

(1968) 09 CAL CK 0017
In the Calcutta High Court
Case No : Suit No. 2209 of 1968

Bagaria More Company Ltd.

APPELLANT

Vs

Nischintapur Tea Company Ltd.

RESPONDENT

Date of Decision : 06-09-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 6 Rule 15
Constitution of India, 1950 — Article 226

Citation : 74 CWN 963

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Judgement

Sabyasachi Mukharji, J.—The learned Master has refused to admit the plaint in this case on the ground that there is no proper affidavit as to the competency of Mr. Radhakissan More, the person, who has verified the plaint. Mr. Radhakishan More in his affidavit described himself as a Director of the plaintiff, which is a limited company and he has further stated that as such he is acquainted with the facts and circumstances of this case. Thereafter he verifies the different paragraphs of the plaint as either being true according to his knowledge or being his submissions to this Hon"ble High Court. The learned Master has rejected the plaint on the basis of the judgment of B.N. Banerjee, J. in the case of (1) Ukhara Forests and Fisheries Ltd. Vs. Sub-Divisional Land Reforms Officer, Asansol and Others, . In that case Banerjee, J., was dealing with a petition under Article 226 of the Constitution of India. A petition made by a limited company under Article 226 of the Constitution of India was verified by one of the Directors by an affidavit in more or less identical terms, as in the present case. His Lordship considered the provisions of Rules 14 and 15 of the Rules under Article 226 of the Constitution of this Court as well as the provisions of Rule 1 of Order 29 of the Code of Civil Procedure. His Lordship was pleased to hold that because a juristic body like Corporation can not sign or verify under its own hand, the persons mentioned in Rule 1 of Order 29 of the CPC must act as it is human agents and sign and verify for itself if otherwise authorised. His Lordship also

relied on the provision of Chapter VII, Rule 8 of the Rules of the Original Side of this Court His Lordship referred to the decision of Buckland, J., in the case of (2) International Continental Caoutchoque Compagnie v. Mehta and Co., reported in 31 CWN 1030. His Lordship came to the conclusion that whenever pleading or petition meant to be filed in the Original Side of this Court or a Writ petition is verified on behalf of the Corporation the person verifying must file an affidavit of fitness or of competency along with the pleading or petition. His Lordship held that because a Director is one amongst on behalf of the company at his own individual choice. He may do so, provided he has the sanction or approval of the Board of Directors or is generally authorised by the Board to initiate, commence or defend the proceedings on behalf of the company. His Lordship in that case directed a separate affidavit to be filed. Mr. B.N. Sen, learned Counsel, for the plaintiff, submitted that decision of the learned Master in this case was wrong. He further submitted that the observation of Banerjee, J., in the aforesaid decision so far as the plaint in the Original Side of this Court is concerned, is not quite correct in view of the decision of the Judicial Committee in the case of (3) The Delhi London Bank Ltd. v. Oldhaman & ors., reported in 20 Indian Appeals 139. He also drew my attention to the decision of S.P. Mitra, J. in the case of (4) The West Bengal Board of Secondary Education Vs. The Standard Book Co. and Others, .

2. In the case of (2) International Continental Caoutchoque Compagnie v. Mehta & Co., (supra), Buckland, J., held that the competency of the Officer to verify the plaint must be supported by an affidavit. In that case one Narayan Chandra Dutta described himself as the constituted attorney of the Plaintiff Company and as such a Principal officer of the plaintiff company. He stated that he had power to sign the plaint and the warrant on behalf of the plaintiff Company and is able to depose to the facts of that case. His Lordship considered Chapter VII, Rule 12 of the Rules of this Court which are insidentrical terms with rule 8 of Chapter VII of the present Rules. His Lordship directed fresh affidavit to be filed. His Lordship also relied on the unreported judgment of his own in Suit No. 1232 of 1927 in the case of (5) Manindra Chandra Nandi v. Galji Mulji.

