(C.R.)

MONDAY, THE 13TH DAY OF JULY 2026

IA 1/2026 IN MJC No. 82 of 2026

SHARESTATES, INC.

VS

PRASAD CHOORAKUZHIYIL GOPALAN & OTHERS

ADVS FOR APPLICANTS/S:
SMT.NAYANPALLY RAMOLA, SMT.PARVATHY KOTTOL, SHRI.PRANOY HARILAL, SHRI.GIRIDHAR KRISHNA KUMAR, SHRI.JAISWAL HARSHIT CHETAN KUMAR, M.SHAJNA(K/1017/2006) -ADVOCATE COMMISSIONER

ADVS FOR RESPONDENT/S:
SRI.P.PRIJITH, SRI.SIDHARTH A.MENON, SRI.THOMAS P.KURUVILLA

(C.R.)

MOHAMMED NIAS C. P. , J.

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I. A. No. 1 of 2026 in M.J.C. No. 82 of 2026

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M.J.C. No. 82 of 2026

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Dated this the 13th day of July, 2026

<u>ORDER</u>

<u>I.A.No.1 of 2026</u>

The question for determination is whether the foreign counsel of respondent Nos.2 & 3, the defendants in the proceedings before the United States District Court for the Eastern District of New York *(hereinafter referred to as "the US Court")* be permitted to examine/cross examine respondent No.1 before the Advocate Commissioner appointed by this Court, in execution of the Letter of Request issued by the US Court.

2. This Miscellaneous Jurisdiction Case has been filed under Order XXVI Rule 20(a) of the Code of Civil Procedure, 1908, for the issuance of a commission for the examination of witnesses so as to obtain documentary and oral evidence from the respondent who is residing within the territorial jurisdiction

of this Court.

3. The petitioner is a private company incorporated under the laws of the State of Delaware and is duly authorised to transact business in the State of New York, having its principal place of business at New York, United States of America (USA). The Petitioner creates customized lending solutions for real estate investors and developers in the USA, and carries on business at the address mentioned in the cause title.

4. The respondent is an Indian citizen residing within the territorial limits of this Court, who is engaged in Private Information Technology consulting and is a Director at TechMaven IT Solutions Private Limited, a company incorporated under the provisions of the Companies Act, 2013.

5. The petitioner had instituted a civil case bearing Docket No. 24-cv-00812-GRB-ST ("Civil Case") as the Plaintiff, which is now before the United States District Court for the Eastern District of New York ("US District Court") against (a) Hari Maddali ("Maddali"), a resident of the State of New Jersey; and (b) Copper Bricks LLC ("CB USA"), a limited liability company formed under

the laws of the State of New Jersey. Maddali and CB USA are collectively referred to as the "Defendants". The suit was for recovery of money alleging fraud, breach of contract, breach of fiduciary duty and unjust enrichment.

6. In the Civil Case, the petitioner filed a request for issuance of a Letter of Request based on Article 3 of the Hague Convention on the taking of Evidence Abroad in Civil or Commercial Matters *(hereinafter referred to as "the Hague Convention")*, seeking the evidence enlisted by the petitioner at Appendix A thereto, which included evidence which was required to be sought from the respondent. Pursuant to the petitioner's request, the US District Court was pleased to issue a Letter of Request dated NIL on April 02, 2025 ("Letter of Request") to the Indian Ministry of Law and Justice, in accordance with the Hague Convention. The 'Letter of Request' requests international judicial assistance to obtain documentary and oral evidence from the respondent in terms of Appendix A thereto. The documentary and oral evidence sought is intended to be used at summary judgment and/or trial, in accordance with the

provisions of the Hague Convention.

7. An original of the Letter of Request issued by the US District Court to the Indian Ministry of Law and Justice dated NIL issued on April 02, 2025 is produced as Annexure B. By way of execution of the Letter of Request, the petitioner aims to *inter alia* procure all communications, documents, invoices and payment receipts existing between CB Global and the Defendants for a specific period ranging from August 1, 2016 to December 31, 2023. The list of documents mentioned in Appendix A to the Letter of Request is stated to be essential for the petitioner to establish the cause of action in the Civil Case as enlisted in the 'Complaint Copy' attached to the Letter of Request, marked as 'Exhibit A' thereto.

