2026 INSC 630

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. …… OF 2026
[ARISING OUT OF SLP (CIVIL) NOS. 855-856 OF 2026]

BAKSISH AHMAD **…..APPELLANT**

VERSUS

UNION OF INDIA & ANR. **…..RESPONDENTS**

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

THE CHALLENGE

2. Appellant is aggrieved by the judgment and order dated 10th January, 2025[1] of the High Court of Delhi at New Delhi[2] dismissing his writ petition[3] as well as the order dated 29th August, 2025 of dismissal of his review petition[4].

[1] impugned order
[2] Delhi High Court
[3] W.P. (C) No.229 of 2025
[4] RP No.38 of 2025

FACTUAL MATRIX

3. The facts, relevant for deciding this appeal, are as under:

a) Appellant was enrolled as a member of the Border Security Force[5] on 31st December, 2010. At the relevant time, he was posted in the 44th Battalion[6]. While serving at Narayanpur, Malda, in West Bengal, a missing person report concerning one xxx[7] was received by the Company Commander of 44 Bn on 24th April, 2022. Appellant and another constable of the 44 Bn were suspected to be involved in abduction of the lady. In the meanwhile, the appellant's wife also lodged a complaint. It was alleged that the appellant, against her wishes, had contracted a second marriage with the lady. It was also alleged that the appellant subjected her to criminal force.

b) The Sector Headquarters, BSF, Malda, ordered a Staff Court of Inquiry[8] to investigate the allegations. During the inquiry, it was found that the appellant had contracted a second marriage with the lady, who herself was married, during the subsistence of his first marriage on 6th May, 2022. The marriage was also formally registered under the Uttar Pradesh Marriage Registration Rules, 2017 on 23rd May, 2022 at the office of the Marriage Registration Officer in Kushinagar, District Kushinagar, Uttar Pradesh, without

[5] BSF
[6] 44 Bn
[7] lady
[8] SCoI

obtaining the necessary permission of the competent authority as well as without obtaining divorce from his first wife. The SCoI confirmed that the appellant had married a second time despite subsistence of his first marriage, without permission; however, exonerated him of the allegations relating to the lady's abduction.

c) On 19th September, 2022, the appellant was served with a show cause notice[9] under Rules 22[10] and 177[11] of the Border Security Force Rules, 1969[12], alleging violation of Rule 7[13] of the BSF Rules

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[9] SCN

[10] Dismissal or removal of persons other than officer on account of misconduct.- (1) When it is proposed to terminate the service of a person subject to the Act other than an officer, he shall be given an opportunity by the authority competent to dismiss or remove him, to show cause in the manner specified in sub-rule (2) against such action: Provided that this sub-rule shall not apply –

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal Court or a Security Force Court; or

(b) where the competent authority is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity of showing cause.

(2) When after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion, its disclosure is not in the public interest.

(3) The competent authority after considering his explanation and defence if any may dismiss or remove him from service with or without pension:

Provided that a Deputy Inspector-General shall not dismiss or remove from service, a Subordinate officer of and above the rank of an Inspector.

(4) All cases of dismissal or removal under this rule, shall be reported to the Director-General.

[11] Prescribed Officer under Section 11(2).- The Commandant may, under sub-section (2) or section 11, dismiss or remove from the service any person under his command other than an officer or a subordinate officer.

[12] BSF Rules

[13] Disqualification.- (1) No person -

(a) who has entered into or contracted a marriage with a person having a spouse living, or

(b) who having a spouse living, has entered into or contracted a marriage with any person, shall be eligible for appointment into Force:

and Rule 21[14] of the Central Civil Services (Conduct) Rules, 1964[15], on the ground that he had entered into a second marriage during the subsistence of both his own marriage and that of the lady, without permission. The SCN was served on him at Narayanpur, District Malda, West Bengal.

d) Appellant failed to submit a reply to the SCN within the stipulated period of fifteen days from its receipt. Consequently, by an order dated 27th October, 2022, the Commandant, 44 Bn, in exercise of powers conferred on him by Rules 22 and 177 of the BSF Rules, dismissed the appellant from service without any pensionary benefits. Appellant was, accordingly, struck-off strength of the BSF from the said date. This order was also served on the appellant at Narayanpur, District Malda, West Bengal.

