

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

377
C.P. No. 160 /2015

CORAM: 1. Hon'ble Member (J) Ms. Manorama Kumari

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 29th March, 2017, 10.30 A.M

Name of the Company		Chandra Basu. -Versus- Central Land & Building Society Pvt. Ltd. & Ors	
Under Section		397/398	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. SHAUNAK MITRA, ADV.

2. S. R. KAKRANIA, ADV.

3. SANJEEB SENI, ADV.

4. ARKADEB BISWAS, ADV.

for
Respondent
Nos. 1, 2 and 3

Sanjeeb Seni
dt. 28-03-2017

1. REETUBROTO KR MITRA, Advocate

2. RATITA PARAN BISWAL, Advocate

3. SRISTI B. RAY, Adv

} for Petitioners

Adv
28/3/17

**29-03-2017 : CP No. 160/2015 – CA No. 374/2016 – Chandra Basu Vs.
Central Land & Building Society Pvt. Ltd. & Ors.**

O R D E R

1 That the instant application is filed by the applicants/ petitioner(s) being the legal heirs and successors of Smt. Chandra Basu (now deceased) who filed the CP No. 160/2015 under Sections 58,59 and 210 of the Companies Act, 2013 and under Sections 397, 398, 399, 402, 403, 406 and 407 of the Companies Act, 1956 against the non-applicants/respondent(s).

During the pendency of the Company Petition, Smt. Chandra Basu expired on 25-11-2015 living behind the applicants being the only son and daughter of the deceased, Late Chandra Basu.

2. The instant petition is filed with prayer to substitute Avijit Basu and Madhurima Sen in place of Late Chandra Basu on her demise, by condoning the delay of 131 days.

3. The non-applicant's Advocate has vehemently objected to the said application; firstly on the ground that inordinate delay of 131 days is not explained in the application. More so, when the applicants/petitioner(s) admittedly came to India to perform the last rites of their mother have not opted for substituting themselves in the Company Petition and now after the delay of 131 days, came with the application, without explaining the cause of delay and secondly, the applicants/petitioner(s) have not sworn in the affidavit and the same is filed through one Shri Ashoke Kumar Banerjee, without having any authentic Power of Attorney and is bad in the eye of law; hence, the application is required to be rejected.

The Ld. Lawyer appearing on behalf of the petitioner denied the objection and submitted that as the applicant/petitioner (son of the deceased) suffered with some injury, as such, he could not come to India and file the application for substitution in time. But the applicant has not filed any medical certificate.

With regard to the Power of Attorney, the Ld. Lawyer of the applicants/petitioners submitted that it is a curable defect and hence, he be allowed some time to cure the defect.

In respect of his submission, the Ld. Lawyer of the petitioner/applicant submitted a case law ; 2010(5) Mh. L.J. ANITA Vs. UNION OF INDIA

“ The respondent No.1 is directed to permit the petitioner to submit applicable power of attorney as per condition No.5.1.1.10 as provided in the format provided in Exh. 6 within a period of three weeks from the date of communication of this judgment. If the petitioner submits the requisite power of attorney, the financial bid of the petitioner under Bid Specification Be opened and be evaluated in accordance with the tender conditions, and take appropriate decision, in accordance with law and procedure applicable in this regard.”

Sahni

On the other hand the respondent cited two judgment in support of his contentions :

(a) AIR 1984[Vol 71] Delhi High Court Para No. 8 :

" It is useful to note that Section 85 raises a presumption about the execution of a Power of Attorney provided two conditions are satisfied. Firstly, it must be executed before a Notary Public and secondly, it must be authenticated by a Notary Public. In this case there is no authentication at all. There is no statement of facts by the Notary Public regarding the manner of execution or the persons executing the document. If reference is made to the judgments cited before us, the contrast is striking. In the case of the City Bank (AIR 1982 Delhi 487) the authentication made by the Notary Public in New York covers nearly two printed pages of the Report and quotes extensively the circumstances in which the General Power of Attorney was executed. Similarly, in the case of the National & Grindlays Bank Ltd. (AIR 1976 Delhi 2363) the authentication shows that the seal of the Bank was impressed on the power of attorney in the presence of the Notary and the same was the genuine seal of the Bank. Thus it was the authentication that proved both the execution as well as the due execution of the power of attorney and, therefore, satisfied the test laid down in Section 85 of the Evidence Act....".

(b) AIR 1971[Vol.58] Supreme Court Section -para 7 :

"The short question in this case is whether Mr. Chawla possessed such a power of attorney for executing the document and for presentation of it for registration. Now, if we were to take into account the first power of attorney which was executed in his favour on May 30, 1963, we would be forced to say that it did not comply with the requirements of the law and was ineffective to clothe Mr. Chawla with the authority to execute the sale deed or to present it for registration. That power of attorney was not authenticated as required by Section 33 of the Indian Registration Act which in the case of an Indian residing abroad, requires that the document should be authenticated by a Notary Public. The document only bore the signature of a witness without anything to show that he was a Notary Public. In any event there was no authentication by the Notary Public(if he was one) in the manner which the law would consider adequate. The second power of attorney, however, does show that it was executed before a proper Notary Public who complied with the laws of California and authenticated the document as required by that law. We are satisfied that the power of attorney is also duly authenticated in accordance with our laws. The only complaint is that the Notary Public did not say in his endorsement that Mr. Chawla had been identified to his satisfaction. But that flows from the fact that he endorsed on the document that it had been subscribed and sworn before him. There is a presumption of regularity of official

Chawla

acts and we are satisfied that he must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person. This makes the second power of attorney valid and effective both under Section 85 of the Indian Evidence Act and Section 33 of the Indian Registration Act."

I have considered the rival submissions and the case laws relied upon by the parties. There is no dispute with the case law cited but each case turns on its own facts.

Considering the arguments of both sides, documents and the legal position as applied to the facts and circumstances of this case, and also close scrutiny of the Power of Attorney filed by the applicants/petitioner(s), I found that two Power of Attorneys is executed by the applicants/petitioner(s) separately, on the non-judicial paper of Rs. 50/- without any notarisation and/or registration and apart from it, neither it is executed in the presence of any witness nor any person has identified the executors of the power of attorney.

In my opinion, it is curable defect and the application, if rejected, on this ground, will amount to curtailment of legitimate right of the applicants/petitioner(s). Hence, the applicants are directed to cure the said defect within a period of 15 days so as to get themselves substituted in place of their deceased mother.

Fix 20-04-2017 for necessary order.


Manorama Kumari
Member(J)