8. Thus, the petitioner wanted the respondent to prove the relationship with CB Global and the Defendants in connection with the consulting work done for and on behalf of the petitioner, and also, for other related matters. The documents sought from the respondent were permitted by the US District Court in the Letter of Request as they are relevant to establish

essential facts in the ongoing Civil Case before the US District Court. It is on the above basis that the petitioner has filed the present M.J.C. for execution of the Letter of Request issued by the US District Court and for issuance of the commission for that purpose.

9. This Court, by order dated 10th April, 2026, appointed an Advocate Commissioner to record evidence and also to exercise the power to summon a person to produce documents or things, the power to accept copies of the said documents, the power to summon a person, to administer oath to him/her and to record his/her evidence in accordance with law.

10. Thereafter, I.A.No.1/2026 was filed before this Court by the defendants in the proceedings before the US District Court, who were also the counter claimants, seeking impleadment. The same was allowed by order dated 16th June, 2026. However, the issue of permitting the cross-examination of the 2nd respondent through a US Counsel was deferred as the petitioner had objected to the same. The respondent also contended that he was ready to produce whatever documents/record available

with him when examined.

11. The Advocate Commissioner filed an Interim Report on 18th May, 2026, stating that the applicant wanted to examine the 1st respondent and seeking production of documents from the respondent contained in Appendix A to the Letter of Request. Since no separate list of documents was furnished for the purpose of issuing a summons, a summons dated 8.5.2026 was issued, calling upon the respondent to appear for recording his testimony and to produce the documents as set out in Appendix A on 13.5.2026. The witness had duly acknowledged the receipt of the said summons by e-mail on the same day. Thereafter, the Commissioner received an e-mail communication from the Counsel representing the Defendants in the US proceedings to be made a party to this case and seeking permission to participate in the evidence collection process, including the right to cross-examine the witness. Since the same was opposed by the petitioner, the issue as to whether the foreign counsel can be allowed to cross-examine the witness in these proceedings is to be considered.

12. The learned counsel for the petitioner, Smt.Ramola Nayanpally along with Sri.Rajendra Barot, Smt. Priyanka Shetty, Sri.Harshit Jaiswal, Sri.Ashuthosh Desai, Smt.Mridula Dixit and Sri.Himanshu Kalwani, learned counsel, submit that the Letter of Request must be executed in accordance with Indian law. She refers to Article 9 of the Hague Convention which requires the executing judicial authority to apply its own law as to the methods and procedures to be followed, and to follow any special method requested by the requesting authority only when it is not incompatible with the internal law of State of execution and thus, the present request to permit cross examination cannot be allowed.

13. It is also argued that the foreign counsel cannot practise law in the litigious areas in India and that the Bar Council of India has framed rules which govern the permission of a foreign lawyer to practise in India. As per the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 *(hereinafter referred to as "the BCI Rules")*, only three defined areas, namely, the practise of

foreign law, diverse international legal issues in non-litigious matters, and international arbitration in the regulated areas can be permitted.

14. The learned counsel also relied on the judgments in ***Upaid Systems Limited v. Satyam Computer Services and Ors.*** *[MANU/DE/1023/2009]*, ***Anurag Kumar Singh and Others v. State of Uttarakhand and Others*** *[(2016) 9 SCC 426]*, ***Mohan H. Punjabi v. Vachha and Co.*** *[1983 SCC OnLine Bom 183]*, ***Harishankar Rastogi v. Girdhari Sharma and Another*** *[(1978) 2 SCC 165]*, ***Ponnusamy Pandaram v. The Salem Vaiyappamalai Jangamar Sangam rep. by its President Palanivel having its office at Vaiyappamalai, Tiruchengode Taluk*** *[Order of the Madras High Court in CRP 3295/1984 dt. 18.9.1984]*, ***Court On Its Own Motion v. Rajesh Girothiya and Others*** *[2024 SCC OnLine Del 5529]*, ***Autodesk INC & Anr. v. Arup Das & Ors.*** *[2013 SCC OnLine Del 4225]*, ***Levi Strauss & Co. v. Rajesh Agarwal*** *[2018 SCC OnLine Del 6421]*, ***Bar Council of India v. A.K.Balaji and Others*** *[(2018) 5 SCC 379]*, ***Lawyers Collective v. Bar Council of India and others*** *[2009 SCC OnLine Bom 2028]*, ***HDT Bio Corp v. Emcure Pharmaceuticals Ltd.*** *[2023 BHC OS 2427]*,

