

CEMENT WORKERS' MANDAL

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v.

GLOBAL CEMENTS LTD. (HMP CEMENTS LTD.) & ORS.

(Civil Appeal No.5360 of 2010)

FEBRUARY 14, 2019

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**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Constitution of India: Art. 226(2) – Territorial jurisdiction of the High Court to entertain the petition – Held: Expression “the cause of action, wholly or in part, arises” occurring in Art. 226(2) has to be read in the context of s. 20(c) CPC which deals with filing of the suit within the local limits of the jurisdiction of the Civil Courts – Issue as to whether the cause of action for filing the petition, wholly or in part, arose in the context of territorial jurisdiction of the High Court, is to be decided keeping in view the provisions of Art. 226(2) r/w s. 20 CPC – On facts, the part of the cause of action as contemplated in Art. 226(2) has arisen within the territorial jurisdiction of the Gujarat High Court for filing the petition to claim appropriate reliefs in relation to such dispute against the Company – Thus, the application was maintainable in the High Court – Order of the Single Judge is restored to the extent it decides that the application is maintainable in the Gujarat High Court – Code of Civil Procedure, 1908 – s. 20.

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Allowing the appeal, the Court

HELD: 1.1 Article 226(2) of the Constitution empowers the High Court to entertain the writ petition if the cause of action to file such writ petition against the respondents of the said writ petition has arisen wholly or in part within the territorial jurisdiction of ‘A’ High Court. Clause (2) further empowers a High Court to issue any order, directions or writ as provided in clause (1) of Article 226 in such writ petition notwithstanding that seat of such Government or the Authority or the residence of such person against whom the writ petition is filed does not fall within the territories of the “A” High Court but falls in the territories of the “B” High Court. [Paras 24, 25] [365-A-C]

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- A 1.2 Respondent No.1-Company has its factory at Porbandar, which is a part of State of Gujarat. The Labour Court, Junagadh, which is also a part of State of Gujarat, entertained the dispute between the appellant-Union and respondent No.1-Company and passed a recovery order. One of the reliefs claimed in the petition (SCA) pertains to non-payment of outstanding wages payable to the workers by respondent No.1-Company. Thus, the part of the cause of action as contemplated in Article 226 (2) has arisen within the territorial jurisdiction of the Gujarat High Court for filing the petition (SCA) to claim appropriate reliefs in relation to such dispute against respondent No.1-Company. [Paras 26-27]
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- C [365-C-E]

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- 1.3 The expression "*the cause of action, wholly or in part, arises*" occurring in Article 226(2) of the Constitution has to be read in the context of Section 20(c) CPC which deals with filing of the suit within the local limits of the jurisdiction of the Civil Courts. Indeed, the question as to whether the cause of action for filing the petition, wholly or in part, arose in the context of territorial jurisdiction of the High Court and whether the Gujarat High Court has territorial jurisdiction to entertain the appellant's petition (SCA) or not, is required to be decided keeping in view the provisions of Article 226(2) read with the provisions of Section 20 CPC. [Paras 28-29] [365-F-H]

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- 1.4 Special Civil Application (SCA) was maintainable in the High Court inasmuch as the part of the cause of action to file such petition did accrue to the appellant within the territorial jurisdiction of the Gujarat High Court. SCA was required to be decided on merits by the High Court. The impugned order of the Division Bench is set aside and the order of the Single Judge is restored to the extent it decides that the SCA as maintainable in the Gujarat High Court. The case is remanded to the Single Judge (Writ Court) for deciding the petition(SCA) on merits strictly in accordance with law. [Paras 30-33] [366-A-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5360 of 2010.

From the Judgment and Order dated 27.04.2007 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 1020 of 2006.

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Ms. Anushree Prashit Kapadia, Ms. Kavita Bhardwaj, Advs. for A
the Appellant.

Gautam Awasthi, Saurabh Trivedi, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed against B
the final judgment and order dated 27.04.2007 passed by the High Court
of Gujarat at Ahmedabad in Letters Patent Appeal No.1020 of 2006 in
Civil Application No.770 of 2005 whereby the Division Bench of the
High Court allowed the said Letters Patent Appeal filed by respondent
No.1 herein holding that the High Court had no territorial jurisdiction to
entertain the Special Civil Application (in short, "SCA") filed by the
appellant herein which was entertained and allowed by the Single Judge. C

2. A few facts need mention hereinbelow for the disposal of this D
appeal, which involves a short legal question.

3. Respondent No.1 herein is a Limited Company having its D
registered office at Calcutta. Respondent No.1 was engaged in the
business of manufacture and sale of cement. They have a cement factory
at Porbandar in the State of Gujarat.

4. The appellant is a Union of workers. These workers were E
working, at all relevant time, in the cement factory of respondent No.1
at Porbandar. According to the appellant-Union, as many as 500 workers,
who are the members of it, were working at the relevant time in the said
cement factory.

