

(1902) 07 CAL CK 0025

In the Calcutta High Court

Case No : Civil Rules Nos. 1053 and 1054 of 1902

Singer Manufacturing Co.

APPELLANT

Vs

Bajnath

RESPONDENT

Date of Decision : 04-07-1902

Acts Referred:

Citation : (1902) 07 CAL CK 0025

Judgement

Banerjee and Pratt, JJ.—These are two Rules calling upon the opposite party to show cause why the order of the Subordinate Judge rejecting the plaints in these two suits should not be set aside and the Subordinate Judge should not be directed to hear and determine the suits on the merits.

2. The learned Subordinate Judge rejected the plaints in these two suits, because they were suits brought by a foreign Corporation (the Petitioners before us) which was not registered under the Indian Companies Act (VI of 1882) and the plaints therefore could not, in the opinion of the Subordinate Judge, be verified on behalf of the Corporation by one of its principal officers u/s 435 of the Code of Civil Procedure. In support of the view he has taken, the learned Subordinate Judge refers to the case of Campbell V. Jackson ILR (1885) Cal. 41.

3. The learned Counsel for the Petitioners contends that this view of the Court below is wholly erroneous, that a foreign Corporation is entitled to sue in its corporate character in this country without being registered under the Indian Companies Act; that Section 435 of the CPC applies to such suits and that the case of Campbell v. Jackson ILR (1885) Cal. 41 does not lay down any rule such as the Court below thinks it does.

4. On the other hand, the learned vakil for the opposite party, in showing cause, contends that, although a foreign Corporation may maintain a suit in this country, yet before it can claim the benefit of Section 435 of the Code of Civil Procedure, it must be registered under the Indian Companies Act and in support of his contention he refers to Sections 4, 41 and 224 of Act VI of 1882 and to the case of Yusuf Beg v. The Board of Foreign Missions of the Presbyterian Church of

New York ILR (1894) All. 420, besides the case of Campbell v. Jackson ILR (1885) Cal. 41 relied upon by the Court below.

5. We are of opinion that the contention on behalf of the Petitioners is correct and that the Court below was wrong in holding that the Plaintiff Corporation was bound to be registered under the Indian Companies Act, or under an Act of Parliament before the benefit of Section 435 of the CPC could be claimed.

6. It is an established rule of private international law that a Corporation duly created according to the law of one State may sue and be sued in its corporate name in the Courts of other States: See Lindley on Companies, 5th edition, p. 909 and Story's Conflict of Laws, paragraph 565. Our Code of Civil Procedure, Section 430, also expressly enacts that alien friends may sue in the Courts of British India, as if they were subjects of our Sovereign. Section 435 of the Code says that "in suits by a Corporation or by a Company authorized to sue and be sued in the name of an officer or by a trustee the plaint may be subscribed and verified on behalf of the Corporation or Company by any director or other principal officer of the Corporation or Company, who is able to depose to the facts of the case." There is nothing in this section to exclude from its operation a foreign Corporation or a foreign Company and there is nothing in the CPC or in the Indian Companies Act requiring such Corporation or Company to be registered under the Indian Companies Act before it can claim the benefit of Section 435. The sections of the Indian Companies Act VI of 1882 to which reference has been made in the course of the argument by the learned vakil for the opposite party do not bear out his contention.

7. As for the two cases relied upon, on behalf of the, opposite party, it is enough to say that the question now before us did not arise in either of them. It is true in the case of Campbell v. Jackson ILR (1885) Cal. 41, Mr. Justice Field, in delivering the judgment of the Court, says, after referring to Section 435,--"Now there is no suggestion in this case that this Company is a Company authorized to sue or be sued in the name of an officer or trustee. Such authority can only be conferred by Act of Parliament or by an Act of the Indian Legislature." But these words must be taken in connection with the facts of the case. The facts of the case go to show that the Company there being a Company in British India, the only authority from which it could derive its powers would be an Act of the Indian Legislature or of Parliament. And with reference to Yusuf Beg v. The Board of Foreign Missions of the Presbyterian Church of New York ILR (1894) All. 420, upon which reliance was placed, it appears from the judgment that it was not shown that the party claiming the benefit of Section 435 was a duly constituted Corporation at all.

8. That being so, we think the view taken by the Court below is erroneous and its order rejecting the plaints must be set aside and the Court below must be directed to entertain the plaints and to deal with the cases according to law.

9. The Rules are made absolute with costs.