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In Chamber

1. Case :- WRIT - A No. - 2071 of 2017

Petitioner :- Manish Kumar Mishra
Respondent :- Union of India and 4 others
Counsel for Petitioner :- Vijay Gautam, Vinod Kumar Mishra
Counsel for Respondent :- A.S.G.I., A.K. Mehrotra U.O.I., Purnendu Kumar Singh, Satish Kumar Rai

With

2. Case :- WRIT - A No. - 2073 of 2017

Petitioner :- Amarjeet Yadav
Respondent :- Union of India and 4 others
Counsel for Petitioner :- Vijay Gautam,Vinod Kumar Mishra
Counsel for Respondent :- A.S.G.I.,Nand.Lal U.O.I.,Satish Kumar Rai

3. Case :- WRIT - A No. - 2074 of 2017

Petitioner :- Rabesh Singh
Respondent :- Union of India and 4 others
Counsel for Petitioner :- Vijay Gautam, Mohammad Fahad
Counsel for Respondent :- A.S.G.I., J.J. Munir, U.O.I.

4. Case :- WRIT - A No. - 2075 of 2017

Petitioner :- Santosh Kumar
Respondent :- Union of India and 4 others
Counsel for Petitioner :- Vijay Gautam, Mohammad Fahad
Counsel for Respondent:- A.S.G.I., Raghuraj Kishore Mishra, U.O.I.

5. Case :- WRIT - A No. - 5634 of 2011

Petitioner :- Jitendra Kumar Nagar
Respondent :- Union of India through Secretary Department of Home Affairs and others
Counsel for Petitioner :- Vijay Gautam, Harendran Singh Bhati, Navin Kumar, Ram Surat Saroj
Counsel for Respondent :- A. S. G. I., S.C., S.K. Om

6. Case :- SPECIAL APPEAL No. - 22 of 2019

Appellant :- Chandra Pal Singh
Respondent :- Union of India and 3 others

Counsel for Appellant :- Dileep Kumar Mishra
Counsel for Respondent :- A.S.G.I., Krishna Mohan Misra, Naresh Chandra Nishad, Rajesh Tripathi

And

7. Case :- SPECIAL APPEAL No. - 23 of 2019

Appellant :- Sikandar Yadav
Respondent :- Union of India and 4 others
Counsel for Appellant :- Shesh Kumar Srivastava, Rajjan Singh
Counsel for Respondent :- A.S.G.I., Manoj Kumar Singh, Manoj Kumar Singh

Hon'ble Mrs. Sunita Agarwal,J.
Hon'ble Anjani Kumar Mishra,J.
Hon'ble Dr. Yogendra Kumar Srivastava,J.

(Per : Dr. Yogendra Kumar Srivastava,J.)

1. I have the benefit of going through the judgment of my esteemed sister Hon'ble Mrs. Sunita Agarwal,J., and I am in respectful agreement with the same. However, in view of the wide expanse and scope of the issue under consideration and the varying interpretations arising therefrom, I am giving a separate concurring judgment, as follows.

2. The reference before this Larger Bench has been occasioned consequent to an order dated 25.01.2017, of a learned Single Judge, expressing a view that there was a conflict of opinion between the views expressed by the Full Bench judgment of this Court in the case of **Rajendra Kumar Mishra Vs. Union of India and others**[1] as also the judgment rendered by a Division Bench of this Court in **The Director General, CRPF, New Delhi Vs. Constable No.850774845,**

1. 2005 (1) UPLBEC 108

Lalji Pandey[2] on one hand and the orders passed by the two Division Benches of this Court in **Bibhuti Narain Singh Vs. Food Corporation of India and others**[3] and the **Har Govind Singh Vs. Union of India and others**[4] in the light of the judgment of the Supreme Court in the case of **Nawal Kishore Sharma Vs. Union of India and others**[5].

3. The learned Judge has made the reference in the following terms:-

> "Having considered the judgments and orders referred to above, I am of the view that there is a conflict of opinion between the Full Bench judgment of this Court in the case of Rajendra Kumar Mishra (supra) and Constable Lalji Pandey (supra) on one hand and the orders passed by the two Division Benches of this Court in the case of Bibhuti Narain Singh (supra) and Har Govind Singh (supra) in the light of the judgment of the Supreme Court in the case of Nawal Kishore Sharma (supra) and this dispute, therefore, needs to be resolved by a larger Bench on the question with regard as to whether the observations of the Supreme Court in the case of Nawal Kishore Sharma (supra) in paragraph 17 can be said to be a binding precedent on this Court to entertain the above writ petitions or whether the observations of paragraph 17 were in the peculiar facts and circumstances of the case of Nawal Kishore Sharma (supra) in view of paragraphs 18 and 19 of the said judgment.
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> OR
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> In the alternative whether the judgment of the Full Bench in Rajendra Kumar Mishra (supra) and Constable Lalji Pandey (supra) can be said to still lay down the correct law in view of the judgment of the Supreme Court in Nawal Kishore Sharma (supra).
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> Therefore, in my opinion this controversy needs to be resolved by a larger Bench of this Court. Let the records of these cases be placed before the Hon'ble Chief Justice for constitution of a larger Bench to resolve the above conflict in the several decisions of this Court."

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2. Special Appeal No.342 of 2010
3. Special Appeal Defective No. 785 of 2014
4. Special Appeal No.158 of 2016
5. (2014) 9 SCC 329

4. In order to appreciate the background of the reference, the judgments and the orders on the basis of which the conflict of opinion has been noticed by the learned Single Judge and the reference has been made, may be adverted to.

5. The question which was considered in the case of **Rajendra Kumar Mishra** (supra) was as to whether this Court had jurisdiction to decide the petition in question and taking into consideration the facts of the case that the petitioner while serving in the Indian Army and on duty at Kanchanpara at Calcutta in West Bengal was given a charge-sheet and thereafter tried by the Summary Court Martial where he was found guilty and awarded punishments, the Full Bench expressed its view that the writ petition challenging the order passed in the Court Martial proceedings was not maintainable before this Court as no part of the cause of action had arisen in the State of U.P.

6. In coming to the aforesaid conclusion the Full Bench took note of the fact that the misconduct was committed at Calcutta and Summary Court Martial was also held at Calcutta therefore the entire cause of action had arisen at Calcutta and merely for the reason that the petitioner was thereafter residing at Ballia (in the State of U.P.) would not give jurisdiction to the Court. Reliance in this regard was placed upon the Constitution Bench judgments rendered by the Supreme Court in **Lt. Col. Khajoor Singh Vs. Union of India**[6], **K.S. Rashid and Son Vs. Income Tax Investigation Commission**[7], and **Election Commission, India Vs. Saka**

6. AIR 1961 SC 532
7. AIR 1954 SC 207

Venkata Subba Rao and others[8], for the proposition that the jurisdiction conferred on the High Court by Article 226 does not depend upon the residence or location of the person applying to it for relief and that a writ cannot be issued beyond the territorial jurisdiction of the High Court.

7. The Full Bench also referred to the judgments in **Board of Trustees for the Port of Calcutta Vs. Bombay Flour Mills Pvt. Ltd.**[9], **Aligarh Muslim University Vs. Vinay Engineering Enterprises (P) Ltd.**[10] and **Oil and Natural Gas Commission Vs. Utpal Kumar Basu**[11] on the point that the question as to whether the cause of action had arisen within the territory of the particular Court would have to be determined in each case on its own facts in the context of the subject mater of the litigation and the relief claimed and while determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration although without embarking upon an enquiry as to the correctness or otherwise of the said facts.

8. The contention sought to be raised by the petitioner, referring to the judgment of the Supreme Court in **Dinesh Chandra Gahtori Vs. Chief of Army Staff**[12], that the Chief of Army Staff may be sued anywhere in the country, was repelled by placing reliance on the Constitution Bench decisions in **K.S. Rashid and Son Vs. Income Tax**

8. AIR 1953 SC 210
9. AIR 1995 SC 577
10. (1994) 4 SCC 710
11. (1994) 4 SCC 711
12. (2001) 9 SCC 525

Investigation Commission[7] and **Election Commission Vs. Saka Venkata Subba Rao and others**[8].

9. In order to fully appreciate the import of the Full Bench judgment in the case of **Rajendra Kumar Mishra**, the question which was taken up for consideration and the opinion expressed by the Larger Bench, are being extracted below:-

> "2. The short question in this case is whether this Court has jurisdiction to decide this petition."
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> x x x x x
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> "40. For the reasons given above we are of the opinion that the Chief of Army Staff can only be sued either at Delhi where he is located or at a place where the cause of action, wholly or in part, arises.
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> 41. We may mention that a "cause of action" is the bundle of facts which, taken with the law applicable, gives the plaintiff a right to relief against the defendant. However, it must include some act done by the defendant, since in the absence of an act, no cause of action can possibly occur. (Vide *Radhakrishnamurithy v. Chandrasekhara Rao, AIR 1966 A.P. 334; Ram Awalamb v. Jata Shankar, AIR 1969 All 526 (FB),* and *Salik Ram Adya Prasad v. Ram Lakhan and others, AIR 1973 All. 107)*.
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> 42. In the present case no part of the cause of action has arisen in U.P. Hence in our opinion the writ petition is not maintainable in this Court. It is accordingly dismissed. The decision of the Division Bench in *Kailash Nath Tiwari v. Union of India, (2002) 1 UPLBEC 468* in our opinion does not lay down the correct law and is overruled."

10. In the aforesaid manner the question considered by the Full Bench was whether the Court had jurisdiction to decide the petition at hand and it expressed its view that since no part of the cause of action in the case had arisen in the State of Uttar Pradesh the writ petition was not maintainable

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7. AIR 1954 SC 207
8. AIR 1953 SC 210

before the Court.

11. In **The Director General, CRPF, New Delhi Vs. Constable No.850774845, Lalji Pandey**[2], the respondent, who was a constable in the Central Reserve Police Force posted at Hyderabad, had absented himself without leave, and therefore the departmental proceedings were conducted against him and an order of dismissal was passed. The appeal and revision filed thereagainst were also rejected. The orders of the dismissal as well as the appellate and revisional orders were passed outside the territorial jurisdiction of this Court. It was in the light of the aforesaid facts that the Division Bench following the judgment of the Full Bench in the case of **Rajendra Kumar Mishra** held that mere communication of the orders at the residential address of the respondent in district Bhadohi (in the State of U.P.) would not confer territorial jurisdiction to this Court.

12. The contra views noticed in the referring order are the judgment in the case of **Bibhuti Narain Singh** and the order passed in the case of **Har Govind Singh** (supra).

13. In the case of **Bibhuti Narain Singh,** the departmental proceedings were undertaken at a place beyond the territorial jurisdiction of this Court but the order of penalty was served upon the petitioner at Faizabad (in the State of U.P.) where he was posted and in view thereof the Division Bench was of the view that since the punishment order was given effect to at Faizabad by withholding increments from his salary to be drawn at Faizabad, the order of imposition of

2. Special Appeal No.342 of 2010

penalty had infringed the right of the appellant to get full salary at Faizabad, therefore, he had every legal right to espouse his cause before the Court within whose jurisdiction his place of posting was covered and in this regard, the judgment of the Apex Court in the case of **Nawal Kishore Sharma** (supra) was followed.

14. The facts of the case of **Har Govind Singh Vs. Union of India and others**[4] were that the appellant had been dismissed at Hyderabad and after his dismissal he came back to his native place in Uttar Pradesh and preferred an appeal to the statutory authority which was rejected and the order of rejection was communicated to him within the State of U.P., and in view of this, the Division Bench which was hearing the special appeal against the decision of the learned Single Judge dismissing the writ petition on the ground that no fraction of the cause of action had arisen in the State of U.P. so as to maintain the petition, expressed its view that in the facts of the case a fraction of the transaction had taken place in the State of U.P., therefore the petitioner had a cause of action to maintain the petition, and even otherwise after twelve years of filing of the petition in the year 2004, the same could not have been dismissed on the ground of want of territorial jurisdiction. The Division Bench entertained the special appeal following the judgment of the Supreme Court in **Nawal Kishore Sharma** (supra) and directed the appeal to be listed for admission/disposal by order dated 27.04.2016, which has been taken note of by the learned Single Judge while making the reference.

4. Special Appeal No.158 of 2016

15. It has been pointed out that the aforementioned special appeal in the case of **Har Govind Singh** has been finally decided in terms of the judgment dated 26.11.2019 whereby the special appeal has been allowed following the judgment in the case of **Nawal Kishore Sharma** (supra).

16. The judgment in the case of **Nawal Kishore Sharma**, which has been followed in the two contra opinions, noticed in the referring order was rendered in a case where the appellant who was on off-shore duty with the Shipping Corporation of India was sent for medical treatment ashore at Adani, Mundra Port and thereafter he was considered permanently unfit for sea-service and an order was passed cancelling the registration of the appellant as a seaman. Copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. The appellant is said to have sent a representation from his home in the state of Bihar to the respondent authorities claiming disability compensation which was rejected and the order was sent to him at his home address at Gaya, Bihar. In the facts of the case where the appellant upon being declared permanently unfit forcing him to stay at his native place in Bihar wherefrom he had submitted representations with regard to disability compensation which were entertained by the respondent and disability thereafter was communicated to him at his home address in Bihar, the Hon'ble Court held that considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the High Court where he received the letter of refusal disentitling him from disability

compensation.

17. Notice was also taken of the fact that after the writ petition was filed at the Patna High Court the same was entertained and a notice was issued. The respondents appeared and participated in the proceedings before the High Court and after hearing counsel appearing for both the parties an interim order was passed directing the respondent authorities to pay an amount which was to be subject to the result of the writ petition and pursuant to the said interim order the respondent authorities remitted the amount less deduction of the TDS to the bank account of the appellant. However, when the writ petition was taken up for hearing, the High Court took the view that no cause of action not even a fraction of cause of action had arisen within its territorial jurisdiction.

18. Considering the aforementioned facts that when the writ petition was heard for the purposes of grant of interim relief no objections were raised by the respondents with regard to the territorial jurisdiction, the order passed by the High Court dismissing the writ petition on the ground that not even a fraction of cause of action had arisen within its territorial jurisdiction, was held to be unsustainable.

19. After discussing the legal position on the point, the Supreme Court in the case of **Nawal Kishore Sharma,** held as follows:-

> "16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has

to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.

17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, the appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.

18. Apart from that, from the counter affidavit of the respondents and the documents annexed therewith, it reveals that after the writ petition was filed in the Patna High Court, the same was entertained and notices were issued. Pursuant to the said notice, the respondents

> appeared and participated in the proceedings in the High Court. It further reveals that after hearing the counsel appearing for both the parties, the High Court passed an interim order on 18.9.2012 directing the authorities of Shipping Corporation of India to pay at least a sum of Rs.2.75 lakhs, which shall be subject to the result of the writ petition. Pursuant to the interim order, the respondent Shipping Corporation of India remitted Rs.2,67,270/- (after deduction of income tax) to the bank account of the appellant. However, when the writ petition was taken up for hearing, the High Court took the view that no cause of action, not even a fraction of cause of action, has arisen within its territorial jurisdiction.
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> 19. Considering the entire facts of the case narrated hereinbefore including the interim order passed by the High Court, in our considered opinion, the writ petition ought not to have been dismissed for want of territorial jurisdiction. As noticed above, at the time when the writ petition was heard for the purpose of grant of interim relief, the respondents instead of raising any objection with regard to territorial jurisdiction opposed the prayer on the ground that the appellate-writ petitioner was offered an amount of Rs.2.75 lakhs, but he refused to accept the same and challenged the order granting severance compensation by filing the writ petition. The impugned order, therefore, cannot be sustained in the peculiar facts and circumstances of this case.
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> 20. In the aforesaid, the appeal is allowed and the impugned order passed by the High Court is set aside and the matter is remitted to the High Court for deciding the writ petition on merits."