Summoning Advocates who give legal opinion or represent parties during investigation of cases and related issues, In Re *[(2026) 2 SCC 233],* ***Carneige Institute of Washington v. Fenix Diamonds LLC*** *[Order of the High Court of Gujarat in R/Misc. Civil Application No. 374/2020 dated 10.9.2020],* ***Encube Ethicals Pvt. Ltd. v. Suven Life Sciences Ltd.*** *[2023 TSHC 1914],* ***J.Barber & Sons v. Lloyd's Underwriters and Others*** *[[1987] Q.B. 103],* ***R. v. Keystone Fisheries Ltd.*** *[[1955] M.J.No.6],* ***Pfizer Inc. and others v. Unimark Remedies Limited*** *[2016 SCC OnLine Bom 8599],* ***Wacom Company Limited, represented by PDA Holder Mr.Nripendra Kashyap v. Cirel Systems Private Limited*** *[2026 SCC OnLine Kar 484],* ***Broadcom INC., LSI Corporation & Avago Technologies U.S.Inc. v. TEXASLDPC Inc. and Another*** *[2023 SCC OnLine AP 4023],* ***Pfizer Inc. and others v. Teena Biolabs Private Limited*** *[MANU/TL/1889/2024],* ***In Re: Ex Parte Application of SBK ART LLC v. Akin Gump Strauss Hauer & Feld LLP*** *[168 F.4th 68 (2026)]* and ***Wacom Company Limited, L & M Healthcare Communications LLC v. Rediffusion Solutions Pvt. Ltd.*** *[Order of the High Court of Judicature at Bombay in Miscellaneous Petition (L) No. 3043 of 2023 dated 22.2.2023],* in support of the submission advanced.

15. Opposing the arguments of the petitioner, it is argued by Sri.Sidharth A.Menon, learned counsel for respondent Nos.2 & 3, that since a Letter of Request has been issued by a Court in a foreign State, which is a signatory to the Hague Convention, it will not prevent this Court from exercising the discretion under Section 32 of the Advocates Act, 1961 *(hereinafter referred to "the Act"),* to permit participation in the peculiar facts of the case. Though the BCI Rules specifically prohibit foreign lawyers to practise Law in India without registration, the same permits appearance on a fly-in fly-out basis, subject to certain conditions. It is also argued that the proceedings under Order XXVI Rule 19 to Rule 22 of the Code of Civil Procedure are meant to be facilitating and not adjudicatory in Indian proceedings and that, the Letter of Request seeks examination of witness in aid of the US proceedings and therefore, the matter cannot be treated as an ordinary civil trial or an ordinary proceeding in which a foreign lawyer seeks to intervene the Indian legal proceedings through the back door.

16. It is also argued that the Hague Convention permits special procedures to be followed unless incompatible with Indian Law. The BCI Rules only regulate the general legal practise and cannot override Section 32 of the Act, the Code of Civil Procedure or the Hague Convention framework, which, in fact, permits foreign lawyers to practise law in India in certain circumstances even without registration. It is also argued that none of the authorities cited on behalf of the petitioner decide the present issue, and it is prayed that the discretion under Section 32 of the Act may be used and the foreign lawyer be permitted to cross-examine the respondent. It is also argued that, had the witness been examined in normal course in the trial in the US to give evidence, he would have been examined and cross examined by the US Counsel and thus, no prejudice is actually caused to the petitioner if the foreign counsel of respondents 2 & 3 is permitted to be represented by the US Counsel.

