE***, while affirming the stand that merely situs of CBSE office being in Delhi would not confer jurisdiction upon this Court,

the Division Bench of this Court has emphatically noted that the doctrine of *forum conveniens* is invoked to determine the most appropriate forum for adjudication of a dispute and this exercise is undertaken not only for the convenience of the parties but also in the interest of justice.

60. Further reliance can also be placed upon the decision of this Court in the case of ***Dr. Neha Chandra v. Union of India***[33], whereby, the petitioner therein was posted as a Medical Officer in State of Uttar Pradesh, and was declined to take admission in PG diploma course in the Balrampur Hospital, Uttar Pradesh by the National Board of Examination in Medical Sciences [**"NBEMS"**], Delhi. It was argued by the petitioner that since the office of NBEMS is situated in Delhi, therefore, this Court would have the requisite territorial jurisdiction to decide the controversy. However, the Court *vide* order dated 30.09.2024 held that solely because a fraction of the cause of action has arisen within the territorial jurisdiction of a particular High Court, the same would not be a sufficient ground to persuade the concerned High Court to entertain a writ petition.

61. In another case of ***Manjira Devi Ayurveda Medical College & Hospital v. Uttrakhand University of Ayurveda***[34], the petitioner-Hospital sought to invoke the jurisdiction of this Court on the ground that the head office of respondent no.2, therein, was situated within the territorial jurisdiction of this Court. Rejecting the aforesaid contention, the Court, in paragraph nos.12 to 15 has held as under:-

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[33] W.P.(C) 13613/2024
[34] 2024 SCC OnLine Del 6146

> *"12. A Coordinate Bench of this Court in the case of Chinteshwar Steel Pvt. Ltd. v. Union of India, 2012 SCC OnLine Del 5264, has held that in case of pan India Tribunals, or Tribunals/statutory authorities having jurisdiction over several States, the situs of the Tribunal would not necessarily be the marker for identifying the jurisdictional High Court.*
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> *13. This Court also notes, based on judicial precedents, that Courts have the power under Article 226 of the Constitution of India to exercise or decline their discretion to entertain writ petitions when the petitioner has an alternative, more appropriate, and convenient High Court to approach. As mentioned above, it is reiterated that it is a settled position of law that if only a part of the cause of action arises within the territorial jurisdiction of the Court, the Court may decline to entertain the case if it is of the opinion that it is not the forum conveniens.*
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> *14. To sum up, the grievance of the petitioner-institute herein, which is situated in Uttarakhand, is essentially against the Uttarakhand Ayurveda University. The interim relief claimed in this petition is also against Uttarakhand Ayurveda University, which reads as follows : "Issue directions to the Uttarakhand Ayurveda University to allow the students of the batch of 2022 to appear for the examinations of the first profession".*
>
> *15. In view of the aforesaid, the present petition is dismissed alongwith pending application if any, solely on the ground of lack of territorial jurisdiction. The petitioner would be at liberty to approach the appropriate Court of jurisdiction for redressal of his grievance, in accordance with law."*

62. The aforesaid decision passed in the case of ***Manjira Devi*** came to be challenged in a Letters Patent Appeal before the Division Bench of this Court in the case of ***Manjira Devi Ayurveda Medical College & Hospital v. Uttrakhand University of Ayurveda***[35]. The Court, *vide* its judgment dated 05.09.2024 has held that the cause of action has arisen within the territorial

[35] 2024 SCC OnLine Del 6303

jurisdiction of the Courts of Uttarakhand and the convenient forum to hear and decide the present writ petition would be the Uttarakhand High Court.

