

CIVIL REVISION.

Before Mitter J.

EAST BENGAL BANK, LTD.

v.

JOGESH CHANDRA BANERJI.*

1940

April 29.

Arbitration—Pending suit—Validity of reference to arbitration at the instance of a lawyer engaged by the agent—Indian Companies Act (VII of 1913), s. 152—Indian Arbitration Act (IX of 1899)—Code of Civil Procedure (Act V of 1908), Second Sch.

The Indian Arbitration Act, 1899, applies only to the arbitration by agreement without the intervention of the Court. The Act has no application to arbitration relating to the subject-matter of a pending suit by the force and effect of s. 152 of the Indian Companies Act.

Where one party or both the parties are companies registered under the Indian Companies Act, such arbitration is governed by the provisions of the second schedule to the Code of Civil Procedure, 1908, notwithstanding the fact that a company registered under the Indian Companies Act is a party thereto.

Jhiringhat Native Tea Co., Ltd. v. Bipul Chandra Gupta (1) referred to.

A reference to arbitration at the instance of a lawyer is valid if the *vakā-lātmā* in favour of the lawyer is executed by a duly authorised agent empowering the lawyer to enter into such arbitration on behalf of the principal, even though such agent himself is not authorised to refer the matter to arbitration.

CIVIL REVISION CASE by the plaintiff-petitioner contesting the validity of an award.

The material facts of the case are set forth in the judgment.

Ajit Kumar Dutta for the petitioner. I submit, in the first place, that, in view of the provision of s. 152 of the Indian Companies Act, 1913, and s. 3 of the Indian Arbitration Act, 1899, the Subordinate Judge had no jurisdiction to refer the matter to arbitration under the provisions of the Code of Civil

*Civil Revision case, No. 157 of 1940, against the order of Kali Prasanna Piplai, Second Subordinate Judge of Sylhet, dated Sep. 15, 1939.

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Procedure, 1908. Clauses (1) and (3), s. 152 of the Indian Companies Act, 1913, and the case of *Jhirighat Native Tea Co., Ltd. v. Bipul Chandra Gupta* (1) support my contention. In short, I submit that in matters of arbitration in which a company is a party, the Indian Arbitration Act is applicable. Secondly I submit that the agent of the bank had no authority to refer the matter to arbitration and the Bank is not bound by it.

Priya Nath Dutt for the opposite party. The case cited by the petitioner has no application to the facts of the present case. In the present case the arbitration relates to a pending suit to which the Indian Arbitration Act, 1899, has no application. The preamble to the Indian Arbitration Act is clear on the point. Therefore, I submit that the Second Schedule of the Code of Civil Procedure, 1908, has been correctly applied to the present case. With respect to the second point urged on behalf of the petitioner, I submit that the agent duly executed the *vakálatnámá* and verified the plaint. The Bank appeared before the arbitrators and examined witnesses. The pleader on behalf of the Bank who moved the application for reference to arbitration himself appeared before the arbitrators and argued the case on behalf of the Bank. Under these circumstances, the petitioner Bank cannot question the award.

Dutt, in reply.

MITTER J. The petitioner before me is the East Bengal Bank, Ltd. (hereinafter called the Bank), a company registered under the Indian Companies Act. The said Bank filed a suit in the Court of Small Causes 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 *vakálatnámá* executed by the

local agent of the Bank on its behalf. The plaint was also verified by the said local agent. On July 28, 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 local 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 August 3, 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.

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One objection was that the Court could not make the reference in view of the provisions of s. 152 of the 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 Indian 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.

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 Indian 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 of the Civil Procedure Code, the rules contained in the second schedule relating to arbitrations with the intervention of the Court would be applicable in such a case and not the provisions of the Indian Arbitration Act. Section 2 of the Indian Arbitration Act limits the applicability of the said Act, in the absence of a

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notification by the Local Government, to private arbitrations, that is arbitrations out of Court, if a suit relating to the subject matter of the dispute either with or without leave, could have been instituted in a presidency town. Section 152 of the Indian Companies Act deals with the matter of arbitration in which a company is interested.

As I pointed out in the case of *Jhirighat Native Tea Co., Ltd. v. Bipul Chandra Gupta* (1) (a case of arbitration out of Court), sub-s. (3) of s. 152 of the Companies Act is of prime importance and it gives a clue to the meaning of s. 152(1) of the Indian Companies Act. That section was interpreted in that judgment and, according to the interpretation there given, the scope of s. 152 of the Companies Act is that the provisions of ss. 3 to 22 of the Indian Arbitration Act would apply where one or both the parties to arbitration are companies registered under the Companies Act by the force and effect of the Indian Companies Act itself irrespective of the provisions of s. 2 of the Indian Arbitration Act; that is to say, the said Act would apply to a case falling within the scope of that Act (the Arbitration 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 Indian Companies Act. As the Indian 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.

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 *vakâlâtnâmâ* on behalf of the Bank. In fact, it is on the *vakâlâtnâmâ* so delivered that the suit had been

instituted in the name of the Bank. That *vakâlât-nâmâ* contained a power given to the pleader to enter into arbitration on behalf of the Bank. The *vakâlât-nâmâ* is not the *vakâlâtnâmâ* of the agent but the *vakâlâtnâmâ* of the Bank itself. The Bank is bound by the terms of that *vakâlâtnâmâ* 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 *vakâlâtnâmâ*, 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 arbitrators, 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.

This Rule is discharged with costs, hearing fee being assessed at one gold mohur.

Rule discharged.

N. C. C.

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