Provided that the Central Government may if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

[14] 21. Restriction regarding marriage.- (1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that-

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of Indian Nationality shall forthwith intimate the fact to the Government.

[15] CCS Rules

e) Aggrieved by the order of dismissal, the appellant preferred a statutory petition under Rule 28A[16] of the BSF Rules seeking reinstatement in service. Such petition was addressed to the Director General, BSF. Since the appellant was an enrolled member of the BSF, such petition should have been addressed to the Inspector General in terms of Rule 28A. The petition was, accordingly, placed before the Inspector General, Frontier Headquarters, BSF, Jammu who, by his order dated 22nd December, 2023 condoned the delay in filing the petition but proceeded to reject the same on merits.

f) Challenging the orders of dismissal from service and rejection of his statutory petition, the appellant unsuccessfully invoked the writ jurisdiction of the Delhi High Court by filing the petition under Article 226 of the Constitution.

IMPUGNED ORDER

4. Appellant's contention before the Delhi High Court was that such court did have the territorial jurisdiction because the offices of the Director General, BSF and the Ministry of Home Affairs[17] were located in Delhi.

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[16] Petition.- Any person subject to the Act, who considers himself aggrieved by any order of termination of his service passed under this Chapter may; in the case of an officer, present a petition to the Central Government, in the case of an Assistant Sub-Inspector or a subordinate officer, present a petition to the Director-General and in the case of an enrolled person, present a petition to the Inspector-General, who may pass such orders on the petition as deemed fit:
Provided that the limitation period for filing such petition shall be three months from the date of order of termination or from the date of its receipt, whichever is later.

[17] Respondents

5. The impugned order passed by the Division Bench of the Delhi High Court is a short order spread over 8 paragraphs. We consider it appropriate to quote the entire order, hereunder:

> 1. This petition has been filed by the petitioner praying for the following relief:-
>
> > "(1) Issue a Writ/Order/Direction setting aside the dismissal order dated 27.10.2022 passed by the Commandant, and reinstate the petitioner in his post with all consequential benefits and back wages."
>
> 2. The petitioner was dismissed from service *vide* the Impugned Order dated 27.10.2022 issued by the Commandant, 44 Bn. BSF, Narayanpur, District Malda, West Bengal. Aggrieved by the same, the petitioner submitted a Statutory Petition dated 18.09.2023, under Rule 28A of the BSF Rules, 1969, which was dismissed by the Inspector General, Frontier Headquarters, BSF, Jammu & Kashmir, *vide* Order dated 22.12.2023.
> 3. The petitioner himself is a resident of the State of Uttar Pradesh.
> 4. We, therefore, enquired from the petitioner as to why this petition has been filed before this Court. He submits that the petition has been filed before this Court as the office of the Director General, BSF and the Ministry of Home Affairs is situated at Delhi.
> 5. We do not find merit in the above submission. Merely because the offices of the respondents are situated in Delhi, would not make this court the *forum conveniens*, especially where no part of the cause of action has arisen within its jurisdiction.
> 6. In the present case, the petitioner was dismissed from service *vide* Impugned Order dated 27.10.2023, which was issued at West Bengal. The petitioner subsequently submitted a statutory petition dated 18.09.2023, which has been dismissed by the Inspector General, Frontier Headquarters, BSF Jammu & Kashmir, *vide* Order dated 22.12.2023. Therefore, the cause of action for filing of the petition has arisen at West Bengal or in the Union Territory of Jammu and Kashmir. Merely because the office of the Director General, BSF and the Ministry of Home Affairs is situated at Delhi, it will not make this Court a *forum conveniens.*
> 7. Applying the principle of the doctrine of *forum non conveniens*, therefore, we are of the opinion that this Court would not be the appropriate/convenient Forum for entertaining the present petition. Accordingly, we decline to entertain the present petition in exercise of the discretion vested in us under Article 226 of the Constitution of India.
> 8. The petition and the pending application are dismissed, while reserving the liberty of the petitioner to avail of his remedies in accordance with law before the Court having jurisdiction.