20. As noticed earlier the question considered by the Full Bench in the case of **Rajendra Kumar Mishra** was as to whether this Court had jurisdiction to decide the said petition and taking into consideration the facts of the case at hand the said question was answered by stating that since in the said case no part of the cause of action had arisen in the State of Uttar Pradesh therefore the writ petition was not maintainable before this Court and the same was accordingly dismissed.

21. The judgment in the case of **Constable Lalji Pandey** rendered by a Division Bench of this Court was also based on the facts of the case and taking in view that the order of dismissal and the revisional order had been passed outside the territorial limits of the State of U.P. it was held that mere communication of the orders at the residence of the petitioner would not confer any jurisdiction on this Court.

22. The Larger Bench in the case of **Rajendra Kumar Mishra** after referring to the case law on the point had held that the question as to whether the cause of action had arisen within the territory of the particular Court would have to be determined in each case on its own facts in the context of the subject matter of the litigation and the relief claimed.

23. The Supreme Court in the case of **Nawal Kishore Sharma** reiterated the parameters for invocation of the jurisdiction of the High Court under Article 226 against an authority/person residing outside the territorial jurisdiction of the High Court by holding that cause of action if wholly or in part arose within territorial jurisdiction of High Court or not is to be determined in the light of nature and character of proceedings and that the High Court can issue a writ if cause of action wholly or partially arises within its territorial jurisdiction even if person or authority against whom writ is issued is located outside the territorial jurisdiction. It was, however, also stated that in order to maintain a petition the petitioner had to establish that his legal right had been infringed by the respondents within territorial limit of the High Court's jurisdiction.

24. On the facts of the case, where the appellant upon being declared permanently unfit for sea-service due to dilated cardiomyopathy which forced him to stay in his native place in Bihar wherefrom he had been making all correspondence with regard to his disability compensation stated to be due from the respondent-employer and all replies including rejection of the claim for disability pension having been addressed to him at his address in Bihar and further the respondents having participated in the writ proceedings without raising objection as to territorial jurisdiction, it was held that part or fraction of cause of action did arise within the jurisdiction of the High Court where the appellant received a letter of refusal disentitling him from the disability pension.

25. There does not seem to be any apparent conflict of opinion between the judgment rendered by the Full Bench of this Court in the case of **Rajendra Kumar Mishra** and that of the Supreme Court in the case of **Nawal Kishore Sharma**. In both the judgments it has been held that the question as to whether cause of action wholly or in part had arisen within the territorial jurisdiction of a High Court would have to be determined in each case on its own facts and in the light of the nature and character of proceedings under Article 226.

26. Having said so, since the question of territorial jurisdiction is coming up before this Court in a fairly large number of matters, as has been pointed out by the counsel for the parties, it would be worthwhile to clarify the position

and restate the law on the point.

27. Article 226 confers extraordinary jurisdiction on the High Court to issue prerogative writs for enforcement of fundamental rights or for any other purpose. The jurisdiction, though is to be based on discretion and equitable considerations, is wide and expansive with no fetters having been placed on the exercise of this extraordinary jurisdiction. The provision as it originally stood, reads as under:-

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

28. The object of the makers of our Constitution in adopting Article 226 was to confer wide powers on the High Courts in issuing directions or writs for the enforcement of fundamental rights and power to issue directions for any other purpose. The observations made in the case of **Election Commission, India Vs. Saka Venkata Subba Rao and others**[8], may be referred to in this regard:-

> "6. ...In that situation, the makers of the Constitution, having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to

8. AIR 1953 SC 210

> provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs, which the Courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States' sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc. "for any other purpose" being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England..."

29. The amplitude of the powers under Article 226 which enables the High Court to reach injustice wherever it is found has been explained in **Dwarka Nath Vs. Income Tax Officer, Special Circle D-Ward, Kanpur and another**[13], as under:-

> "4. …This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs.
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> It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Art. 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the

13. AIR 1966 SC 81

> High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels...”

30. The jurisdiction conferred on the High Courts under Article 226, as it originally stood from its very inception, was very wide with only two limitations placed upon the exercise of these powers: (i) that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction, i.e., the writs issued by the Court cannot run beyond the territories subject to its jurisdiction; (ii) that the person or authority to whom the High Court is empowered to issue the writs must be within those territories, and as an implication they must be amenable to the jurisdiction of the Court either by residence or location within those territories.

31. The aforesaid provision and the power of the High Court to issue writs in the context of its territorial jurisdiction came up before a Constitution Bench of the Supreme Court in the case of **Saka Venkata Subba Rao** (supra) where an appeal had been filed from an order passed by the High Court of Madras issuing a writ of prohibition restraining the Election Commission, a statutory authority constituted by the President having its offices permanently located at New Delhi, from enquiring into the alleged disqualification of the respondent for membership of the Madras Legislative Assembly. Reversing the decision of the High Court of Madras, the Supreme Court repelled the proposition that the location of the subject matter or the cause of action or the parties within the territorial limits of the High Court's jurisdiction was sufficient to vest the High

Court with the substance of jurisdiction to issue prerogative writs to an authority even though such authority was located outside its jurisdiction. **Patanjali Sastri, C.J.,** speaking for the Court, made the following observations:-

> "6. Turning now to the question as to the powers of a High Court under article 226, it will be noticed that article 225 continues to the existing High Courts the same jurisdiction and powers as they possessed immediately before the commencement of the Constitution. Though there had been some conflict of judicial opinion on the point, it was authoritatively decided by the Privy Council in the *Parlakimedi case (70 I.A. 129)*, that the High Court of Madras - the High Courts of Bombay and Calcutta were in the same position - had no power to issue what were known as high prerogative writs beyond the local limits of its original civil jurisdiction, and the power to issue such writs within those limits was derived by the Court as successor of the Supreme Court which had been exercising jurisdiction over the Presidency Town of Madras and was replaced by the High Court established in pursuance of the Charter Act of 1861. The other High Courts in India had no power to issue such writs at all..."

32. Referring to the origin of the writs, as pointed out by **Prof. Holdsworth** in **History of English Law**[14], the Constitution Bench held that such limitation was a logical consequence of the origin and development of the power to issue prerogative writs as a special remedy. The observations made in this regard are as follows:-

> "7. Such limitation is indeed a logical consequence of the origin and development of the power to issue prerogative writs as a special remedy in England. Such power formed no part of the original or the appellate jurisdiction of the Court of King's Bench. As pointed out by Prof. Holdsworth *(History of English Law, Vol. I, p. 212 et seq)* these writs had their origin in the exercise of the King's prerogative power of superintendence over the due observance of the law by his officials and tribunals, and were issued by the Court of King's Bench — habeas corpus, that the King may know

14. History of English Law, Vol. I, p. 212 by Prof. Holdsworth

> whether his subjects were lawfully imprisoned or not; certiorari, that he may know whether any proceedings commenced against them are conformable to the law; mandamus, to ensure that his officials did such acts as they were bound to do under the law, and prohibition, to oblige the inferior tribunals in his realm to function within the limits of their respective jurisdiction. See also the introductory remarks in the judgment in the *Parlakimedi case 70 I.A. 129*. These writs were thus specifically directed to the persons or authorities against whom redress was sought and were made returnable in the court issuing them and, in case of disobedience, were enforceable by attachment for contempt. These characteristics of the special form of remedy rendered it necessary for its effective use that the persons or authorities to whom the Court was asked to issue these writs should be within the limits of its territorial jurisdiction. We are unable to agree with the learned Judge below that if a tribunal or authority permanently located and normally carrying on its activities elsewhere exercises jurisdiction within those territorial limits so as to affect the rights of parties therein, such tribunal or authority must be regarded as "functioning" within the territorial limits of the High Court and being therefore amenable to its jurisdiction under article 226."

33. Regarding the "cause of action" in the context of the power to issue writs under Article 226, it was stated thus:-

> "8. ...The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority "within the territories" in relation to which the High Court exercises jurisdiction..."

34. Taking a similar view another Constitution Bench in **K.S. Rashid and Son Vs. Income Tax Investigation Commission**[7] held that a writ Court cannot exercise its power under Article 226 beyond its territorial jurisdiction.

35. The question with regard to territorial jurisdiction

7. AIR 1954 SC 207

again arose in **Lt. Col. Khajoor Singh Vs. Union of India**[6], which was a case where the petitioner, who was serving in the Jammu & Kashmir State Forces, was served with an order passed by the Government of India prematurely retiring him from service and the said order was challenged before the High Court of Jammu and Kashmir. A preliminary objection being raised by the Union of India that since the authority against which the writ was sought was outside the territorial jurisdiction of the High Court the petition was not maintainable, the High Court dismissed the petition relying upon the earlier Constitution Bench judgments in the cases of **Saka Venkata Subba Rao** and **K.S. Rashid**. The High Court, however, granted certificate under Article 132 of the Constitution whereupon the matter came up for hearing before a Bench of five Judges of the Supreme Court and during the course of hearing the appellant not only tried to distinguish the previous judgments of the Supreme Court but also tried to question their correctness and in view thereof the matter was placed before a Larger Bench of seven Judges.

36. The majority judgment in the case of **Khajoor Singh** rendered by **B.P. Sinha,C.J.**, reaffirmed and approved the earlier view taken by the Constitution Bench judgments in **Saka Venkata Subba Rao** and **K.S. Rashid** (supra) and it was held that the petition filed at the High Court of Jammu and Kashmir was not maintainable. The two questions considered in the majority judgment, are as follows:-

"11. The two main questions which arise, therefore, are :

6. AIR 1961 SC 532

(i) whether the Government of India as such can be said to have a location in a particular place, viz., New Delhi, irrespective of the fact that its authority extends over all the States and its officers function throughout India, and (ii) whether there is any scope for introducing the concept of cause of action as the basis of exercise of jurisdiction under Art. 226. Before, however, we deal with these two main questions, we would like to clear the ground with respect to two subsidiary matters which have been urged on behalf of the appellant."

37. The majority judgment thereafter proceeded to observe as follows:-

"12. The first argument is that the word "authority" used in Art. 226 cannot and does not include Government. We are not impressed by this argument. In interpreting the word "authority" we must have regard to the clause immediately following it. Art. 226 provides for "the issue to any person or authority including in appropriate cases any Government" within those territories. It is clear that the clause "including inappropriate cases any Government" goes with the preceding word "authority", and on a plain and reasonable construction it means that the word "authority" in the context may include any Government in an appropriate case. The suggestion that the said clause is intended to confer discretion on the High Courts in the matter of issuing a writ or direction on any Government seems to us clearly unsustainable. To connect this clause with the issuance of a writ or order and to suggest that in dealing with cases against Government the High Court has to decide whether the case is appropriate for the issue of the order is plainly not justified by the rules of grammar. We have no hesitation in holding that the said clause goes with the word "authority" and that its effect is that the authority against whom jurisdiction is conferred on the High Court to issue a writ or appropriate order may in certain cases include a Government. Appropriate cases in the context means cases in which orders passed by a Government or their subordinates are challenged, and the clause therefore means that where such orders are challenged the High Court may issue a writ against the Government. The position, therefore, is that under Art. 226 power is conferred on the High Court to issue to any person or authority or in a given case to any Government, writs or orders there specified for enforcement of any of the rights

conferred by Part III and for any other purpose. Having thus dealt with the two subsidiary points raised before us, we may now proceed to consider the two main contentions which arise for our decision in the present appeal."

38. In respect of the first question, it was stated thus:-

"13. This brings us to the first question, namely, whether the Government of India as such can be said to be located at one place, namely, New Delhi. The main argument in this connection is that the Government of India is all-pervasive and is functioning throughout the territory of India and therefore every High Court has power to issue a writ against it, as it must be presumed to be located within the territorial jurisdiction of all State High Courts. This argument in our opinion confuses the concept of location of a Government with the concept of its functioning. A Government may be functioning all over a State or all over India; but it certainly is not located all over the State or all over India. It is true that the Constitution has not provided that the seat of the Government of India will be at New Delhi. That, however, does not mean that the Government of India as such has no seat where it is located. It is common knowledge that the seat of the Government of India is in New Delhi and the Government as such is located in New Delhi. The absence of a provision in the Constitution can make no difference to this fact. What we have to see, therefore, is whether the words of Art. 226 mean that the person or authority to whom a writ is to be issued has to be resident in or located within the territories of the High Court issuing the writ? The relevant words of Art. 226 are these—

> "Every High Court shall have power... to issue to any person or authority... within those territories..."

So far as a natural person is concerned, there can be no doubt that he can be within those territories only if he resides therein either permanently or temporarily. So far as an authority is concerned, there can be no doubt that if its office is located therein it must be within the territory. But do these words mean with respect to an authority that even though its office is not located within those territories it will be within those territories because its order may affect persons living in those territories? Now it is clear that the jurisdiction conferred on the High Court by Art. 226 does not depend upon the residence or location of the person applying to it for relief; it depends only on the person or

authority against whom a writ is sought being within those territories. It seems to us therefore that it is not permissible to read in Art. 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Art. 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Art. 226. The introduction of such a concept may give rise to confusion and conflict of jurisdictions. Take, for example, the case of an order passed by an authority in Calcutta, which affects six brothers living, say, in Bombay, Madras, Allahabad, Jabalpur, Jodhpur and Chandigarh. The order passed by the authority in Calcutta has thus affected persons in six States. Can it be said that Art. 226 contemplates that all the six High Courts have jurisdiction in the matter of giving relief under it? The answer must obviously be 'No', if one is to avoid confusion and conflict of jurisdiction. As we read the relevant words of Art. 226 (quoted above) there can be no doubt that the jurisdiction conferred by that Article on a High Court is with respect to the location or residence of the person or authority passing the order and there can be no question of introducing the concept of the place where the order is to have effect in order to determine which High Court can give relief under it. It is true that this Court will give such meaning to the words used in the Constitution as would help towards its working smoothly. If we were to introduce in Art. 226 the concept of the place where the order is to have effect we would not be advancing the purposes for which Art. 226 has been enacted. On the other hand, we would be producing conflict of jurisdiction between various High Courts as already shown by the illustration given above. Therefore, the effect of an order by whomsoever it is passed can have no relevance in determining the jurisdiction of the High Court which can take action under Art. 226. Now, functioning of a Government is really nothing other than giving effect to the

> orders passed by it. Therefore it would not be right to introduce in Art. 226 the concept of the functioning of Government when determining the meaning of the words "any person or authority within those territories". By introducing the concept of functioning in these words we shall be creating the same conflict which would arise if the concept of the place where the order is to have effect is introduced in Art. 226. There can, therefore, be no escape from the conclusion that these words in Art. 226 refer not to the place where the Government may be functioning but only to the place where the person or authority is either resident or is located. So far therefore as a natural person is concerned, he is within those territories if he resides there permanently or temporarily. So far as an authority (other than a Government) is concerned, it is within the territories if its office is located there. So far as a Government is concerned it is within the territories only if its seat is within those territories."

