(1985) 02 CAL CK 0027

Calcutta High Court

Case No: F.M.A.T. No. 1096 of 1985

Anant Plasma Private Ltd. and Another		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Feb. 28, 1985

Hon'ble Judges: Manash Nath Roy, J; Amarendra Chandra Sengupta, J

Bench: Division Bench

Advocate: Prodosh Kumar Mallick, Ranjan Deb and Surendra Dube, for the Appellant;Jatin Ghose and Sunil Chatterjee, for the Respondent

Final Decision: Dismissed

Judgement

1. The appellants, who were petitioners in Civil Rule No. 920 (W) of 1985, by the present application are asking for stay of an operation of an order dated 6th March, 1985, passed by Bhagabati Prosad Banerjee, J. and in the alternative, they have asked for an injunction against the Respondents, from giving effect or any further effect to the said order or to act on the basis thereof and more particularly in the matter of encasing the securities as furnished by the writ petitioners, pursuant to an order dated 30th January, 1985.

2. Admittedly, on 30th January, 1985, the writ petitioners, who entered into a contract at Delhi with Lucky Gold stat International Corporation of Seul, South Korea, for purchase of 1000 m. t. P.V.C. Resins, moved this Court in its Appellate Jurisdiction, disputing the determination of assessable value and assessment of Customs and allied duty on the basis thereof, claiming amongst others for a declaration that no duty of customs whether basis or additional or otherwise is livable on the said goods being P.V.C. Resins imported into India and particularly the consignments as stated in the body of the petition save an except to the extent specified in the Notification No. 36/83. Cuss. Dated 1st March, 1983 with Notification No. 342/76 dated 2nd August, 1975 and the other, prayers were (1) a writ of and/or in the nature of Mandamus do issue commanding and directing the respondents

and each of them by themselves, their servants or agents to forthwith (i) desist from levying and/or collecting any duty of customs including additional, countervailing or any other type of duty except to the extent permitted by the Notification No. 342/76-Cus. Dated 2nd August 1976, on the consignments of 1000 m.t. of P.V.C. Resins, covered by the Contract annexed as Annexure "A" hereto; (ii) release and/or allow clearance of the consignments of the said goods as stated in the body of the petition upon payment of duty of customs, if any, in terms of the Notification No. 36/83-Cus. Dated 1st March, 1983; (iii) desist from levying or collecting any duty of customs, whether basic, additional, countervailing or otherwise, in excess of what is specified in the Notification No. 36/83-Cus. Dated 1st March 1983, read with Notification No. 342/76-Cus. Dated 2nd August, 1976 of P.V.C. Resins, covered by Contract annexed as Annexure ''A'' (2) A writ of and/or in the nature of Prohibition to issue prohibiting the respondents and each of them by themselves their servants or agents, from exercising any further jurisdiction in the matter of levying or demanding or collecting any duty of customs, whether basic, additional, countervailing or otherwise, except in terms of the Notification No. 36/83-Cus. Dated 1st March 1983 read with Notification No. 342/76-Cus. Dated 2nd August, 1976; (3) Alternatively and in the event of prayers (b) to (d) not being granted, a Writ of and/or in the nature of Mandamus commanding the respondents not to include the amount of basic duty and auxiliary duty in the assessable value of the said goods imported by your petitioners for the purpose of levy and/or determination of the amount of countervailing duty and not to include landing charges and to allow the exemption under the said Notification No. 184/76-Cus. in respect of the said goods and to withdraw, cancel and/or rescind the said purported assessment and to act according to law; (4) Alternatively and in the event of prayers (b) not being granted, a writ of and/or order and/or direction in the nature of Certiorari commanding the respondents to transmit and certify the records relating to the said purported assessment relating to the levy and or demand of counter duty, custom duty and auxiliary duty had relating to the inclusion of the packing and landing charges in the assessable value of the said goods and all purported proceedings relating thereto so that the same may be set aside and/or quashed and conceivable justice might be rendered; (5) Alternatively and in the event of prayers (b) to (d) not being granted, a writ of and/or direction in the nature of Prohibition commanding the respondents to forbear from including the basic, customs and/or auxiliary duty in the assessable value of the said goods for the purpose of levy and or determination of the amount of countervailing duty and/or from including the pickings charges, landing charges, freight, insurance charge and any other additional charges in the assessable value of the said goods and/or from levying and/or demanding any countervailing duty at the rates in excess of 75% ad-valor in respect of the said goods; (6) Rule in terms of prayers (a) to (g) above; (7) If no cause or insufficient cause be shown, the Rule be made absolute; (8) An injunction do issue restraining the respondents and each of them by themselves, their servants or agents or otherwise however from levying, collecting or demanding any duty of customs, basic, additional, countervailing or

otherwise, save and except to the extent permitted by the Notification No. 36/85-Cus. Dated 1st March, 1985 read with Circular No. 342/76 dated 2nd August, 1976 on the consignment of 1000 m. t. P.V.C. Resins covered by Contract annexed as Annexure "A" hereto and to allow clearance of the same on payment of 75 per cent ad-valor custom duty as is specified therein until the disposal of the application; (9) An injunction do issue directing the respondents and each of them by themselves, their servants and agents to allow clearance of 500 m. t. of P.V.C. Resins covered by the Contract No. 84SSC-024 dated 22nd October, 1984, a copy whereof in annexed hereto and marked with the letter "A'' without levying and/or collecting any additional and/or auxiliary duty, upon payment of 75 per cent of the Customs duty only after allowing in the Invoice value the adjustment of the packaging charges and without adding landing charges, freight and Insurance charges for calculation of assessable value of the goods; (10) Ad-interim order in terms of prayers (j) and (k) above.