17. Sri. Sidharth A.Menon, learned counsel, also relied on the judgments in ***Barendra Prosad Roy and Ors. v. Income Tax Officer, "A"***

Ward, Foreign Section and Ors. *[MANU/WB/0173/1973],* ***Harishankar Rastogi v. Girdhari Sharma and Ors.*** *[MANU/SC/0092/1978],* ***Wooster Products Inc. v. Magna Teck Inc. and Ors.*** *[MANU/DE/0102/1988],* ***L & M Healthcare Communications LLC v. Rediffusion Solutions Pvt. Ltd.*** *[Order of the High Court of Judicature at Bombay in Miscellaneous Petition (L) No. 3043 of 2023 dated 22.2.2023],* ***In Re: Ex Parte Application of SBK ART LLC*** *[Order of the United States Court of Appeals for the Second Circuit dated 20.2.2026] and* ***Broadcom INC., LSI Corporation & Avago Technologies U.S.Inc. v. TEXASLDPC Inc. and Another*** *[2023 SCC OnLine AP 4023]* to buttress his submissions.

18. For determination of the above question, the relevant provision of the Hague Convention is to be noticed which is as below:

> "***<u>Article 9:</u>*** *The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.*
>
> *However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties.*
>
> *A Letter of Request shall be executed expeditiously."*

19. Paragraph 12 of the Letter of Request dated NIL issued

on April 02, 2025 by the United States District Court, Eastern District of New York states as follows:

> "***12. Any requirement that the evidence be given on oath or affirmation and any special form to be used (article 3(h))***
>
> *The examinations shall be taken under the Federal Rules of Civil Procedure of the United States of America, except to the extent such procedure is incompatible with the law of India. The testimony shall be given under oath."*

20. A reading of the Hague Convention itself shows that, when the requesting authority requests a special method or procedure to be followed, the same needs to be complied with only if it is not incompatible with the internal law of the State of execution. This is made clear in the Letter of Request itself, which states that the examination shall be conducted under the Federal Rules of Civil Procedure of the United States of America, except to the extent that such procedure is incompatible with the law of India. A reading of the above clearly shows, without any manner of doubt, that the procedure to be adopted has to align with the law applicable in India. It is also relevant to note that when the main proceedings are ongoing abroad, the

recording of the testimony of a witness resident in India is taking place as per Indian law as a foreign Court cannot directly summon him by subjecting him to a Foreign Law.

21. Under Section 47 of the Advocates Act, foreign lawyers may practise in India only where their home jurisdictions extend reciprocal rights to Indian advocates and the Bar Council of India is empowered to regulate the recognition of foreign legal qualifications. The reciprocity principle embedded in the Advocates Act and carried under the BCI Rules cannot be treated as a one-way concept, as it is calibrated against the treatment Indian Advocates receive in the foreign lawyer's home jurisdiction.

22. Sections 29 & 33 of the Advocates Act, 1961, speak of the recognised class of persons entitled to practise law and that Advocates alone are entitled to practise. Said sections read as follows:

> "***S.29. Advocates to be the only recognised class of persons entitled to practise law.****—Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.*

> ***S.33. Advocates alone entitled to practise.****—Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.”*

23. In ***Lawyers Collective v. Bar Council of India and Others [2009 SCC OnLine Bom 2028]***, the issue that arose was whether foreign lawyers and foreign law firms could be permitted to practise law in India. The Bombay High Court held that the expression "practice of the profession of law" under the Advocates Act is wide enough to include both litigious and non-litigious practice, and consequently held that foreign law firms could not practise law in India or establish liaison offices for carrying on legal activities without complying with the Advocates Act. Thereafter, in ***A.K. Balaji v. Government of India [2012 SCC OnLine Mad 723]***, the Madras High Court reiterated that foreign lawyers and law firms cannot practise law in India on either the litigation or non-litigation side, except for limited "fly-in, fly-out" visits for advising clients on foreign law and participation in international commercial arbitration. The

principles laid down by both the High Courts were subsequently affirmed by the Hon'ble Supreme Court in ***Bar Council of India v. A.K. Balaji [(2018) 5 SCC 379]***, which held that foreign lawyers cannot practise law in India, whether on the litigation or non-litigation side, without complying with the Advocates Act and the regulatory framework prescribed by the Bar Council of India.