39. The first question was answered by the Supreme Court in the following manner:-

> "14. The seat of a Government is sometimes mentioned in the Constitutions of various countries but many a time the seat is not so mentioned. But whether the seat of a Government is mentioned in the Constitution or not, there is undoubtedly a seat from which the Government as such functions as a fact. What Art. 226 requires is residence or location as a fact and if therefore there is a seat from which the Government functions as a fact even though that seat is not mentioned in the Constitution the High Court within whose territories that seat is located will be the High Court having jurisdiction under Art. 226 so far as the orders of the Government as such are concerned. Therefore, the view taken in *Election Commission, India v. Saka Venkata Subba Rao (AIR 1953 SC 210)* and *K.S. Rashid and Son* v. *The Income Tax Investigation Commission* (AIR 1954 SC 207) that there is twofold limitation on the power of the High Court to issue writs etc. under Art. 226, namely, (i) the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction, and (ii) the person or authority to whom the High Court is empowered to issue such writs must be "within those territories" which clearly implies that they must be amenable to its jurisdiction either by

residence or location within those territories, is the correct one."

40. In respect of the second question which was with regard to the cause of action, it was observed as follows:-

"15. This brings us to the second point, namely, whether it is possible to introduce the concept of cause of action in Art. 226 so that the High Court in whose jurisdiction the cause of action arose would be the proper one to pass an order thereunder. Reliance in this connection has been placed on the judgment of the Privy Council in *Ryots of Garabandho v. Zamindar of Parlakimedi (70 Ind App 129 : AIR 1943 PC 164)*. In that case the Privy Council held that even though the impugned order was passed by the Board of Revenue which was located in Madras the High Court would have no jurisdiction to issue a writ quashing that order, as it had no jurisdiction to issue a writ beyond the limits of the city of Madras except in certain cases, and that particular matter was not within the exceptions. This decision of the Privy Council does apparently introduce an element of the place where the cause of action arose in considering the jurisdiction of the High Court, to issue a writ. The basis of that decision, however, was the peculiar history of the issue of writs by the three Presidency High Courts as successors of the Supreme Courts, though on the literal construction of clause 8 of the Charter of 1800 conferring jurisdiction on the Supreme Court of Madras, there could be little doubt that the Supreme Court would have the same jurisdiction as the Justices of the Court of King's Bench Division in England for the territories which then were or thereafter might be subject to or depend upon the Government of Madras. It will therefore not be correct to put too much stress on the decision in that case. The question whether the concept of cause of action could be introduced in Art. 226 was also considered in Saka Venkata Subba Rao's case, 1953 SCR 1144 and was repelled in these words:-

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

16. Article 226 as it stands does not refer anywhere to the

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

17. We have given our earnest consideration to the language of Art. 226 and the two decisions of this Court referred to above. We are of opinion that unless there are clear and compelling reasons, which cannot be denied, we

> should not depart from the interpretation given in these two cases and indeed from any interpretation given in an earlier judgment of this Court, unless there is a fair amount of unanimity that the earlier decisions are manifestly wrong. This Court should not, except when it is demonstrated beyond all reasonable doubt that its previous ruling, given after due deliberation and full hearing, was erroneous, go back upon its previous ruling, particularly on a constitutional issue. In this case our reconsideration of the matter has confirmed the view that there is no place for the introduction of the concept of the place where the impugned order has effect or of the concept of functioning of a Government, apart from the location of its office concerned with the case, or even of the concept of the place where the cause of action arises in Art. 226 and that the language of that Article is plain enough to lead to the conclusion at which the two cases of this Court referred to above arrived. If any inconvenience is felt on account of this interpretation of Art. 226 the remedy seems to be a constitutional amendment. There is no scope for avoiding the inconvenience by an interpretation which we cannot reasonably, on the language of the Article, adopt and which the language of the Article does not bear."

41. Expressing his inability to agree with the majority view, **K.Subba Rao,J.** (as he then was), construing the words "in appropriate cases" took the view that the petition in the High Court of Jammu and Kashmir was maintainable and summarised his view by stating the following propositions:-

> "40. ...(1) The power of the High Court under Art. 226 of the Constitution is of the widest amplitude and it is not confined only to issuing of writs in the nature of habeas corpus, etc., for it can also issue directions or orders against any person or authority, including in appropriate cases any Government. (2) The intention of the framers of the Constitution is clear, and they used in the Article words "any Government" which in their ordinary significance must include the Union Government. (3) The High Court can issue a writ to run throughout the territories in relation to which it exercises jurisdiction and to the person or authority or Government within the said territories. (4) The Union Government has no constitutional situs in a particular place, but it exercise its executive powers in

> respect of matters to which Parliament has power to make laws and the power in this regard is exercisable throughout India; the Union Government must, therefore, be deemed in law to have functional existence throughout India. (5) When by exercise of its powers the Union Government makes an order infringing the legal right or interest of a person residing within the territories in relation to which a particular High Court exercises jurisdiction, that High Court can issue a writ to the Union Government, for in law it must be deemed to be "within" that State also. (6) The High Court by issuing a writ against the Union Government is not travelling beyond its territorial jurisdiction, as the order is issued against the said Government "within" the State. (7) The fact that for the sake of convenience a particular officer of the said Government issuing an order stays outside the territorial limits of the High Court is not of any relevance, for it is the Union Government that will have to produce the record or carry out the order, as the case may be. (8) The orders issued by the High Court can certainly be enforced against the Union Government, as it is amenable to its jurisdiction, and if they are disobeyed it will be liable to contempt. (9) Even if the Officers physically reside outside its territorial jurisdiction, the High Court can always reach them under the Contempt of Courts Act, if they choose to disobey the orders validly passed against the Union Government which cannot easily be visualized or ordinarily be expected. (10) The difficulties in communicating the orders pertain to the rules of procedure and adequate and appropriate rules can be made for communicating the same to the Central Government or its officers."

42. A point on the doctrine of merger arose in **Collector of Customs, Calcutta Vs. East India Commercial Company Limited, Calcutta and others**[15]. In this case a writ petition under Article 226 was filed before the High Court of Calcutta against an order of confiscation passed by the Collector of Customs, Calcutta which had been confirmed by the Central Board of Revenue. Upon a preliminary objection being raised by the Department placing reliance upon the decision in the case of **Saka Venkata Subba Rao** to the effect that since the

15. AIR 1963 SC 1124

Central Board of Revenue was not within the territorial jurisdiction of the High Court, no writ could be issued against it, the matter was referred to a Full Bench of the High Court wherein the following questions were considered:-

> "(i) Whether any writ could issue against the Central Board of Revenue which was a party to the writ petition and which was permanently located outside the jurisdiction of the High Court; and (ii) Whether if no writ could issue against the Central Board of Revenue any writ could be issued against the Collector of Customs (Original Authority) when the Central Board of Revenue (Appellate Authority) had merely dismissed the appeal."

43. On the first question, it was held that the High Court had no jurisdiction to issue a writ against the Central Board of Revenue in view of the decision in **Saka Venkata Subba Rao**. However, on the second question, the Full Bench took a view that since the Central Board of Revenue had only dismissed the appeal against the order of Collector of the Customs, Calcutta, the order of the Original Authority was operating and since the said authority was situate within the jurisdiction of the High Court, therefore, it had jurisdiction to entertain the petition.

44. The question as to whether the High Court would have jurisdiction to issue a writ against the original order in spite of the fact that the same had been taken in appeal to the Central Board of Revenue against which the High Court could not issue a writ, was considered before the Supreme Court upon an appeal filed against the judgment of the High Court. Speaking for the Bench, **K.N. Wanchoo,J.** (as he then was) observed as follows:-

> "4. The question therefore turns on whether the order of the original authority becomes merged in the order of the Appellate Authority even where the Appellate Authority merely dismisses the appeal without any modification of the order of the original authority. It is obvious that when an appeal is made, the Appellate Authority can do one of three things, namely, (*i*) it may reverse the order under appeal, (*ii*) it may modify that order, and (*iii*) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the Appellate Authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the Appellate Authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the Appellate Authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the Appellate Authority and the third kind of order passed by it. In all these three cases after the Appellate Authority has disposed of the appeal, the operative order is the order of the Appellate Authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification. Therefore, if the Appellate Authority is beyond the territorial jurisdiction of the High Court it seems difficult to hold even in a case where the Appellate Authority has confirmed the order of the original authority that the High Court can issue a writ to the original authority which may even have the effect of setting aside the order of the original authority when it cannot issue a writ to the Appellate Authority which has confirmed the order of the original authority."

45. A similar view had been taken earlier in **Burhanpur National Textile Workers' Union, Burhanpur Vs. Labour Appellate Tribunal of India at Bombay and others**[16], wherein it was stated as follows:-

> "26. ...The power to compel an inferior tribunal so to certify its record must of necessity be territorial in extent

16. AIR 1955 Nag 148

> and has been rendered more so by the manner in which Article 226 has been framed in the Constitution. If we cannot make our writ run to the Appellate Tribunal at Bombay so as to compel it to certify its record to us or to bind it with our consequent order; we have no jurisdiction to interfere with its decision at all. To interfere with the order of the Industrial Court in such circumstances would be improper. I regret I have to refer to my decision given when sitting with Choudhuri, J. in — *'Ramkrishna v. Daoosingh', AIR 1953 Nag 357 (E)*, that the Court does not do indirectly what it cannot do directly and this Court should be loath to quash an intermediate order so as to get rid of a subsequent order by implication. Further, our action in quashing the order of the Industrial Court would place that Court and the Registrar on the horns of a dilemma. Under the Act they would be bound by the order of the Appellate Tribunal, and equally bound to give effect to our order. If we do not quash the order of the Appellate Tribunal and leave it operative, we indirectly compel the Industrial Court to disobey that order. The Industrial Court and the Registrar are thus exposed to a commitment for contempt at the instance of the Appellate Tribunal and equally at our instance, if they disobey our writ. Such a situation cannot be allowed to arise and is against the practice of Courts."

46. The aforementioned decisions were on the principle that once an order of an original authority is taken in appeal to the appellate authority, which is located beyond the territorial jurisdiction of the High Court, it is the order of the appellate authority which is the effective order after the appeal is disposed of, and as the High Court cannot issue a writ against the appellate authority for want of territorial jurisdiction, it would not be open to the High Court to issue a writ to the original authority though the same may be within its territorial jurisdiction. In other words, once the appeal is disposed of, though the appellate authority may have merely confirmed the order of the appellate authority and dismissed the appeal, the High Court could not issue a

writ to the original authority, which was within its territorial jurisdiction, since it would have the effect of setting aside the order of the appellate authority which was located beyond the jurisdiction of the High Court. The effect of the decisions was thus to hold that even if the cause of action originally arose within the territorial jurisdiction of a High Court, if the appeal lay to an authority beyond its territorial jurisdiction, the order of the appellate authority could not be subjected to challenge before that High Court within whose jurisdiction the original cause of action arose.

47. Another effect of the above decisions was that the only High Court, at that point of time, which could exercise jurisdiction to issue any direction, order or writ to the Union of India, was the Punjab High Court.

48. The resulting inconvenience to persons residing far away from New Delhi who were aggrieved by some order of the Government of India was noticed by the Constitution Bench in the case of **Khajoor Singh** and it was stated that the argument of inconvenience may be a reason for making a suitable constitutional amendment in Article 226, but the same could not affect the plain language of the said provision. The observations made in the judgment are as follows:-

> "16. ...The concept of cause of action cannot in our opinion be introduced in Art. 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to person residing far away from New Delhi who are aggrieved by

> some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Art. 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Art. 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it."

49. The Supreme Court in the Constitution Bench judgment referred to above held that "cause of action" was not at all relevant for the purpose of conferring jurisdiction on High Courts under Article 226, as it originally stood, and the attempt to import the said concept was repelled.

50. In order to overcome the hardship faced by the litigants from distant places in regard to invoking writ jurisdiction against the Central Government, the Constitution (Fifteenth) Amendment Act, 1963, was brought in, in terms whereof, after clause (1), clause (1-A) was inserted in Article 226 (renumbered as clause (2) by the Constitution (Forty-second) Amendment Act, 1976).

51. The amended provision now reads as under:-

> "**226. Power of the High Courts to issue certain writs**.—(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
>
> (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the

> cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

52. The statement of objects and reasons giving the underlying object of the amendment was stated in the following words:-

> "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 arises may also have jurisdiction to issue appropriate directions, orders or writs.*"

53. With the coming into force of the Constitution (Fifteenth) Amendment, on October 5, 1963, and the insertion of clause (1-A), subsequently renumbered as clause (2), the jurisdiction of the High Court could now be invoked if the cause of action arose wholly or in part within the territorial jurisdiction of that High Court.

54. It is thus seen that the Constitution (Fifteenth) Amendment introduced the concept of cause of action, which the Supreme Court, in its majority judgment in the case of **Khajoor Singh**, had held to be not included in the language of Article 226.

55. In view of Section 141 CPC, the procedure provided under the Code of Civil Procedure, may not be held to be applicable to writ proceedings, however, the concept of cause of action having been introduced by virtue of the

Constitution (Fifteenth) Amendment, the phraseology used in Section 20(c) and Article 226(2) of the Constitution being *pari materia,* the meaning assigned to the expression "cause of action" in the context of its use under Section 20(c), may be adverted to. This is more so, for the reason that the expression "cause of action" has not been defined in the Constitution.

56. Section 20 of the Code of Civil Procedure recognises the territorial jurisdiction of Courts, *inter alia*, wherever the cause of action wholly or in part arises.

57. The judicially settled meaning which the expression "cause of action" has acquired, has been summarised in **Mulla's Code of Civil Procedure**[17], in the following words:-

> "In the restricted sense, 'cause of action', means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously 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 'cause of action'. It has to be left to be determined in each individual case as to where the cause of action arises. The cause of action means the circumstances forming infraction of the right or immediate occasion for action. It is left to be determined in each individual case as to where the cause of action arises. The cause of action in suit/petition has no reference to the defence taken in the suit nor is it related to the evidence by which the cause of action is established.
>
> A suit is always based on a cause of action. There can be no suit without a cause of action and such cause of action

17. Mulla's Code of Civil Procedure by Sir Dinshaw Fardunji Mulla, 19th Edn. Vol. 1

> having accrued to the plaintiff, the jurisdiction of the court in a matter of contract will depend on the situs of the contract and the cause of action arising through connecting factors. A cause of action is a bundle of facts which taken with the law applicable, gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of an act no cause of action can possibly accrue. It is not limited to actual infringement of right sued on, but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action; but it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. 'A cause of action' means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. It is a media upon which the plaintiff asks the court to arrive at a conclusion in his favour. In legal parlance the expression 'cause of action' is generally understood to mean a situation or a state of facts that entitle a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person."

58. The classical definition of the expression "cause of action", referred to in **Mulla's Code of Civil Procedure**, is found in the case of **Cooke Vs. Gill**[18] where in the words of **Lord Brett** it was stated thus:-

> "'Cause of action' 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."

