Callipers Naigai Ltd. And Ors. vs Government Of Nct Of Delhi And Ors. on 30 January, 2004

Equivalent citations: II(2004)BC204, [2005]128COMPCAS730(DELHI), 110(2004)DLT41, 2004(73)DRJ104

Author: Badar Durrez Ahmed

Bench: Badar Durrez Ahmed

JUDGMENT

Badar Durrez Ahmed, J

1. This writ petition has been filed by the petitioners, inter alia, praying for a writ of certiorari for quashing the impugned notice dated 30.4.2001 issued by the Respondent No.1 (Assistant Collector, Grade-I, Room No. 5, Office of the Deputy Commissioner (South), Abdul Hamid Marg (M.B. Road), Saket, New Delhi). The petitioners have also, inter alia, sought the issuance of an appropriate writ against the respondents preventing them from taking any coercive action against the petitioners on the basis of the aforesaid recovery notice dated 30.4.2001.

2. The petitioner No.1 took a loan from Respondent No. 3 (M/s Pradeshiya Industrial and Investment Corporation of U.P. Ltd.) - (hereinafter referred to as PICUP). The petitioners 2 and 3 are the guarantors to the said loan taken by the petitioner No. 1 from PICUP. The petitioner No.1's registered office is at Delhi and the petitioners 2 and 3 also reside in Delhi. PICUP, however, does not have any office in Delhi.

3. The learned counsel on behalf of PICUP submitted that this Court does not have the territorial jurisdiction to entertain this petition and, as such, this question be disposed of as a preliminary question before the case on merits is examined. It is in this context that arguments were heard on the question of territorial jurisdiction and the same are being disposed of by this judgment.

4. According to Mr. Neeraj Kaul, the learned senior counsel who appeared on behalf of the petitioners, this Court would have jurisdiction to entertain this writ petition in view of the facts that (a) the loan agreement dated 11.4.1986 did not contain any clause whereby the jurisdiction of the courts at Delhi had been ousted and (b) the impugned recovery notice dated 30.4.2001 had been issued by respondent No.1 in Delhi. On the other hand, Mr. Sandeep Aggarwal, learned counsel appearing on behalf of PICUP submitted that the loan agreement was entered into in Lucknow. The stamp papers were purchased in Uttar Pradesh. The plant in respect of which the loan was taken by the petitioner No.1 is situated in Surajpur, Dadri, Gaziabad, Uttar Pradesh. The schedule of disbursement also indicates that the disbursement of the loan by PICUP was also from Lucknow. The registered office of PICUP was at Lucknow and Clause 57 of the Loan Agreement specifically provided that for all purposes of litigation relating to the agreement, the jurisdiction would be of the

Lucknow Courts. In so far as the question of the impugned recovery notice having been issued by the respondent no.1 at Delhi was concerned, he submitted that this was merely a ministerial act and could not be the subject matter of a writ of certiorari. All other reliefs were in respect of events or deeds which took place outside the territorial jurisdiction of this court. As such, he submitted that this Court would have no territorial jurisdiction and if the petitioners were aggrieved they ought to go before the High Court Bench at Lucknow which would be the proper forum for adjudication of the disputes raised in this petition.

5. So, the two questions which require consideration are :-

> (1) Does clause 57 of the loan agreement in question exclude the jurisdiction of courts other than the Lucknow courts?
>
> (2) If no, does the the mere issuance of the impugned recovery notice at Delhi clothe this court with the territorial jurisdiction to entertain this petition?

6. Let me examine the first question. For this purpose, it would be necessary to set out clause 57 of the loan agreement which reads as under:-

> "(57) Jurisdiction for litigation:
>
> The Borrower and PICUP agree that for all purposes of litigation relating to this agreement the jurisdiction shall be of Lucknow Courts."

