

(1925) 02 CAL CK 0028
In the Calcutta High Court

The Jagadishpore Tea Co. Ltd.

APPELLANT

Vs

McLeod and Co. and Others

RESPONDENT

Date of Decision : 03-02-1925

Acts Referred:

Companies Act, 1913 — Section 165, 246
Government of India Act, 1915 — Section 109

Citation : AIR 1925 Cal 606a

Hon'ble Judges : Suhrawardy, J;Cuming, J

Bench : Full Bench

Judgement

Suhrawardy, J.—This case raises the same question which came up before us for consideration in Order No. 1091 of 1924. There we held that applications under the Indian Companies Act relating to Companies doing business in the mofussil should be made in the Original Side of this Court. After we had pronounced our judgment this matter came up before another Bench of this Court which issued notices to the Incorporated Law Society and the Vakils' Association probably with the view that the question should be re-argued. This case has come up before us for hearing and the Incorporated Law Society and the Vakils' Association are represented before us. Since on the previous occasion we fully heard the argument on behalf of the Incorporated Law Society and the Vakils' Association we do not think that we should allow them to argue the point over again. But as the Petitioner has expressed a desire to have the questions reargued we have allowed Dr. Basak to place before us further materials so that he might induce us to change our view. We have heard Dr. Basak fully and I have given my best considerations to the matter, but I am unable to change the view that I formed on the previous occasion. On the previous occasion Dr. Mitter appearing on behalf of the Vakils' Association made submissions which we considered in our judgment delivered in that case. Dr. Basak has supplemented the arguments advanced by Dr. Mitter on the former occasion.

2. The first point raised by Dr. Basak is that the alteration in the law as enacted in the Indian Companies Act, VI of 1882, by the present Act of 1913 indicates

the change of mind of the legislature and invests the High Court in its Appellate Jurisdiction with power to deal with matters relating to Companies working in the mofussil. By Section 3 of the Act of 1882 the word "Court" was defined as follows:- "Court means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in the exercise of its Ordinary Original Civil Jurisdiction." In the present Indian Companies Act, VII of 1913, this definition has been omitted and "Court" is thus defined in Section 2: "The Court" means the Court having jurisdiction under this "Act" and in Section 3 it is said that the Court having jurisdiction under this Act shall be "the High Court having jurisdiction in the place at which the registered office of the Company is situate." Dr. Basak argues from this alteration in the definition of the word "Court" that though under the Act of 1882 the High Court in its Original Jurisdiction was vested with power to deal with matters relating to all Companies the change in the definition in the present Act has empowered the "Appellate Side of the High Court to deal with these matters; and that by the words "the High Court" in Section 3 of Act VII of 1913 the High Court in its Appellate Jurisdiction is meant. I do not think that this interpretation of the law is correct. According to Dr. Basak's reading of the law this Court in its Appellate Side should have jurisdiction also over Companies carrying on business in Calcutta and not in its Original Side, a position hardly tenable. If the alteration in the law gives any indication of the intention of the legislature it does in my opinion support the contrary view. It is conceded that before the Act of 1913 all matters relating to Companies whether situated in the Presidency Towns or outside them were dealt with by the High Court in its Original Jurisdiction. Now it may be interesting to find out why this alteration in the law has been made in the Act of 1913. To my mind the alteration was made in order to include within the definition of the word "Court" such Courts of highest Civil Jurisdiction in a province which are not High Courts and such High Courts which have no Original Civil Jurisdiction. It was not intended by the legislature to take away the jurisdiction of the Original Side of the High Court and to vest it in the Appellate Side. The alteration in the law therefore does not support the contention of the learned Advocate.

3. It is next argued that the jurisdiction of the Original Side of the High Court is circumscribed by the provisions of the Letters Patent and it cannot be extended. Clause 11 of the Letters Patent and Section 109 of the Government of India Act vest the Governor-General in Council with wide powers to extend the limit of the Ordinary Original Civil Jurisdiction of the High Court. The Act of 1913, as the Act of 1882, may be taken to be a legislative enactment by which the Original Civil Jurisdiction of the High Court has been extended to embrace questions relating to Companies situated outside the Presidency Towns. For the view that we held on the last occasion and to which I still adhere, we relied on the meaning of the word "High Court" in the Act of 1913. By the word "High Court" is meant the High Court as a whole including its Appellate and original Jurisdiction. There is no justification for the view that "High Court," means only the High Court in its Appellate Jurisdiction. If that were the intention of the legislature in altering the

definition of the term " Court", it should have expressed clearly that the Court dealing with Companies is the High Court in its Appellate Jurisdiction. I do not wish to repeat the arguments which we adopted on the previous occasion; but it is clear that the expression " High Court" in the Act of 1913 is intended to include all the Sides of the High Court and is as equally applicable to High Courts having Original Civil Jurisdiction as to High Courts which have no Original Side.