59. The expression "cause of action" has been defined in **Halsbury's Laws of England**[19], as follows:-

> "**20. Cause of action**. "Cause of action" has been defined as meaning simply a factual situation, the existence of

18. (1873) 8 CP 107
19. Halsbury's Laws of England, 4th Edn. Vol.37, p.27

> 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.
>
> The same facts or the same transaction or event may give rise to more than one effective cause of action.
>
> A cause of action arises wholly or in part within a certain local area where all or some of the material facts which the plaintiff has to prove in order to succeed arise within that area."

60. In **A.B.C. Laminart Private Limited and another Vs. A.P. Agencies, Salem**[20], the meaning of the expression "cause of action" was explained thus:-

> "12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

61. The aforementioned position has been reiterated in **South East Asia Shipping Company Limited Vs. Nav**

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20. (1989) 2 SCC 163

Bharat Enterprises Private Limited and others[21], wherein it has been observed as follows:-

> "3. It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a court of law. The cause of action means, therefore, every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to 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..."

62. The meaning of the expression "cause of action", as understood in English Law, had been summarised in **Paragon Finances Vs. DB Thakerar and Company**[22], wherein referring to the earlier decisions in **Letang Vs. Cooper**[23], approved in **Steamship Mutual Underwriting Association Limited Vs. Trollope & Colls Limited**[24], the expression "cause of action" has been held to mean every fact which is material to be proved to entitle plaintiff to succeed – every fact which the defendant would have a right to traverse. The observations made, in this regard, by **Millet LJ**, are as follows:-

> "The classic definition of a cause of action was given by Brett J in Cooke v Gill (1873) LR 8 CP 107 at p. 116:
>
> > "Cause of action" has been held from the earliest times to mean every fact which is material to be proved to entitle the plaintiff to succeed,—every fact which the defendant would have a right to traverse."
>
> In the *Thakerar* case Chadwick J cited the more recent definition offered by Diplock LJ in *Letang v Cooper (1965) 1 QB 232 CA at pp. 242-243,* and approved in *Steamship*

21. (1996) 3 SCC 443
22. (1999) 1 All ER 400
23. (1964) 2 All ER 929
24. (1986) 6 ConLR 11

> *Mutual Underwriting Association v Trollop & Colls Ltd (1986) 6 ConLR 11 at p. 30*:
>
> > "A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person."
>
> I do not think that Diplock LJ was intending a different definition from that of Brett J. However it is formulated, only those facts which are material to be proved are to be taken into account. The pleading of unnecessary allegations or the addition of further instances or better particulars do not amount to a distinct cause of action. The selection of the material facts to define the cause of action must be made at the highest level of abstraction."

63. In **Rajasthan High Court Advocates' Association Vs. Union of India and others**[25], the meaning of the expression "cause of action" was compendiously held to include 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, as distinguished from every piece of evidence which is necessary to prove each fact. As to where the cause of action arises would have to be left to be determined in each individual case. It was stated thus:-

> "17. 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 action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously 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". It has to be left to be determined in each individual case as to where the cause of action arises..."

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25. (2001) 2 SCC 294

64. While considering the meaning of the expression "cause of action" in **Ambica Industries Vs. Commissioner of Central Excise**[26], it was held that although in view of Section 141 CPC, the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) CPC, and Article 226(2), being *in pari materia*, the decisions of the Supreme Court rendered on interpretation of Section 20(c) shall apply to writ proceedings also keeping in view the expression "cause of action" used in Article 226(2), it was stated, that indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court would have jurisdiction in the matter though the doctrine of *forum conveniens* may also have to be considered. The observations made in this regard are as follows:-

> "40. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and Clause (2) of Article 226, being *in pari materia*, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action, as what is necessary to be proved, before the petitioner can obtain a decree, is material facts. The expression material facts is also known as integral facts.
>
> 41. Keeping in view the expression "cause of action" used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of *forum conveniens* may also have to be considered."

65. As we have already taken note of, the expression "cause of action" having not been defined in the

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26. (2007) 6 SCC 769

Constitution, the meaning envisaged under Section 20(c) CPC, may be adverted to for the purpose of understanding the meaning of the expression "cause of action".

66. The meaning of "cause of action" in the context of territorial jurisdiction of a High Court was subject matter of consideration in **Navinchandra N. Majithia Vs. State of Maharashtra and others**[27], and it was held that a High Court will have jurisdiction if any part of cause of action arises within the territorial limits of its jurisdiction even though the seat of a Government or authority or residence of person against whom direction, order or writ is sought to be issued is not within the said territory. In the facts of the case, where a writ petition had been filed before the Bombay High Court for quashing of a criminal complaint filed at Shillong on the ground that it was false and had been filed with *mala fide* intention of causing harassment and putting pressure on the petitioner to reverse the transaction relating to transfer of company shares, which had entirely taken place at Mumbai, and alternatively, making a prayer for issuance of writ of mandamus to State of Meghalaya for transfer of investigation to Mumbai Police, it was held, that the Bombay High Court erred in dismissing the writ petition on ground that it had no jurisdiction to quash the complaint filed at Shillong as prayed for. It was held that the relief sought by the writ petitioner, though is one of the relevant criteria for consideration, but not the sole consideration in the matter. Drawing inference from the provision under clause (2) of Article 226, it was stated that maintainability or otherwise of

27. (2000) 7 SCC 640

a writ petition in a High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

67. Referring to the meaning of the expression "cause of action" as given in **Black's Law Dictionary**[28], **Stroud's Judicial Dictionary of Words and Phrases**[29] and also the definition as per **Lord Esher, M.R., in Read Vs. Brown**[30], it was stated that in legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain the remedy in Court from another person. The observations made in the judgment are extracted below:-

> "17. From the provision in clause (2) of Article 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.
>
> 18. In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person. (*Black's Law Dictionary*)
>
> 19. In *Stroud's Judicial Dictionary* a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.
>
> 20. In "*Words and Phrases*" *(4th Edn.)* the meaning

28. Black's Law Dictionary (9th Edn.)
29. Stroud's Judicial Dictionary of Words and Phrases, 8th Edn. Vol. 1
30. (1888) 22 QBD 128

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.

x x x x x

34. When the Constitution was framed, Article 226, as it originally stood therein provided that

> "every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs…".

Some of the decisions rendered by different High Courts during the earlier years of the post-Constitution period have given a wider perspective regarding the jurisdiction of the High Court and pointed out that a High Court can exercise powers under Article 226 even in respect of tribunals or authorities situated outside the territorial limits of its jurisdiction if such tribunal or authority exercises powers in such a manner as to affect the fundamental rights of persons residing or carrying on business within the jurisdiction of such High Court [vide *K.S. Rashid Ahmed v. Income Tax Investigation Commission (AIR 1951 Punj 74), M.K. Ranganathan v. Madras Electric Tramways (1904) Ltd. (AIR 1952 Mad 659), Aswini Kumar Sinha v. Dy. Collector of Central Excise and Land Customs (AIR 1952 Ass 91)*. It was Subba Rao, J. (as the learned Chief Justice then was) who observed in *M.K. Ranganathan* case that:

> "If a tribunal or authority exercises jurisdiction within the territories affecting such rights it may reasonably be construed that the authority or the tribunal functioned within the territorial jurisdiction of the High Court and, therefore, is amenable to its jurisdiction."

35. But a Constitution Bench of this Court has held in *Election Commission, India v. Saka Venkata Subba Rao (AIR 1953 SC 210)* thus:

> "[T]he power of the High Court to issue writs under Article 226 of the Constitution is subject to the two-fold limitation that such writs cannot run beyond the territories subject to its jurisdiction and the person or authority to whom the High Court is empowered to issue such writs must be amenable to the jurisdiction of the High Court either by residence or location within the territories subject to its jurisdiction."

36. It was the said decision of the Constitution Bench which

necessitated Parliament to bring the Fifteenth Amendment to the Constitution by which clause (1-A) was added to Article 226. That clause was subsequently renumbered as clause (2) by the Constitution Forty-Second Amendment. Now clause (2) of Article 226 reads thus:

> "226(2). The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

37. The object of the amendment by inserting clause (2) in the article was to supersede the decision of the Supreme Court in *Election Commission* v. *Saka Venkata Subba Rao* and to restore the view held by the High Courts in the decisions cited above. Thus the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which "the cause of action, wholly or in part, arises" and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts.

38. "Cause of action" is a phenomenon well understood in legal parlance. Mohapatra, J. has well delineated the import of the said expression by referring to the celebrated lexicographies. The collocation of the words "cause of action, wholly or in part, arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the courts. As per that section the suit could be instituted in a court within the legal limits of whose jurisdiction the "cause of action wholly or in part arises". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean "the bundle of facts which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court".

39. In *Read v. Brown (1888) 22 QBD 128*, Lord Esher, M.R., adopted the definition for the phrase "cause of action" that it meant

> "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved".
>
> 40. The Privy Council has noted in *Mohd. Khalil Khan v. Mahbub Ali Mian (AIR 1949 PC 78)* that the aforesaid definition adopted by Lord Esher M.R. had been followed in India. Even thereafter the courts in India have consistently followed the said interpretation without exception for understanding the scope of the expression "cause of action"."

68. Cause of action, in legal parlance, has been understood as a situation or "state of facts" which entitles a party to maintain an action before a Court or Tribunal. It would refer to the existence of those facts set forth in the plaint upon which the party seeks a right to judicial interference on his behalf. Facts which would have no bearing on the *lis* or the dispute involved in the case, would, therefore, not give rise to a cause of action so as to confer territorial jurisdiction on the Court.

69. It may be necessary at this stage to take notice of the distinction between the terms "right of action" and "cause of action".

70. The distinction between the two terms has been referred to in **American Jurisprudence**[31], wherein it has been stated as follows:-

> "Although the courts sometimes confuse the term 'cause of action' and 'right of action' and state that right of action at law arises from the existence of a primary right in the plaintiff and the invasion of that right by some delict on the part of the defendant, in a legal sense, these terms are not

31. American Jurisprudence 2nd Edn. Vol. 1 p.541

> synonymous or interchangeable. A right of action is the right to presently enforce a cause of action - a remedial right affording redress for the infringement of legal right belonging to some definite person, a cause of action is the operative facts which give rise to such right of action. Right of action does not arise until the performance of conditions precedent to the action and may be taken away by the running of the statute of limitation, through an estoppel, or by other circumstances which do not affect the cause of action. There may be several rights of action and one cause of action and rights may accrue at different times from the same cause."

71. The aforementioned distinction, was also recognised in **Code Pleading** by **Phillips**[32], which has been referred to in an article by **Oliver L. McCaskill**[33], "**The Elusive Cause of Action**", and it was stated thus:-

> "It should be borne in mind that a right of action is a remedial right belonging to some person, and that a cause of action is a formal statement of the operative facts that give rise to such remedial right. The one is matter of right, and depends upon the substantive law; the other is matter of statement, and is governed by the law of procedure. The terms, 'right of action' and 'cause of action,' are therefore not equivalent terms, and should not be used interchangeably."

72. We may also gainfully refer to **Code Remedies** by **Pomeroy**[34], wherein it has been stated as follows:-

> "Every judicial action must therefore involve the following elements: a primary right possessed by the plaintiff, and a corresponding primary duty devolving upon the defendant; a delict or wrong done by the defendant which consisted in a breach of such primary right and duty ; a remedial right in favor of the plaintiff, and a remedial duty resting on the defendant springing from this delict, and finally the remedy or relief itself. Every action, however complicated or however simple, must contain these essential elements. Of these elements, the primary right and duty and the delict or wrong combined constitute the cause of action in the legal

32. Phillips, Code of Pleading § 189 (2nd Edn. 1932)
33. University of Chicago Law Review (1937) Vol.4 Issue 2, Article 10
34. Pomeroy, Code Remedies §§ 347-349 (4th Edition 1904)

> sense of the term, and as used in the codes of the several States. They are the legal cause or foundation whence the right of action springs, this right of action being identical with the 'remedial right' as designated in my analysis. In accordance with the principles of pleading adopted in the new American system, the existence of a legal right in an abstract form is never alleged by the plaintiff; but, instead thereof, the facts from which that right arises are set forth, and the right itself is inferred therefrom. The cause of action, as it appears in the complaint when properly pleaded, will therefore always be the facts from which the plaintiff's primary right and the defendant's corresponding primary duty have arisen, together with the facts which constitute the defendant's delict or act of wrong..... From one cause of action, that is, from one primary right and one delict being a breach thereof, it is possible, and not at all uncommon, that two or more remedial rights may arise, and therefore two or more different kinds of relief answering to these separate remedial rights. This is especially so when one remedial right and corresponding relief are legal, and the other equitable; but it is not confined to such cases..... If the facts alleged show one primary right of the plaintiff, and one wrong done by the defendant which involves that right, the plaintiff has stated but a single cause of action, no matter how many forms and kinds of relief he may claim that he is entitled to, and may ask to recover; the relief is no part of the cause of action."

73. The relation between “right of action” and “cause of action” has been further analysed in the article “**Actions and Causes of Action**” by **O.L. McCaskill**[35], wherein referring to the observations made by **Phillips** in **Code Pleading**[36], it has been stated thus:-

> "Judge Phillips describes the cause of action in this fashion:
>
> > “The question to be determined at the threshold of every action is, whether there is occasion for the state to interfere. Therefore, when a suitor asks that the public force be exerted in his behalf, he must show that there is, *prima facie*, occasion for the state to act in his behalf. That is, he must show a right in himself, recognized by

35. (1925) 34 Yale Law Journal 614
36. Phillips, Code Pleading (1896) secs. 30-32

> law, and a wrongful invasion thereof, actual or threatened. And since both rights and delicts arise from operative facts, he must affirm of himself such investitive fact or group of facts as will show a consequent legal right in him, and he must affirm of the adversary party such culpatory fact or facts as will show his delict with reference to the right so asserted. The formal statement of operative facts showing such right and such delict shows a *cause for action* on the part of the state and in behalf of the complainant, and is called in legal phraseology, a *cause of action*."
>
> "From the foregoing definitions of right of action and cause of action, it will be seen that the former is a remedial right belonging to some person, and that the latter is a formal statement of the operative facts that give rise to such remedial right. The one is matter of right, and depends upon the substantive law; the other is matter of statement, and is governed by the law of procedure." .....
>
> "It will appear, without further analysis, that a statement of facts, to constitute a cause of action, must show a right of action; that to show a right of action, it must state facts to show (I) a primary right and its corresponding duty, and (2) the infringement of this right by the party owing this duty. From the one set of facts the law raises the primary right and duty, and to the other set of facts the law attaches a remedial right, or right of action...."