63. Recently, a Coordinate Bench of this Court had an occasion to deal with an almost similar controversy in the case of ***White Medical College***, wherein, the petitioner-College was intending to admit 150 MBBS students for the academic year 2024-25, however, the renewal permission was denied by the respondent therein i.e., NMC. The Court refused to entertain the said petition on the ground that the petitioner-College was based in Punjab and the affiliating university was also located in Punjab. It was also observed that merely because the head office of the NMC was situated in Delhi would not be a sufficient ground to maintain the petition in this Court. Paragraph no.7 of the said decision reads as under:-

> *"**7.** It is noted that the petitioner-institute is situated in the State of Punjab and the medical college is affiliated with Baba Farid University of Health Science and is under the administrative control of the Director, Medical Education and Research, Punjab, SAS Nagar, Mohali, Punjab. The petitioner-institute is also approved and recognized by the State Government of Punjab. The ground on which the petitioner-institute has approached this High Court is that the Head Office of National Medical Commission i.e., respondent no. 2 is situated within the territorial jurisdiction of this Court. However, merely because the office of respondent no. 2 is situated within the territorial jurisdiction of this Court, it cannot be a ground to entertain the instant writ petition."*

64. Similarly, in the batch of writ petitions of ***Dr. Supreeti Chahal***, the petitioner-students therein approached this Court seeking recognition of their MDS course on the ground that the office of the Dental Council of India [**"DCI"**] was situated within the territorial jurisdiction of this Court. The Court, *vide* its decision dated 23.08.2024, declined to entertain the

aforesaid batch of writ petitions, holding that the college in question was situated within the State of Haryana and therefore, the appropriate jurisdiction did not lie with this Court.

65. In the said case, the petitioners contended that the grievance was neither against the college nor against any authorities situated within the State of Haryana. The petitioners therein argued that since the office of the DCI was situated within the jurisdiction of this Court, therefore, this Court should entertain the writ petition. Rejecting the aforesaid submissions, the Court, in paragraph nos. 18 to 20, has held as follows:-

> *"18. A Coordinate Bench of this Court in the case of Chinteshwar Steel Pvt. Ltd. v. Union of India, 2012 SCC OnLine Del 5264, has held that in case of pan India Tribunals, or Tribunals/statutory authorities having jurisdiction over several States, the situs of the Tribunal would not necessarily be the marker for identifying the jurisdictional High Court.*
>
> *19. This Court also notes, based on judicial precedents, that Courts have the power under Article 226 of the Constitution of Indiato exercise or decline their discretion to entertain writ petitions when the petitioner has an alternative, more appropriate, and convenient High Court to approach. As mentioned above, it is reiterated that it is a settled position of law that if only a part of the cause of action arises within the territorial jurisdiction of the Court, the Court may decline to entertain the case if it is of the opinion that it is not the forum conveniens.*
>
> *20. Considering the aforesaid facts and circumstances, this Court is of the view that the reasons for which Dental Council of India has yet not recognized the Degree issued by respondent no. 3 college, situated in Haryana, is due to factum of several legal proceedings qua the said College pending in competent Courts of Haryana, and therefore, the present petition is dismissed alongwith pending applications solely on the ground of territorial jurisdiction. The petitioners would be at liberty to approach the appropriate Court of jurisdiction for redressal of their grievance, in accordance with law."*

66. Another significant aspect which merits consideration at this stage is the dictum laid down by the Division Bench of this Court in the case of ***Vishnu Security Services v. Regional Provident Fund Commissioner***[36], wherein, the Court, while expounding the concept of comparative conveniens, took a view that the Court has to satisfy itself not only with the fact that it is a *forum non conveniens* but also that the other forum is more convenient. The relevant excerpt of the said decision is reproduced as under:-