5. Respondent No.1, however, closed the cement factory F
somewhere in the year 1998 for myriad reasons without paying the wages
to its workers.

6. A dispute, therefore, arose between the appellant-Union and G
Respondent No.1-Company (employer) regarding the non-payment of
outstanding wages payable to the workers. The appellant- Union,
therefore, approached the Labour Court at Junagadh (Gujarat) and filed
Recovery Application No.86/98 under the Industrial Disputes Act, 1947
for the recovery of the outstanding wages payable to the workers against
Respondent No.1.

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- A 7. By order dated 12.04.1999, the Labour Court allowed the application and directed Respondent No.1-Company to pay a sum of Rs.81,50,744/- with a cost of Rs.50,000/- to the workers. This was followed by issuance of recovery certificate dated 04.09.2000 for Rs.60,35,379/- by the Collector, Junagadh as arrears of land revenue. The said certificate, however, has remained unexecuted.
- B 8. It appears that Respondent No.2 - Indian Bank had given business loan to Respondent No.1- Company, which they failed to repay to the Indian Bank. The Indian Bank (R-2), therefore, filed a claim petition before the Debt Recovery Tribunal (for short “the DRT) at Calcutta against Respondent No.1-Company for recovery of their unpaid loan amount with interest.
- C 9. By order dated 04.03.2003, the DRT allowed the claim petition and ordered for sale of the properties of Respondent No.1-Company after giving due publicity. The DRT also appointed one Receiver to take appropriate steps in this regard. The Receiver informed the appellant-Union accordingly.
- D 10. It is with these background facts, the appellant-Union filed a petition (Special Civil Application No.12212 of 2004) in the High Court of Gujarat at Ahmadabad out of which this appeal arises. The SCA was filed against the Indian Bank(respondent No.2 herein) and the Company(respondent No.1 herein). The appellant claimed the following reliefs in their SCA:
- F **“A. To issue an order, direction in the nature of mandamus and/or any other appropriate writ, order or direction, directing the respondent No.1 Indian Bank, Kolkata, to deposit the 50% amount of the sale proceeds of the Porbandar H.M.P. Cement with the District Collector, Porbandar, and the District Collector be directed to pay by account payee cheque to each of the workmen proportionately towards the part-payment of the legal dues to the individual workman concerned; ALTERNATIVELY.**
- G **B. To issue direction to the respondent No.1 Indian Bank to pay 50% of the amount to the petitioner union who shall directly pay to the workmen by account payee cheque either under the supervision of District Collector, Porbandar or Assistant Labour Commissioner, Porbandar.**
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C. To declare and hold the impugned action of the Debt Recovery Tribunal, Kolkata, in transferring the entire sale proceed to respondent No.1, Indian Bank, without retaining the amount of workers' due, as illegal and without authority of law. A

D. To suspend the operation, implementation and execution of the order of the Debt Recovery Tribunal insofar as the Debt Recovery Tribunal directs: B

"It is being further ordered that in the case of default on the part of the defendants in adhering to any of the terms and condition hereinabove stated, the certificate of recovery so issued, shall automatically be altered for the total applicant's claim as filed on July 2002 and the applicant being granted the liberty to appropriate the entire money lying with the present learned transferring Tribunal in O.A. No.142 of 1998 after receiving the said sum from the learned Receiver and it is also being ordered that the learned Receiver is hereby being ordered to stand discharged...." C

E. To grant such other and further relief as the Hon'ble Court deems fit and proper in the interest of justice." D

11. The respondent Nos.1 & 2, i.e., Company and the Indian Bank on entering their appearance in the SCA raised a preliminary objection before the writ court contending that the SCA filed by the appellant-Union is not maintainable in the High Court of Gujarat at Ahmedabad inasmuch as no part of the cause of action in relation to the subject matter of the SCA has arisen in the State of Gujarat which entitled the appellant-Union to file the SCA in the Gujarat High Court. E F

12. In other words, the objection was that having regard to the nature of reliefs claimed by the petitioner (appellant herein) in the SCA, no part of cause of action could be said to have arisen in the State of Gujarat, which would empower the Gujarat High Court to entertain the SCA for its disposal on merits. On the other hand, it was contended that it is clear that the entire cause of action between the parties has accrued in the State of Calcutta where the company's registered office is located and where the DRT had also entertained the claim petition filed by the Indian Bank(respondent No.2 herein) against the Company (respondent No.1 herein) and had passed the orders in the said claim petition. G H

A 13. The respondent Nos. 1 & 2, therefore, contended that the said SCA was liable to be dismissed as being not maintainable for want of territorial jurisdiction of the Gujarat High Court.

B 14. The Single Judge by order dated 26.10.2005 overruled the preliminary objection and held that the Gujarat High Court has the territorial jurisdiction to entertain the SCA.