74. The distinction between "cause of action" and "right of action" was noticed by a Full Bench of this Court in **Sardar Balbir Singh Vs. Atma Ram Srivastava**[37], in the context of Order II of the CPC, and referring to the decisions in **Whitfield Vs. Aetna**[38], **Emory Vs. Hazard Powder Company**[39], **Weldon Vs. Neal**[40], **Cooke Vs. Gill**[18], **Robinson Vs. Unicos Property Corporation Limited**[41], **Dorman Vs.**

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37. AIR 1977 All 211
38. (1906) 205 US 489
39. 22 SC 476
40. (1887) 19 QBD 394
18. (1873) 8 CP 107
41. (1962) 2 All ER 24

J.W. Ellis and Company Limited[42], **Sidramappa Vs. Rajashetty**[43] and **Gurbux Singh Vs. Bhooralal**[44], it was observed as follows:-

> "48. What does the expression 'cause of action' as used in Order II of the Code of Civil Procedure connote ? An all embracing definition of the term 'cause of action' is not to be easily found. It may mean one thing for one purpose and something different for another depending, for example, on the question whether the principle of *res judicata* applies or whether an amendment of pleading is permissible or whether a pleading is good upon demurrer and so on. Cause of action has sometime been defined as being the fact or facts which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief. The facts which comprise the cause of action are those which, if traversed, the plaintiff is obliged to prove in order to obtain a judgment, or those facts which the defendant would have the right to traverse, or as observed in *Whitfield v. Aetna, (1906) 205 US 489* "a cause of action is the reverse of a defence, which is defined as whatever tends to diminish the plaintiff's cause of action or to defeat recovery in whole or in part"; or as laid down in *Emory v. Hazard Powder Co., (22 SC 476)* "a cause of action arises where there has been an invasion of a legal right without justification or sufficient cause"; or that a cause of action is that single group of facts which is claimed to have brought about an unlawful injury to the plaintiff and which entitles him to relief. It consists of a right belonging to one person and some wrongful act or omission by another by which that right has been violated. It has been variously stated that a cause of action cannot exist without the concurrence of a right, a duty, and the default and is the subject of an action. It has also been defined as the subject of an action, or the wrong for which the law prescribes a remedy. While dealing with an application for amendment of plaint the Supreme Court observed in *A.K. Gupta and Sons v. Damodar Valley Corporation, (AIR 1967 SC 96)*:
>
> > "The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neal, (1887) 19 QBD 394*. But it is also well recognised that where

42. (1962) 1 All ER 303
43. AIR 1970 SC 1059
44. AIR 1964 SC 1810

> the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation."

Then dealing with the connotation of the term 'cause of action' in the context of an application for amendment of pleading the Supreme Court observed:

> "The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in *Cooke v. Gil, (1873) 8 CP 107 (116)*, in a different context for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson v. Unicos Property Corpn. Ltd., 1962-2 All ER 24*, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas' *Dorman v. J. W. Ellis and Co. Ltd., 1962-1 All ER 303*. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

The term 'cause of action', however, for the purpose of Order II means 'cause of action' which gives occasion for and forms the foundation of the suit. *(See AIR 1970 SC 1059 (Sidramappa v. Rajashetty)*, and *AIR 1964 SC 1810, Gurbax Singh v. Bhooralal)*.

There is, however, a 'distinction' between 'cause of action' and the 'right of action'. These terms are not synonymous and interchangeable. A right of action is a right to presently enforce a cause of action a remedial right affording redress for the infringement of a legal right belonging to some definite person; a cause of action is the operative facts which give rise to such right of action. The right of action does not arise until the performance of all conditions precedent to the action, and may be taken away by the running of the statute of limitations, through an estoppel, or by other circumstances which do not affect the cause of action. There may be several rights of action and one cause

> of action and rights may accrue at different times from the same cause.
>
> 49. Cause of action should also be distinguished from 'remedy' which is the means or method whereby the cause of action or corresponding obligation is effectuated and by which a wrong is redressed and relief obtained. The one precedes and gives rise to the other, but they are separate and distinct from each other and are governed by different rules and principles. The cause of action is the obligation from which springs the "action", defined as the right to enforce an obligation, A cause of action arises when that which ought to have been done is not done or that which ought not to have been done is done. The essential elements of a cause of action are thus the existence of a legal right in the plaintiff with a corresponding legal duty in the defendant, and a violation or breach of that "right or duty" with consequential injury or damage to the plaintiff for which he may maintain an action for appropriate relief or reliefs. The right to maintain an action depends upon the existence of a cause of action which involves a combination of a right on the part of the plaintiff and the violation of such right by the defendant. The duty on the part of the defendant may arise from a contract or may be imposed by positive law independent of contract, it may arise of *contractus* or *ex delicto*. A cause of action arises from the invasion of the plaintiff's right by violation of some duty imposed upon the defendant in favour of the plaintiff either by voluntary contract or by positive law."

75. The meaning of the two expressions was again considered by a Division Bench of this Court in **Daya Shankar Bhardwaj Vs. Chief of the Air Staff, New Delhi and others**[45], and it was reiterated that the two are neither synonymous nor interchangeable. The meaning of the term "right of action" as provided in **American Jurisprudence Vol. 1**[46] was considered and it was stated as follows:-

> "13. ...A right of action arises as soon as there is an invasion of right. But 'cause of action' and 'right of action'…….are not synonymous or interchangeable. A right of action is the right to enforce a cause of action (*American*

45. AIR 1988 All 36
46. American Jurisprudence 2nd Edn. Vol. 1

> *Jurisprudence* 2nd Edition vol. 1.) A person residing anywhere in the country being aggrieved by an order of government Central or State or authority or person may have a right of action at law but it can be enforced or the jurisdiction under Art. 226 can be invoked of that High Court only within whose territorial limits the cause of action wholly or in part arises. The cause of action arises by action of the government or authority and not by residence of the person aggrieved."

76. The expression "cause of action" has been held to have no relation whatever to the defence which may be set up by the defendant nor does it refer to the character of the relief prayed for by the plaintiff, and it would be referable entirely to the grounds set forth in the plaint. The observations made by **Lord Watson** in the Privy Council judgment of **Chand Kaur and another Vs. Partab Singh and others**[47] would be apposite in this regard:-

> "The cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour."

77. The meaning of the expression "cause of action", in the context of the territorial jurisdiction of a High Court under Article 226(2), was considered in **State of Rajasthan and others Vs. M/s Swaika Properties and another**[48], and it was observed that in order to invest the High Court with jurisdiction to entertain the petition the transaction in question must be an integral part of the cause of action. In the facts of the case it was held that the service of notice on the respondent at its registered office at Calcutta within the

47. ILR 1889 (16) Cal 98
48. (1985) 3 SCC 217

territorial limits of the State of West Bengal, in respect of acquisition proceedings initiated by Rajasthan State Government regarding land situate in Jaipur, could not give rise to a cause of action within the territorial jurisdiction of the Calcutta High Court unless the service of such notice was an integral part of the cause of action. The observations made in the judgment are as follows:-

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

> validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

78. The question of territorial jurisdiction of the High Court under Article 226(2) again came up for consideration in **Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others**[11], and it was held that territories within which the cause of action, wholly or in part, arises, is to be decided on facts pleaded in the petition, disregarding the truth or otherwise thereof.

79. In the facts of the case, the mere fact that the petitioner company, having its registered office at Calcutta, had responded to an advertisement published in a Calcutta newspaper, inviting tenders at Delhi, for the works to be executed in Gujarat, had sent its tender to the Delhi address from Calcutta and also made representations from Calcutta against non-consideration of its offer, held, did not disclose that even a part of cause of action arose within the territorial jurisdiction of Calcutta High Court, and it had no jurisdiction to entertain the writ petition. The observations made in the judgment are as follows:-

> "5. Clause (1) of Article 226 begins with a non obstante clause — notwithstanding anything in Article 32 — and provides that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders or writs, for the enforcement

11. (1994) 4 SCC 711

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

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

> "… the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had

> jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

80. The question as to whether location of head office of a company within the territorial jurisdiction of a High Court would automatically give it jurisdiction was subject matter of consideration in **Eastern Coalfields Limited and others Vs. Kalyan Banerjee**[49]. In the facts of the case, a challenge to termination of service of an employee was raised where the company was having its head office in West Bengal. The services of the employee were terminated at a place in Jharkhand State by his appointing authority whose office was also located at the same place. The termination order was not subject to sanction of the head office. In such circumstances, no part of the cause of action having arisen in West Bengal, it was held, that mere location of the head office of the company in West Bengal would not confer jurisdiction upon Calcutta High Court to entertain such a petition. It was reiterated that "cause of action" for the purpose of Article 226(2), must be assigned the same meaning as under Section 20(c) CPC. It would mean a bundle of facts which are required to be proved; however, the entire bundle of facts pleaded, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed.

81. A question as to whether order of Supreme Court could

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49. (2008) 3 SCC 456

confer territorial jurisdiction on a High Court in matters in which High Court is lacking the same was considered in **Satya Prakash Vs. State of U.P. and others**[50]. In this case reliance was placed upon prior order of the Supreme Court dismissing the appellant's petition under Article 32 with liberty to move the appropriate Court including the High Court of Delhi, if so advised. The offence having been committed within the jurisdiction of Allahabad High Court, it was held that the Supreme Court's order could not be construed to confer any territorial jurisdiction on Delhi High Court when it does not possess such jurisdiction.

82. The nature of facts which give rise to "part of cause of action" within the territorial jurisdiction of a High Court in the context of clause (2) of Article 226 came up for consideration in the case of **Union of India and others. Vs. Adani Exports Ltd. and another**[51] and it was held that 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 do 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

50. (2000) 9 SCC 421
51. (2002) 1 SCC 567

the case, were held, to be not giving rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. The observations made in the judgment are being extracted below:-

> "15. Article 226(2) of the Constitution of India which speaks of the territorial jurisdiction of the High Court reads:
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> > "226(2). The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."
>
> 16. It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this regard, it would suffice for us to refer to the observations of this Court in the case of *Oil and Natural Gas Commission* v. *Utpal Kumar Basu (1994) 4 SCC 711* wherein it was held:
>
> > "Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or

> otherwise of the said facts. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial."
>
> 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 the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not *ipso facto* lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

83. The meaning of the expression "cause of action" was discussed in **National Textile Corporation Limited and others Vs. Haribox Swalram and others**[52], while considering the facts giving rise to the Court's territorial jurisdiction, in the context of Article 226(2), and it was held that only those facts 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, and not otherwise. It was stated thus:-

> "10. Under clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the

52. (2004) 9 SCC 786

> exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Cause of action as understood in the civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. To put it in a different way, it is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. In *Union of India v. Adani Exports Ltd. (2002) 1 SCC 567* in the context of clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ petition 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 dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. A similar question was examined in *State of Rajasthan v. Swaika Properties (1985) 3 SCC 217*. Here certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and a notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for consideration was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land under Section 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52 of the Act. It was thus held that the Calcutta High Court had no jurisdiction to entertain the writ petition."

84. The territorial scope of an order of a High Court under Article 226 and the meaning of the expression "cause of action" in the context of clause (2) of Article 226 was subject

matter of consideration in **Kusum Ingots & Alloys Ltd. Vs. Union of India and another**[53] Taking into consideration that the phraseology used in Section 20(c) of the Code of Civil Procedure, 1908[54] and clause (2) of Article 226 are in *pari materia*, the decisions of the Supreme Court rendered on interpretation of Section 20(c) CPC were held to be applicable to writ proceedings also and it was held that even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter. The observations made in the judgment in this regard are as follows:-

> "6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.
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> 7. Clause (2) of Article 226 of the Constitution of India reads thus:
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> > "226(2). The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."
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> 8. Section 20(c) of the Code of Civil Procedure reads as under:

53. (2004) 6 SCC 254
54. CPC

> "20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—
>
> (a)-(b) x x x
>
> (c) the cause of action, wholly or in part, arises."
>
> 9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in *pari materia*, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.
>
> 10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter."

85. The principle that the question of territorial jurisdiction to entertain a writ petition must be arrived at solely on the basis of averments made in the petition, the truth or otherwise thereof being immaterial was reiterated placing reliance upon the judgments in **Chand Kaur and another Vs. Partab Singh and others**[47], **Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others**[11], **State of Rajasthan Vs. Swaika Properties**[48], **Aligarh Muslim University Vs. Vinay Engineering Enterprises (P) Ltd**[10], **Union of India Vs. Adani Exports Ltd.** and **National Textile Corporation Ltd. Vs. Haribox Swalram and**

47. ILR 1889 (16) Cal 98
11. (1994) 4 SCC 711
48. (1985) 3 SCC 217
10. (1994) 4 SCC 710

others[52], and it was stated thus:-

"11. In *Chand Kour v. Partab Singh (1887-88) 15 IA 156* it was held: (IA pp. 157-58)

> "The cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour."

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

13. This Court in *Oil and Natural Gas Commission* case held that all necessary facts must form an integral part of the cause of action. It was observed: (SCC p. 719, para 8)

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

14. In State of *Rajasthan v. Swaika Properties (1985) 3 SCC 217* this Court opined that mere service of a notice would not give rise to any cause of action unless service of notice was an integral part of the cause of action. The said decision has also been noticed in *Oil and Natural Gas Commission*. This Court held: (SCC p. 223, para 8)

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

15. In *Aligarh Muslim University v. Vinay Engg. Enterprises (P) Ltd. (1994) 4 SCC 710* this Court lamented: (SCC p. 711, para 2)

> "2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh,

52. (2004) 9 SCC 786

> even the contracts provided that in the event of dispute the Aligarh court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable."
>
> 16. In *Union of India v. Adani Exports Ltd. (2002) 1 SCC 567* it was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction.
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> 17. Recently, in *National Textile Corpn. Ltd. v. Haribox Swalram (2004) 9 SCC 786* a Division Bench of this Court held: (SCC p. 797, para 12.1)
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> > "12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed."
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> 18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court."

86. The *situs* of the office of the respondents was held to be not relevant for the purposes of territorial jurisdiction and it was held in the context of clause (2) of Article 226 that a place where appellate/revisional order is passed may give

rise to a part of the cause of action although the original order was made at a place outside the said area, and when a part of an action arises within one or the other High Court it would be for the litigant who is the *dominus litis* to have his *forum conveniens* that is to choose his forum. The observations made in the judgment in this regard are as follows:-

> "23. A writ petition, however, questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. (See *Abdul Kafi Khan* v. *Union of India AIR 1979 Cal 354)*.
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> 24. Learned counsel for the appellant in support of his argument would contend that the situs of framing law or rule would give jurisdiction to the Delhi High Court and in support of the said contention relied upon the decisions of this Court in *Nasiruddin* v. *STAT (1975) 2 SCC 671* and *U.P. Rashtriya Chini Mill Adhikari Parishad* v. *State of U.P. (1995) 4 SCC 738.* So far as the decision of this Court in *Nasiruddin* v. *STAT* is concerned, it is not an authority for the proposition that the situs of legislature of a State or the authority in power to make subordinate legislation or issue a notification would confer power or jurisdiction on the High Court or a Bench of the High Court to entertain a petition under Article 226 of the Constitution. In fact this Court while construing the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 stated the law thus: (SCC p. 683, para 37)
>
> > “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 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."

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

26. The view taken by this Court in *U.P. Rashtriya Chini Mill Adhikari Parishad (1995) 4 SCC 738* that the situs of issue of an order or notification by the Government would come within the meaning of the expression "cases arising" in clause 14 of the (Amalgamation) Order is not a correct view of law for the reason hereafter stated and to that extent the said decision is overruled. In fact, a legislation, it is trite, is not confined to a statute enacted by Parliament or the legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instructions issued in this behalf shall also come within the purview thereof. Situs of office of Parliament, legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer

> jurisdiction upon a court only because of the situs of the office of the maker thereof.
>
> 27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority."