Mr. Kaul submitted that Clause 57 did not expressly oust the jurisdiction of other courts. According to him, if the last word in the clause had been "only", "alone" or "exclusively" or the like, then alone could it be said that there was ouster of jurisdiction in respect of all courts, other than the courts at Lucknow. Since there was no express ouster of jurisdiction of other courts, the said Clause 57 cannot be read as limiting jurisdiction to the Courts at Lucknow alone. In support of his arguments on this question, Mr. Kaul relied upon the following decisions:-

> (1) A. B. C. Laminart Pvt. Ltd. and another v. A.P. Agencies, Salem :
>
> (2) R. S. D. V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd.:
>
> (3) M/s Cheema Enterprises v. M/s. Mayur Enterprises : JT 2001 (Suppl.1) SC 560 On the other, Mr Sandeep Aggarwal, relying upon a division bench decision of this court in the case of A.K. Surekha v. PICUP and others: (DB),submitted that Clause 57 clearly meant that courts at Lucknow alone would have jurisdiction. However, Mr Kaul submitted that the clause that was considered in A. K. Surekha (supra) was different and, therefore, that decision would be inapplicable to the facts of the present case.

6.1 In this background, I now examine the aforesaid decisions relied upon by the parties. In the A. B. C. Laminart Pvt. Ltd. (supra), the Supreme Court was considering whether the clause -- "any dispute arising out of this sale shall be subject to Kaira jurisdiction" -- could, by itself be construed as ousting the jurisdiction of all courts other than those at Kaira. It held that it could not be so construed. It observed that "when the Court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ousting expression or clause properly" (see para 20). The Supreme Court held that :-

> "As regards construction of the ouster clause when words like `alone', `only', `exclusive', , and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim `expressio unius est exclusio alterius' - expression of one is the exclusion of another may be applied. What is an appropriate case shall depend on the facts of the case." [para 21] In the case of R. S. D. V. Finance Co. Pvt. Ltd. (supra), the Supreme Court, following its decision in ABC Laminart (supra), held as follows:-
>
> "9. We may also consider the effect of the endorsement `Subject to Anand jurisdiction' made on the deposit receipt issued by the defendant. In the facts and circumstances of this case it cannot be disputed that the cause of action had arisen at Bombay as the amount of Rs. 10,00,000/- itself was paid through a cheque of the Bank at Bombay and the same was deposited in the bank account of the defendant in the Bank of Baroda at Nariman Point Bombay. The five post dated cheques were also issued by the defendant being payable to the plaintiff at Bombay. The endorsement `Subject to Anand jurisdiction' has been made unilaterally by the defendant while issuing the deposit receipt. The endorsement `Subject to Anand jurisdiction' does not contain the ouster clause using the words like `alone', `only', `exclusive' and the like. Thus the maxim `expressio unius est exclusio alterius' cannot be applied under the facts and circumstances of the case and it cannot be held that merely because the deposit receipt contained the endorsement `Subject to Anand jurisdiction' it excluded the jurisdiction of all other courts who were otherwise competent to entertain the suit. The view taken by us finds support from a decision of this Court in A. B. C. Laminart Pvt. Ltd v. A.P. Agencies, Salem, ".

In M/s Cheema Enterprises (supra), the Supreme Court, considered the clause -- "All disputes are subject to Kashipur jurisdiction" and, following its decision in ABC Laminart (supra), held that the clause did not oust the jurisdiction of courts other than those at Kashipur. The principle laid down in ABC Laminart (supra), which has been followed in the other two decisions referred to above, is this: unless words such as "alone", "only", "exclusive" and the like are used in the jurisdiction clause, it cannot be inferred, ipso facto, that there is ouster of jurisdiction of courts not mentioned in the clause. However, surrounding circumstances may yet indicate an ouster of jurisdiction on an application of the 'expressio unius est exclusio alterius' maxim. The principle being that jurisdiction must be explicitly and unambiguously excluded by the clause itself or by other clauses in the agreement. In the present case, apart from clause 57, no other clause has been pointed out to suggest ouster or exclusion of jurisdiction of courts other than those at Lucknow. And, it is clear that

clause 57, which merely states that the jurisdiction shall be of Lucknow courts, does not ipso facto exclude the jurisdiction of other courts.