CONTENTIONS OF THE PARTIES

6. Mr. Inayati, learned counsel for the appellant, vehemently contended that the Delhi High Court did have the territorial jurisdiction to entertain the writ petition. In support of this submission, reliance was first placed upon Article 226 of the Constitution. It was argued that clause (1) of Article 226 confers jurisdiction upon a high court where the person or authority against whom a writ, direction, or order is sought is situated within its territorial limits, whereas clause (2) of the said article enables a high court to exercise jurisdiction where the cause of action arises, wholly or in part, within its territory. According to him, the Central Government exercises overall superintendence over the BSF, while its command and administration vest in the Director General, BSF, and the offices of both the authorities are located in Delhi. Consequently, the Delhi High Court was competent to adjudicate the *lis* under clause (1) of Article 226.

7. Mr. Inayati placed heavy reliance on the decision of this Court in ***Abrar Ali v. CISF***[18]. He contended that the issue involved therein was substantially similar and the decision being pat on the point, the ratio thereof squarely applies in this case. He urged that the appellant was entitled to similar relief in the present case.

[18] Civil Appeal No. 6020 of 2012

8. Drawing our attention to several other Division Bench decisions[19] of the Delhi High Court, Mr. Inayati further contended that the decision in ***Abrar Ali*** (supra) has been consistently followed and there was no justification for the Division Bench hearing the appellant's writ petition to take a contrary view.

9. Lastly, Mr. Inayati submitted that the Delhi High Court was also the appropriate *forum conveniens* for both the appellant and the respondents, particularly in view of the proximity of the BSF Headquarters to such court.

10. Accordingly, Mr. Inayati prayed that the Delhi High Court be directed to hear and decide the appellant's writ petition on merits upon setting aside of the impugned order.

11. *Per contra*, Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for the respondents, submitted that the impugned judgment warrants no interference. She contended that the Delhi High Court had correctly held that no part of the cause of action arose within its territorial jurisdiction, - the relevant events having occurred either in West Bengal (where the appellant was dismissed from service) or in the Union Territory of Jammu and Kashmir (where his statutory petition came to be rejected). It was further argued that the Delhi High Court could not be regarded as the *forum conveniens* merely because the situs of the offices of the respondents were in Delhi. On the contrary, the

[19] W.P. (C) No.96 of 2017 (Sumit Kumar v. Union of India & ors.), W.P. (C) No.3983 of 2022 (Sunil Kumar v. The Director General, SSB & ors.) and W.P. (C) No.8626 of 2022 (Chhattar Singh v. Union of India & anr.)

most appropriate forum is the High Court at Calcutta within whose territorial jurisdiction the integral and essential part of the cause of action had arisen.

12. Reference was made by Ms. Bhati to the decision of this Court in ***Arif Azim Co. Ltd. v. Micromax Informatics FZE*** where the concept of *forum non conveniens* has been dealt with by a 3-Judge Bench. Relying on paragraphs 71, 72 and 75 of the said decision, it was contended that the Division bench of the Delhi Court did not commit any irregularity, far less illegality, in relegating the appellant to either of the two high courts where part cause of action arose.

13. Ms. Bhati, accordingly, prayed that the appeal deserves to be dismissed.

ANALYSIS

14. We have heard the parties at length and examined the precedents cited by them.

15. Although the facts and the question of law are not too complicated, this is a case which calls for circumspection since it could affect not only enrolled members of the BSF like the appellant but other members of the Central Armed Police Forces[20] too.