3. There is a judgment of Mr. Justice Sale in the case of (6) Srinath Banerji v. E.I. Railway Company, reported in ILR 22 Cal 268. There His Lordship held that the person authorised to verify a plaint or the written statement on behalf of the Corporation must state that he is a principal officer and is able to depose to the facts of the case. If the plaint or the written statement contained statement of that fact the verification in the usual form would probably be sufficient.

4. The point was again considered in the case of (4) The West Bengal Board of Secondary Education Vs. The Standard Book Co. and Others, . There was an affidavit by one Amalendu Gupta who said that he Was a Deputy Secretary of the Board of Secondary Education and as such he was acquainted with the facts and proceeding relating to the suit and was competent to verify the plaint and also to affirm affidavits and other documents. His Lordship was of the opinion that the

affidavit was in compliance with well established practice of this Court. Afterwards, no doubt, the competency of the deponent to verify may be challenged by respondent in the affidavit in the opposition or in the written statement to enable the plaintiff to prove his authority.

5. Order 29, Rule 1 of the Code of Civil Procedure, in my opinion is the specific provision dealing with the suit by or against Corporation and verification of plaint in respect thereof. Rule 8 of Chapter VII of the Original Side Rules states that where any person other than party pleading verifies a pleading under Chapter VI, Rule 15 of the Code of Civil Procedure; his fitness to certify shall be proved by his affidavit at the time the pleading is presented. Rule 15 of Order VI of the CPC deals with verification of pleading and states that "save as otherwise proved by any law for the time being in force" every pleading shall be verified at the foot by one of the parties pleading or some other persons proved to the satisfaction of the Court to be acquainted with the facts of the case.

6. Where there is a special provision dealing with a case Order VI Rule 15 cannot have any application. It says so, Rule 1 of Order 29 of the CPC is the special provision dealing with verification of pleadings in cases of this type. In the premises Rule 15 of Order VI of the CPC does not govern this case. If Rule 15 of Order VI of CPC does not apply then the provisions of Rule 8 of Chapter VII of the Original Side Rules are not attracted.

7. I am of the opinion that if there is verification of the pleading only in compliance with Order 29 of Rule 1 of the CPC in the case of Corporation, the same would be sufficient for admission. If the authority of the deponent to verify is disputed then that point should be taken by the defendant in its pleading to enable the plaintiff to prove the authority of the deponent.

8. The above view is in my opinion concluded by the judgment of the Privy Council in the case of (3) The Delhi and London Bank Limited v. Oldhaman and others, reported in 20 IA 139. There the question was whether the omission of express power to sue in terms of Section 51 of the Old CPC was fatal. Section 51 of the Old CPC corresponds to Order VI Rule 15 of the present Code of Civil Procedure. Their Lordships of the Judicial Committee were of the opinion that Section 51 of the Old Code regulated proceedings by or on behalf of ordinary plaintiffs but in case of Corporation the same were to be guided by provisions of Section 435 of the Old Code of Civil Procedure. Section 435 of the Old CPC alone corresponds to Rule 1 of Order 29 of the present Code of Civil Procedure.

9. In the decision in the case of (1) Ukhara Forests and Fisheries Ltd. v. Sub-Divisional Land Revenue Officer, Asansol (Supra) the attention of Banerjee, J., was not drawn to the aforesaid decision of the Judicial Committee. Furthermore in that case His Lordship was dealing with the question of petition under Article 226 of the Constitution of India where perhaps different considerations might apply. In that case His Lordship was not actually concerned with the plaint filed in the Original Side of this High Court.

10. In the decision in the case of (2) International Continental Caoutchoque Compagnie v. Mehta & Co. (Supra) attention of Buckland, J., was not drawn to the aforesaid decision of the Judicial Committee. Furthermore in that case His Lordship was dealing with verification by a constituted attorney. In the premises I am of the opinion that the affidavit in the present case is in compliance with the provision of Order 29 Rule 1 of the CPC and I direct the plaint to be admitted.