24. The relevant portion of the judgment of the Apex Court in ***A.K.Balaji 's*** case supra reads as follows:

> *"47. In view of above, we uphold the view of the Bombay High Court and Madras High Court in para 63 (i) of the judgment to the effect that foreign law firms/companies or foreign lawyers cannot practice profession of law in India either in the litigation or in non-litigation side. We, however, modify the direction of the Madras High Court in Para 63(ii) that there was no bar for the foreign law firms or foreign lawyers to visit India for a temporary period on a "fly in and fly out" basis for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues. We hold that the expression "fly in and fly out" will only cover a casual visit not amounting to "practice". In case of a dispute whether a foreign lawyer was limiting himself to "fly in and fly out" on casual basis for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues or whether in substance he was doing practice which is prohibited can be*

determined by the Bar Council of India. However, the Bar Council of India or Union of India will be at liberty to make appropriate Rules in this regard including extending Code of Ethics being applicable even to such cases.

48. We also modify the direction in Para 63 (iii) that foreign lawyers cannot be debarred from coming to India to conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration. We hold that there is no absolute right of the foreign lawyer to conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration. If the Rules of Institutional Arbitration apply or the matter is covered by the provisions of the Arbitration Act, foreign lawyers may not be debarred from conducting arbitration proceedings arising out of international commercial arbitration in view of Sections 32 and 33 of the Advocates Act. However, they will be governed by code of conduct applicable to the legal profession in India. Bar Council of India or the Union of India are at liberty to frame rules in this regard.

49. We also modify the direction of the Madras High Court in Para 63(iv) that the B.P.O. Companies providing wide range of customised and integrated services and functions to its customers like word processing, secretarial support, transcription services, proof reading services, travel desk support services, etc. do not come within the purview of the Advocates Act, 1961 or the Bar Council of India Rules. We hold that mere label of such services cannot be treated as conclusive. If in pith and substance the services amount to practice of law, the provisions of the Advocates Act will apply and foreign law firms or foreign lawyers will not be allowed to do so."

25. Based on the above, rules framed by the Bar Council of

India came into force, known as the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022, as amended in 2025, issued under the provisions of the Advocates Act, 1961. The objects and reasons for the BCI Rules clearly state that foreign lawyers can be permitted only in three defined areas: (1) in the practise of foreign law, (2) handling diverse international legal issues in non-litigious matters and (3) participating in international arbitration cases, all in a restricted, controlled and regulated manner.

26. Rules 3 and 8 of the BCI Rules applicable for the determination of the above case read thus :

> "***3. Registration of foreign lawyers or foreign law firms and eligibility criteria there for:–***
>
> *(1) A foreign lawyer or foreign law firm shall not be permitted to practice law in India unless registered with the Bar Council of India under these Rules. This applies to Indian Advocates and Indian Law Firms seeking registration as Foreign Lawyer and Foreign Law Firm as per applicable rules hereinunder:*
>
> *Provided that this prohibition shall not apply to the practice of law by a foreign lawyer or foreign law firm conducted on a "fly-in, fly-out" basis, subject to the following conditions:*
>
> *(a) Such practice is strictly limited to providing legal advice to clients in India concerning foreign law, the foreign*

lawyer's own legal system, or diverse international legal issues, and must not amount to "practice" as defined under Indian law.

(b) The engagement or expertise of the foreign lawyer or foreign law firm must be procured by the client either in a foreign country or in India.

(c) The foreign lawyer or foreign law firm must not establish, operate, or maintain any office, infrastructure, or regular presence in India for the purpose of such legal practice.

(d) The total duration of such practice in India shall not exceed 60 days in aggregate within any 12-month period, with the calculation starting from the first day of arrival in India. All subsequent days of presence within the 12-month period shall be counted consecutively, regardless of any interim departure and re-entry into India.

(e) In case of any dispute regarding whether the foreign lawyer's activities qualify as permissible "fly-in, fly-out" practice or constitute prohibited "practice" under Indian law, the matter shall be determined by the Bar Council of India.

