

(1965) 02 CAL CK 0017

Calcutta High Court

Case No: Civil Revision Case No. 389 (w) of 1962

Ukhara Forests and Fisheries Ltd.

APPELLANT

Vs

Sub-Divisional Land Reforms
Officer, Asansol and Others

RESPONDENT

Date of Decision: Feb. 1, 1965

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 29 Rule 1, Order 6 Rule 15, Order 6 Rule 15(1)
- Constitution of India, 1950 - Article 226
- West Bengal Estates Acquisition Act, 1953 - Section 10(2)

Citation: 69 CWN 325

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: Priti Bhusan Burman and Ranajit Ghose, for the Appellant; N.C. Chakrabarty and Manindra Chandra Chakravorty, for the Respondent

Judgement

Banerjee, J.

The petitioner is a private limited company, incorporated under the Companies Act. The company has moved this Court, under Article 226 of the Constitution, praying for a Writ of Mandamus directing the respondents to cancel or withdraw a notice or order u/s 10(2) of the West Bengal Estates Acquisition Act and for a Writ of Certiorari for the quashing thereof and has obtained this Rule. When the Rule came up for hearing, it was detected that there was no affidavit of competency appended to the petition, as required under Rule 15 of the Rules of this Court relating to applications under Article 226 of the Constitution (hereinafter referred to as the Writ Rules). I was prepared to adjourn the hearing of this Rule so as to enable the petitioner to cure the defect, but Mr. Priti Bhusan Burman, learned Advocate for the petitioner company, refused to take advantage of that opportunity and contended that the affidavit verifying the petition was sufficient also for the purposes of affidavit of

competency under Rule 15. I, therefore, called upon Mr. Burman to substantiate his point.

2. Elaborating his contention, Mr. Burman argued that Rule 15 of the Writ Rules attracted the provisions of Order 29, of the CPC by its own force and if an affidavit fulfilled the requirements of Order 29 of the Code nothing further need be done. In order to appreciate this argument it is necessary for me to examine, in the first place, the language of Rules 14 and 15 of the Writ Rules and also the relevant provisions of Order 29, rule 1 of the Code. Rules 14 and 15 of the Writ Rules read as follows:-

14. Every petition shall be verified by the solemn affirmation made by the petitioner or a person or persons having cognizance of the facts stated and shall state clearly by reference to the paragraphs of the petition whether the statements are based on knowledge, information and belief, or on records. Where a statement is based on information, the source of information should be disclosed and where the statements are based on records, sufficient particulars should be given to identify the records.

15. Where the petitioner is a company or a corporation, there should be appended an affidavit of competency; where the petitioner or a respondent is a corporation, the provisions of Order XXIX of the C.P. Code in so far as they are applicable, shall apply.

3. Rule 1 of Order 29 of the Code is couched in the following language:-

In suits by or against a Corporation, any pleading may be signed and verified on behalf of the Corporation by the Secretary or by any Director or other principal officer of the Corporation who is able to depose to the facts of the case.

4. Mr. Burman contended that the affidavit in support of the petition was affirmed by one of the Directors of the petitioner company, who stated in paragraphs 1 and 2 of the affidavit as follows:-

Para. 1. That I am one of the Directors of the petitioner company and as such I am competent and authorised to make this application before this Hon"ble Court, to verify and sign this application and to sign Vokatnamas and do all other things in connection therewith that may be necessary on behalf of the petitioner company and I am acting under the said authority.

Para. 2. That I am acquainted with the facts and circumstances of the case.

5. According to Mr. Burman, the aforesaid paragraphs in the affidavit by a Director of the petitioner company served the requirements of Order 29, rule 1 of the Code and as such fulfilled the provisions of Rule 15 of the Writ Rules. In my opinion, Mr. Burman is not right in his contention. The Secretary, Director or any other principal officer of a Corporation is not the party pleading in a suit instituted or an application

moved by a Corporation. The party pleading is the Corporation itself. But because a juristic body like a corporation cannot sign or verify, under its own hands, the persons mentioned in Rule 1 of Order 29 of the CPC must act as its human agents and sign and verify for itself, if otherwise authorised. In the case of suits, (other than suits filed in the Original Side of this Court), Order 6, Rule 15(1) of the CPC provides for the following manner of verification of pleadings.

Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

6. In the case of suits or proceedings filed in the Original Side of this Court, Chapter VII, Rule 8 of the Original Side Rules makes the following provisions for verification of pleadings:

Where a person other than a person pleading, verifies a pleading under Order VI, Rule 15 of the Code, his fitness to verify shall be proved by his affidavit at the time the pleading is presented. Pleadings shall include complaints, written statements, petitions, statement of facts and counter-statement of facts.

7. How a Writ petition must be verified, particularly a Writ petition by a company, appears from Rules 14 and 15 of the Writ Rules, which I have hereinbefore set out.

8. Order 29, Rule 1 of the Code does not supersede either Rule 8 in Chapter VII of the Original Side Rules or Rule 15 of the Writ Rules but is in amplification of such Rules. But for the provisions of Rule 1 of Order 29 of the Code, it might have been difficult to determine who in the case of a Corporation was the appropriate person to sign or verify pleadings or petition on behalf of the Corporation and Rule 1 of Order 29 is intended to meet this difficulty and nothing more. A similar view was expressed by Buckland, J. in (1) *International Continental Caoutchouc Company v. Mehta & Co.*, (31 C.W.N. 1030) and I respectfully agree with the view.

9. That being the legal position, wherever a pleading meant to be filed in the Original Side of this Court or a Writ petition is verified on behalf of a Corporation, the person verifying (namely, one or other of the persons named in Order 29, Rule 1 of the Code) must file an affidavit of fitness or of competency along with the pleading or petition. I do not express any opinion as to how proof of competency of a non party person, verifying a pleading, not meant for filing in the Original Side of this Court, under Order 6, Rule 15 of the Code of Civil Procedure, is to be supplied because it is not necessary for me to do so in the present context.

10. Turning now to the affidavit verifying the petition, on paragraphs 1 and 2 on which Mr. Burman placed strong reliance, I find that the same is wholly inadequate for the purpose of Rule 15 of the Writ Rules. The idea of the deponent of the affidavit is that because he is a Director of the petitioner company he is "as such"

competent and authorised to move this Court and to sign and verify the Writ petition. Now, a Director, because he is one amongst the several Directors of a company, is not entitled to commence an action on behalf of the company at his own individual choice. He may do so provided he has the sanction or approval of the Board of Directors or is generally authorised by the Board to initiate, commence or defend proceedings on behalf of the company. It is not merely acquaintance with the facts and circumstances of the action that confers the competency. He must prove that he is authorised to initiate or defend an action on behalf of the company. An affidavit of competency must indicate how he is so competent.

11. In the view that I take, I hold that the affidavit verifying the petition is wholly inadequate for the purpose of Rule 15 of the Writ Rules and I overrule the contention of Mr. Burman. In the result, I direct the petitioner to file a separate affidavit of competency in the light of the observations contained herein. Such affidavit must be filed within a fortnight from today and thereafter this Rule may come up for hearing. In view of the attitude taken, I direct that the petitioner must pay costs of this hearing to the contesting respondents, which I assess at three gold mohurs.