

(1940) 04 CAL CK 0032
In the Calcutta High Court

East Bengal Bank Ltd.

APPELLANT

Vs

Jogesh Chandra Banerjee

RESPONDENT

Date of Decision : 29-04-1940

Acts Referred:

Companies Act, 1956 — Section 152

Citation : AIR 1941 Cal 127

Hon'ble Judges : R.C. Mitter, J

Bench : Division Bench

Judgement

R.C. Mitter, J.—The petitioner before me is the East Bengal Bank Ltd. (hereinafter called the Bank), a company registered under the Companies Act. The said Bank filed a suit in the Court of the Small Cause for the recovery of Rs. 408 from the defendant opposite party on the basis of a promissory note executed by the latter in its favour. The suit was filed on the basis of a vakalatnama executed by the local agent of the Bank on its behalf. The plaint was also verified by the said local agent. On 28th July 1939, a joint petition was filed on behalf of the Bank and by the defendant asking the Court to refer the matter to arbitration. The petition was signed by the legal agent of the Bank but it was approved of by the pleader engaged by the Bank and was moved by him in Court. On the said petition, an order was passed by the learned Small Cause Court Judge referring the dispute to the named arbitrators. The arbitrators filed their award in Court on 3rd August 1939 and in accordance with the award the suit was dismissed by the lower Court after overruling the two material objections of the Bank which are material for the purposes of the present rule. One objection was that the Court could not make the reference in view of the provisions of Section 152, Companies Act, which according to the petitioner required an arbitration in which a company was interested to be made in accordance with the provisions of the Arbitration Act and to which the procedure laid down in the said Act was to be followed. The second objection was that the local agent had no authority to apply for referring the matter to arbitration on behalf of the Bank.

2. The rule has been issued on the aforesaid two points. I do not think that any of those contentions raised by the Bank in the lower Court and overruled by it can be given effect to. The Preamble of the Arbitration Act makes it clear that that Act has application only to arbitrations without the intervention of the Court. Having regard to the provisions of S.89, Civil P. C., the rules contained in Schedule 2 relating to arbitrations with the intervention of the Court would be applicable in such a case and not the provisions of the Arbitration Act. Section 2, Arbitration Act, limits the applicability of the said Act, in the absence of a notification by the Local Government, to private arbitrations, that is arbitrations out of Court, if a suit, either with or without leave, could have been instituted in a presidency town relating to the subject-matter of the dispute. Section 152, Companies Act, deals with the matter of arbitration in which a company is interested.

3. As I pointed out in *Jhirighat Native Tea Co. Ltd. Vs. B. Gupta*, (a case of arbitration out of Court), Sub-section (3) of Section 152, Companies Act, is of prime importance and it gives a clue to the meaning of Section 152(1), Companies Act. That section was interpreted in that judgment and according to the interpretation there given, the scope of Section 152, Companies Act, is that the provisions of Sections 3 to 22, Arbitration Act, would apply where one or both the parties to arbitration are companies registered under the Companies Act by force and effect of the Companies Act itself irrespective of the provisions of Section 2, Arbitration Act; that is to say, the said Act would apply in a case falling within the scope of the Act even when the locus of the subject-matter was outside a presidency town, provided one of the parties or both of them were companies registered under the Companies Act. As the Arbitration Act has no application to arbitration with the intervention of the Court, the contention raised by the petitioner cannot be given effect to. I accordingly overrule the first point raised before me and also before the lower Court.

4. I do not also see any substance in the second ground. The local agent of the Bank had undoubtedly authority to engage a pleader and to deliver a vakalatnama on behalf of the Bank. In fact, it is on the vakalatnama so delivered that the suit had been instituted in the name of the Bank. That vakalatnama contained a power given to the pleader to enter into arbitration on behalf of the Bank. The vakalatnama is not the vakalatnama of the agent but the vakalatnama of the Bank itself. The Bank is bound by the terms of that vakalatnama and although the agent may not have the power from the Bank to refer the matters in dispute to arbitration, the pleader, on the basis of that vakalatnama had authority to apply for referring the matter to arbitration. The pleader himself approved of the arbitration and he, in fact, moved the petition on which reference was made. Before the arbitrator, he took part in the proceedings on behalf of the Bank and now that the award is against the Bank, the Bank is not entitled to repudiate the authority of the pleader for the purpose of nullifying the proceedings. The second ground is accordingly overruled. The rule is discharged with costs, hearing fee being assessed at one gold mohur.