16. The limited question before us is whether the Delhi High Court was right in refusing to entertain, try and adjudicate the writ petition of the appellant on the ground of *forum non conveniens*.

[20] CAPF

17. In ***Abrar Ali*** (supra), this Court held:

> "We have heard Dr. L.S. Chaudhary, learned counsel for the petitioner, and Mr. Sidharth Luthra, learned Additional Solicitor General for the respondents.
> 2. Leave granted.
> 3. The Writ Petition filed by the appellant has been dismissed by the Delhi High Court vide order dated May 3, 2011 by holding that no cause of action has accrued within the territorial jurisdiction of that Court. From the impugned order, it appears that the High Court considered the aspect of jurisdiction with reference to Article 226(2) of the Constitution of India. We are afraid, the impugned order cannot be sustained as the High Court overlooked Article 226(1) of the Constitution of India. The appellant approached Delhi High Court as the headquarter of respondent No.1 – Central Industrial Security Force - is located in Delhi. The jurisdiction of the Delhi High Court in the matter is, thus, clearly referable to Article 226(1).
> 4. We, accordingly, allow the Appeal and set aside the impugned order and restore Writ Petition being Writ Petition (Civil) No. 1241 of 2011 titled "Abrar Ali vs. C.I.S.F. & Ors." to the Delhi High Court for consideration in accordance of law. No orders as to costs."
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> (emphasis ours)

18. Bare perusal of paragraph 3 reveals that the coordinate Bench proceeded to hold the order under challenge unsustainable on the premise that the Delhi High Court overlooked clause (1) of Article 226.

19. The order under challenge in ***Abrar Ali*** (supra), however, throws light on what was considered by the Delhi High Court. It reads as follows:

> 1. At the outset, learned counsel for the respondents raises the bar of territorial jurisdiction.
> 2. It is not in dispute that the order dated 28.11.2000 has been passed by the Disciplinary Authority at Dhanbad and was conveyed to the petitioner at Dhanbad. It is also not in dispute that Appellate order dated 01.02.2001 has been passed at Dhanbad and conveyed to the petitioner at his village in District Muzaffarnagar, U.P. It is also not in dispute that the Revisional order dated 31.12.2010 has been passed by the Revisional Authority i.e. Inspector General, CISF at Patna and has been conveyed to the petitioner at his village in District Muzaffarnagar, U.P.
> 3. It is apparent that no cause of action has accrued within the territorial jurisdiction of this Court.
> 4. Merely because the seat of the Union of India or that the Director General, CISF is stationed at Delhi would thus be irrelevant in view of law laid down by a Co-ordinate Division Bench of this Court in the decision reported in *Vinod Kumar vs. Union of India* 2007(1) AD (Delhi) 284.

> 5. Accordingly, we dismiss the writ petition granting liberty to the petitioner to approach the Court of competent jurisdiction.
> 6. No costs."
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> (underlining in original)

20. With due respect to the coordinate Bench which decided ***Abrar Ali*** (supra), the observation that the Delhi High Court overlooked clause (1) of Article 226 does not appear to be wholly correct. Paragraph 4 of the order of the Delhi High Court, for whatever it is worth, provides sufficient indication of consideration of clause (1) of Article 226 in the light of an earlier decision of the same court. This part of the order under challenge seems to have been overlooked by this Court.