6.2 In this schema where does the Division Bench decision of this Court in A.K. Surekha (supra) fit in? The Division Bench of this Court in that case declined to exercise jurisdiction in respect of a "similar" loan agreement. But, the Division Bench so decided on the basis of a specific ouster clause. In that case, it was specifically provided that the jurisdiction shall be of Lucknow courts "only". The clause that was construed by the Division Bench in the case of A.K. Surekha (supra) was as under:-

> "57. Jurisdiction for litigation.
>
> The borrower and PICUP agree that for all purposes of litigation relating to his agreement this jurisdiction shall be of Lucknow Courts only." [underlining added] Comparing this clause with clause 57 in the present case, it is obvious that the clause construed by the Division Bench had the word "only", whereas Clause 57 in the present case has omitted the word "only". Thus, while there was an express ouster in A.K. Surekha (supra), in the present case there is no such express ouster of jurisdiction of Courts other than those at Lucknow. A reference to paragraph 28 of the Division Bench decision would also show that the Division Bench in that case had decided that this Court did not have jurisdiction because the clause specifically stipulated that the jurisdiction shall be of Lucknow Courts alone. So, the answer to question No. 1 clearly has to be that clause 57 of the loan agreement in question does not exclude the jurisdiction of courts other than the Lucknow courts. To this extent, I am in agreement with the submissions of Mr Kaul.

7. Now to question No.2. Before I embark upon a discussion of the case law relied upon by the parties in support of their respective contentions, it would be necessary to note the provisions under which the impugned recovery notice dated 30.4.2001 came to be issued. The respondent No.1 issued the impugned recovery notice on the basis of a recovery certificate issued the Uttar Pradesh Public Monies (Recovery of Dues) Act, 1972 (hereinafter referred as the said U.P. Act). Section 3 of the said U. P. Act, which relates to the recovery of certain dues as arrears of land revenue, reads as under:-

> "3. Recovery of certain dues as arrears of land revenue. -
>
> (1) Where any person is party, -
>
> (a) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of, goods, sold to him by the State Government or the Corporation, by way of financial assistance: or
>
> (b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him by a banking company or a Government company, the case may be, under a State-sponsored scheme; or

(c) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern; or

(d) to any agreement providing that any money payable there under to the State Government for the Corporation shall be recoverable as arrears of land revenue; and such person -

(i) makes any default in repayment of the loan or advance or any Installment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any Installment thereof; or

(iii) otherwise fails to comply with the terms of the agreement;

then, in the case of the State Government, such officer as may be authorised in that behalf by the State Government by notification in the official Gazette, and in the case of the Corporation or a Government company the Managing Director or where there is no Managing Director then the Chairman of the Corporation, by whatever name called for such officer of the Corporation or Government company as may be authorised in that behalf by the Managing Director or the Chairman thereof, and in the case of a banking company, the local agent thereof, by whatever name called, may send a certificate, to the Collector, mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue.

(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

(3) No suit for the recovery of any sum due as aforesaid shall lie in the civil court against any person referred to in sub-section (1).

(4) In the case of any agreement referred to in sub-section (1) between any person referred to in that sub-section and the State Government or the Corporation, no arbitration proceedings shall lie at the instance of either party either for recovery of any sum claimed to the due under the said sub-section or for disputing the correctness of such claim:

Provided that whenever proceedings are taken against any person for the recovery of any such sum he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed and the person against whom such proceedings were taken may make a reference under or otherwise enforce an arbitration agreement in respect of the amount to be paid, and the provisions of Section 183 of the Uttar Pradesh Land Revenue Act, 1901, or Section 287-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as the

case may be, shall mutates mutants apply in relation to such reference or enforcement as they apply in relation to any suit in the civil court.