(f) All rules and regulations that apply to registered foreign lawyers and registered foreign law firms to govern their activities including extending the applicability of the Code of Ethics to foreign lawyers and foreign law firms shall also apply to foreign lawyers and foreign law firms engaging in "fly-in, fly-out" practice except where explicitly exempted under these rules.

**** **** **** **** ”

“***8. Law practice by a foreign lawyer and/or foreign Law Firm, it's nature and extent thereof:-***

(1) A foreign lawyer or Law firm registered under rules shall be entitled to practice law in India in non-litigious matters only, subject to such exceptions, conditions and limitations as are laid down under these Rules. Such a lawyer shall be deemed to be an advocate within the meaning sections 29, 30 and 33 of the

Act qua such acts and deeds as are envisaged or permitted to be performed by him under these Rules as a foreign lawyer. However, a foreign Lawyer or Foreign Law Firm shall not be subject to proceedings under Chapter V of the Advocates Act; rather in case of any substantive misconduct, the Bar Council of India may cancel the registration of such Foreign Lawyer or Foreign Law Firm as the case may be.

(2) (a) The areas of practice for foreign lawyers and foreign law firms in India shall be determined and laid down by the Bar Council of India. If deemed necessary, the Bar Council of India may consult the Government of India, Ministry of Law and Justice in this regard.

(b) Foreign lawyers and foreign law firms are strictly prohibited from appearing before Indian courts, tribunals, or other statutory or regulatory authorities unless explicitly permitted by the Bar Council of India or as provided under these Rules.

(c) Foreign lawyers and foreign law firms are prohibited from performing the following activities:

i. Conveyancing of property, title investigation, or similar work.

ii. Drafting, preparing, or filing documents for proceedings before Indian courts, tribunals, or other authorities empowered to record evidence on oath.

(d) Prohibited activities listed under these Rules shall be enforceable through penalties, including suspension or cancellation of registration, as prescribed under Rule 10.

(e) The practice of law by a foreign lawyer or foreign law firm in India shall be limited to non-litigious areas involving foreign law and/or international law. Permissible areas of practice include:

(i) Engaging in corporate legal matters such as joint ventures, mergers and acquisitions, intellectual property matters, drafting of contracts, and other related transactional

work, provided such work is on a reciprocal basis.

(ii) Representing clients in both institutional and ad hoc international arbitration cases conducted in India provided such representation does not contravene the provisions of these Rules or the Advocates Act, 1961. Such clients may include individuals, firms, companies, corporations, trusts, or societies with their principal office or address in a foreign country. These arbitration cases may involve foreign law, international law, or the laws of jurisdictions other than the lawyer's home country.

(iii) Providing legal advice and opinions concerning the laws of their country of primary qualification, international law, and the foreign laws of jurisdictions other than the country of primary qualification.

(iv) The practice of law by foreign lawyers or foreign law firms in India shall further include the following specific areas:

(a) Providing legal advice, conducting transactions, and giving opinions on the laws of their country of primary qualification, international law, and the foreign laws of other jurisdictions.

(b) Representing clients in international arbitration cases conducted in India. Such clients may include individuals, firms, companies, corporations, trusts, or societies with their principal office or address in a foreign country. These arbitration cases may involve foreign law, international law, or a combination thereof.

(c) Providing legal expertise and advice, and appearing as a lawyer for

(i) Entities having a principal office or address in the foreign country of their primary qualification or any other foreign country.

(ii) Entities or individuals seeking advice or assistance related to foreign law of any country and/or international law, in proceedings before bodies other than

courts, tribunals, boards, or statutory authorities that are not legally empowered to record evidence on oath. Such work must involve essential knowledge of foreign law of the country of primary qualification, as well as international law and the foreign laws of other jurisdictions involved.

(v) Providing legal expertise and advice concerning the laws of their country of primary qualification, as well as international law and foreign laws of other jurisdictions. This excludes representation or preparation of documents for submission to Indian courts, tribunals, or other forums empowered to record evidence on oath, or the preparation of any petitions, documents, or pleadings to be submitted to such forums regarding procedural matters.