> ***"12.*** *The principle was succinctly stated by Lord President in Clements v. Macaulay, 4 Macph. 593. His Lordship stated the general principle relating to jurisdiction, namely, when jurisdiction is competently vested in a particular court as per law, normally the court has no discretion whether it shall exercise its jurisdiction or not, but is bound to award the justice which a suiter comes to ask. This is founded on Latin maxim Judex tenetur impertiri judicium suum which means a Judge must exercise discretion in every case in which he is seized of it. Lord President also emphasised that the plea of forum non conveniens must not be stretched so as to interfere with the aforesaid general principle of jurisprudence.* ***Forum non conveniens is applicable where the Court is satisfied that another Court of Law is also having jurisdiction over the matter and the case can be tried more suitably for the interest of the parties and for the ends of justice in the other court. Thus, while exercising the discretion, the Court has to satisfy not only with the fact that it is a forum non conveniens but the other forum is more convenient and in the comparative conveniens (or the non conveniens), the yardstick is to see as to which Court, out of the two, is more suitable for the interest of the parties as well as for the ends of justice****. These twin requirements are to be kept in mind. In Tehran v. Secretary of State for the Home Department, [2006] UKHL 47, the House of Lords expounded the doctrine in the following manner:*
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> > *"The doctrine of forum non conveniens is a good example of a reason, established by judicial authority, why a court*

[36] 2012 SCC OnLine Del 1024

> *should not exercise a jurisdiction that (in the strict sense) it possesses. Issues of forum non conveniens do not arise unless there are competing courts each of which has jurisdiction (in the strict sense) to deal with the subject matter of the dispute. It seems to me plain that if one of the two competing courts lacks jurisdiction (in the strict sense) a plea of forum on conveniens could never be a bar to the exercise by the other court of its jurisdiction."*

We may also quote the following passage from the judgment of US Supreme Court in Gulf Oil Corporation v. Gilbert: 330 U.S. 501:

> *"The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even where jurisdiction is authorised by the letter of a general venue statute. These statutes are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy. But the open door may admit those who seek not simply justice but perhaps justice blended with some harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself."*

67. Also, in the case of ***Shanti Devi v. Union of India***[37], the Supreme Court, while deciding the correctness of a decision passed by the High Court of Judicature at Patna which dismissed the petition for lack of territorial jurisdiction, *inter alia*, took into consideration the fact that the deceased petitioner therein was a pensioner and the effect of stoppage of his pension was felt at his native place in Bihar. The view taken by the Supreme Court is reproduced as under:-

> *"29. From the facts of the present case, we are of the considered opinion that part of cause of action has arisen within the territorial jurisdiction of Patna High Court. The deceased petitioner was continuously receiving pension for the last 08*

[37] (2020) 10 SCC 766

> *years in his saving bank account in State Bank of India, Darbhanga.* ***The stoppage of pension of late B.N. Mishra affected him at his native place, he being deprived of the benefit of pension which he was receiving from his employer. The employer requires a retiring employee to indicate the place where he shall receive pension after his retirement.*** *Late Shri B.N. Mishra had opted for receiving his pension in State Bank of India, Darbhanga, State of Bihar, which was his native place, from where he was drawing his pension regularly for the last 08 years, stoppage of pension gave a cause of action, which arose at the place where the petitioner was continuously receiving the pension. We, thus, are of the view that the view of the learned Single Judge as well as the Division Bench holding the writ petition not maintainable on the ground of lack of territorial jurisdiction was completely erroneous and has caused immense hardship to the petitioner."*

Driving home the contours of forum conveniens

68. The salient aspects which emerge from the line of precedents discussed above can be delineated as under:-

a. The litigant initiating a legal proceeding in the capacity of *dominus litis* is entitled to approach the jurisdiction of his choice if the cause of action arises in two different jurisdictions, however, the same shall remain subject to judicial scrutiny by the Court. The Court shall find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action.

b. While determining jurisdiction to hear a writ petition under Article 226 of the Constitution of India, the Court must consider two key factors i.e., whether any part of the cause of action falls within its territorial jurisdiction and whether the Court serves as a suitable forum, ensuring convenience and fairness for all the parties involved in the case.

c. The mere situs of any authority, original or appellate, would not be a sole determinative factor in conferring jurisdiction upon a High Court.

d. The Court has to adjudicate the objection raised on the territorial jurisdiction bearing in mind the overarching principle of comparative conveniens i.e., the Court must not only be satisfied that it is a non-convenient forum, rather it must also be reckoned that the other forum is more convenient.