(5) Save as otherwise expressly provided in the proviso to sub-section (4) of this section or in Section 183 of the U.P. Land Revenue Act, 1901 or Section 287-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 every certificate sent to the Collector under sub-section (1) shall be final and shall not be called in question in any original suit, application (including any application under the Arbitration Act, 1940) or in any reference to arbitration, and no injunction shall be granted by any court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Act."

From a reading of Section 3(1) of the said U.P. Act, it becomes clear that whenever there is default in repayment of loan or advance or any installment thereof, the Managing Director of the Corporation (in this case PICUP) may send a certificate to the Collector mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue. Section 3(2) makes it clear that the Collector, on receiving the certificate, shall proceed to recover the amount stated therein as an arrear of land revenue. Section 3(5) of the said U. P. Act makes it clear that, subject to the exceptions provided therein, every certificate sent to the Collector under Section 3 (1) of the said Act shall be final and shall not be called in question in any original suit, application or in any reference to arbitration, and no injunction shall be granted by any court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under the Act.

7.1 The manner in which an arrear of land revenue is to be recovered is provided in The Revenue Recovery Act, 1890 (hereinafter referred to as the "RR Act"). Section 2(2) of this Act defines "Collector" to mean the Chief officer-in-charge of the revenue administration of a district and includes any Assistant Collector empowered by such officer to perform the functions of Collector under the Act. Section 2(3) of this Act further defines "defaulter" to mean a person from whom an arrear of land revenue, or a sum recoverable as an arrear of land revenue, is due, and includes a person who is responsible as surety for the payment of any such arrears or sum. Sections 3,4 and 5-A are relevant and are, therefore, reproduced in full:-

"3. Recovery of Public demands by enforcement of process in other districts than those in which they become payable:- Where an arrear of land revenue or a sum recoverable as an arrear of land revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrears accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule, stating-

(a) the name of the default and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, and save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district.

4. Remedy available to person denying liability to pay amount recovered under last foregoing section; - (1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid.

(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

(4) This section shall apply if under this Act as in force as part of the law of Pakistan or Burma, or under any other similar Act forming part of the law of Pakistan or Burma, proceedings are taken against a person in Pakistan or Burma, as the case may be, for the recovery of an amount stated in a certificate made by a Collector in any State to which this Act extends."

"5-A. Certificates in respect of sum recoverable as arrears of revenue by either public officers or local authorities from defaulters being or have property outside Uttar Pradesh - Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, and the defaulter is or has property in a district outside Uttar Pradesh, the Collector of the district in which the office of that officer or authority is situate may, on the request of the officer or authority, send a certificate of the amount to be recovered to the Collector of the district where the defaulter is or has property under the foregoing provisions of this Act, as if the sum were payable to himself."

Upon a reading of the aforesaid provisions, it becomes clear that under Section 3 of the RR Act, where an arrear of land revenue or a sum recoverable as an arrear of land revenue is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule stating the name of the defaulter and such other particulars as may be necessary for his identification or the amount payable by him or the

account on which it is due. Section 3(2) stipulates that the certificate shall be signed by the Collector making it, and save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated. Sub Section (3) of Section 3 mandates that the Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district. Two things are clear. Firstly, the certificate issued by the Collector in the District where the arrears accrued shall be conclusive proof of the matter stated therein and secondly, the Collector of the other district is duty-bound to give effect to this certificate and proceed to recover the amount stated therein. From this, it becomes apparent that the Collector who receives such a recovery certificate has no role to play except to recover the amount stated in the recovery certificate as arrears of land revenue. He merely performs a ministerial function. He does not decide any lis and any action taken by him does not have the trappings of a quasi-judicial function.

7.2 Section 4 of the RR Act provides for the remedy available to a person denying liability to pay under such a notice. The remedy is that he must pay the amount under protest made in writing at the time of payment and signed by him or his agent and thereafter institute a suit for the repayment of the amount or the part thereof so paid. Section 4(2) further provides that such a suit must be instituted in a civil court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose. Section 5-A is relevant for the purpose that the certificate may be sent by the Collector of a District in Uttar Pradesh to authorities in respect of defaulters being or having property outside Uttar Pradesh.

