

(2015) 02 CAL CK 0091

In the Calcutta High Court

Case No : C.A. Nos. 786 of 2014, 49 of 2015 and C.P. No. 1122 of 2014

In Re: Rei Agro Ltd. and Others

Date of Decision : 12-02-2015

Acts Referred:

Evidence Act, 1872 — Section 78, 85
Notaries Act, 1952 — Section 14

Citation : AIR 2015 Cal 54 : (2015) 1 CALLT 613 : (2015) 2 CHN 237 : (2015) 4 WBLR 193

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Sudipto Sarkar, Senior Advocate, Moushumi Bhattacharya, S. Sengupta, Udit Mendritta and Smita Mukherjee, for the Appellant

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—On 27th January, 2015, when the petitioners prayed for leave under Rule 21 of the Company (Court) Rules, 1959, the learned senior counsel representing the company objected to such leave being granted by this Court. After hearing the parties and upon considering the law on the issue, this Court delivered a judgment, the operative portion whereof is quoted hereinbelow:--

"As such, the deponents are directed to satisfy this Court that they were "duly authorised" by the petitioning creditors to make and file the affidavit verifying the instant winding-up petition, by producing valid resolutions adopted by the Board of Directors of the petitioning-creditors supported by powers of attorney given in their favour by the petitioning-creditors. Let such documents be produced before this Court on 29th January, 2015."

Consequently, the matter is again taken up for consideration for such purpose, as stated above.

2. The learned senior counsel representing the petitioners produces a document which purports to be a power of attorney issued by UBS AG dated 5th November,

2014, signed by two persons, namely, Celine Teo and Pram Kurniawan, described as Executive Directors. The power of attorney appears to have been notarised by one Yang Yung Chong, whose seal indicates that he/she is a notary public of Singapore. The learned senior counsel representing the petitioners also refers to an endorsement in the document made by the Consular Section of the High Commission of India, Singapore, and the signature of one Asha Upreti, whose seal describes her as the Assistant Consular Officer in the High Commission of India at Singapore, both of which appear in the top sheet of the document. He submits that the power of attorney has been duly authenticated by the concerned officer of the High Commission of India, which is clear from the endorsement made by the office of the Indian High Commission at Singapore. He also refers to the provisions of section 85 and Sub-section (6) of section 78 of the Indian Evidence Act, 1872 and submits that the Court shall, in such circumstances, presume the authenticity of the said document, which was notarized in Singapore. In this context, he relies on several decisions, which are as follows:--

"1) National and Grindlays Bank Ltd. Vs. World Science News and Others, AIR 1976 Delhi 263 : (1976) 12 DLT 69 : (1976) 1 ILR Delhi 559 : (1976) ILR Delhi 559 : (1976) RLR 356

2) Citibank N.A. Vs. Juggilal Kamlatpat Jute Mills Co. Ltd., AIR 1982 Delhi 487 : (1984) 56 CompCas 509

3) M/s. Rudnap Export-Import Vs. Eastern Associates Co. and others, AIR 1984 Delhi 20

4) Jugraj Singh and Another Vs. Jaswant Singh and Others, AIR 1971 SC 761 : (1970) 2 SCC 386 : (1971) 1 SCR 38 : (1971) 3 UJ 379

3. After considering the submission made by the learned senior counsel representing the petitioners, this Court is of the view that the only issue which requires consideration is whether the deponents have been able to satisfy this Court that they were "duly authorised" by the petitioning-creditors to make and file the affidavit verifying the instant winding-up petition on the basis of the direction given by this Court, as contained in its order dated 27th January, 2015.

4. A bare perusal of the operative portion of the judgment and order dated 27th January, 2015, quoted above, clearly reveals that production of valid resolutions adopted by the Board of Directors of the petitioning-creditors supported by powers of attorney given in their favour by the petitioning-creditors were the essential requirements for the purpose of satisfying this Court that all the deponents had been "duly authorised" by the petitioning-creditors to make and file the affidavit in support of the petition on their behalf. However, the learned senior counsel for the petitioners has not been able to produce valid resolutions adopted by the petitioning-creditors. So far as the power of attorney is concerned, it appears to be authenticated by one Yang Yung Chong, a notary public of Singapore. No doubt, there is an endorsement made on the top sheet of

the document, which carries the signature of Asha Upreti, Assistant Consular Officer in the High Commission of India at Singapore. However, the endorsement dated 12th November, 2014, merely reads as follows:

"Seen in the Consular Section of the High Commission of India, Singapore. And not responsible for the contents."

5. As such, this endorsement cannot be held to be an authentication of the foreign document by the Consular Section of the High Commission of India, Singapore.

6. A question, therefore, arises as to whether this Court can recognize a notarial act which took place before a notary public at Singapore. This is required to be considered first, even before this Court can go into the genuineness or authenticity of the document. The answer to this question is clearly provided under section 14 of the Notaries Act, 1952, which reads as follows:

"14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries - If the Central Government is satisfied that by law or practice of any country or place outside India, the notarial acts done by notaries within India are recognized for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognized within India for all purposes, or as the case may be, for such limited purposes as may be specified in the notification."

7. None of the judgments, which have been referred to or relied upon by the learned senior counsel appearing on behalf of the petitioners, takes into consideration or even dwells upon the above quoted provision of the Notaries Act, 1952, which is a Central Legislation that has come into force at a latter point of time - much after the Indian Evidence Act of 1872. Now, so far as section 85 of the Indian Evidence Act is concerned, it provides that the Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated. However, it must be held that to the extent it dwells upon presumption as to powers of attorney, executed and authenticated by a Notary Public, the provision of section 85 of the Indian Evidence Act, 1872, cannot be read in isolation to the specific provision as contained under section 14 of the Notaries Act, 1952, insofar as notarial acts done by foreign notaries are concerned. For an Indian Court to recognise a notarial act done by a notary public at Singapore, it is imperative for the Central Government to issue a notification under section 14 of the Notaries Act, 1952, declaring that the notarial acts lawfully done by notaries in Singapore shall be recognised within India for all purposes, or as the case may be, for such limited purposes as may be specified in the notification. In other words, unilateral recognition by an Indian Court of a notarial act done by a foreign notary is

impermissible in the absence of reciprocity of recognition as contemplated under section 14 of the Notaries Act, 1952. The reason is, if it is otherwise, the sanctity of the sovereign power being exercised by an Indian Court will be compromised.

8. Since there is clearly no such notification of the Central Government in the Official Gazette granting recognition to the notarial acts done by the notary public of Singapore, this Court is unable to take any judicial recognition of the document which has been handed over before this Court by the learned senior counsel appearing on behalf of the petitioners.

9. In the absence of the documents which were required to be produced before this Court in terms of the order dated 27th January, 2015, it cannot be held that the deponents have been "duly authorised" by the petitioning-creditors to make and file the affidavit in support of the winding-up petition. This Court, therefore, is left with no option but to reject the petition, being CP No. 1122 of 2014, summarily, on such ground alone.

10. In view of the dismissal of CP No. 1122 of 2014, there is no scope for adjudication in respect of the connected matters, being CA No. 786 of 2014 and CA No. 49 of 2015, which are accordingly disposed of.

11. However, it is made clear that dismissal of the petition shall not cause any prejudice to the rights of the petitioners to file a fresh petition on the same cause of action provided, of course, the petition conforms to the observations made by this Court herein and in its earlier judgment and order dated 27th January, 2015. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.