e. The doctrine of *forum conveniens* is applied to identify the most suitable forum for resolving a dispute, taking into account not only the convenience of the parties but also ensuring that the interests of justice are served. The question as to which would be the determinative or non-determinative factors to be considered in arriving at a conclusion about the *forum conveniens* or *non-conveniens*, will depend upon the facts of each case. However, a standalone factor would not weigh in determining the same, rather a cumulative result of the bundle of facts having nexus to the *lis* deserve to be appreciated. The following illustrative aspects, though not exhaustive, may be borne in mind while determining the applicability of the principle of *forum conveniens or non-conveniens*:-

i. The location of the parties;
ii. The convenience of the parties;
iii. The interest of other relevant stakeholders;
iv. The place of the decision as well as the situs of the effect felt thereto;

v. The decision making authority has a pan-India jurisdiction or otherwise;

vi. The nature of the authority taking the impugned action i.e., statutory, administrative or private;

vii. The best interests of the general public at large;

viii. The jurisdiction invoked by the parties is aligned with the principles of judicial consistency, fairness and propriety in adjudication of disputes;

ix. The intentions behind invoking a particular jurisdiction *viz.* the parties approaching with *malafide* intentions or making surreptitious attempts of forum shopping may be identified;

x. The resourcefulness of parties in approaching the jurisdiction to be considered immaterial etc.

Analysis of facts in juxtaposition with the legal standpoint

69. Upon a perusal of the factual matrix of the present case alongwith the prevailing jurisprudence governing the controversy at hand, as already discussed above, it can be seen that the foundational facts which form the essential, material and integral part of cause of action, which gave rise to the *lis* in question have arisen in the State of Uttar Pradesh for the reasons enumerated as below:-

a. The petitioner-College has been found to be in defiance of certain compliances required to increase the intake capacity of the medical college in Sambhal (Uttar Pradesh). As a natural corollary, all the compliances—statutory, regulatory or administrative

obligations—must be fulfilled in that location only. The compliances which need to be primarily fulfilled by the institution in question would also be predominantly governed by the authorities where the institution in question is located. Therefore, the primary events giving rise to the dispute occur in Sambhal (Uttar Pradesh), as that is where actions are taken and obligations are expected to be performed.

b. The relief sought in the instant petition essentially relates to the admission of the students in the petitioner-College which is situated in Sambhal (Uttar Pradesh) and therefore, the ultimate effect, if the prayer of the petitioner-College is acceded to, would be felt in Sambhal (Uttar Pradesh) only. Admittedly, if any positive direction is issued by the Court, the same would be effectively enforced outside Delhi, thereby, creating a significant disconnect between the Court's territorial jurisdiction and the area where its orders have actual consequences, without there being any substantial cause arising in the periphery of Delhi.

c. Though the petitioner-College has contended that the entire cause of action arises within the territorial jurisdiction of this Court, however, the said argument of the petitioner-College is entirely misplaced. Undoubtedly, the impugned order would give rise to a cause of action, but the same constitutes only a miniscule or slender part of entire cause of action, inasmuch as, it would not be a sole determinative factor in conferring the jurisdiction upon this Court. In the present case, the alleged deficiency has taken place at Sambhal (Uttar Pradesh). Thereafter, the inspection was carried out by the

NMC at the said place only and pursuant to the information collected therein, the consideration of the relevant material took place at Delhi by virtue of statutory mandate stipulated under the NMC Act, 2019. If the chain of events in the present dispute is perused, the same would exhibit that the relevant facts that are necessary to prove the case have arisen at the situs of the petitioner-College only and all those facts have merely been considered at Delhi, which has resultantly culminated into the impugned order.

d. In case there is any alleged violation of the fundamental right to carry on any occupation, business or trade enshrined under Article 19(1)(g) of the Constitution of India, the same has been infracted at Sambhal (Uttar Pradesh), whereby, it can allegedly be said that any individual has been denuded from establishing occupation through medical college.