87. It was also held that if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court would have jurisdiction in the matter; however, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits and in appropriate cases the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*. Reference in this regard was made to the judgments in the cases of **Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney**[55], **Madanlal Jalan Vs. Madanlal**[56], **Bharat Coking Coal Ltd. Vs. Jharia Talkies & Cold Storage (P) Ltd.**[57], **S.S. Jain & Co. Vs. Union of India**[58] and **New Horizons Ltd. Vs. Union of India**[59].

88. The principle with regard to the doctrine of *forum conveniens* was stated by **Lord Kinnear** in **Sim Vs.**

55. AIR 1941 Cal 670
56. AIR 1949 Cal 495
57. 1997 CWN 122
58. (1994) 1 CHN 445
59. AIR 1994 Del 126

Robinow[60] in the following manner, which is being extracted below:-

> "The general rule was stated by the late Lord President in *Clements v. Macaulay, 4 Macph. 593*, in the following terms: 'In cases in which jurisdiction is competently founded, a 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. *Judex tenetur impertiri judicium suum*; and the plea under consideration must not be stretched so as to interfere with the general principle of jurisprudence.' And therefore the plea can never be sustained unless the court is satisfied that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of all the parties and for the ends of justice... In all these cases there was one indispensable element present when the court gave effect to the plea of *forum non conveniens*, namely, that the court was satisfied that there was another court in which the action ought to be tried as being more convenient for all the parties, and more suitable for the ends of justice."

89. The principle has been further explained in the judgment of House of Lords in **Tehrani Vs. Secretary of State for the Home Department (Scotland)**[61] and it has been stated thus:-

> "25. The existence of jurisdiction is one matter, the exercise of the jurisdiction is another... A court will decline to exercise jurisdiction if there is available an alternative forum more appropriate for deciding the dispute in question."

90. The doctrine of *forum non conveniens* was also considered by the U.S. Supreme Court in **Gulf Oil Corporation Vs. Gilbert**[62] and it was held that the doctrine can never apply in a case where there is absence of jurisdiction. The observations made in the judgment in this

60. (1892) 19 R 665
61. (2006) UKHL 47
62. 330 U.S. 501 (1947)

regard are as follows:-

> "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."

91. The invocation of the jurisdiction of a High Court under Article 226 in a case where cause of action wholly or in part had arisen within its territorial limits even though the seat of the Government or authority or residence of a person against whom the direction, order or writ was sought was not within the said territory was considered in **Om Prakash Srivastava Vs. Union of India and another**[63] and the order of the High Court refusing to consider the writ petition merely by observing that though it may have jurisdiction but another High Court may deal with the matter more effectively, was held to be not a correct way to deal with the petition and the appeal was disposed of remitting the matter to the High Court for fresh hearing on merits.

92. The expression "cause of action" in the context of clause (2) of Article 226 was explained referring to **Black's Law Dictionary, Stroud's Judicial Dictionary** and **Halsbury's Laws of England (4th Edn.)**. Reference was also made to the decisions in **Oil and Natural Gas Commission**

63. (2006) 6 SCC 207

Vs. Utpal Kumar Basu[11]**, Bloom Dekor Ltd. Vs. Subhash Himatlal Desai**[64]**, Sadanandan Bhadran Vs. Madhavan Sunil Kumar**[65]**, South East Asia Shipping Company Limited Vs. Nav Bharat Enterprises (P) Ltd.**[21]**, Rajasthan High Court Advocates' Association Vs. Union of India**[25]**, Gurdit Singh Vs. Munsha Singh**[66]**, Navinchandra N. Majithia Vs. State of Maharashtra**[27]. The observations made in the case of **Om Prakash Srivastava** (supra) in this regard are as follows:-

> "7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has *prima facie* either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.
>
> 8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. (See *ONGC* v. *Utpal Kumar Basu (1994) 4 SCC 711*).
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> 9. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In

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11. (1994) 4 SCC 711
64. (1994) 6 SCC 322
65. (1998) 6 SCC 514
21. (1996) 3 SCC 443
25. (2001) 2 SCC 294
66. (1977) 1 SCC 791
27. (2000) 7 SCC 640

other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See *Bloom Dekor Ltd.* v. *Subhash Himatlal Desai (1994) 6 SCC 322)*.

10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment. (See *Sadanandan Bhadran* v. *Madhavan Sunil Kumar (1998) 6 SCC 514 : 1998 SCC (Cri) 1471*).

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*).

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*).

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See *Gurdit Singh* v. *Munsha Singh (1977) 1 SCC 791*).

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles

a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see *Black's Law Dictionary*). In *Stroud's Judicial Dictionary* a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. 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. (See *Navinchandra N. Majithia v. State of Maharashtra [(2000) 7 SCC 640 : 2001 SCC (Cri) 215*).

15. In *Halsbury's Laws of England (4th Edn.)* it has been stated as follows:

> " '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."

93. The Supreme Court in the aforementioned case of **Om Prakash Srivastava** while remitting the matter to the High Court made the following observations:-

> "18. In the instant case the High Court has not dealt with the question as to whether it had jurisdiction to deal with the writ petition. It only observed that the Delhi High Court may have jurisdiction, but the issues relating to conditions of prisoners in the State of U.P. can be more effectively dealt with by the Allahabad High Court. As noted supra, there were two grievances by the appellant. But only one of them i.e. the alleged lack of medical facilities has been referred to by the High Court. It was open to the Delhi High Court to say

> that no part of the cause of action arose within the territorial jurisdiction of the Delhi High Court. The High Court in the impugned order does not say so. On the contrary, it says that jurisdiction may be there, but the Allahabad High Court can deal with the matter more effectively. That is not certainly a correct way to deal with the writ petition. Accordingly, we set aside the impugned order of the High Court and remit the matter to it for fresh hearing on merits..."

94. The law with regard to determination of the territorial jurisdiction of a High Court again came to be analysed in **Alchemist Limited and another Vs. State Bank of Sikkim and others**[67], and taking note of the amendment of Article 226 in the year 1963, wherein accrual of cause of action had been made an additional ground to confer jurisdiction on the High Court under Article 226, it was held, that after 1963, cause of action is relevant and germane for determination of the jurisdiction of a High Court under Article 226 and that a writ petition could now be instituted in the High Court within territorial jurisdiction of which, cause of action, in whole or in part, arises.

95. Explaining the meaning of "cause of action", it was further held, that, in a particular case, whether facts averred by the writ petitioner constitute a part of cause of action, has to be determined, on the basis of question whether such facts constitute a material, essential or integral part of the cause of action, and in determining the said question, the substance of the matter and not the form thereof has to be considered. The observations made in the judgment are as follows:-

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67. (2007) 11 SCC 335

"16. It may be stated that by the Constitution (Forty-second Amendment) Act, 1976, Clause (1-A) was renumbered as Clause (2). The underlying object of amendment was expressed in the following words:

> "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 arises may also have jurisdiction to issue appropriate directions, orders or writs."

The effect of the amendment was that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under Article 226 of the Constitution.

17. As Joint Committee observed:

> "This clause would enable the High Court within whose jurisdiction the cause of action arises to issue directions, orders or writs to any Government, authority or person, notwithstanding 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."

18. The legislative history of the constitutional provisions, therefore, makes it clear that after 1963, cause of action is relevant and germane and a writ petition can be instituted in a High Court within the territorial jurisdiction of which cause of action in whole or in part arises.

19. The question for our consideration is as to whether the assertion of the appellant is well founded that a part of cause of action can be said to have arisen within the territorial jurisdiction of the High Court of Punjab and Haryana. Whereas, the appellant Company submits that a part of cause of action had arisen within the territorial jurisdiction of that Court, the respondents contend otherwise.

20. It may be stated that the expression "cause of action" has neither been defined in the Constitution nor in the

Code of Civil Procedure, 1908. It may, however, be described as a bundle of *essential facts necessary* for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.

21. The classic definition of the expression "cause of action" is found in *Cooke* v. *Gill (1873) 8 CP 107* wherein Lord Brett observed:

> " 'Cause of action' 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."

22. For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.

23. Mr Soli J. Sorabjee, Senior Advocate appearing for the appellant Company placed strong reliance on *A.B.C. Laminart (P) Ltd. v. A.P. Agencies (1989) 2 SCC 163* and submitted that the High Court had committed an error of law and of jurisdiction in holding that no part of cause of action could be said to have arisen within the territorial jurisdiction of the High Court of Punjab and Haryana. He particularly referred to the following observations: (SCC p. 170, para 12)

> "*12*. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

24. In our opinion, the High Court was wholly justified in upholding the preliminary objection raised by the respondents and in dismissing the petition on the ground of want of territorial jurisdiction.

25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the *lis* between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.

26. In *Union of India v. Oswal Woollen Mills Ltd. (1984) 2 SCC 646* the registered office of the Company was situated at Ludhiana, but a petition was filed in the High Court of Calcutta on the ground that the Company had its branch office there. The order was challenged by the Union of India. And this Court held that since the registered office of the Company was at Ludhiana and the principal respondents against whom primary relief was sought were at New Delhi, one would have expected the writ petitioner to approach either the High Court of Punjab and Haryana or the High Court of Delhi. The forum chosen by the writ petitioners could not be said to be in accordance with law and the High Court of Calcutta could not have entertained the writ petition.

27. In *State of Rajasthan v. Swaika Properties (1985) 3 SCC 217* the Company whose registered office was at Calcutta filed a petition in the High Court of Calcutta challenging the notice issued by the Special Town Planning Officer, Jaipur for acquisition of immovable property situated in Jaipur. Observing that the entire cause of action arose within the territorial jurisdiction of the High Court of Rajasthan at Jaipur Bench, the Supreme Court held that the High Court of Calcutta had no territorial jurisdiction to entertain the writ petition.

28. This Court held that mere service of notice on the petitioner at Calcutta under the Rajasthan Urban Improvement Act, 1959 could not give rise to a cause of action unless such notice was “an integral part of the cause of action”.

29. In *ONGC v. Utpal Kumar Basu (1994) 4 SCC 711* this

Court held that when the Head Office of ONGC was not located at Calcutta, nor the execution of contract work was to be carried out in West Bengal, territorial jurisdiction cannot be conferred on the High Court of Calcutta on the ground that an advertisement had appeared in a daily (*The Times of India*), published from Calcutta, or the petitioner submitted his bid from Calcutta, or subsequent representations were made from Calcutta, or fax message as to the final decision taken by ONGC was received at Calcutta inasmuch as neither of them would constitute an "integral part" of the cause of action so as to confer territorial jurisdiction on the High Court of Calcutta under Article 226(2) of the Constitution.

30. In *CBI, Anti-Corruption Branch v. Narayan Diwakar (1999) 4 SCC 656*, *A* was posted in Arunachal Pradesh. On receiving a wireless message through Chief Secretary of the State asking him to appear before CBI Inspector in Bombay, *A* moved the High Court of Guwahati for quashing FIR filed against him by CBI. An objection was raised by the department that the High Court of Guwahati had no territorial jurisdiction to entertain the writ petition. But it was turned down. The Supreme Court, however, upheld the objection that Gauhati High Court could not have entertained the petition.

31. In *Union of India* v. *Adani Exports Ltd. (2002) 1 SCC 567* a question of territorial jurisdiction came up for consideration. *A* filed a petition under Article 226 of the Constitution in the High Court of Gujarat claiming benefit of the Passport Scheme under the EXIM policy. Passport was issued by Chennai Office. Entries in the passport were made by the authorities at Chennai. None of the respondents was stationed within the State of Gujarat. It was, therefore, contended that the Gujarat High Court had no territorial jurisdiction to entertain the petition. The contention, however, was negatived and the petition was allowed. The respondents approached the Supreme Court.

32. The judgment of the High Court was sought to be supported inter alia on the grounds that (*i*) *A* was carrying on business at Ahmedabad; (*ii*) orders were placed from and executed at Ahmedabad; (*iii*) documents were sent and payment was made at Ahmedabad; (*iv*) credit of duty was claimed for export handled from Ahmedabad; (*v*) denial of benefit adversely affected the petitioner at Ahmedabad; (*vi*) *A* had furnished bank guarantee and executed a bond at Ahmedabad, etc.

33. Allowing the appeal and setting aside the order of the

High Court, the Supreme Court held that none of the facts pleaded by *A* constituted a cause of action.

> "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." (*Adani Exports Ltd. case* (2002) 1 SCC 567, SCC pp. 573-74, para 17.)

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

35. Negativing the contention and upholding the order passed by the High Court, this Court ruled that passing of a legislation by itself does not confer any such right to file a writ petition in any court unless a cause of action arises therefor. The Court stated: (*Kusum Ingots case (2004) 6 SCC 254*, SCC p. 261, para 20)

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

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

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

> "12.1. …the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the

> view to the contrary taken by the Division Bench cannot be sustained."
>
> 37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a *material*, *essential*, or *integral* part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that."

96. An interesting question with regard to the territorial jurisdiction of the High Court arose in **Ambica Industries Vs. Commissioner of Central Excise**[26], which was a case where the appellant carried on business at Lucknow and was assessed at that place whereafter the matter came up before the Customs Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi, which had been exercising territorial jurisdiction over U.P., N.C.T. of Delhi and Maharashtra. An appeal came to be filed subsequently under Section 35-G of the Central Excise Act, 1944, before the Delhi High Court, which was turned down on the ground of territorial jurisdiction. In appeal, before the Supreme Court, it was contended that the order of the first appellate court being a decree, a second appeal would lie before the High Court to which it was subordinate, and in view thereof the High Court had erred in arriving at the conclusion that it had no territorial jurisdiction in the matter. On behalf of the Revenue, it was urged that the *situs* of the assessing officer and not *situs* of the Tribunal would be the determinative

26. (2007) 6 SCC 769

factor in that regard.

97. Dismissing the appeals, it was held, that CESTAT, New Delhi, was exercising jurisdiction over three states. In all the three states, there are High Courts and 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, and it would only be of persuasive value on the authorities functioning under a different jurisdiction, which may lead to a sort of judicial anarchy.

98. It was noted that in a particular case, an assessee, may invoke the jurisdiction of a High Court of his choice to take advantage of the law laid down by it which might suit him.

99. Furthermore, it was also taken note of that when an appeal is provided under a statute, Parliament must have thought of one High Court. It is a different matter that by way of necessity a Tribunal may have to exercise jurisdiction of over several States but it does not appeal to any reason that Parliament intended, despite providing for an appeal before the High Court, that appeals may be filed before different High Courts at the sweet will of the party aggrieved by the decision of the Tribunal. It was therefore held that in a case of this nature the “cause of action” doctrine may not be invoked.

100. In terms of Article 226(2), a High Court would have the power to issue a writ of *certiorari* in respect of orders

passed by subordinate courts within its territorial jurisdiction or if any cause of action had arisen therewithin but the same tests could not be applied when the appellate court exercises a jurisdiction over a tribunal situated in more than one State. In such a situation, the High Court in the State where the first court is located should be considered to be the appropriate appellate authority.