21. In any event, despite such oversight, we agree with the decision in ***Abrar Ali*** (supra). The reason lies here. A 3-Judge Bench decision of this Court in ***Shri Ranjeet Mal v. General Manager, Northern Railway, Baroda House, New Delhi***[21] laid down the law that the Union of India would be fastened with the liability for enforcement of an order quashing an order of dismissal/removal from service of a railway servant, and not the officer who passed it. This decision, read with the provisions of Sections 4 and 5 of the BSF Act, makes the position clear that the Union of India and the Director General, BSF having their offices in New Delhi were necessary parties to the appellant's writ petition and, thus, had been duly impleaded as the respondents before the Delhi High Court. Also, we bear in mind that in terms of sub-rule (4) of Rule 22, BSF Rules, every order of dismissal/removal passed under sub-rule (3)

[21] (1977) 1 SCC 484

thereof has to be reported to the Director General. There is a presumption that official acts have been regularly performed. Hence, on a cumulative assessment of these factors, there may not be any difficulty in holding that the Delhi Court did have the competence to entertain and try the writ petition of the appellant.

22. Significantly, the impugned order of the Division Bench does not say that the Delhi High Court has no jurisdiction. We presume, the Division Bench was aware of the decision in ***Abrar Ali*** (supra), though not formally noticed, as well as the other Division Bench decisions of the Delhi High Court which followed ***Abrar Ali*** (supra).

23. However, we find a somewhat discordant note having been struck in an earlier decision of another coordinate Bench of this Court in ***Eastern Coalfields Ltd. v. Kalyan Banerjee***[22] which ***Abrar Ali*** (supra) did not notice. In ***Kalyan Banerjee*** (supra), this Court dealt with a somewhat similar situation. Although the entire cause of action for exercising the right of action arose in Jharkhand, the order of penalty was challenged by the employee before the High Court at Calcutta since the head office of the employer was located in Sanctoria, Burdwan, within the territory of West Bengal. This is what the Court held:

> **13.** In view of the decision of the Division Bench of the Calcutta High Court that the entire cause of action arose in Mugma area within the State of Jharkhand, we are of the opinion that only because the head office of the appellant Company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court, particularly when the head office had nothing to do with the order of punishment passed against the respondent.

[22] (2008) 3 SCC 456

24. A critical view of ***Abrar Ali*** (supra) could lead to the conclusion that the decision in ***Kalyan Banerjee*** (supra) and a host of other decisions on the point of territorial jurisdiction referred to therein not having been considered, it has its own consequences. Prudence dictates silence on this aspect.

25. We are, however, conscious that in ***Kalyan Banerjee*** (supra), this Court did not notice its earlier 3-Judge Bench decision in ***Dinesh Chandra Gahtori v. Chief of Army Staff***[23]. In the context of a writ petition which was dismissed 7 (seven) years after it was filed on the ground of cause of action having entirely arisen within the State of Punjab including the order of penalty issued by the West (sic, Western) Command and, therefore, the court lacked territorial jurisdiction, this Court ruled that the High Court of Judicature at Allahabad[24] should have taken into consideration that the Chief of Army Staff can be sued anywhere in the country.

26. The decision in ***Dinesh Chandra Gahtori*** (supra) is notably silent both on the factual matrix pleaded and the role, if any, of the Chief of Army Staff in imposition of the order of penalty. Hence, the circumstances leading to the conclusion that the Chief of Army Staff is amenable to be sued across the country are difficult to discern. In any event, the decision in ***Dinesh Chandra Gahtori*** (supra) is prior to the introduction

[23] (2001) 9 SCC 525
[24] Allahabad High Court

of the Armed Forces Tribunal Act, 2007[25] which, through Rule 6[26] of the Armed Forces Tribunal Rules, 2008, has regulated the place of filing application and designated the forum, i.e., the relevant Bench of the Tribunal which ordinarily would proceed to hear the application. Once such Bench of the Tribunal can be approached by an aggrieved member of the armed forces for remedy, to hold that ***Dinesh Chandra Gahtori*** (supra) still permits the Chief of Army Staff to be sued anywhere in the country would re-introduce the multiplicity of forum that the AFT Act sought to eliminate and, thereby, defeat its object. The said decision, therefore, cannot be of any relevance post the AFT Act.