3. On such application, the learned Trial Judge was pleased to a Rule and made the same returnable 6 weeks hence and recorded also, that compliance of Rule 25A of the writ Rule in dispensed with and further directed the mater to appear in the list four weeks hence for orders, upon notice to the Respondents. The learned Trial Judge also ordered that the petitioners would however pay admitted amount of customs duty. There will be ad-interim order of injunction in terms of prayer (k) of the petition upon condition that the petitioner will furnish a bank guarantee to the extent of 50% of the disputed amount of the customs duty in favour of the concerned Collector of Customs and furnish a personal bond for the balance disputed amount. The concerned authorities were directed to release the goods within 3 days from the date of submission of the guarantee bond and a payable of the admitted amount. It was recorded that the petitioners gave an undertaking through their Advocate Shri S. Dube that they will not dispose of their assess until further orders of this Court. In the event the goods are not released within 3 days the concerned Customs Authorities would issue necessary detention Certificate, apart from directing the petitioners to serve a copy of the petition on the Respondents and to file affidavit of service, and gave further liberty to the Respondents to apply for variation and/or vacating the interim order upon notice to the petitioners.

4. It was pleaded in the petition that the Petitioner No. 1 is a company within the meaning of the Companies Act, 1956. The Office of the Petitioner No. 1 is, inter alias, situated at 113/1, Chittaranjan Avenue, Calcutta, within the jurisdiction of this Hon''ble Court. The Registered Office of the Company is, however, situated at 7/11, Rupnagar, Delhi and the Petitioner No. 2 is a shareholder and a Director of the Petitioner No. 1 and is a citizen of India. All the shareholders of the Petitioner No. 1 are citizen of India. The Petitioner No. 2 carries on business and or holds property through the agency and or instrumentality of the Petitioner No. 1. Due to wrongful and illegal acts of the Respondents as stated hereinafter, the value of the shares

held by the Petitioner No. 2 in the Petitioner No. 1 was likely to be substantially reduced, apart from stating that the Petitioner No. 1, in the usual course of business, imports P.V.C. Resins. The particulars of the contract as indicated hereinbefore were admitted.

5. It further appeared from the pleadings that the goods were duly shipped by the foreign supplier and the vessel "S.S. PROPER" duly arrived at the Port of Bombay. After its arrival, the said vessel discharged its cargoes including the aforesaid goods of the petitioner and the said goods were kept in the bonded warehouse. It was the claim of the petitioners that the cost of the said goods packed in the said bag was covered by the provisions of Notification No. 1984 of 1976 and the cost of said bags ought to be excluded from the assessable value of the said goods, for the purpose of computing the customs duty as well as additional duty, if any and according to them, the cost of packing being to arrive Rs. 450/- per m. t., was liable to be excluded from the invoice in order to arrive at the assessable value of the concerned goods, but the Customs Authorities, in spite of repeated requests and demands of your petitioners, have refused to allow deduction on account of the said packing cost, in spite of the provisions of the said Notification No. 184 of 1976 and further claimed, that the levy and/or collection of auxiliary and or additional duties of customs on the importation of said goods is illegal, ultra virus and without the authority of law.

6. On a reference to different notification, the petitioners claimed that the effective rate o the goods as imported, should be 75% ad-valor and on proper construction of the notification, the Respondents had no power or authority and jurisdiction to levy and realize any excess duty. In particular and in short, it was claimed that the purported attempt to collect any ancillary or additional duty by the Respondents, in the facts of this case, was unauthorized, void and irregular. It should also be noted that to establish this Court has jurisdiction to entertain their proceedings, the petitioners have pleaded that at least a part of the cause of action had arisen in the jurisdiction of this Court as (1) the office of the Petitioner No. 1 is in Calcutta and at the address as given, is within the jurisdiction of this Court and (2) a substantial quantity of the goods imported by the Petitioner No. 1 sold in West Bengal and the said sales are do it with, inter alias, by the office at Calcutta. In the event the petitioners have to pay the duty as demanded by the Customs Authorities, the petitioners would suffer loss at Calcutta. The petitioners state that the petitioners would suffer loss at Calcutta. The petitioner''s state that the petitioners would suffer loss in their business in the sale of the said goods in Calcutta in the event the exemptions asked for are not granted to the petitioners and the Respondents levy the duty without granting the exemptions. The petitioners would be seriously prejudiced by the impugned action of the Respondents. By the reason of the wrongful and illegal assessment sought to be made by the respondents, the Petitioner No. 1 has suffered losses and would suffer further loss in its business at Calcutta as the direct consequence of the impugned action the respondents. The

pleading of the part of the cause of action as indicated above, was made on the basis of the determination of a Division Bench judgment of this Court, in the case of (1) Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, .