e. A perusal of the record and the rival submissions would only evince that the sole reason behind the conferment of jurisdiction on this Court is the situs of the authorities which have passed the order to be in Delhi. It is copiously settled by a series of judicial pronouncements, as already discussed above, that the situs of any authority within the territorial jurisdiction of any High Court would not be a sufficient ground in itself to clothe the Court with the requisite jurisdiction. Therefore, only because the head office of NMC and the appellate authority is situated in Delhi cannot be a cogent reason to entertain the present petition, in the absence of there being any material, essential or integral facts also arising in the same

jurisdiction. It is observed that the facts which are most intimately connected with the controversy are situated outside the territorial jurisdiction of this Court.

f. The recognition, affiliation and permission are pivotal in the process of setting up a medical college, and while they may seem distinct, they are intimately connected and interdependent for the proper functioning and legitimacy of a medical institution. Each of these elements—recognition, affiliation, and permission—plays a specific role, yet they work in tandem to ensure the medical college can admit students, provide education, and confer degrees that are valid and recognized by the Government and relevant medical bodies. Therefore, it is of utmost importance that endeavours should be made to ensure that all the relevant stakeholders are cognizant of any proceedings which are being carried out in respect of the petitioner-College. The said goal would have been best achieved if the present case was adjudicated in the State where the petitioner-College is located as it would give a convenient fora to the State, affiliating University, other relevant intervenors etc.

g. The appropriate forum in the instant case should be the one which may allow all parties, including students, medical staff, government agencies etc. to raise their concerns without any undue obstacles. For example, if a medical college faces regulatory issues or non-compliance allegations, the most convenient jurisdiction would be the one that allows stakeholders to present their grievances

effectively without there being any logistical or other constraints, which in the case at hand is possible in Uttar Pradesh.

70. Testing the jurisdictional aspect on the touchstone of the comparative conveniens, as has been envisaged in the case of ***Vishnu Security,*** except the fact that the documents are present in Delhi and the impugned order has been passed in Delhi due to the presence of head office of NMC, nothing substantial, integral and material facts to the *lis* can be seen to be arising in Delhi. On the other hand, the petitioner-College is situated in Sambhal (Uttar Pradesh), the affiliating University is also located in Uttar Pradesh, the students would be granted admission in Sambhal (Uttar Pradesh), the infrastructure being the hallmark of a quality education is situated in Sambhal (Uttar Pradesh) and the effect of the prayer sought for be ultimately felt in Uttar Pradesh, the High Court of Judicature at Allahabad shall be a convenient forum to adjudicate upon the controversy at hand. Interestingly, the entire purpose of bringing the amendment to Article 226 of the Constitution of India was to curb the hardships faced by the litigants and therefore, if the jurisdictional issues are brushed aside without a due consideration and the petition is entertained because the parties are resourceful to approach the jurisdiction of this Court, the same would militate against the solemn objectives of the said amendment.

71. Furthermore, as already stated by the Division Bench of this Court in ***Ridhima Singh*** that the exercise of correcting the jurisdictional error is undertaken not only for the convenience of the parties but also in the interest of justice, the Court, while adjudicating upon jurisdiction, cannot sit in silos without realising the magnitude of public interest involved in the cases like

the present one. In such cases where future of present students and upcoming doctors would be affected, the scales of justice are balanced when the Courts recognize the intricate relationship between individual rights and the collective good, besides the fact that ends of justice would demand striking a balance between individual interest of the litigants and the public at large. Afterall, the end goal of justice is not merely resolution of disputes between private litigants but to also ensure that the societal needs i.e., access to quality medical education, the availability of qualified healthcare professionals and the ability of stakeholders to raise grievances in the present case, are met. The Courts are, therefore, reasonably expected to act as stewards of public welfare, ensuring that jurisdictional decisions reflect a balance between convenience, justice and the broader interests of society.