27. Be that as it may, to reconcile the conflict, if any, we hold that in case any member of the CAPF, and that includes the BSF, is aggrieved by any administrative order of termination of his service issued by the competent authority, notwithstanding that the cause of action arose outside, i.e., the said order was issued from a place beyond the territorial limits of the Delhi High Court or that the events which triggered such an order occurred outside its limits, etc., still the Delhi

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[25] AFT Act

[26] Place of filing application. – (1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction -

(i) the applicant is posted for the time being, or was last posted or attached; or

(ii) where the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 14 or section 15 of the Act, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.

High Court would have territorial jurisdiction in light of situs of office of the Union of India and the Director General, BSF/the officer in whom is vested supervision and command of the other CAPF, as per clause (1) of Article 226.

28. Moving on to the decision in ***Arif Azim*** (supra), Ms. Bhati has relied on certain paragraphs which need to be noted now. The same read as under:

> **71.** … The term "*forum non conveniens*" is a Latin term which means "an inconvenient forum" and provides that a court which otherwise might have jurisdiction may decline jurisdiction over a case if there is a more appropriate forum available to the parties, and is typically invoked in respect of cross-border subject-matters that are amenable to multiple concurrent jurisdictions. Depending upon the nature of the dispute, the subject-matter involved and the parties thereto, the courts by invoking this doctrine proceed to determine which one of the available forums may be more convenient and fair for entertaining and adjudicating the matter.
> **72.** In order to apply the doctrine of *forum non conveniens* an adequate alternative forum must exist where the subject-matter may be espoused. The alternative forum must be capable of providing a fair and adequate remedy for the dispute, however this does not mean that the alternative forum must offer identical remedies, and this doctrine may be applied as long as the other alternative forum offers a reasonably fair process of remedy and is more convenient or appropriate in the opinion of the court invoking the doctrine. Courts in doing so must weigh the relative importance of private and public interest factors. In doing so, they exercise a high level of discretion and often issue rulings that are fact specific.
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> ***
>
> **75.** What can be discerned from the above is that where more than one forum is available, it is the discretion of the court to entertain the matter by examining as to which is the appropriate forum more suited for the interests of all the parties and the ends of justice. Ordinarily, the burden to prove that the court or forum in *seisin* of the matter is an inconvenient forum or the proceedings therein are oppressive or vexatious lies on the party contending the same, yet the choice of forum by the other party is not decisive, and that it is for the court to determine whether the proceedings before it might be an inconvenience to the interests of the parties or less appropriate for the subject-matter in question.

29. What follows from the above passages is that the doctrine of *forum non conveniens* applies only where multiple fora are available to a litigant for seeking the same remedy; and, when such multiple fora are available, the forum which has been approached is entitled in law to examine whether any other forum is more convenient and/or better suited to consider and decide the claim that has been raised by the aggrieved litigant. For informed reasons, the forum seized of the claim may refuse to entertain the claim and leave the said litigant free to approach the other forum. It is, however, noticed that the decision in ***Arif Azim*** (supra) did not arise from writ proceedings.

30. We may, in this connection, also profitably refer to the 3-Judge Bench decision in ***Kusum Ingots & Alloys Ltd. v. Union of India***[27]. The proposition of law, which is of importance for deciding this appeal, reads as under:

> **30.** … even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.
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> (emphasis ours)

31. Therefore, in ***Kusum Ingots & Alloys Ltd.*** (supra), an observation as to the applicability of the doctrine of *forum non conveniens* was made where causes of action arise within the jurisdiction of more than one high court, and not in relation to the situs of office of the respondent(s).

[27] (2004) 6 SCC 254

32. What then are the available fora exercising writ jurisdiction under Article 226, which the appellant could have approached for relief in light of clause (2) thereof?