7. It has been stated that consequent upon the furnishing of Bank guarantee and the necessary Bond, on 18th February, 1985, the Respondent Collector of Customs, released the goods and on such basis the petitioners have cleared substantial quantity of the concerned goods. But thereafter, their learned Advocate received a letter from the learned Judge had directed the case to appear as "To be mentioned" on 6th March 1985. It has been stated that on that day, adjournment for one day was asked for, for obtaining necessary instructions, but such prayer was refused and the learned Judge director dismissal of the writ petition and consequent vacation of the interim order, as issued, on the preliminary point of jurisdiction, as raised by the Respondents. It would appear that the subsequent order was made by the learned Judge on the basis of his own determinations in the case of (2) Kajaria Exports Ltd. & Anr. v. Union of India & Ors., 88 CWN 1086 and more particularly on his holdings that as all the Respondents were outside the jurisdiction of this Court, this Court has no jurisdiction to entertain the writ petition as the cause of action or any part of the same did not arise within the jurisdiction of this Court. As such, on recalling the earlier order issuing the Rule and injunction on 30th January 1985, the same was discharged and all interim orders were vacated. The learned Judge of course kept it on record that the order as made, would not prejudice the petitioners from moving the appropriate forum, if so advised. Such order, has been claimed by the Respondents, to have been passed duly as all the Respondents as imp leaded, have their offices outside the State of West Bengal and the subject matter of the dispute viz. the determination of assessable of Custom and allied duty was before the authorities at Bombay, apart from the fact that such assessment as well as the order for clearance of the goods were to be made by the Customs Authorities there and furthermore, the entire cause of action, if any, of the petitioners, in respect of their claims or the relief, with regard to the determination of assessable value as well as assessment and order for clearance of the goods, was outside the State of West Bengal or the territorial jurisdiction of this Court and no part of the same within arose the limits of this Court even on the basis of the statements by the petitioners, that they have their office here and some quantity of the goods will also be sold here through that office and in the event the exemption as asked for by them are not granted, they would suffer loss in their business in such sale of goods at Calcutta. It was specifically urged by the Respondents that the contract was entered from the office of the petitioners at Delhi, the vessel had arrived and discharged the cargo at Bombay, on such discharge, the goods were lying in the Bonded Warehouse at Bombay and the Bill of entry, license and all shipping documents were filed with the Customs Authorities in Bombay. Such being the position, the further assertion of the Respondents were that the Customs

Authorities, Bombay, were and are the only proper authorities in the matter of making assessment and order for release of the goods in discharge of their statutory duties and obligations. It was further pointed out by them that neither Calcutta nor West Bengal or any part thereof has not been shown or mentioned in any of the shipping documents and only for the first time, in the writ petition, the petitioners have mentioned or made reference to Calcutta in the manner as stated hereinbefore.

8. As indicated earlier, the learned Trial Judge has recalled his order and directed in the manner as indicated hereinbefore, on the basis of his determinations in Kajaria Exports Ltd. & Anr. v. Union of India & Ors. (Supra) and in that case, while dealing with the cause of action, in paragraph 46, he has observed that the cause of action in this case has arisen partly in Calcutta wherein the shipping documents received and the price of the imported consignment was paid and further the contract of sale was concluded at Calcutta and registered office of the petitioner is at Calcutta. The said imported goods will be hold at Calcutta and the impact of detention of goods is felt in Calcutta and holding on that basis, while discharging the Rule in that case that no part of the cause of action partly or wholly had arisen within the territorial jurisdiction on this Hon''ble Court. In Kajaria Export''s case (Supra), it would appear that the concerned goods were discharged in Bombay and the dispute over their assessment and valuation was pending with the Customs Authorities, Bombay. It was claimed before the learned Trial Judge and also before us, that the facts of this case and those in Kajaria Export''s case (Supra), were and are the same. We have indicated earlier, the way, manner and the circumstances, in which the order as impeached, was obtained by the Respondents in the Rule, who are also Respondents in this application.

9. Mr. Mallick, in his usual fairness, stated that this application was initially and earlier moved and was heard by the Bench presided over by M. M. Dutt, J. but on the basis of the leave granted by that Bench, our Bench has been approached. There is no doubt that earlier, this application was moved before the other Bench as indicated hereinbefore and the Respondents before us further pointed out, that on their opposition, that Bench, expressed their distinction to entertain the application unless full duty was paid in cash, in view of the determinations of the Supreme Court in the case of (3) Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , without going into the question of jurisdiction. It has of course been stated by the Respondents further, that the said Bench gave leave to the applicants to withdraw their application in question with liberty to move before any other Division Bench, if so advised.

