

(1937) 01 CAL CK 0020

Calcutta High Court

Case No: Suit No. 610 of 1931

Eastern Tavoy Minerals
Corporation Ltd.

APPELLANT

Vs

Clarke Rawlins Ker and Co.

RESPONDENT

Date of Decision: Jan. 15, 1937

Judgement

Lort-Williams, J.

This suit was instituted originally by the Eastern Tavoy Minerals Corporation, Limited, a public limited Company, incorporated under the Indian Companies Act, VII of 1913, against Messrs. Clarke, Rawlins, Ker and Company and others. Subsequently the Company went into liquidation and leave was obtained by the liquidators under sec, 171 of the Indian Companies Act to proceed with the suit, and the cause title was amended. Consequently, the suit at present is by the Eastern Tavoy Minerals Corporation, Limited, in liquidation, through its official liquidators, F.L. Harcourt and M. L. Mallick. The Company through Mr. Harcourt, who has appeared before the Court, has presented a petition asking for permission to examine witnesses upon interrogatories. Objection has been taken by Counsel on behalf of Messrs. Clarke, Rawlins, Ker and Company on the ground that Mr. Harcourt has no right of audience. Mr. Harcourt on the contrary has contended that as liquidator of the Company he has a right of audience.

2. In the first place it is to be observed that this is not a proceeding in the winding-up. It is a suit brought in the ordinary way in the Original Civil Jurisdiction of the Court, but the Court which deals with winding-up proceedings has given leave to the liquidator to proceed with the suit. Or. 3, r. 1 of the CPC provides that-

Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader appearing, applying or acting on his behalf Provided that any such appearance shall, if the Court so directs, be made

by the party in person." Rule 2 defines the persons called "recognised agents" within the meaning of the Code.

3. This Order therefore has no application to the present case, because it expressly provides that the rule shall not apply "where otherwise expressly provided by any law for the time being in force," and as this proceeding is one which comes within the Ordinary Original Civil Jurisdiction of the Court, the rules of the Court on the Original Side apply, and the matter is governed also by clause (X) of the Letters Patent of 1865. That clause provides inter alia that-

No person whatsoever, but such Advocates Vakeels or Attornies shall be allowed to act or to plead for or on behalf of any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf or on behalf of a co-suitor.

It is clear therefore that no persons have rights of audience in the Original Civil Jurisdiction of the Court except Advocates and Attorneys and suitors in person. The suitor in the present case is the Eastern Tavoy Minerals Corporation, Ltd., a public limited Company; such "a Company cannot appear in person, not having as a legal entity any visible person, it must appear either by counsel or solicitor," as was stated by Swinfen Eady, L. J., in the case of *Charles P. Kinnell & Co. v. Harding, Wace & Co.* [1918] 1 K.B. 413.

4. For the reasons I have given above it is not necessary for me to deal with the cases to which I have been referred, because in my opinion they have no application to the present case. They deal with questions regarding "recognised agents" under the CPC which does not apply to questions of right of, audience on the Original Side of this Court. The result is that I hold that Mr. Harcourt, as liquidator, has no right of audience, and the application therefore cannot at present be entertained. I will adjourn it till Friday to give the liquidator an opportunity of instructing attorney and Counsel if he so chooses.