101. The Hon'ble Bench held that doctrine of *dominus litis* and doctrine of *situs* of the appellate tribunal do not go together inasmuch as *dominus litis* indicates that the suitor has more than one option, whereas the *situs* of an appellate tribunal refers to only one High Court wherein the appeal could be preferred. It was noticed that the *situs* of a Tribunal may vary from time to time and the question whether its jurisdiction would be extending to three States or more or less would depend upon the executive order which may be issued. In such circumstances, determination of the jurisdiction of a High Court should be considered only on the basis of the statutory provisions and not anything else. In case the cause of action doctrine was given effect to, invariably more than one High Court may have jurisdiction, which would not be contemplated.

102. The scope of Article 226(2) was again considered in **Rajendran Chingaravelu Vs. R.K. Mishra, Additional Commissioner of Income Tax and others**[68] and it was held that as per clause (2) of Article 226 even if a small fraction of cause of action i.e. the bundle of facts which gives the

68. (2010) 1 SCC 457

petitioner a right to sue accrued within the territories of the State, the High Court of that State would have jurisdiction. The observations made in the judgment are as follows:-

> "9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction. In this case, the genesis for the entire episode of search, seizure and detention was the action of the security/ intelligence officials at Hyderabad Airport (in Andhra Pradesh) who having inspected the cash carried by him, alerted their counterparts at the Chennai Airport that appellant was carrying a huge sum of money, and required to be intercepted and questioned. A part of the cause of action therefore clearly arose in Hyderabad. It is also to be noticed that the consequential income tax proceedings against him, which he challenged in the writ petition, were also initiated at Hyderabad. Therefore, his writ petition ought not to have been rejected on the ground of want of jurisdiction."

103. The parameters for invocation of jurisdiction of High Court under Article 226 against an authority or person residing outside its territorial jurisdiction in a case where a cause of action wholly or partly arises within the territorial jurisdiction of a High Court was considered in the case of **Nawal Kishore Sharma Vs. Union of India**[5] and referring to the provisions of clause (2) the Court held that it was clear that the High Court can issue a writ where a person or authority against whom the writ is issued is located outside

5. (2014) 9 SCC 329

its territorial jurisdiction, if the cause of action wholly or partially arises within the Court's territorial jurisdiction.

104. The expression "cause of action" for the purpose of Article 226(2), for all intents and purposes, was held to have the same meaning as envisaged under Section 20(c) CPC. The observations made in the judgment in the case of **Nawal Kishore Sharma** are as follows:-

> "9. …On a plain reading of the amended provisions in clause (2), it is clear that now the High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed. The term "cause of action" as appearing in clause (2) came up for consideration time and again before this Court.
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> 10. In *State of Rajasthan v. Swaika Properties (1985) 3 SCC 217*, the fact was that the respondent Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur City, was served with notice for acquisition of land under the Rajasthan Urban Improvement Act, 1959. Notice was duly served on the Company at its registered office in Calcutta. The Company, first appeared before the Special Court and finally the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came before this Court to answer a question as to whether the service of notice under Section 52(2) of the Act at the registered office of the respondent in Calcutta was an integral part of cause of action and was it sufficient to invest the Calcutta High Court with a jurisdiction to entertain the petition challenging the impugned notification. Answering the question this Court held: (*Swaika Properties* case, SCC pp. 222-23, paras 7-8)

"7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

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

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

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The Notification dated 8-2-1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service

> of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

11. This provision was again considered by this Court in *Oil and Natural Gas Commission v. Utpal Kumar Basu (1994) 4 SCC 711*. In this case the petitioner Oil and Natural Gas Commission (ONGC) through its consultant Engineers India Limited (EIL) issued an advertisement in the newspaper inviting tenders for setting up of Kerosene Recovery Processing Unit in Gujarat mentioning that the tenders containing offers were to be communicated to EIL, New Delhi. After the final decision was taken by the Steering Committee at New Delhi, the respondent NICCO moved the Calcutta High Court praying that ONGC be restrained from awarding the contract to any other party. It was pleaded in the petition that NICCO came to know of the tender from the publication in the Times of India within the jurisdiction of the Calcutta High Court. This Court by setting aside the order passed by the Calcutta High Court came to the following conclusion: (*Utpal Kumar Basu* case, SCC p. 717, para 6)

> "6. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case

> the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paras 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

105. Referring to the judgment in the case of **Kusum Ingots**, **Adani Exports Ltd.**, **Om Prakash Srivastava** and **Rajendran Chingravelu** (supra) the Court held that there cannot be any doubt that a question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution.

106. Having regard to the foregoing discussion we may proceed to restate the position of law with regard to the scope of territorial jurisdiction of High Courts under Article 226, as interpreted in terms of judicial precedents.

107. Article 226, as we have already noticed, from its inception, clearly reflected the object of makers of the Constitution to confer wide powers on the High Courts in issuing directions or writs for the enforcement of fundamental rights and also the power to issue directions for any other purpose. Having decided to provide certain basic safeguards for the people under the new set up post the enforcement of the Constitution, it was thought necessary to provide a quick and inexpensive remedy for the enforcement of such rights, and, finding that prerogative writs, which the Courts in England had developed and used whenever urgent

necessity demanded immediate and decisive interposition, were suited for the purpose, the High Courts, were conferred with wide powers of issuing directions, orders or writs primarily for the enforcement of fundamental rights. In addition, the power to issue such directions "for any other purpose" was also included.

108. Article 226 confers extraordinary jurisdiction on the High Court to issue prerogative writs for enforcement of fundamental rights or for any other purpose. The jurisdiction, though is to be based on discretion and equitable considerations, is wide and expansive with no fetters having been placed on the exercise of this extraordinary jurisdiction.

109. The language of Article 226 is couched in a comprehensive phraseology and it *ex facie* confers a wide power on the High Courts to reach injustice wherever it is found.

110. The nature of the power, its purpose and the person or authorities against whom it can be exercised, has been described in a language which gives to the High Court wide amplitude of powers.

111. The powers conferred on a High Court to issue prerogative writs, as understood in England, has been widened by using the expression "in the nature of", which indicates that the writs that can be issued by our High Courts, only draw analogy from the kind in England but the powers in this regard have a wider expanse.

112. Article 226(1) grants to the High Courts powers to issue directions, orders, writs, which would include writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari*. This clearly shows that the powers of the High Courts to issue directions, orders or writs, would be inclusive of writs in the nature of prerogative writs, as understood in England. The conferment of the powers upon the High Courts to issue writs may thus be seen to be drawing an analogy from the powers as in England but the use of the phraseology including writs "in the nature of" does not stop at merely equating the powers with those in England but goes beyond giving it a wider expanse. This is clearly with a view to enable the High Courts to mould the reliefs to meet the complex ground realities of our country.

113. The jurisdiction conferred on the High Courts under Article 226, as it originally stood, was very wide with only two limitations placed upon the exercise of these powers : (i) that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction, i.e., the writs issued by the Court cannot run beyond the territories subject to its jurisdiction; (ii) that the person or authority to whom the High Court is empowered to issue the writs must be within those territories, and as an implication they must be amenable to the jurisdiction of the Court either by residence or location within those territories.

114. The concept of cause of action as a basis for exercise of jurisdiction was not provided for under Article 226, as it originally stood, as it did not contain any reference to the

accrual of cause of action or to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. The concept of cause of action being not included in the express provision contained under Article 226 which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court had jurisdiction the possibilities of the resultant inconvenience to persons residing far away from New Delhi who could be aggrieved by some order of the Government of India was judicially noticed keeping in view the wide amplitude of power conferred upon a High Court under Article 226 which is not confined only to issuing of writs in the nature of prerogative writs but also including within its ambit the powers to issue directions or orders against any person or authority including in appropriate cases any Government.

115. The use of the words “any Government" indicated the intent of framers of the Constitution to include the Union Government also. The Union Government having no *situs* in a particular place is deemed to have functional existence throughout the country and when in exercise of its power the Union Government passes an order infringing the legal right or interest of a person residing within the territories in relation to which a particular High Court exercises jurisdiction, it would reasonably be expected of the High Court to issue a writ to the Union Government, for in law, it must be deemed to be within that State also.

116. The hardship faced by the litigants from distant places in regard to invoking writ jurisdiction against the Central Government, resulted in amendment of the provision by the Constitution (Fifteenth) Amendment Act, 1963, in terms whereof, after clause (1), clause (1-A) was inserted in Article 226 (renumbered as clause (2) by the Constitution (Forty-second) Amendment Act, 1976).

117. The Constitution (Fifteenth) Amendment came into force on October 5, 1963 with the effect that it made the accrual of cause of action an additional ground to confer jurisdiction to a High Court under Article 226. The amended clause now enabled the High Court within whose jurisdiction the cause of action arises to issue directions, orders or writs to any Government, authority or person, notwithstanding that the seat of such government or authority or the residence of such person is outside the territorial jurisdiction of the High Court.

118. The legal position after insertion of clause (1-A), subsequently renumbered as clause (2), is that a writ can be issued by a High Court against a person, Government or authority residing within the jurisdiction of that High Court, or within whose jurisdiction the cause of action in whole or in part arises.

119. The amended clause did not confer any new jurisdiction on High Court but provides an additional ground which extends its jurisdiction beyond the boundaries of the State if the cause of action arises within its territory. The

amendment is thus procedural without affecting any substantive rights of the parties.

120. Consequent to the (Fifteenth) Amendment to the Constitution, the power conferred on the High Courts under Article 226 can as well be exercised by any High Court having jurisdiction in relation to the territories within which "the cause of action, wholly or in part, arises" and it would not matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of the High Court. The aim of the Amendment is clearly to widen the width of the reach of the writs issued by the High Courts.

121. The only difference made by the Constitution (Fifteenth) Amendment is that the location of the seat of Government or authority or residence of a person to whom the writ is to be issued is not to be the sole criteria for conferring jurisdiction and writs may also issue to Governments, authorities or persons outside the territory of a High Court provided the cause of action, in whole or in part, arises within the limits of its territorial jurisdiction.

122. The change consequent to the amendment is that location is not the sole criteria and place of cause of action may also confer jurisdiction. It cannot, however, be construed that place of cause of action alone would confer territorial jurisdiction. If it were to be so, it would lead to an inference that Article 226(2) is not in extension of powers under Article 226(1) but in annihilation thereof, which certainly was not the intent of the Constitutional

Amendment.

123. We may at this juncture again refer to the Statement of Objects and Reasons of the Constitution (Fifteenth) Amendment, which reads as follows:-

> "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 arises may also have jurisdiction to issue appropriate directions, orders or writs.*"
>
> (emphasis supplied)

124. The use of the words "only" and "may also" shows that the object was not to take away the jurisdiction of the High Courts which they had prior to the (Fifteenth) Amendment but to enable other High Courts to also have jurisdiction provided the cause of action, in whole or in part, arose within their territorial jurisdiction. Article 226(2) is to be seen as an extension of or in addition to the jurisdiction conferred under Article 226(1).

125. We are fortified in taking this view by the observations made in the treatise **Constitutional Law of India** by **H.M. Seervai**[69], wherein the effect of the (Fifteenth) Amendment has been stated in the following words:-

> "16.251. The newly-added sub-Art. (1A) to Art. 226 introduces an additional basis of jurisdiction, namely, the whole or in part of a cause of action arising within the jurisdiction of a court. This is clear from the use of the words, "The power conferred by Clause (1) ... may also be exercised..." Therefore jurisdiction to issue writs can be

69. Constitutional Law of India by H.M. Seervai : 4th Edn. : Vol. 2, p.1598

> exercised (i) by a court within whose jurisdiction a person or authority (including, in appropriate cases, any Govt.) resides or is located, and (ii) also by a court within whose jurisdiction the cause of action wholly or in part arises, notwithstanding that the seat of such Govt. or authority or the residence of such person is not within those territories."

126. Although in view of Section 141 CPC the provisions under the Code thereof would not apply to the writ proceedings, the phraseology used in Section 20(c) CPC and clause (2) of Article 226, being *in pari materia,* the principles with regard to interpretation of Section 20(c) CPC shall apply to writ proceedings also, and keeping in view the use of the expression "cause of action" in Article 226(2), even if a fraction of the cause of action accrues within the jurisdiction of the Court, the Court would have jurisdiction in the matter though the doctrine of *forum conveniens* may also have to be considered.

127. We may, however, take notice that in contra distinction to the provisions in Sections 16 to 20 of CPC, under Article 226(2) the invocation of the territorial jurisdiction is restricted to the existence of a "cause of action", which expression would include part or entire cause of action. The cause of action, or any part thereof, even in its minutest form, is therefore necessary for invocation of the jurisdiction under Article 226. If the element of the cause of action, or any part thereof is absent, the Court may not have territorial jurisdiction, solely on the basis of the residence of the party. In terms of Section 20 CPC, a suit could be instituted in a Court within the local limits of whose jurisdiction, the defendant, or each of the defendants, actually and

voluntarily resides, or where the cause of action, wholly or in part arises. The two factors i.e., the place of residence of the defendant(s) and the place where the cause of action, wholly or in part arises, therefore, independently, give a right to the party to institute a suit in the Court of competent jurisdiction.

128. The provisions of CPC do not strictly apply to writ proceedings and only the principles therein may be held to be applicable. Section 20 of CPC which specifies different contingencies whereunder jurisdiction is vested in the Court would, therefore, *stricto sensu* not be applicable for the purposes of invocation of the territorial jurisdiction under Article 226.

129. Article 226 confers upon the High Court power to issue writs to any person or authority or any Government, within its territorial jurisdiction, and with the insertion of clause (1-A) subsequently renumbered as clause (2), the said power may also be exercised in relation to the territories within which the cause of action, wholly or in part has arisen, notwithstanding that seat of such Government or authority or residence of such person is not within those territories. The use of non-obstante clause under clause (2) clearly manifests that residence of the party is not a relevant consideration for determining the territorial jurisdiction under Article 226.

130. The relief sought by the writ petitioner, though would be one of the relevant criteria for consideration, but not the

sole consideration in this regard. The maintainability, or otherwise, of a writ petition in a High Court would depend on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court. The High Court would have jurisdiction if any part of cause of action arises within the territorial limits of its jurisdiction even though the seat of the Government or authority or residence of person against whom direction, order or writ is sought to be issued is not within the said territory.

131. The expression “cause of action” has been understood to be 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 would be necessary to be proved would be the material facts on the basis of which a writ petition can be allowed. It may also be considered as a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. The Court would be required to take into consideration all the facts pleaded in support of the cause of action without embarking upon an enquiry as to the correctness or otherwise of the said facts. The facts as pleaded in the petition may be considered, truth or otherwise whereof being immaterial.

132. In legal parlance the expression “cause of action” is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one

person to obtain the remedy in Court from another person.

133. The meaning of the expression “cause of action” as distinct from “right of action”, as evolved in terms of the precedents, would go to show that a right of action is a remedial right affording a redress for the infringement of a legal right and a right of action arises as soon as there is an invasion of rights whereas a cause of action would refer to the set of operative facts giving rise to such right of action. A person residing anywhere in the country being aggrieved by an order of the Government (Central or State), or authority or person may have a right of action at law but the same can be enforced by invoking the jurisdiction under Article 226 of only that High Court, within whose territorial limits the cause of action wholly or in part arises.

134. The “right of action” being the right to commence and maintain an action is therefore distinguishable from “cause of action” in that the former is a remedial right while the latter would comprise the operative facts giving rise to such remedial right. The former would be a matter of right and would depend upon the substantive law whereas the latter would be governed by the law of procedure.