10. After placing the relevant facts up to the date of the issue of the Rule and the conditional interim order, Mr. Mallick also pointed out that the necessary conditions having been fulfilled and satisfied, the Customs Authorities gave effect to the order as made and released the concerned goods between February and March, 1985,

and thereafter, mentioned the matter before the learned Trial Judge on 5th March, 1985. According to him, the matter did appear in the list as "To be mentioned" on 6th March, 1985, when disallowing the prayer of the writ petitioners for accommodation of one day to get the necessary instruction, the writ petition was directed to be dismissed and consequently, all interim orders were also directed to be vacated, by the order under Appeal. This dismissal, of the writ petition, on oral prayer and without any application, was claimed by Mr. Mallick to be improper, irregular, void and bad, apart from being contrary to the principles of nature justice and the law as laid down in the case of (4) Samarias Trading Co. Pvt. Ltd. Vs. S. Samuel and Others, . In that case an oral application was made by an advocate before a Judge of the High Court on the basis of which an ex parte interim order directing to maintain status quo against alleged auction of a liquor shop was passed. The order did not indicate even briefly the facts of the case, or the question of law, if any, which prompted the Judge to pass the interim order. The order also did not indicate whether the Judge was aware that the bid was for a large amount of Rs. 25 lacks and that the successful bidder had deposited half the amount. There was no indication that any security was taken from the petitioner. The advocate has given undertaking that the petitioner will file written application within 3 days. It subsequently turned out that the petitioner''s existence itself was doubtful and on such facts, it has been held that the practice in vogue in Calcutta High Court of obtaining interim orders on oral applications subject to undertaking being given proposing to file written applications later is a most unwholesome practice, likely to lead to vicious and pernicious results. It is practice to be strongly deprecated, a practice reminiscent of the feudal days. It is a practice, which strikes at the very root of the system of open and even-handed justice, apart from observing that it does not, however, mean that oral application may never be made or entertained by a Court. Far from the contrary, for example, all applications for adjournment are generally made orally. Often during the course of the hearing of a case it becomes necessary to make applications of a formal nature and such applications are permitted by the Presiding Judge. But in all such cases the Court is already seized of the principal matter or dispute and there is a record pertaining to it before the Court. But there is hardly any justification for the entertainment of an oral application and the issuance of an interim order with no record whatever of what was submitted to the Court or the reasons for the order made by the Court. To permit a procedure by which oral applications may be made and interim orders obtained without any petition in writing, without any affidavit having been sworn to as prima facie proof of allegations and without any record being kept before the Court may lead to very serious abuse of the process of the Court. Nor can it be said that urgent oral applications may never be made. If someone is going to be deported in a few minutes or if some grossly iniquitous act is about to be perpetrated and any delay would result in the fait accompli of a monstrosity, urgent oral applications may be moved and urgent interim order issued. If urgent interim orders are operative, at least skeletal applications setting out the bare facts and the

questions involved should be insisted upon. A detailed application could be permitted to be filed later, and to grant interim order on oral application in chambers when the Judge is otherwise sitting in open Court for other matters would seriously reflect on the fairness of the procedure adopted by the Court and may have the unpleasant effect of undermining public confidence in Courts. Sometimes when a Judge is sitting in a Division Bench or a Full Bench, some application may have to be made to him individually in which case permission in always sought in open Court to move the application in the chamber. The Registry then prepares a special list, put it upon the notice board and before the Judge''s chamber and also circulates a copy to the Bar Association. This procedure is followed in some High Courts and it such a procedure is followed then alone can the high tradition of open justice be kept up. A public hearing is one of the great attributes of a Court, and Courts of this country are therefore, required to administer justice in public. Otherwise, there is a risk that justice may even be undone. It was then claimed by Mr. Mallick that Dunlop''s case (Supra), where the Supreme Court, amongst others while considering and deprecating, the entertaining of oral applications for interim order and non speaking orders as made therein, has also deprecated the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations, has not application in this case and more particularly when, there has been grave allegations of mala fide and these allegations have not been duly contradicted.

11. On a reference to paragraphs 32 and 84 of the petition of motion, which according to Mr. Mallick, were the basis of the cause of action or at least a part of the same and the particulars whereof have been indicated hereinbefore, this Court had and still has jurisdiction to entertain the application for a Rule and more particularly when those statements were and are in pari material with or in line with the facts, which, were found to have given power to decide and interfere and more particularly when since on these facts it was observed in the case of Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, , that the question whether a High Court has territorial jurisdiction to entertain a writ petition has to be decided on the basis of the allegations made in the petition. The truth or otherwise of the allegations is immaterial at that stage. In the instant case the impugned orders fixing the selling price and the retention price of aluminum was fixed by the Central Government at Delhi, the factory of the petitioner Company was located outside West Bengal. However, the Head Office was situated at Calcutta. The petitioner Company had alleged that it suffered losses in business at Calcutta as the direct consequence of the impugned order and o the facts of that case it was held that part of the cause of action arose at Calcutta and therefore the Calcutta High Court had territorial jurisdiction to entertain the petition. It was the specific submission of Mr. Mallick that the pleadings of this case and the reported decision,