(3) Indian advocates enrolled with any State Bar Council and working as partners or associates in foreign law firms registered in India under these rules may engage in non litigious matters, including advisory work related to foreign law or international law. They may also represent clients in international arbitration forums or international law courts as referred by their respective foreign law firms. Such advocates shall not claim any additional rights or privileges solely based on their enrollment as advocates in India when practicing through foreign law firms. However, Indian advocates and partners in such law firms, in accordance with their enrollment rights and privileges to practice law in Indian courts, may take up matters referred by their respective foreign law firms, provided such matters fall within the scope of Indian law and the advocate's permissible area of practice.

(4) Foreign lawyers and foreign law firms intending to practice law in India must register with the Bar Council of India under applicable rules and regulations and comply with the conditions laid down for reciprocal recognition of foreign qualifications, including equivalence of qualifications, qualifying examinations, and restrictions on litigious practice.

****   ****   ****   **** "

27. In the above backdrop, it has to be seen whether examination before a Commissioner in proceedings of the instant nature can be treated as practise. ***A.K.Balaji*** clarified that the provisions under the Act encompass both litigious and non-litigious practice. ***A.K.Balaji*** relied on the principles of law stated in ***Harish Uppal v. Union of India*** *[(2003) 2 SCC 45]*. Earlier, the judgment in ***Pravin C. Shah v. K. A. Mohd. Ali.*** *[(2001) 8 SCC 650]* also held that the right to practise is the genus of which the right to appear and conduct cases is a species. The Bombay High Court had clearly considered the distinction between litigious and non-litigious practice in ***Lawyers Collective,*** which stands affirmed by the Hon'ble Supreme Court in ***A.K.Balaji.***

28. Thus, a person can be said to be practising litigious matters when he renders legal assistance by acting, appearing and pleading on behalf of another person before any court/authority. Similarly, a person can be said to be practising non-litigious matters when he represents to be an expert in the field of law when he renders legal assistance to another person

by drafting documents, advising clients, giving opinions, etc. Since litigious practise includes acting, appearing and pleading on behalf of another person before any court or authority, necessarily, it has to be held that examination or cross examination before a Court appointed Commissioner, under the provisions of the Code of Civil Procedure, falls under the domain of practise of law reserved exclusively for the Advocates enrolled under the Act and subject to the exceptions created by the BCI Rules.

29. The relevant provisions of Order XXVI of the Code of Civil Procedure are also be noted, which are extracted below:

> "***19. Cases in which High Court may issue commission to examine witness.***—*(1) If a High Court is satisfied.—*
> *(a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,*
> *(b) that the proceeding is of a civil nature, and*
> *(c) that the witness is residing within the limits of the High Court's appellate jurisdiction, it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.*
> *(2) Evidence may be given of the matters specified in clause (a), (b) and (c) of sub-rule (1)—*
> *(a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Central Government, or*
> *(b) by a letter of request issued by the foreign Court and*

transmitted to the High Court through the Central Government, or

(c) by a letter of request issued by the foreign court and produced before the High Court by a party to the proceeding.

20. Application for issue of commission.*—The High Court may issue a commission under rule 19—*

(a) upon application by a party to the proceeding before the foreign court, or

(b) upon an application by a law officer of the State Government acting under instructions from the State Government.

21. To whom commission may be issued.*—A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or where the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court, to any person whom the Court thinks fit to execute the commission.*

22. Issue, execution and return of commissions, land transmission of evidence to foreign Court.*—The provisions of rules 6, 15, 5 [sub-rule (1) of rule 16A, 17, 18 and 18B] of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has, been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the Government General in Council along with the letter of request for transmission to the foreign court."*

30. A reading of Order XXVI Rule 17 shows that the Commissioner who was appointed has to be treated as a Court and that the report of the Commissioner shall be evidence in the

suit. It is trite that an Advocate Commissioner, executing a warrant issued by a Court, is deemed to be a civil court for the attendance and examination of witnesses and the Courts have consistently held that the commissioner acts as the “eyes and ears” of the Court and “an extended arm and agent” of the Court and, in fact, “a projection of the Court” for a particular purpose whose report in evidence forms part of the record. The recording of evidence before a Commissioner is, indeed, a litigious act forming part of the practise of law in India, from which the foreign lawyers stand excluded. The examination of a witness before the Commissioner under Order XXVI of the Code of Civil Procedure clearly falls outside of each of the permissible categories under the BCI Rules.