135. It is, therefore, seen that a “cause of action” is the fact or corroboration of facts which affords a party right to judicial interference on his behalf. The “cause of action” would be seen to comprise: (i) the plaintiff's primary right and the defendant's corresponding primary duty; and (ii) the delict or wrongful act or omission of the defendant, by which

the primary right and duty have been violated. The term "right of action" is the right to commence and maintain action or in other words the right to enforce a cause of action. In the law of pleadings, "right of action" can be distinguished from "cause of action" in that the former is a remedial right while the latter would comprise the operative facts giving rise to such remedial right. The former would be a matter of right and depend on the substantive law while the latter would refer to the bundle of operative facts and would be governed by the law of procedure.

136. A right of action, may therefore, be said to have arisen upon the invasion of primary rights of the person residing anywhere in the country being aggrieved by an act or omission of the Government or authority or a person, but in order to enforce the same, the jurisdiction under Article 226 of the Constitution of only that High Court can be invoked, within whose territorial jurisdiction, on the basis of the bundle of facts, the cause of action can be said to have arisen wholly or in part.

137. The question as to whether any particular facts constitute a cause of action or not has thus to be determined with reference to the facts of each case taking into consideration the substance of the matter rather than the form of action. The cause of action must be antecedent to the institution of the proceedings and before a petition can be entertained the petitioner would be required to demonstrate that one of the essential facts giving rise to the petition has arisen within the territorial jurisdiction of the High Court.

138. The powers to issue directions, orders or writs to any government, authority or person, may be exercised, as per terms of clause (2) of Article 226, by any High Court exercising jurisdiction in relation to the territories within which the cause of action, "wholly or in part", arises. This exercise of power, may be made notwithstanding that the seat of such government or authority or residence of such person is not within those territories.

139. In determining the objection of lack of territorial jurisdiction, the Court must, therefore, take all the facts pleaded in support of the cause of action into consideration without embarking upon an enquiry as to the correctness or otherwise of the said facts. The question of territorial jurisdiction thus must be decided on the facts pleaded in the petition, the truth or otherwise, whereof being immaterial.

140. It may, however, be added as a caveat that if from the averments of the petition, as they are, no part of cause of action can be held to have arisen within the jurisdiction of a High Court, that High Court cannot assume territorial jurisdiction on the ground of residence of the petitioner or the like.

141. The expression "in part" has been held to be comprehensive and includes within its ambit even an *infinitesimal* fraction of cause of action. The expression "wholly or in part" used under clause (2) of Article 226 would therefore be referable entirely to the facts stated and the grounds set forth in the petition as the cause of action

has no relation to the defence set up or the objection raised by the opposite party.

142. In order to invest the High Court with jurisdiction to entertain a petition under Article 226, the transaction in question must be an integral part of the cause of action which must arise within its territorial jurisdiction, and would depend upon the facts of the case and the nature of the order impugned giving rise to the cause of action.

143. Notice may also be had to the fact that Article 226(1) begins with a non-obstante clause and in terms thereof every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders or writs, for the enforcement of any other rights conferred by Part III or for any other purpose. In terms of clause (2) of Article 226 the power conferred by clause (1) may be exercised by the High Court if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

144. A plain reading of the two clauses of Article 226 makes it clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in

part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories.

145. Article 226(1) states that every High Court shall have power, throughout the territorial jurisdiction in relation to which it exercises jurisdiction, to issue directions, orders or writs to any person or authority, including in appropriate cases, any Government, within those territories. The powers so conferred under Article 226(1) have been further amplified with the insertion of clause (1-A), subsequently renumbered as clause (2), which provides that the powers conferred under clause (1) may also be exercised by the High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such powers, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. It provides an expansion to the normal rule of the respondent being sued at his place of residence by providing for exercise of jurisdiction “notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories”. The non-obstante clause appearing under clause (2) thus enlarges the scope of jurisdiction which is primarily founded on the ground of cause of action.

146. We may therefore observe that Article 226(1) provides

the source of power of the High Court as well as its territorial jurisdiction, whereas Article 226(2) amplifies the jurisdiction in relation to a cause of action by providing that the territorial jurisdiction would be exercisable in relation to the territories within which the cause of action, arises, wholly or in part. The cause of action would include material and integral facts and accrual of even a fraction of cause of action within the jurisdiction of the Court would provide territorial jurisdiction for entertaining the petition.

147. The territorial jurisdiction is to be decided on the facts pleaded in the petition and in determining the objection of lack of territorial jurisdiction the Court would be required to take into consideration all the facts pleaded in support of the cause of action without embarking upon an enquiry as to the correctness or otherwise of the said facts. The question whether a High Court has territorial jurisdiction to entertain a writ petition is to be answered on the basis of the averments made in the petition, the truth or otherwise, whereof being immaterial. The expression “cause of action”, for the purpose of Article 226(2), is to be assigned the same meaning as under Section 20(c) CPC, and would mean a bundle of facts which are required to be proved. However, the entire bundle of facts pleaded, need not constitute a cause of action as what is necessary to be proved are material facts on the basis of which a writ petition can be allowed.

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 "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.

149. The *situs* of the office of the respondent would not be relevant for the purposes of territorial jurisdiction in the context of Article 226(2), and a place where appellate or revisional order is passed may give rise to a part of the cause of action although the original order was made at a place outside the said area, and a writ petition would be maintainable in the High Court within whose jurisdiction it is situate, having regard to the fact that the order of the appellate authority may also be required to be set aside since the order of the original authority has merged with that of the appellate authority. In such cases, where a part of a cause of action arises within one or the other High Court, it would be for the litigant who is the *dominus litis* to have his

forum conveniens. In such cases, it would not be wholly correct to say that the litigant chooses a particular Court; the choice, would be by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of that Court, and it would ultimately be upon the Court to find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action.

150. The doctrine of *forum conveniens* can be invoked only where the Court having jurisdiction decides not to exercise jurisdiction by invoking the doctrine *forum conveniens*. The invocation of doctrine of *forum conveniens* or *forum non conveniens* pre-supposes that the Court refusing to entertain a case on the basis of this doctrine, otherwise has jurisdiction. The argument of *forum non conveniens* cannot be raised in conjunction with the argument of lack of jurisdiction or *forum non competens*. The doctrine would be available only in a case where although the Court has jurisdiction but an adequate alternative forum is also available.

151. It may also be added that where a small fraction of cause of action accrues within the jurisdiction of a Court, although it may have jurisdiction in the matter, but the same by itself may not be considered to be a determinative factor compelling the Court to decide the matter on merits and in appropriate cases the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*.

152. The question whether or not cause of action, wholly or in part, has arisen within the territorial limits of any High Court is to be decided in the light of the nature and character of the proceedings and in order to maintain the writ petition, the petitioner would be required to establish that the legal right claimed by him has *prima facie* either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction causing him actual injury or threat thereof.

153. The accrual of cause of action having been made an additional ground to confer jurisdiction on the High Court after the Constitution (Fifteenth) Amendment, cause of action would be a relevant and germane factor for determination of the jurisdiction of a High Court under Article 226 and a writ petition can be instituted in a High Court, within territorial jurisdiction of which, cause of action, in whole or in part, arises.

154. As to whether the facts averred by the writ petitioner, in a particular case, constitute a part of cause of action, has to 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 cause of action and if it is not, it does not form a part of cause of action. In determining the said question the substance of the matter and not the form thereof has to be considered, and even if a small fraction of cause of action arises within the jurisdiction of the Court, it would have territorial jurisdiction to entertain the petition.

155. In dealing with the cases relating to forces operating under special statutes, as is the case from which the present reference has arisen which pertains to the C.R.P.F. Act, we may take notice of the fact that these special statutes have an inbuilt provision for filing statutory appeals/revisions and representations. In the event the statutory appellate/revisional authority is located beyond the territorial jurisdiction of the Court and the petitioner has availed such remedies, the jurisdiction of the Court cannot be invoked on the ground that the head office of the department is located within the jurisdiction of the Court. From a practical stand point also, this would be a more acceptable view for the reason that records of all the authorities whose jurisdiction might have been invoked during the pendency of departmental proceedings would be available at the offices of the authorities, which would be beyond the territorial limits of the Court.

156. The intent of the Parliament to grant territorial jurisdiction to the High Court within whose jurisdiction the entire or part of cause of action has arisen may be seen to have a nexus to the expeditious disposal of the proceedings. The exercise of jurisdiction under Article 226 would, in our view, take within its ambit remedies which are effective and efficacious.

157. Keeping in mind the objective of expeditious disposal of the proceedings and the need to balance the convenience between the parties to the *lis* it may be appropriate for the Courts to determine the question of jurisdiction at the very

threshold. The doctrine of *forum conveniens* may be considered while determining the issue of jurisdiction. The petitioner no doubt is the *dominus litis* but the rights in this regard would be subject to the law of jurisdiction. In a case where the necessary ingredients of the territorial jurisdiction are not satisfied the Court may not assume jurisdiction merely on the ground of the residence. The doctrine of *forum conveniens* and *forum non conveniens* would be a relevant factor for the Court to examine whether the claim should or should not be entertained for the reason that there is another forum which is more appropriate. This doctrine would, however, not be the determinative factor and in a case where no fraction or even an *infinitesimal* part of the cause of action as arisen within its territorial limits the jurisdiction of the Court may not be invoked.

158. The aforementioned propositions broadly set out the contours with regard to the position of law in respect of the territorial jurisdiction of the High Courts under Article 226 of the Constitution of India. We may add that though an attempt has been made to cover the expanse of the precedents which are available, the discussion in the preceding paragraphs, is by no means exhaustive, in view of wide expanse of the scope and the varying interpretations rendered by the Courts keeping in view the complexities which arise in the interpretation of the scope of the writ jurisdiction of the High Courts.

159. We may now come back to the question referred to this Bench, which is in the following terms:-

> "whether the observations of the Supreme Court in the case of Nawal Kishore Sharma (supra) in paragraph 17 can be said to be a binding precedent on this Court to entertain the above writ petitions or whether the observations of paragraph 17 were in the peculiar facts and circumstances of the case of Nawal Kishore Sharma (supra) in view of paragraphs 18 and 19 of the said judgment?
>
> OR
>
> In the alternative whether the judgment of the Full Bench in Rajendra Kumar Mishra (supra) and Constable Lalji Pandey (supra) can be said to still lay down the correct law in view of the judgment of the Supreme Court in Nawal Kishore Sharma (supra)?"

160. Insofar as the question regarding the observations made in paragraph 17 of the judgment in the case of **Nawal Kishore Sharma,** we may state that a judgment is required to be read in its entirety in order to understand the facts on which the decision was given and to appreciate the ratio of the judgment and the law laid down.

161. In the case of **Nawal Kishore Sharma**, the question which had fallen for consideration before the Supreme Court was as to whether in the facts of the case, the High Court was correct in taking the view that it had no jurisdiction to entertain the writ petition.

162. While considering the aforesaid question, the Court noticed the provisions under clause (1-A) inserted in Article 226 by the Constitution (Fifteenth) Amendment Act, 1963, subsequently renumbered as clause (2) by the Constitution (Forty-second) Amendment Act, 1976, and held that on a plain reading of the amended provisions in clause (2), it was clear that the High Court could now issue a writ when the person or the authority against whom the writ is issued is

located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the Court's territorial jurisdiction. It was stated that cause of action for the purpose of Article 226(2), for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the CPC. It was also taken note of that the expression "cause of action" having not been defined either in the Code of Civil Procedure or the Constitution, the same would be referable to a bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed.

163. Referring to the decisions on the point it was observed that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or part of it arose within its jurisdiction. It was also taken note of 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 are such which have a nexus or relevance with the *lis* involved in the case.

164. The Supreme Court in the judgment of **Nawal Kishore Sharma**, upon an extensive discussion based on the earlier precedents, held that there could not be any doubt that the question whether or not cause of action wholly or in part for filing the writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature

and character of the proceedings under Article 226 of the Constitution, and in order to maintain a writ petition the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction. It was thereafter that the judgment, in paragraph 17, refers to the facts of the case, and records its conclusion that upon a consideration of all the facts together, a part of fraction of cause of action had arisen within the jurisdiction of the High Court in question.

165. It is therefore seen that though the observations made in the judgment in the case of **Nawal Kishore Sharma**, in paragraph 17, were on the facts of the case, the ratio of the judgment and the law laid down, is to be culled out upon reading the judgment in its entirety, and the observations made in its paragraphs, which we have referred to above.

166. As regards the alternative question posed in the referring order as to whether the judgment of the Full Bench in **Rajendra Kumar Mishra** and the judgment in the **Constable Lalji Pandey** can be said to still lay down the correct law in view of the judgment of the Supreme Court in **Nawal Kishore Sharma**, we may take notice of the fact that the question considered by the Full Bench was as to whether the Court had jurisdiction to decide the petition at hand, and based on the facts of the case, it had expressed a view that since no part of the cause of action in the case had arisen in State of Uttar Pradesh the writ petition was not maintainable before the Court.

167. As we have noticed earlier, the judgment in the case of **Constable Lalji Pandey** was in respect of a Constable in the Central Reserve Police Force posted at Hyderabad, had absented himself without leave, and therefore the departmental proceedings were conducted against him and an order of dismissal was passed. The appeal and revision filed thereagainst were also rejected. The orders of the dismissal as well as the appellate and revisional orders were passed outside the territorial jurisdiction of this Court. It was in the light of the aforesaid facts that the Division Bench following the judgment of the Full Bench in the case of **Rajendra Kumar Mishra** (supra) held that mere communication of the orders at the residential address of the respondent at district Bhadohi would not confer territorial jurisdiction to this Court. It would therefore be seen that the decision in the case of **Constable Lalji Pandey** was based on its own facts.

168. It may be taken note of that while considering the question with regard to jurisdiction of the Court to decide the petition at hand, the Full Bench in **Rajendra Kumar Mishra**, after referring to earlier judgments on the point made an observation that in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration although without embarking upon an enquiry as to the correctness or otherwise of the said facts. The Full Bench further reiterated that a 'cause of action' is bundle of facts, which taken with the law applicable, gives the plaintiff right to relief against the defendant.

169. We may therefore observe that in both the Full Bench judgment of this Court in the case of **Rajendra Kumar Mishra** and the judgment of the Supreme Court in the case of **Nawal Kishore Sharma**, it has been held that the question as to whether cause of action, wholly or in part, had arisen within the territorial jurisdiction of a High Court, would have to be determined in each case on its own facts and in the light of the nature and character of the proceedings under Article 226.

170. Thus there does not seem to be any apparent conflict of opinion in the two views. However, the broad propositions which we have attempted to cull out from the precedents which are available, may be taken as reference points while deciding the question of territorial jurisdiction under Article 226 of the Constitution of India, which are stated to be coming up in a fairly large number of matters.

171. The reference is accordingly answered in the manner as aforesaid.

172. The papers relating to individual cases may now be placed before the appropriate Bench having jurisdiction in the matter.

Order Date :- 01.05.2020
Pratima/Shahroz

(Dr. Y.K. Srivastava,J.) (Anjani Kumar Mishra,J.) (Sunita Agarwal,J.)