33. First and foremost, the High Court at Calcutta since the SCN and the order terminating the appellant's service were issued from Narayanpur, District Malda, West Bengal; secondly, the High Court for the Union Territory of Jammu & Kashmir and Ladakh, since it is within the said high court's jurisdiction that the appellant's petition under Rule 28A, BSF Rules came to be rejected; and thirdly, the Allahabad High Court's writ jurisdiction could have also been invoked by the appellant since he married the lady in Kushinagar, District Kushinagar, Uttar Pradesh, without prior permission of the competent authority and despite subsistence of his first marriage, which formed the basic ingredient of the charge of misconduct. All these high courts are empowered to grant adequate relief, if at all satisfied that a strong case on merits has been set up.

34. Notwithstanding that the appellant could have approached any of the three high courts based on accrual of part cause of action, as observed earlier, the Delhi High Court is indeed the fourth forum which had the competence to entertain and try the writ petition of the appellant. The Division Bench was also conscious and hence it did not dismiss the appellant's writ petition on the ground of lack of territorial jurisdiction; it applied the doctrine of *"forum non conveniens"* and held that the Delhi High Court was not *"forum conveniens"* for either party having regard

to the run of events leading to dismissal of the appellant's petition under Rule 28A of the BSF Rules.

35. It is in the conspectus of the above fact situation that we need to examine whether the approach of the Division Bench of the Delhi High Court to apply the doctrine of *forum non conveniens* to non-suit the appellant was justified and acceptable. It is obvious from a reading of the impugned order that discretion was not exercised in favour of the appellant because it was felt that the other high courts provided a more convenient forum for the appellant to approach. However, for the reason that follows, we do not find the refusal to exercise discretion to be legal and proper having regard to the claim presented before the Division Bench.

36. The core idea of *forum non conveniens* is that although the court which has been approached by the suitor can legally entertain and try his case, the said court may refuse to do so and require the suitor to approach an appropriate court exercising similar jurisdiction and having powers to grant similar relief that is more convenient to the parties. Ordinarily, it would be the respondent who is likely to raise an objection. By invoking the doctrine of *forum non conveniens*, the respondent while conceding jurisdiction would urge the court to decline its exercise. In courteous terms, the argument would be : though the court <u>can</u> entertain and try the *lis* but it <u>may not</u>.

37. In our considered opinion, the doctrine of *forum non conveniens* has been misapplied by the Division Bench in the context of writ jurisdiction

referable to Article 226 of the Constitution. Such article permits filing of a writ petition as per situs of office of the respondent(s) [clause (1)] and cause of action [clause (2)] which gives the right of action. Where the question of pursuing a constitutional remedy is involved and invocation of writ jurisdiction is traceable to clause (1) of Article 226, the doctrine of *forum non conveniens* may rarely apply. When a writ of or in the nature of Certiorari is prayed, Rule Nisi requires the records of the case to be placed before the Court for examining whether the order under challenge, which is part of the records, deserves to be quashed or not by a writ of or in the nature of Certiorari. Such records would invariably be available in the offices of the respondents[28]; if not, it can readily be called for from the custodian thereof. A suitor having himself chosen the forum convenient to the respondents, application of the doctrine of *forum non conveniens* could be self-defeating and likely to deny access to justice rather than advancing it.

38. For the foregoing reason, the impugned order merits interference; the same is set aside. The appeal thereagainst succeeds and is allowed.

39. Since no appeal lies against dismissal of a review petition, the appeal against the order of dismissal of the review petition is dismissed as not maintainable.

40. This order results in revival of the appellant's writ petition on the file of the Delhi High Court. The same may now be considered and decided on its own merits and according to law. For facilitating early disposal

[28] see, for this case, sub-rule (4) of Rule 22, BSF Rules

thereof, we grant the respondents in the writ petition two months' time to file their counter affidavit; rejoinder thereto, if any, may be filed by the appellant by a month thereafter.

41. Connected applications, if any, shall stand disposed of.

.....J.
(DIPANKAR DATTA)

.....J.
(SATISH CHANDRA SHARMA)

New Delhi,
June 09, 2026.