72. Assumingly, if all the orders passed by the authorities which have their head offices in Delhi would attract jurisdiction of this Court, as has been quixotically argued by the petitioner-College to some extent in the case at hand, the same would amount to concentration of jurisdiction on one High Court. Undeniably, such a view cannot be countenanced by any prudent stretch of imagination and must be eschewed. The said practice would overshadow the judicial propriety which must be upheld at all times.

73. Further, Delhi being the national capital, is home to a major chunk of central regulatory bodies, central agencies, central Public Sector Undertakings etc., with their head offices/registered offices/regional offices located within the peripheral limits of the State and generally, the final decisions are either directly or indirectly taken by these authorities through their offices in Delhi. Notwithstanding the fact that some of the litigants may

be resourceful in approaching this Court to challenge the action taken by these authorities merely because of their situs in Delhi, their resourcefulness shall not determine the course of justice. Considering a situation where any student is aggrieved by a decision taken by the NMC regarding derecognition of his/her degree, if the said student is asked to approach this Court only because any adverse order is passed in Delhi, it would create an undue hardship, which is verily not the Constitutional mandate enshrined in Article 226.

74. Undoubtedly, the other High Courts of the country are also not incapacitated to issue writs against the authorities located in Delhi, particularly in light of the authority explicitly granted as per Article 226(2) of the Constitution of India. It is observed that in some cases, the entertainability of disputes by different High Courts in absence of there being any uniform approach adopted by the parties to agitate their grievance, leads to an inconsistency in the adjudication of disputes, which must be endeavoured to be avoided. It is significant to curb such an approach in context of a broader objective to eliminate any form of abuse of jurisdiction at the hands of litigating parties. In fact, this Court has come across several cases where the piousness of the writ jurisdiction is surreptitiously attempted to be compromised by the parties by making it susceptible to misuse by either non-disclosure of already pending proceedings before another High Court or through myriad other ways. For instance, recently, in a case where the petitioner had a chequered history of litigation in Kerala, filed a petition in this Court being aggrieved by a decision of the NMC, without impleading the necessary parties situated in Kerala, though only a miniscule part of

cause of action arose in the jurisdiction of this Court. Upon being confronted by the respondents therein on various aspects, including an assertion that the same was an attempt to put the relevant stakeholders in dark and unaware of the proceedings, the petition was ultimately withdrawn by the petitioner.

75. It is also noteworthy that this Court is coming across numerous cases being filed from across the length and breadth of the country and clogging the docket of the Court merely on the ground that the impugned action has been taken by an authority having the situs in Delhi. In all such cases, an argument is made that since the concerned authorities are located in Delhi, the same would constitute essential, integral and material facts to confer jurisdiction. However, accepting such an argument would lead to jurisdictional overreach by this Court, thereby, contradicting and diluting the purport of the constitutional scheme outlined in Article 226(2).

76. For instance, in W.P.(C) 14153/2024 decided on 07.10.2024, this Court was posed to decide a challenge raised against the order passed by the Northern Regional Committee [**"NRC"**] of the National Council for Teacher Education and the appellate authority thereto in Delhi, pertaining to an institution which was located in the State of Punjab. While dismissing the case on the ground of lack of territorial jurisdiction, the Court noted that if the petitioner's argument is accepted then any decision of NRC with respect to any institution located within the periphery of various States where NRC exercises authority, shall be assailable before this Court, which would resultantly defeat the applicability of doctrine of *forum conveniens* as also the mandate of law stemming from the provision enshrined in Article 226(2)

of the Constitution of India. The relevant paragraphs of the said decision reads as under:-