31. It is also to be noted that the provisions under Order III of the Code of Civil Procedure confines appearance, application or act in or to any Court by a party in person be made or done by the party in person or by his recognized agent or by a pleader and Section 2(15) of the Code of Civil Procedure defines a 'pleader' as any person entitled to appear and plead for another

in Court, including an Advocate and thus, a reading of Order XXVI Rule 18 of the Code of Civil Procedure read with Order III clearly show that a foreign lawyer cannot be treated as 'pleader' under the Act and thus, not entitled to appear before the Commissioner for examining or cross examining the witness.

32. The learned counsel for the respondents contends that Section 32 of the Act enables the Court to permit any individual who is not even a registered Advocate to appear and argue before it. As held by the Hon’ble Supreme Court in ***Harishankar Rastogi v. Girdhari Sharma and Another*** *[(1978) 2 SCC 165],* any person who is not qualified as an Advocate under the Act has no right to barge into a court and claim or argue for a party. Secondly, a person seeking permission under Section 32 must show good reasons, (a) he is unable to engage a lawyer (b) he is unable to represent his case himself (c) a person to be represented by another person is sufficiently connected with him and (d) in such manner as to show that he is not performing anything in the nature of profession in presenting the case of the former. None of the requirements applies to the case at

hand. That apart, it is the discretion of the Court to grant or refuse such a permission. This principle was followed by the Bombay High Court in ***Mohan H. Punjabi v. Vachha & Co.*** *[1983 SCC OnLine Bom 183],* wherein it was reiterated that the power under Section 32 is purely discretionary and cannot be invoked as a matter of right. This being the case, no request can be made to exercise discretion in a particular manner, as judicial discretion can be exercised by a Court only when there are two or more possible lawful solutions. The Courts cannot exercise any discretion contrary to the statute or rules made thereunder, more so in the wake of the BCI Rules expressly prohibiting foreign lawyers representing any party before any authority empowered to record evidence on oath; the request to exercise discretion under Section 32 of the Act cannot be exercised, and the said request is only to be rejected. Allowing such a permission would be an indirect method to achieve something that cannot be done directly.

33. Though all the legal issues that cropped up in this case was not considered, in ***HDT Bio Corp v. Emcure Pharmaceuticals***

Ltd. (supra)*,** the Bombay High Court, relying on the Bar Counil of India Rules and following the principle laid down by the Hon'ble Supreme Court in ***Bar Council of India v. A.K. Balaji*,** held that foreign lawyers are entitled to practise in India only in non-litigious matters and that permitting a U.S. attorney to conduct a deposition in India would be contrary to the BCI Rules. A similar view has also been taken by the Telangana High Court in ***Pfizer Inc. v. Unimark Remedies Ltd. **(supra),** the Andhra Pradesh High Court in ***Broadcom Inc., LSI Corporation & Avago Technologies U.S. Inc. v. Texas LDPC Inc. and Another*** **(supra)**, and the Karnataka High Court in ***Wacom Co. Ltd. v. Cirel Systems (P) Ltd.*** **(supra),** wherein the respective High Courts directed that the examination and cross-examination of witnesses be conducted by the Indian counsel for the parties, while permitting the respective foreign counsel only to attend and observe the proceedings.

Given the aforesaid reasons, the request of the petitioner to permit the foreign counsel to conduct the examination and cross-examination of the witness before the Commissioner is declined. However, the petitioner's foreign counsel/ representatives shall be permitted to attend/observe/ participate in the proceedings. The examination and cross-examination of the witness shall be conducted only by the respective Indian counsel for the parties.

M.J.C.No. 82 of 2026

Post on 13.8.2026.

Sd/-

MOHAMMED NIAS C. P.,
JUDGE

MMG