

**(1924) 12 CAL CK 0049**

**Calcutta High Court**

**Case No:** None

Mohini Mills, Ltd.

APPELLANT

Vs

Susama Debi and Others

RESPONDENT

**Date of Decision:** Dec. 22, 1924

**Acts Referred:**

- Companies Act, 1913 - Section 12

**Citation:** (1925) ILR (Cal) 586

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

**Bench:** Division Bench

### **Judgement**

Cuming, J.

This is an application u/s 12 of the Companies Act (VII of 1913) on behalf of the Mohini Mills, Ltd., to alter the Memorandum of Association of the Company. On the application (being called on for hearing Mr. Langford James on behalf of the Incorporated Law Society raised a preliminary objection that the application should have been made on the Original Side of this Court.

2. Mr. James" contention is as follows:

3. Section 3(1) of the Act provides that the Court having jurisdiction under this Act is the High Court having jurisdiction in the place at which the registered office of the Company is. The High Court is the Court which has jurisdiction all over Bengal within which province Kushtia, the place where the registered office of the Company is, is: Mr. James contends that the expression High Court means the Court as a whole and that the particular department of the Court which deals with such matters is the Original Side. Hence the application should have been made to a Judge on the Original Side. Dr. Mitter on behalf of the Vakils" Association contends that Kushtia is outside the Original Jurisdiction of the High Court and that the Appellate Side of the Court alone has jurisdiction over the district in which the town of Kushtia is situated. I am of opinion that the view taken by Mr. James is correct. An examination of the

Act will show that in certain matters an appeal is allowed on a question of law-Section 38(3) and Section 202 of the Act. If Dr. Matter's contention was correct, in the case of Companies in the Mofussil a first appeal would lie to the Privy Council while so far as Companies within the Original Jurisdiction of this Court are concerned the appeal would lie to a Bench of this Court.

4. Dr. Mitter would try to meet this argument by contending that possibly matters in which an appeal lay would be dealt with by a Judge on the Original Side even though they came from the Mofussil whilst matters in which no appeal lay would be dealt with by the Appellate Side. The inconvenience of such a course is obvious.

5. A Court may be divided into three classes:

- (i) Of Original Jurisdiction.
- (ii) Of Appellate Jurisdiction.
- (iii) Of Revisional Jurisdiction.

6. Every matter must be dealt with in the first instance by a Court of Original Jurisdiction; until it has been so dealt with an Appellate Court can have no jurisdiction. This application which is an original matter cannot be dealt with therefore by the Appellate Court.

7. Reference in this connection may be made to Rule 2 of the Rules of the High Court under the Indian Companies Act which provides that all applications under the Act are to be made to the Judge in Chambers in the Original Side and to Rule 3 which makes the rules and practice and procedure of the Original Side applicable to all proceedings under the Act.

8. Our attention has been drawn to the case of *Birendra Kishore Manikya v. Secretary of State for India (1)*. This was a reference u/s 51 of the income tax Act. That matter was heard by a Bench of this Court and it was held that when a Court hears such a reference it reality performs the function of a Court of Appeal. That case is different from the present one because in that case there had already been a decision and the Court dealt with the (decision on a reference made to it. The Court then in that matter acted in its Appellate Jurisdiction. But in the present case there has been no decision. The matter is therefore an original one and could not be dealt with by an Appellate Court. It therefore cannot be dealt with by the Bench which deals only with appeals or revisional matters.

9. No doubt the Original Side of this Court has ordinarily no jurisdiction to deal with matters outside the limit of the town of Calcutta. In the present lease the jurisdiction is conferred by the statute itself.

10. The present application to this Court is incompetent and must be returned to be presented to the proper Court.

Suhrawardy J.

11. I agree.