> *"69. In the instant case, undoubtedly, on the basis of the order being passed by the Appellate Authority of NCTE, a fraction of the cause of action does arise in the territorial jurisdiction of this Court, but the same cannot be a sole determining factor to confer jurisdiction upon this Court. Furthermore, it is also pertinent to point out that the concerned Appellate Authority of NCTE exercises pan-India jurisdiction and in the case of appellate authorities/tribunals of such nature, the mere situs of authority would not necessarily be the marker for identifying the jurisdictional High Court, as has been clearly explained by this Court in the case of* ***Chinteshwar Steel****.*
>
> *70. With respect to the argument raised by the learned counsel for the petitioner that even the first impugned order was passed by the NRC, which is also situated within the territorial jurisdiction of this Court, it is needless to state that the concerned NRC deals with the institutions which have been set up within six States and one Union Territory, namely Himachal Pradesh, Delhi, Punjab, Uttar Pradesh, Haryana, Uttarakhand and Chandigarh. It is thus, seen that if the petitioner's argument is accepted, then any decision of NRC with respect to any institution located within the territorial precincts of aforementioned States shall be assailable before this Court. The above argument falls flat in light of the bonafide intent of Article 226 of the Constitution of India as explicated above. If such an argument is accepted, the principle of forum conveniens will lose its relevance, particularly in the scenario wherein most of the head offices of authorities are situated within the territorial boundaries of the NCT of Delhi."*

77. Conversely, if the argument that for the purpose of avoiding confusion and inconsistency, only this Court must exercise jurisdiction over all the authorities located in the territorial jurisdiction of this Court, the same would also fail to muster support from the constitutional scheme enshrined in Article 226 of the Constitution of India, which does not intend any such restrictive interpretation.

78. Therefore, one of the factors which also merits consideration is which Court would be better placed to deal with the prayer and more appositely without facing any jurisdictional obstacle. A further scrutiny should also be made about the manner in which the prayer is couched so as to ascertain whether the same has been done in a clandestine manner to exclude the jurisdiction of other Court(s) or otherwise.

79. However, having noted the aforesaid, the Court also reprimands the inconsistent stand taken by the NMC in raising the objection regarding lack of territorial jurisdiction as it seemingly adopts different stands in similar cases. Such a practice is not only highly depreciable in light of the NMC being State which is expected to act as a model litigant but at times, it also hampers the swift and efficient administration of justice.

80. For instance, recently in the case of ***IQ City Medical* College**, wherein, the petitioner-College was situated in West Bengal and which sought for quashing of the letter of disapproval issued by NMC denying permission of increase in seats for the Academic Year 2024-25, the respondents did not raise any objection with respect to territorial jurisdiction and a decision came to be passed on 19.09.2024.

81. However, as already observed above in ***White Medical College,*** wherein, almost similar grievance was agitated by the petitioner therein, the maintainability of the writ petition was challenged for lack of territorial jurisdiction by the NMC.

82. It is therefore observed that the NMC is blowing hot and cold at the same time when it comes to raising the challenge based on the territorial

jurisdiction. As a sequitur, undue hardship is being caused to the litigants who are ostensibly left in limbo. For instance, after passing of the directions in ***IQ City Medical College*** *vide* order dated 19.09.2024, the petitioner-institution had again approached the Court with a grievance that counselling authority be directed to comply with the judgment and to conduct a special counselling round for the students to be admitted due to the increased intake. However, the Court noted *vide* order dated 30.09.2024 that no such directions could be passed in a disposed of matter.

83. Therefore, in light of the aforesaid, the Court deemed it apposite to analyse multifarious dimensions pertaining to the doctrine of *forum non-conveniens* and reaffirm the settled position of law regarding the same in the case at hand. Since our justice delivery system is already crippled with mounting pendency, it is necessary for the Courts to ensure that the judicial time and resources is used judiciously. Judicial time, in principle and in fact, is public's time and the principles discussed above are only meant to realise the goal that it goes to the deserving causes in an appropriate manner so that the constitutional promise of guaranteed protection of rights is fulfilled in a time-bound manner.

84. In view of the aforesaid, this Court is of the considered opinion that this Court is not the comparatively convenient forum for the parties to effectively ventilate their grievance.

85. Accordingly, the petition stands dismissed alongwith the pending application(s) with a liberty to the petitioner-College to approach the jurisdictional High Court.

86. All rights and contentions of the parties are left open.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 8, 2024
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