
(1939) 12 CAL CK 0010
In the Calcutta High Court

Jhirighat Native Tea Co. Ltd.

APPELLANT

Vs

B. Gupta

RESPONDENT

Date of Decision : 08-12-1939

Acts Referred:

Companies Act, 1956 — Section 152

Citation : AIR 1940 Cal 220

Judgement

1. The respondent was the selling agent of the appellant Company at Calcutta. In that capacity he had from time to time received sums of money on behalf of the company. It is not necessary to recite the terms on which he obtained the agency. He was also the financier of the company and in that capacity had from time to time advanced monies to the company. Difference as to the state of accounts arose between them. By a written submission signed on 11th September 1937 by the respondent and, by and on behalf of the company, by its secretary, Bidit Chandra Gupta. The matters in dispute were referred to the arbitration of Mr. Surendra Mohan Sen Gupta. Mr. Sen Gupta entered upon the reference and made his award on 15th October 1937. On 19th April 1938, just on the re-opening of the Court after the Easter vacation, the company filed an application, in the Court of the Subordinate Judge, Cachar, under para. 20 of Schedule 2, Civil P.C., for filing the award. A copy of the award was filed with that application. The respondent being served with notice of the said application filed his written statement on 20th June 1938. As the contest raised important points the learned District Judge transferred the case to his file and by his order dated 27th September 1938 dismissed the same.

2. On the pleadings 14 issues were framed. The 13th and the 14th were general issues. The remaining 12 issues raised specific points. The learned District Judge gave his judgment on the first 5 issues only. He held on issue 1 that the application was not maintainable as it was made under Para. 20, Sen. 2 and on issue 2 that the application to file the award could not be made to the Subordinate Judge. The ground for his decision was that the Arbitration Act (9 of 1899), was applicable to the case. He further held on issue 5 that the award was

illegal and void as the "formalities of the Arbitration Act had not been observed." His last mentioned conclusion, according to him, followed as a corollary to his finding on issue 2. He further held that the submission was valid, that the company and the Board of Directors were competent to refer the dispute to arbitration and that the arbitrator had been legally appointed (issues 3 and 4). We think that the learned District Judge, in the view that he took on issues 1 and 2 ought not to have expressed his opinion on issues 3 to 5. He should have returned the application for being presented to the proper Court, leaving it open to the proper Court to decide these three issues as well as the other issues. As we think that the learned District Judge was right in his decision on issues 1 and 2 we set aside his decision on issues 3 to 5 and leave the subject-matter of these issues open between the parties. The determination of the question involved in issues 1 and 2 depend mainly upon the interpretation of Section 152, Companies Act. These issues as framed by the lower Court are:

(1) Is the petition for filing the award maintainable?

(2) Has this Court jurisdiction to hear the petition filed by the plaintiff or to pass judgment thereon?

3. The first and the third sub-sections of Section 152 are:

(1) A company may by written agreement refer to arbitration, in accordance with the Arbitration Act, 1899, an existing or future difference between itself and any other company or person.

* * * * * (3) The provisions of the Arbitration Act, 1899, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations between companies and persons in pursuance of this Act.

4. The second sub-section is not material in the appeal. Two views have been taken of these two sub-sections by other Courts but there is no decision of this Court. The conflict in the Lahore High Court was settled by a Full Bench of that Court in *Sita Ram Balmukund v. Punjab National Bank Ltd.* 23 AIR (1936) Lag. 721. Stress was laid by Bhide, J., on the word "may" in Sub-section (1) and on the last five words of Sub-section (3) which by the way, were misquoted. The conclusion of the Full Bench was that apart from Section 152 a company had the power to refer disputes to arbitration and that Section 152 gave a company the option to refer matters in dispute between it and another company or person in accordance with the Arbitration Act, 1899, and when the said option was exercised by the company the limiting provision contained in Section 2, Arbitration Act would have no force. It was said that Section 214(2), Companies Act, as it stood then (Section 208(c), Clause 6 of the Act now in force) lent additional support to that view. The other view is that if a company wishes to refer disputes to arbitration, it must refer in accordance with the provisions of the Arbitration Act, 1899. One of the recent decisions which has expressed this view is in *Peoples Bank of Northern India Ltd. v. Padam Lal Wasu Ram* 25 AIR

(1938) Pesh 54. We do not feel inclined to the view taken by the Full Bench of the Lahore High Court.