7.3 The gravamen of the matter is the Managing Director of PICUP issued a recovery certificate which was sent to the Collector, Lucknow, Uttar Pradesh who in turn sent it to concerned Collector in Delhi and on the basis of which the impugned notice dated 30.4.2001 has been issued by the respondent No.1. In the context of the foregoing provisions it becomes abundantly clear that the respondent No.1 has merely performed a ministerial function in issuing the impugned notice dated 30.4.2001. As such, in the first instance, it does appear to me that no writ of certiorari can at all be issued quashing the impugned recovery notice dated 30.4.2001 which has merely been issued in exercise of a ministerial function. There is the added question as to whether mere issuance of such a recovery notice would constitute a part of the cause of action for this petition or not?

7.4 Mr Kaul referred to the decision of a Division Bench of this Court in the case of Pradeep Gupta v. Haryana Financial Corporation: (DB). He sought to rely upon observations in the aforesaid decision to submit that the impugned recovery notice is sought to be enforced against the petitioner company in respect of its properties located in Delhi and, therefore, the cause of action which forms the basis of the writ petition definitely arose within the territorial limits of Delhi and, therefore, this Court would have territorial jurisdiction to entertain the present writ petition. In that case the challenge to the territorial jurisdiction was on the ground that since the recovery certificate had been issued by the Haryana Financial Corporation at Chandigarh, therefore any challenge to the said certificate of proceedings taken there under had to be in the courts at Chandigarh. But, it must be noted that the plaintiff in that case had specifically alleged in paragraph 29 of the Plaint that the Haryana Financial Corporation was calling upon him time and again at Delhi regarding recovery of their claim and its

realisation. It was further alleged that the said Corporation had been trying to recover money at Delhi through its Delhi office or through the Collector, Tees Hazari, Delhi. These were admitted facts. It was also clear that the Haryana Financial Corporation had a full-fledged office at Greater Kailash-II, New Delhi, from where substantial activities and work of the Corporation was being carried on regularly and it is in the light of this background, as specifically stated in paragraph 8 of the aforesaid decision, that the question of territorial jurisdiction has been answered. I am in agreement with the submission of Mr Aggarwal that the facts of that case and the case at hand are distinguishable. In the first instance, the case of Pradeep Gupta (supra) was one which arose out of a suit whereas the present case is of a petition under Article 226 of the Constitution. Secondly, while in that case the Haryana Financial Corporation had an office in Delhi, in the present case PICUP has no office in Delhi. Thirdly, in that case the officers of the Haryana Financial Corporation were admittedly trying to recover the money from the plaintiff therein through its office located at Delhi, in the present case there is no such allegation against the officers of PICUP. There has been no attempt by PICUP to directly try and recover the said amount from the petitioners at Delhi. Fourthly, in that case the Mortgage Deed and the Bond of Guarantee had been finalised and executed at New Delhi, whereas in the present case all the documentation and execution thereof had been done at Lucknow, U.P. In the circumstances noted above, it is obvious that in that case the Court at Delhi had jurisdiction to entertain the suit as part of the cause of action clearly arose within the territory of Delhi. In the present case, apart from the issuance of the recovery notice by the respondent No.1 nothing else has happened in Delhi. The ratio of the decision in the case of Pradeep Gupta (supra) is clearly distinguishable and is not applicable to the facts and circumstances of the present case.

