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

+ W.P.(C) 2401/2015 & CM Appls. 4312, 6752/2015

**MS STADMULLER GABRIELE, GERMAN NATIONAL**

..... Petitioner

Through: Mr. Rajeev Ranjan Pandey with Mr. Salil Ahuja and Mr. Manmohan, Advs.

versus

**UNION OF INDIA & ORS.**

..... Respondents

Through: Mr. Sanjib K. Mohanty, Sr. Central Government Counsel for R-1 to 3

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Date of Decision: 17<sup>th</sup> March, 2016

**CORAM:  
HON'BLE MR. JUSTICE MANMOHAN**

**J U D G M E N T**

**MANMOHAN, J: (Oral)**

1. Present writ petition has been filed challenging the order dated 26<sup>th</sup> February, 2015 passed on a revision application filed by the petitioner under Section 15 of the Citizenship Act, 1955.
2. On 11<sup>th</sup> March, 2015, this Court, while granting an interim order in favour of the petitioner, had directed the Additional District Magistrate, North Goa to produce the record. Till date, none has entered appearance on behalf of the State of Goa. In fact, the State of Goa has no standing counsel in this Court.
3. Both the counsel state that the High Court of Bombay at Goa, which has concurrent jurisdiction, would be the convenient forum to deal with the

present case. This Court is in agreement with the view of both the counsel. In fact, a Five Judge Bench of this Court in *Sterling Agro Industries Ltd. Vs. Union of India & Ors. 181 (2011) DLT 658 (LB)* has held as under:-

*"31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.*

*32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.*

*33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows*

*(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the*

tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

*(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) “that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens” is not correct.*

*(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled.”*

(emphasis supplied)

4. Consequently, the present writ petition and pending applications are dismissed with liberty to the petitioner to file the present writ petition in the High Court of Bombay at Goa.

5. Since learned counsel for the petitioner states that fresh writ petition in the High Court of Bombay at Goa shall be filed within a period of eight weeks, it is directed that no coercive action shall be taken against the petitioner for a period of eight weeks in pursuance to the impugned order.

Order dasti under the signature of the Court Master.

**MARCH 17, 2016**  
**NG**

**MANMOHAN, J**