on the point of the cause of action, being admitted by the same viz. loss to be incurred or anticipated at Calcutta, the learned Judge was wrong in dismissing the writ petition. According to Mr. Mallick, the said determination in Hindulco''s case (Supra), would really support the case of the petitioners here. It was also contended by Mr. Mallick, that when the Supreme Court, itself has, in the case of (5) Abdulla Bin Ali and Others Vs. Galappa and Others, , laid down amongst others that allegations made in the plaint decide the forum. The jurisdiction does not depend on the defense taken by the defendants in the written statement and had, after deciding the question regarding jurisdiction, remanded the case to the High Court for deciding the other issues, and the High Court had decided the case only on the ground of jurisdiction, the learned Trial Judge should be held to have decided initially the question of jurisdiction duly and as such he was not right in recalling the order as made subsequently, the more so when, in their writ petition, the petitioners had really disclosed and established cause of action or part of the same to have arisen within the jurisdiction of this Court. Mr. Mallick submitted that the determination of the Supreme Court and the present determination of the same, on the question of jurisdiction and cause of action or part of the same are very difficult to be reconciled. It was Mr. Mallick''s specific and real submission that since the pleadings regarding the accruing of the part of the cause of action in this case have not been appropriately or at all denied, so applying the tests as in Galappa''s case (Supra), the learned Trial Judge could not have and in fact, he should not have held that the proceedings was not maintainable in this case.

12. Mr. Mallick further reiterated, that following the observations by the Supreme Court in different cases and specially in view of the determination in M/s. Samarias Trading Co. Pvt. Ltd. v. S. Samuel & Ors. (Supra) and that too in view of the relief''s as asked for, the Respondents were not entitled to move their oral application and to have the Rule as issued, dismissed and the interim order vacated, consequently, more particularly when, there was no urgency and the goods in fact were released on Bank guarantee. It was claimed that such mentioning and obtaining of the concerned order by the Respondents, was malicious, and that too after the subject goods, to their knowledge, were released in the manner as indicated above, they should not have moved this Court and more particularly when, there was nothing to be done or nothing remained to be complied with or to give effect to the interim order, for the steps which were taken duly by the writ petitioners.

13. Mr. Ghose, appearing for the Respondents and opposing this application, pointed out that since the shipping documents/Bill of Entries in this case were at Bombay, subject goods on release there were kept at the Bonded Warehouse at Bombay and the duty was levied there, so this Court, really had no jurisdiction to entertain the writ petition and the part of the cause of action as pleaded in paragraphs 32 and 34 of the writ petition, which again were pleaded for the first time, may be encouraged by the observations in Hindulco''s case (Supra), will not really help the writ petitioners and such pleading of the cause of action theory,

would not also ensure to their benefit, as the determinations in Hindulco''s case (Supra), which was on a different premises and subject viz. Sales Tax, will not apply in the case of levy of duty as involved in this case, more particularly when, the incidents of taxation under the two concerned statutes are distinctively different. In Hindulco''s case (Supra), the Division Bench has referred to and approved another determination of this Court in the case of (6) Darshanlal Anand Prokash v. Collector of Customs & Central Excise, Shillong, 1974 Cal LJ 27. That was a determination by Sisir Kumar Mukherjee, J. and in that case, the petitioners challenged the notifications under item 3(1) of the First Schedule to the Central Excise and Salt Act, 1944. By the said notifications, the Central Government classified the tea gardens into five zones for the purpose of levying excise duty at varying rates on tea produced at the gardens according to the zones to which they belonged. The challenge of the petitioners, therefore, related to the levy of duties of excise on the manufacture and production of tea. The manufacture and production by the petitioners took place in the State of Assam. The levy and collection of duties of excise also took place in the State of Assam. It was, however, contended on behalf of the petitioners that by reason of the said levy the financial position of the petitioners was adversely affected and such adverse effect was felt by them in Calcutta. The question was whether a part of the cause of action had arisen in Calcutta. In support of the contention that a part of the cause of action arose in Calcutta, it was contended on behalf of the petitioners that as they had to deposit money in the Reserve Bank of India at its Calcutta Office for the payment of excise duty, it should be held that a part of the cause of action had arisen in Calcutta and, accordingly, this Court had jurisdiction to entertain the writ petition. It was held that such deposit was not payment of excise duty so long as it was not appropriated by the Collector of Customs and such appropriation took place as Assam by the Collector of Customs by debiting the current account maintained by the assessed in Assam. Accordingly, the said contention of the petitioners was not accepted by the learned Judge. The learned Judge also overruled the contention of the petitioners that the effect of the impugned notifications was felt by the petitioners in the their places of business including Calcutta. It has been observed by the Division Bench in that case before the learned Single Judge in Darshanlal''s case (Supra), there was however, no averment and also no finding that the petitioner in that case had suffered loss in their business in Calcutta as a result of the impugned notification, apart from holding that the learned Single Judge in that case was justified in observing that the effect felt at a place of business of the petitioners by reason of imposition of duty levied on the petitioner''s tea, is far too remote and incidental to constitute a part of the cause of action. Further, there is a clear distinction between the effect being felt at a place of business and suffering of loss in the business by reason of an impugned order of the Government. It was Mr. Ghose''s specific contentions that on the pleadings and available materials in this case, the determinations in Darshanlal''s case (Supra), which have in fact been approved in Hindulco''s case (Supra), would appropriately apply in this case and as such, the learned Trial Judge