5. Sub-section (1) of Section 152, by itself conveys the meaning that a company will have the power to refer to arbitration in accordance with the Arbitration Act, 1899. It would be a redundant provision if it be not read with Sub-section 3. A company would have had the power, apart from Sub-section (1), Section 152, to refer to arbitration in accordance with the Arbitration Act, 1899, a dispute, the subject-matter of which could be the subject-matter of a suit which with or without leave, could have been instituted in Presidency town. Sub-section 3, Section 152, therefore is of prime importance, and in our judgment the questions involved in issues 1 and 2 will have to be answered on the interpretation to be put on that sub-section.

6. By its own force the Arbitration Act, 1899, governs a narrow field. It operates where the subject-matter of the submission falls either wholly or partly within the locus of a Presidency town or of the City of Rangoon. The Act itself lays down the procedure for its extension to other local areas. That procedure is that a notification by the Local Government defining the extended local area must be issued. A repeal of Section 2 of the Act would bring into operation the other Sections of the Act, namely Sections 3 to 22 throughout the whole of British India, by the force of Section 1, Sub-section (2). These two facts are fundamental and in our judgment must be kept in view, and if these are kept in view, the meaning of Sub-section 3, Section 152, Companies Act, would become clear. The concluding words of that subsection "in pursuance of this Act" words which had troubled the minds of the Judges constituting the Full Bench of the Lahore High Court, mean that Sections 3 to 22, Arbitration Act, 1899, would apply to all arbitrations in which one or both the parties are companies irrespective of the locus of the subject-matter by the force and effect of the Companies Act, and the procedure provided for in the Arbitration Act for extending its field of operation would not have to be followed in such cases. This is, in our judgment, the effect of Sub-section 3 of Section 152. The words "in pursuance of this Act" (i.e. the Companies Act) clearly qualify the phrase "shall apply." The meaning is that the provisions of the Arbitration Act, 1899 except Section 2 thereof (which is to be treated as non-existent) shall apply to all arbitrations between companies and persons by the force and effect of the Companies Act itself. The decision of the Full Bench of the Lahore High Court has the effect of substituting for the words "in pursuance of this Act" used by the Legislature the words "in pursuance of Sub-section (1)" or the words "in pursuance of this Section." On the interpretation we have put upon Sub-section (3) of Section 152, Section 3 and Section 4(a), Arbitration Act, 1899, would apply to all arbitration in which a company is a party. Paras. 20 and 21 of Schedule 2, Civil P.C., are accordingly excluded and the Court to which the award will have to be filed u/s 11(2), Arbitration Act of 1899 must be either the High Court or the Court of the District Judge, as the case may be. The material Paragraphs of Schedule 2, Civil P. C, are excluded by the direct force of the

Companies Act, by reason of that Act incorporating Section 3, Arbitration Act. Schedule 2 is accordingly excluded by virtue of the provisions of Section 89, Civil P.C.

7. We do not think that Section 208-C, Sub-section (6), Companies Act helps the contention of the appellant, which was on the same lines as were adopted by the 3M1 Bench of the Lahore Court. That sub-section made the provisions of the Arbitration Act, 1899, except Section 2 thereof, applicable to arbitrations in pursuance of that Section, namely 208-C. The arbitration contemplated in that Section is one between the company in liquidation and one or more of its members an arbitration to settle an internal dispute or difference. Section 152(3) would not have covered such a case, as the arbitration contemplated there is one between a company and either another company or an individual a third party, i.e., an arbitration to| settle not an internal but an external dispute or difference. We accordingly uphold the decision of the learned District Judge on issues 1 and 2 only. As the Court in which the application to file the award was made had no jurisdiction to entertain it, not being the Court of the District Judge the proper order would not be an order of dismissal but an order for return of the application for presentation to the proper Court in accordance with the provisions of the Arbitration Act, 1899. We accordingly direct the application to be returned. Subject to this modification and the reservation made with regard to issues 3 to 5 the appeal is dismissed. As the respondent has succeeded substantially he must have the costs of this Court from the appellant Company. Hearing fee three gold mohurs.