4. Our attention was next drawn to Section 165 of the present Indian Companies Act.

5. It is argued that under this section matters relating to winding-up may be transferred by the High Court to the District Court and the High Court may transfer any such matter from one District Court to another District Court, It is contended that these powers can only be exercised by the High Court in its Appellate Side as the Original Side has no jurisdiction over District Courts. In the view that I take, namely, that High Court includes both Sides of the Court, this argument fails. If the High Court as a whole has been invested with powers under the Act, including powers under Sections 164 and 165, they do not bar the Judge sitting in the Original Side exercising the powers under these sections.

6. As one of the grounds for holding on the last occasion that these matters should be dealt with by the Original Side we referred to Section 2 of the rules framed by this Court which lays down that all applications relating to Companies should be presented to the High Court in its Original Side. Dr. Basak contends that the rule-making power is given to the High Court u/s 246 of the Indian Companies Act of 1913 and it deals only with cases of winding-up of Companies, reduction of capital and sub-division of shares of a Company, that Rule 2 of the Rule of this Court must therefore be taken to apply to those cases though it is expressed in general terms. But the learned Advocate is not content with this argument and he further contends that that Rule even if so limited is ultra vires of this Court as under the Indian Companies Act 1913 it is the High Court in its Appellate Side alone which has jurisdiction to deal with all matters relating to Companies and therefore Rule 2 which makes such matters cognizable by the Original Side of the Court must be taken to be ultra vires. In the view that I have already expressed, namely that the expression " High Court " as used in the Indian Companies Act is the High Court as a whole including the Appellate and Original Sides, no further argument is necessary on this point.

7. I may mention that the present case the application relates to two points-reduction of capital and enlargement of the local area of the operation of the Company. Under the rules framed by this Court u/s 246 the question relating to reduction of capital must be tried in the Original Side of this Court. If we are to hold that the other question, namely, the enlarging the field of operation of the Company is to be tried only by the Appellate Side it would create an undesirable anomaly. In our previous judgment we have already shown the conveniences and inconveniences arising from the Appellate Side taking up these matters. I do not wish to express any opinion as to the proper interpretation of the Act with

reference to High Courts which have no Original Jurisdiction. In their case, the situation is met by a single Judge dealing with matters relating to Companies, rendering his orders appealable under the Letters Patent. But we are concerned with our High Court which has both the Appellate and Original Jurisdiction and I think that this Court has the power to rule that matters relating to Companies, though carrying on business outside Calcutta, should be within the Original Jurisdiction of this Court. I am not to be understood to lay down (for it is beyond my present purposes that the Appellate Side of this Court can have no jurisdiction in the matter.

8. On the above consideration I hold that this application should have been presented in the Original Side of this Court and in this view this Rule should be discharged. Liberty is reserved to the Petitioner to renew his application in the proper Court. We think that the Registrar of Joint Stock Companies who has appeared before us in this proceeding is entitled to his costs which we assess at two gold Mohurs.

Cuming, J.

9. This question of jurisdiction was fully argued before us in the former application heard by myself and my learned brother and I see no reason whatever to alter the opinion that I then expressed, On that occasion the matter was argued by the Incorporated Law Society on one side and the Vakils' Association on the other; and when this matter was called on for hearing we expressed an opinion that we were not prepared to hear these parties on the present occasion. On this the Advocate for the Petitioner stated that he wished to argue this question of jurisdiction before us. Why the Petitioner should raise the question of jurisdiction is not easy to understand. As far as can be seen, it must be a matter of indifference to the Petitioner whether this matter is heard on the Original Side of this Court or on its Appellate Side. In fact a little consideration will show that it is obviously to the Petitioner's advantage that the matter should be heard not in the Appellate Side where the first appeal would lie to the Privy Council but on the Original Side where, if dissatisfied with the decision, he would have a first appeal to a Bench of this Court; and the impression that the argument of the learned Advocate left on my mind, rightly or wrongly, is that the Petitioner is arguing not on his own behalf but on behalf of the Vakils' Association. If my impression is correct I can only say that it is a procedure that does not commend itself to me.