was right and justified in making the impugned order viz, dismissing the writ petition as soon as he realized and felt that no cause of action or even a part of the same effectively arose within the jurisdiction of this Court. Mr. Ghose also contended that even on the basis of the determinations in Samarias Trading Co''s case (Supra), the order as made, was possible and permissible, as the records were available before the learned Trial Judge and more particularly when, in that case, the Supreme Court has observed, even after deprecating the way and the manner in which the interim order was obtained from this Court, that such observations would not however, mean that oral application may never be made or entertained by a Court. Far from the contrary. For example, all applications for adjournment are generally made orally. Often, during the course of the hearing of a case it becomes necessary to make applications of a formal nature and such applications are permitted by the Presiding Judge. But in all such cases the Court is already seized of the principal matter or dispute and there is a record pertaining to it before the Court. But there is hardly and justification for the entertainment of an oral application and the issuance of an interim order with no record whatever of what was submitted to the Court or the reasons for the order made by the Court. To permit a procedure by which oral applications may be made and interim orders obtained without any petition in writing, without any affidavit having been sworn to as prima facie proof of allegations and without any record being kept before the Court may lead to very serious abuse of the process of the Court. Nor can it be said that urgent oral applications may never be made. If someone is going to be deported in a few minutes or if some grossly inequities act is about to be perpetrated and any delay would result in the fait accompli of a monstrosity, urgent oral applications may be moved and urgent interim order issued. If urgent interim orders are imperative, at least skeletal applications setting out the bare facts and the questions involved should be insisted upon. A detailed application could be permitted to be field later and it was in particular the submissions of Mr. Ghose that the case of the Respondents in the writ petition, came within the exceptions as indicated by the Supreme Court and as such, the learned Trial Judge was right and justified in accepting and allowing the oral application as made by them, specially, when, the records were available before him. It should be noted that Mr. Mallick also claimed that even in spite of the determinations in Samarias Trading Co''s case (Supra), an oral application in an appropriate case, would be maintainable and entertainable in this Court and the procedure as is being followed so long by this Court, in entertaining oral applications in appropriate cases, was unfortunately, not duly and appropriately placed before the Supreme Court. We have just recorded those submissions of Mr. Mallick, as he required us to do so. We of course feel and hold, following the said determinations of the Supreme Court, that subject to such exceptions as indicated in the concerned judgment of the Supreme Court and some particulars whereof have already been recorded hereinbefore, an oral application in appropriate cases, can be maintained. If the order in this case was not passed on 6th March 1985, but such order was made on 5th March 1985, certainly the order

would have been without jurisdiction, as on that date, the concerned records were not expected to be before the learned Trial Judge. But, such difficulties have been avoided, as the order was made on 6th March 1985, when the matter appeared in the list of the learned Trial Judge as "To be mentioned" and consequently, the relevant records were available before him. That being the position, the order as made in this case, would not strictly come within the purview of the facts in the said Samarias Traidng Co''s case (Supra), where the Court had initially passed an order for maintenance of status quo, in respect of the auction of a liquor shop, without indicating the facts of the case or the question of law, if any, which prompted the issue of interim order and that apart, the learned Judge making such order, did not also indicate, whether he was aware that the concerned bad was for Rs. 25 lakhs and that the successful bidder had already deposited half of that amount and furthermore, there was no indication that any security was taken from the petitioner and such order was made on an undertaking given by the learned Advocate for the petitioner that the writ petition will be filed within three days. Thus, we are of the view that in the facts and circumstances of the case, the learned Trial Judge was authorized in accepting and acting on the basis of the oral application and such entertainment was not hit by the determinations in Samarias Trading Co''s case (Supra), rather the same was protected by such determination.