7.5 Mr Kaul then relied upon a Division Bench decision of the Bombay High Court in the case of Damomal Kausomal Raisinghani v Union of India and others: . He referred to paragraph 5 of the said decision to submit that the Court, within whose territorial jurisdiction, the effect of an order fell, even if such an order is made outside such territory, would have territorial jurisdiction. That decision to my mind was decided in the background of its own peculiar facts. An order dated 31.10.1962 passed by Additional Settlement Commissioner under the Displaced Persons (Claims) Supplementary Act, 1954 was under challenge. The order was apparently made in New Delhi, though that is not for sure. However, what is clear is that the Additional Settlement Commissioner had fixed the hearing at Bombay. The petitioner therein, who was a resident of Ulhasnagar, a place situated in the district of Thane in Maharashtra, appeared at the hearing at Bombay. Obviously, since the hearing was conducted in Bombay, the High Court there would have jurisdiction, even if it were assumed that the order impugned therein was made at New Delhi. It is in this context that the High Court of Bombay held that it had territorial jurisdiction. The situation in the present case is entirely different and distinct. Nothing has happened in Delhi other the issuance of the impugned recovery notice.

7.6 Mr. Kaul lastly referred to the Supreme Court decision in the case of Navinchandra N. Majithia v. State of Maharashtra: . Referring to paragraphs 4,5,6 and 7 of the said Supreme Court decision, Mr. Kaul submitted that after the amendment inserted in Clause 2 of Article 226 by virtue of the Forty Second Amendment the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising the jurisdiction in relation to the territories within which

the cause of action, wholly or in part, arises and it is no matter that 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 and reach of writs issued by different High Courts. There can be no exception to this proposition as that is the purport and meaning of Article 226(2) itself as declared by the Supreme Court. What is to be seen in this case is whether the cause of action, wholly or in part, arose within the territory of Delhi. It is only then that this Court can entertain the present writ petition. Mr Kaul also referred to paragraph 8 of the said Supreme Court decision to submit that cause of action is nothing but a bundle of facts which it would be necessary for the petitioner to prove, if traversed, in order to support his right to the judgment of the Court. In the context of the aforesaid decision, he submitted that the recovery notice issued by the respondent No.1 which is impugned in the present writ petition forms an integral part of the demand against the petitioners. The effect of the demand is the issuance of the recovery notice which falls upon the petitioners in Delhi and such effect is a part of the cause of action. He urged the Court not to separate and compartmentalise the recovery notice and the recovery certificate. According to him the recovery notice is a part of the bundle of facts and, therefore, a part of the cause of action. If that be the case, since the recovery notice was issued in Delhi by the respondent No.1, this Court would have territorial jurisdiction to entertain the present writ petition.

7.7 Mr Sandeep Aggarwal, on the other hand, firstly stated that the decision of the Division Bench of this Court in Pradeep Gupta (supra) would not be applicable to the facts and circumstances of the case. These differences have already been referred to above and need not be repeated. It is clear that the decision in Pradeep Gupta's case (supra) is not applicable to the facts and circumstances of the present case. According to Mr. Aggarwal the Loan Agreement was executed at Lucknow, the Stamp paper was purchased in U.P., the plant for which the loan was taken was situate at Surajpur, Dadri, Ghaziabad, U.P., the disbursement of the loan was from U.P., the repayment of the loan by the borrower was also to be done at Lucknow, U.P., the service of notice to PICUP was also to be done at the PICUP's office at Lucknow in terms of the Loan Agreement. Thus, for all practical purposes, everything other than the issuance of the recovery notice by the respondent No.1 has taken place and occurred outside the territorial jurisdiction of this Court. According to Mr. Aggarwal the issuance of the recovery notice by the respondent No.1 is a mere ministerial and does not form part of the cause of action. He further submitted that insofar as the guarantors, i.e. petitioners 2 and 3 are concerned, no recovery notice had been issued to them by the respondent No.1 and as such, they cannot have any cause of action whatsoever. The recovery notice has been issued only against petitioner No.1, i.e. the company. Mr Aggarwal relied upon the decision of another Division Bench of this Court in the case of M/s Indo Gulf Explosives Ltd & Another v U. P. State Industrial Development Corporation & Anr. : (DB). In that case also the Division Bench was considering the question of territorial jurisdiction. The challenge was to a demand notice dated 27.2.1996 issued by the UPSIDC threatening recovery and forfeiture of the rights of the petitioners therein to run its industrial unit. The notice which was issued by UPSIDC was received by the petitioner therein at its registered office at New Delhi. The writ petition challenging the said notice was filed on the ground that the notice had been received at New Delhi and, as such, cause of action had accrued to the petitioner within the territorial jurisdiction of this Court. According to the petitioner therein the notice was an integral part of the whole transaction as well as an integral part of the cause of action and, therefore, the receipt of the notice in Delhi gave this Court the jurisdiction to entertain a