C 15. Respondent No.1 (Company) felt aggrieved and filed the LPA before the Division Bench. By impugned order, the Division Bench allowed the LPA, set aside the order of the Single Judge and dismissed the SCA. The Division Bench held that the Gujarat High Court has no territorial jurisdiction to entertain the SCA in question because no part of the cause of action has accrued to file such petition(SCA) in the Gujarat High Court.

D 16. In other words, the Division Bench was of the view that having regard to the nature of reliefs claimed in the SCA, the Gujarat High Court cannot be held to have territorial jurisdiction to entertain such petition for grant of the reliefs claimed therein.

E 17. It is against this order of the Division Bench, the Union (petitioner in SCA) felt aggrieved and has filed the present appeal in this Court after obtaining the special leave to appeal.

F 18. So, the short question, which arises for consideration in this appeal, is whether the Division Bench was justified in holding that the SCA filed by the appellant was not maintainable for want of territorial jurisdiction of the Gujarat High Court.

G 19. Heard Ms. Anushree Prashit Kapadia, learned counsel for the appellant and Mr. Gautam Awasthi, learned counsel for the respondents.

H 20. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order of the Division Bench restore the order of the Single Judge.

I 21. In our considered opinion, the Division Bench erred in not noticing Article 226(2) of the Constitution of India while deciding the question arising in this case.

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22. In other words, the question as to whether the Gujarat High Court has territorial jurisdiction to entertain the appellant's petition(SCA) or not, should have been decided keeping in view the provisions of Article 226(2) of the Constitution read with Section 20 of the Code of Civil Procedure, 1908 (for short, "CPC"). A

23. Article 226 of the Constitution and Section 20 of CPC read as B under:

"Article 226 of the Constitution"

226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, 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. C

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

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without- E

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and G

(b) giving such party an opportunity of being heard,

- A makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated
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- D (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."

“Section 20 of CPC”

- E 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 Court within the local limits of whose jurisdiction-
 - F (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
 - G (b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
 - H (c) the cause of action, wholly or in part, arises.
- Explanation - A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect**

**of any cause of action arising at any place where it has also A
a subordinate office, at such place."**

24. Article 226(2) of the Constitution, in clear terms, empowers the High Court (let us say "A" High Court) to entertain the writ petition if the cause of action to file such writ petition against the respondents of the said writ petition has arisen wholly or in part within the territorial jurisdiction of "A" High Court. B

25. Clause (2) further empowers a High Court to issue any order, directions or writ as provided in clause (1) of Article 226 of the Constitution in such writ petition notwithstanding that seat of such Government or the Authority or the residence of such person against whom the writ petition is filed does not fall within the territories of the "A" High Court but falls in the territories of the "B" High Court. C

26. Coming to the facts of this case, we find from the averments of the petition(SCA) that firstly, Respondent No.1-Company has its factory at Porbandar, which is a part of State of Gujarat; Second, the Labour Court, Junagadh, which is also a part of State of Gujarat, entertained the dispute between the appellant-Union and respondent No.1-Company and passed a recovery order; and Third, one of the reliefs claimed in the petition(SCA) pertains to non-payment of outstanding wages payable to the workers by respondent No.1-Company. D

27. In the light of these three reasons, we are of the view that the part of the cause of action as contemplated in Article 226 (2) of the Constitution has arisen within the territorial jurisdiction of the Gujarat High Court for filing the petition(SCA) to claim appropriate reliefs in relation to such dispute against respondent No.1-Company. E

28. In our considered opinion, the expression "*the cause of action, wholly or in part, arises*" occurring in Article 226(2) of the Constitution has to be read in the context of Section 20(c) of CPC which deals with filing of the suit within the local limits of the jurisdiction of the Civil Courts. F

29. Indeed, the question as to whether the cause of action for filing the petition, wholly or in part, arose in the context of territorial jurisdiction of the High Court is required to be decided keeping in view the provisions of Article 226(2) of the Constitution read with the provisions of Section 20 of CPC. G

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- A 30. In the light of the foregoing discussion, we are of the view that the appellant's petition(SCA) was maintainable in the Gujarat High Court inasmuch as the part of the cause of action to file such petition did accrue to the appellant herein (petitioner) within the territorial jurisdiction of the Gujarat High Court.
- B 31. In these circumstances, the SCA was required to be decided on merits by the Gujarat High Court.
32. In view of the foregoing discussion, the appeal succeeds and is hereby allowed. The impugned order of the Division Bench is set aside and the order of the Single Judge is restored to the extent it decides
- C that the petition(SCA) as maintainable in the Gujarat High Court.
33. The case is accordingly remanded to the Single Judge (Writ Court) for deciding the petition(SCA) on merits strictly in accordance with law uninfluenced by any of the observations made by the Division Bench and this Court because this Court has decided only the issue of
- D territorial jurisdiction of the Gujarat High Court and not beyond it.
34. Since the petition(SCA) is old, we request the Single Judge to decide it preferably within six months.

Nidhi Jain

Appeal allowed.