14. It should be noted here that Mr. Mallick contended that since the statement as to the accrual of the part of the cause of action as pleaded by the writ petitioners in this case was not duly disputed or appropriately denied and replied to, there was prejudice, so far as the writ petitioners were concerned, to meet the case as was sought to be made against them and as such, there was violation of principles of natural justice also, in making the impugned order. Certainly, on such mentioning, if the order as made in this case was obtained behind the back of the writ petitioners, the submissions of Mr. Mallick would have been of substance, as we feel that in obtaining such order as in this case on oral application, the person against whom the order is asked for, must not be allowed to be caught by surprise. Such contingencies would not apply in this case, as admittedly, by this letter dated 5th March, 1985, the learned Advocate for the Respondents in the writ proceedings duly intimated, informed and notified to the learned Advocate for the writ petitioners, that on mentioning, the learned Trial Judge was pleased to direct the matter to appear as "To be mentioned" in the daily list of 6th March, 1985. It was also informed that when the matter would be called, the Respondents would ask for discharge of the Rule on the ground of jurisdiction and they will also pray for vacating and/or variation of the interim order as passed on 30th January, 1985. In fact, as per schedule, the matter appeared as "To be mentioned" on 6th March, 1985, when prayers were made to the above effect by the Respondents concerned. Such being the position, it cannot also be said that the writ petitioners were not aware of the prayers to be made or as made by their adversaries and as such, there was no question or any occasion for them to be caught by surprise. As such, it is

very difficult to agree with Mr. Mallick''s submissions that there was violation of principles of natural justice or any norms of fair play, in obtaining the impugned order.

15. Our answer to the question of propriety of making the impugned order by the learned Trial Judge or his jurisdiction to do the same, in the facts and circumstances as indicated above, being in the affirmative and in favour of the order as made, we shall have to determine now, whether the learned Trial Judge was justified in recalling the Rule as issued by him on the subsequent disclosure of lack of territorial jurisdiction. While on that issue, we have already referred to the determination in the cause of Union of India v. Hindusthan Aluminium Corporation Ltd., & Anr. (Supra), Kajaria Exports Ltd & Anr. v. Union of India & Ors., Abdulla Bin Ali & Ors. v. Galappa & Ors. (Supra) and Runlap Darshanlal Anand Prokash v. Collector of Customs & Central Excise, Shillong (Supra) and the findings and observations made in these cases. In support of the powers of this Court to interfere in cases of lack of territorial jurisdiction over the cause of action or part of the same, further reference was made by Mr. Ghose, to the case of (7) Abdul Kafi Khan Vs. Union of India (UOI) and Others, . In that case, when the disciplinary proceedings against a Railway servant was taken by the authorities in Bihar and show-cause notice against removal from service was also issued by the authorities there, on a writ petition challenging those actions here at Calcutta, it has been observed that Calcutta High Court had no jurisdiction to entertain the petition, merely because the Head Office of the Railways was located in Calcutta, when neither the cause of action nor any part thereof arose within the territorial jurisdiction of this Court. In fact, in that case, it has been specifically, observed, that when the General Manager has not as yet passed any order, even though representation has been made to him by the petitioner, which has not as yet been determined, no cause of action or any part thereof, has arisen within the jurisdiction of the Calcutta High Court and as such, that Court would have no jurisdiction to hear and determine the writ proceeding. In the case of (8) Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, , to which reference was made by Mr. Ghose, earlier, the Supreme Court had occasions to deal with and determine on the question of cause of action or part of the same, conferring jurisdiction on this Court, to decide, entertain and consider writ petitioners and in the facts and circumstances of that case it was held that the respondents began "the game" by filing an application under Article 226 of the Constitution in the Calcutta High Court, whereas in the normal course one would expect such an application to be filed in the Patna High Court within whose jurisdiction the subject-matter of the dispute was situate. For some mysterious reason which nobody has been able to explain the writ application was filed in the Calcutta High Court. A justifiable prima facie inference from this circumstance may be that the application was not bona fide but intended to harass and oppress the opposite parties. Application, after applications were filed before the Single Judge, every one of them designed to circumvent, defeat or nullify the effect of the orders

of the Division Benches of the Calcutta High Court and the Patna High Court. The order of the Division Bench of the Calcutta High Court directing the respondents to furnish security in a sum of Rs. 1, 55,000/- was never complied with. The order of the Division Bench of the Patna High Court directing the respondents to furnish security of immovable property in a sum of Rs. 75, 000/- and to deposit cash or furnish bank guarantee in a sum of Rs. 50, 000/- was also never complied with. Instead, an order was obtained from the Single Judge of the Calcutta High Court restraining the State of Bihar from continuing the money suit in the Court of the Subordinate Judge. When this order was set aside by the Division Bench, an attempt was made to circumvent all earlier orders by obtaining and order from the Single Judge that they may be allowed to deposit Rs. 60, 000/- in cash and permitted to remove the stock from the forest coupes. When the State of Bihar moved the Subordinate Judge for a direction to auction the attached stock, the respondents moved an application on December 14, 1972 and obtained an order from the Single Judge the proceedings in the money suit in the Court of the Subordinate Judge, the filing of the application dated December 14, 1972, was an abuse of the process of the Court, calculated to obstruct the due course of a judicial proceeding and the administration of justice and was, therefore, a Criminal Contempt of Court. Not a single application made to Single Judge was bona fide. Every application was a during ''raid'' on the court and each was an abuse of the process of the Court. Apart from the above, further reference was made by Mr. Ghose, to the case of (9) In Re: Bharat Sugar Mills Ltd. and Another, .