petition challenging the same. The Division Bench after considering the decisions of the Supreme Court in the case of State of Rajasthan v M/s Swaika Properties and Another : came to the conclusion that mere service of notice on the petitioner's registered office at Delhi would not be an integral part of the transaction of cause of action.

7.8 Mr Aggarwal next relied upon the decision of Union of India and Others v Adani Exports Ltd and Another : and in particular paragraph 17 thereof which reads as under:-

> "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."

From the aforesaid decision it is clear that 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. What needs to be examined in the present case is whether the issuance of the recovery notice has any connection or relevance with the lis that is involved in the case. If it has, then, this Court would have jurisdiction If not, then, the petition would not be maintainable in Delhi.

7.9 Mr Aggarwal relied upon yet another Division Bench decision of this Court in the case of Okhla Enclave Plot Holders Welfare Association (Regd.) v. State of Haryana & Others: (DB). He referred to paragraph 15 thereof to show that the cause of action constitutes a bundle of facts which are necessary to be stated for the purpose of obtaining a relief. Such cause of action, as mentioned in paragraph 16 of the said decision, must have a direct nexus with the relief sought for in the petition. He next referred to paragraph 26 of the said decision in which, the Division Bench, following the decision of the Supreme Court in the case of State of Rajasthan & Ors. (supra) held that "it is now trite that the residence or location of the petitioners is not relevant." Mr Aggarwal further submitted that even where a small part of the cause of action arises within the territorial jurisdiction of a High Court, such High Court may refuse to exercise its jurisdiction. In support of this he referred to paragraph 35 of the said decision in the case of Okhla Enclave Plot Holders Welfare Association (supra). In this view Mr Aggarwal submitted that even if it be held that the impugned recovery notice was a part of the cause of action in the facts of the present case, it was only a minuscule part

and, therefore, this Court ought not to exercise such jurisdiction. He further submitted that the entire pleadings are in relation to actions of PICUP and the only averments in the writ petition with regard to the respondent No.1's action are contained in paragraph 45 and 56 of the writ petition. He further contended that if one were to examine the prayers contained in the writ petition, it would be straightway obvious that prayer (b) which pertains to purported notices issued against the petitioner's 2 and 3 by respondent No.1 would not be relevant at all inasmuch as no recovery notice has been issued against respondents 2 and 3. Insofar as prayer (a) is concerned, it seeks issuance of a writ of certiorari quashing the recovery notice dated 30.4.2001 issued by respondent No.1. The issuance of the recovery notice by respondent No.1 being a purely ministerial function no writ of certiorari could be issued as the respondent No.1 has decided nothing and there was no lis before him. As such prayer (a) cannot be granted. Prayers (c), (d), (e),(f) and (g) all pertain to reliefs against the respondent No.3 (PICUP). Prayer (h) does not arise as that pertains go some Bank Guarantees which are not in issue. Thus, according to Mr. Aggarwal, if the relief of a writ of certiorari cannot, be granted in respect of the recovery notice dated 30.4.2001 issued by the respondent No.1, the only other reliefs that are sought for by the petitioners are those in respect of respondent No.3 which neither has an office in Delhi nor has it issued any notice to the petitioners in Delhi. I agree with submission. Therefore, this Court would have no territorial jurisdiction in respect of the reliefs claimed against respondent No.3.