16. On the basis of the intrinsic ratio of the determinations as indicated hereinbefore, it would ordinarily be very difficult to held that in the facts of this case, either the cause of action or part of the same, arose within the territorial jurisdiction of this Court and thus to enable and authorize this Court to entertain and decide the writ petition. There would of course be no such difficulty if the findings and observations in Hindulco''s case (Supra), help the writ petitioners and furthermore, if they could get or draw any sustenance from the determinations in the case of (10) Union of India and Others Vs. Oswal Woollen Mills Ltd. and Others, , to which reference was also made by Mr. Mallick and when he really claimed that the ratio of the determinations in that case, do really help and support the writ petitioners in this case. On the basis of the facts of that case as in paragraph 2 of the judgment and to the effect that M/s. Oswal Woolen Mills Limited, having its registered office at Ludhiana in the State of Punjab and a branch office at Calcutta and Narayan Das Jain, Secretary of the Company have filed a writ petition in the Calcutta High Court seeking various relief''s against the Union of India (through the Secretary, Ministry of Commerce, New Delhi), the Chief Controller of Imports and Exports, New Delhi, the Deputy Chief Controller of Imports and Exports, Amritsar, the Collector of Customs, Calcutta and the State Trading Corporation of India, New Delhi. The primary prayer in the writ petition is to prevent or to quash an apprehended or purported action under Clause 8-B of the Import Control Order. All the other relief''s

sought in the writ petition revolve round the principal relief regarding Clause 8-B of the Import Control Order. The other prayers are either ancillary or incidental to the principal prayer or are of an interlocutory character. Having regard to the fact that the registered office of the Company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court. The writ petitioners however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory relief''s which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of writ petitions elsewhere than at the place where the concerned offices and the relevant records are located is to delay prompt return and contest. We do not desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of Company is in the State of Punjab and all the principal respondents in Delhi. But we do feel disturbed that such writ petitions are often deliberately filed in distant High Courts, as part of a maneuver in a legal battle, so as to render it difficult for the officials at Delhi to move applications to vacate stay where it becomes necessary to file such applications. Mr. Mallick contended that the citrus theory as depicted there, would really help the writ petitioners, to have their petition maintained and entertained in this Court, in view of their specific pleadings in paragraphs 32 and 34 of the writ petition, which again has really been approved or in the line of the determinations in Hindulco''s case (Supra) and more particularly when, these specific pleadings have neither been appropriately nor duly denied by the Respondents and that again, according to Mr. Mallick, was not the case in Kajaria Exports Ltd.''s case (Supra).

17. Testing the facts of this case with these of Hindulco''s case (Supra), we feel that considering the statutory provisions as involved in those cases and the incidents of levy and taxation as involved, the determination in Hindulco''s case (Supra), will have no application in this case and as such, even on the basis of the pleadings in Paragraph 34 and 35 of the petition as indicated hereinbefore, this Court had no jurisdiction on the question of accrual of the part of the cause of action and as such, the learned Trial Judge, was justified in recalling the order issuing the Rule and consequently, the recalling of the conditional interim order and that too when the relevant and necessary fact were brought to his notice. In fact, the facts of this case, were really in the same line with the facts as involved in Kajaria Exports Ltd.''s, case (Supra) and as such the learned Trial Judge was right and justified in making the impugned order after following such determination. It should also be noted that the determinations in Darshanlal Anand Prokash''s case (Supra), which has in fact and effect been approved in Hindulco''s case (Supra), can be looked into and profitably applied in this case.

18. Above being the position and our findings, we think that we are no longer required to determine and deliberate on the question of Bank Guarantee and Bond,

which was directed by the learned Trial Judge to be furnished, as we feel that because of the order as made by him and as approved by us, such order of furnishing Bank guarantee and Bond would no longer be either in existence or required. We should of course keep this on record that on the basis of the determinations in Assistant Collector of Central Excise etc. v. Dunlop India Ltd., & Ors. (Supra), Mr. Ghose disputed the right, authority and jurisdiction of the learned Trial Judge, to make such or any conditional order and more particularly when, Collection of Revenue was involved. These submissions were opposed and disputed by Mr. Mallick and in view of the facts and circumstances as indicated hereinbefore, we keep it on record that since we are not required to make any determination on the point, we have not made any determination of the concerned point on merit.

19. The application thus fails and the same is dismissed. There will be no order as to costs. The order as made by the learned Trial Judge is affirmed.

After the judgment was delivered, Mr. Mallick made an oral application for lave to appeal to the Supreme Court since we feel that no such point of law is involved in this case which is required to be decided by the Supreme Court or there is any point of great public importance involved, we refuse the prayer of Mr. Mallick. There will be stay of operation of this order for a fortnight.

Amarendra Chandra Sengupta, J.

20. I agree