7.10 Finally, Mr. Aggarwal referred to the case of Vinod Kumar Mehta and Others v. Haryana Financial Corporation and Others: (CW 3953/1998), which was heard and decided by me on 10.9.2003. He referred to paragraphs 8 and 9 thereof which are set out hereinbelow:-

"8. The other and main aspect of the matter is that the cause of action entirely arose at Chandigarh where the recovery certificate under Section 3(2) was issued. In the case of State of Rajasthan & Ors v. Swaika Properties & Anr: , the Supreme Court observed that cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. In that case, the Supreme Court held that mere service of notice under Section 52(2) of the Rajasthan Urban Improvement Act, 1959 on the respondents therein at their registered office at Calcutta, could not give rise to a cause of action within that territory unless the service of such a notice was an "integral part" of the cause of action. The Supreme Court further held that the answer to the question whether service of notice is integral part of cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of impugned order giving rise to a cause of action. Again in the case of Union of India v. Adani Exports Ltd: , the Supreme Court categorically observed that in order to confer jurisdiction on a High Court to entertain a writ petition, 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. In particular, the Supreme Court observed as under:-

> "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."

9. In this particular case, we have to examine, therefore, what is the actual grievance of the petitioner. The petitioners, in view of Section 3(3) of the said Act, cannot have any grievance with regard to the issuance of notices dated 02.07.1998 because these have been issued merely in compliance of the recovery certificate received by the respondent no.2 from the Haryana Financial Corporation at Chandigarh. The respondent no.2 had no option in the matter. He was not in any manner enjoined with any duty to examine the correctness or otherwise of the recovery certificate issued under Section 3 (2) of the said Act. The issuance of the recovery certificate is conclusive proof of the matters stated therein. In fact, the actual cause of action is in respect of the recovery certificate which is the causa causae and it is well-known that causa causae est causa causati (the cause of a cause is the cause of the thing caused) and the cause of the cause is to be considered as the cause of the effect also (see: Black's Law Dictionary 6th Edition, p.220). Thus, the recovery notices are nothing but the effect and the cause, in point of fact, is the issuance of the recovery certificate. In other words, the recovery certificate is the causa sine qua non (a necessary or inevitable cause); a cause without which the effect in question could not have happened (see: Black's Law Dictionary 6th Edition, p.221). Sans the recovery certificate, the recovery notices could not have been issued. Thus, it is clear that the recovery notices dated 02.07.1998 cannot be set aside without the recovery certificate dated 21.01.1998 also being set aside. The recovery notices have no life of their own and must necessarily depend for their sustenance on the existence of the recovery certificate. If the petitioners are to succeed, they must challenge the recovery certificate and the cause of action for which arose entirely in Chandigarh. The recovery notices do not form an integral part of the cause of action. Thus, this Court does not have territorial jurisdiction to entertain the present writ petition.

In the aforesaid decision, which clearly dealt with a similar situation, it was held that recovery notices such as the one impugned herein do not form an integral part of the cause of action and, therefore, this court would not have territorial jurisdiction to entertain the writ petition challenging the recovery notice. I see no reason to depart from this view. The lis is with PICUP. Consequently the cause of action is qua PICUP. Unfortunately that has entirely arisen outside the territorial jurisdiction of this Court. The issuance of the recovery notice has no relevance with the lis that is involved in the case. It is the result of a purely ministerial act on the part of Respondent No.1 who cannot be faulted for acting in the manner he did. The statute required him to do so. He had no discretion in the matter. He had no lis to decide. The recovery notice is merely an effect and not the cause. It is the cause which confers jurisdiction and not the effect. Then, the answer to question No.2 is that the the mere issuance of the impugned recovery notice at Delhi does not clothe this court with the territorial jurisdiction to entertain this petition.

8. In view of the foregoing discussion, the writ petition is dismissed on the ground that this Court does not have the territorial jurisdiction to entertain the same. The petitioners are, however, granted liberty to approach the appropriate Court having jurisdiction in this matter. There shall be no order as to costs.