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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15th February, 2024

+ CS(COMM) 281/2022

PHILLIPS 66 COMPANY Plaintiff

Through: Mr. Raj Shekhar Rao, Senior
Advocate with Ms. Priya Adalakha,
Mr. Rohan Krishna Seth,
Ms. Aishwarya Debadarshini and
Mr. Areeb Amanullah, Advocates.

versus

RAAJ UNOCAL LUBRICANTS LIMITED Defendant

Through: Mr. Jayant K. Mehta, Senior
Advocate with Mr. Kapil Wadhwa
and Ms. Tejasvini Puri, Advocates.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J. (Oral):

I.A. 25181/2023 (seeking appointment of a Local Commissioner for recording the evidence through video conferencing)

1. The Plaintiff through this application seeks directions for appointment of a Local Commissioner to record the statement of Plaintiff witnesses - Mr. Stephen P. Meleen (PW1) and Mr. Craig Stone (PW2), remotely, *via* video conferencing mechanism. Notably, the prayer in paragraph 8(b) of the application has been rendered infructuous.



2. Mr. Rajshekhar Rao, Senior Counsel for the Plaintiff, highlights that the Plaintiff's witnesses, residing in the United States of America, are professionals engaged with significant responsibilities in their law firm, rendering them unable to travel to India for cross-examination due to these professional commitments. Furthermore, Mr. Rao emphasizes the personal circumstances of Mr. Craig Stone, who has young children under his care. The obligation to look after his children, coupled with the logistical challenges and the substantial burden that international travel imposes, would make his physical presence for the proceedings exceedingly difficult.

3. The application is strongly opposed by Mr. Jayant Mehta, Senior Counsel, as well as Mr. Kapil Wadhwa, who addressed further submissions independently today, on behalf of the Defendant. Mr. Mehta firstly underscores lack of prior consent on the part of the defendant to the request made in the application, which according to him is essential for considering the instant application. On this issue, he also emphasises non-compliance of Chapter 3, Rule 6.2 of the High Court of Delhi Rules for Video Conferencing for Courts, 2021 [hereinafter, '*VC Rules, 2021*'] which mandates that any proposal to move a request for video conferencing should first be discussed with the other party or parties to the proceeding. Further, he argues that the traditional preference for in-person cross-examination, enables the Court to directly observe the demeanour of the witness, an aspect, he deems, crucial for assessing credibility of the witness. He posits that the physical courtroom setting inherently fosters a more transparent and fair examination process. Furthermore, Mr. Mehta highlights practical challenges associated with presenting documents to the witnesses during cross-examination, suggesting that these tasks are more effectively managed



in person. Mr. Mehta also questions the merits of the grounds urged, particularly, targeting the frivolity of the reasons outlined in paragraph No. 4 as insufficient. He contends that the Plaintiff has failed to disclose any urgent circumstances that would necessitate the deviation from standard courtroom procedures, suggesting that acceding to such a request without substantial justification would encroach upon the Defendant's right to a fair trial. Additionally, Mr. Wadhwa, relying upon decision of Karnataka High Court, in *T.G. Veeraprasad and Ors. Vs. Prakash Gandhi*,¹ argues that Plaintiff cannot insist on recording evidence through video conferencing as a matter of right. This Court must examine the reasons behind the request for filing the application and it should be in strict compliance of the Rules. Mr. Wadhwa, concedes that video conferencing holds a valuable position within the legal framework, but emphasizes that the objective is not to reject its use outright but to employ it judiciously. He contends that the Court must weigh in the nuanced differences in communication dynamics that distinguish video conferencing from traditional in-person interactions. This distinction becomes particularly critical in cases where the Defendant has raised complex issues such as fraud and forgery, necessitating a careful consideration of how evidence and testimonies are presented and assessed. He submits that the virtual environment is not suitable in the given facts of the case.

4. The Court has duly considered the arguments presented. Firstly, it is pertinent to acknowledge that initially Mr. Rao has argued for the appointment of a Notary Public, to serve as the remote point coordinator, a proposal, which he argued is viable under the VC Rules, 2021

¹ 2022(3) AKR 604



notwithstanding Rule 5.1 of the said rules. However, this request was later not pressed, and the Plaintiff consented to have an official from the Indian Embassy, in Texas, assume the role of remote point coordinator. Given this change in stance by the Plaintiff, the Court will no longer delve into the interpretation of Rule 5.1 in the present context. Next, we must address the objection concerning the alleged non-compliance with Rule 6.2, pertaining to the initiation of the present application without prior consultation with the Defendant. It is pertinent to recall that on 23rd January 2024, this Court expressly directed both parties' counsels to engage in discussions aimed at identifying a mutually agreeable solution. Unfortunately, these discussions did not yield a productive outcome. Nonetheless, this objection has been met. Regarding the perceived lack of compelling reasons presented in paragraph No. 4 of the application, it is true that the Plaintiff has not furnished strong arguments to justify the witnesses' inability to attend cross-examination in person. However, this Court is of the opinion that the absence of a forceful rationale does not undermine the significant benefits and suitability of adopting modern technological solutions in our judicial processes. The existing rules and frameworks for video conferencing are specifically designed to accommodate such scenarios, ensuring that justice is administered efficiently without compromising the fairness of the trial. In consideration of these factors and recognizing the technological advancements that now readily enable the recording of testimony from a distance, the Court finds merit in Mr. Rao's request. Moreover, in an era marked by significant technological advancements, the Commercial Court is committed to facilitating expeditious trials that reflect the needs and realities of today's cross border nature of legal matters. The Plaintiff's request for



video conferencing, being both feasible and technically sound, aligns with this commitment and warrants support. Allowing video testimony not only spares witnesses from the inconvenience and expense of international travel but also ensures that the trial proceeds without unnecessary delay.

5. The Court has also carefully considered the logistical challenges posed by the time difference between the court point and the remote location from where the witnesses will testify. Mr. Rao has given assurances that the witnesses are prepared to accommodate the inconvenience resulting from this time difference and will make themselves available at hours that might be considered unconventional, thereby facilitating the cross-examination by the Defendant's counsel. Nevertheless, Mr. Rao's plea for scheduling considerations, aimed at minimizing the inconvenience to the witnesses, is reasonable and shall be taken into account when planning the hearing.

6. The Court acknowledges the validity of Mr. Mehta's points, especially regarding the importance of observing a witness's demeanour and the practicalities of document examination. However, the Court must weigh in the broader context of judicial efficiency and the imperative to adapt to contemporary challenges without diminishing the fairness or integrity of the trial process. The apprehensions regarding the use of video conferencing for the examination and cross-examination of witnesses, would assume significance where the witnesses are vulnerable, or not tech savvy. However, in the context of the Intellectual Property Division (IPD) bench of this court, where we deliberate on matters of intellectual property rights, both the legal professionals and the parties involved are sophisticated users of technology. This bench deals with counsels who are not only accustomed to, but also proficient in the use of digital platforms for professional and personal



communication. The assertion that the use of video conferencing technology might be inherently disadvantageous overlooks this crucial aspect of our proceedings.

7. An effective cross-examination is undeniably central to both civil and criminal trials, serving as a fundamental mechanism for challenging witnesses and scrutinizing evidence. The goal, then, is not to replace the traditional method but to ensure that cross-examination *via* video conferencing replicates the rigor and thoroughness of in-person proceedings as closely as possible. The courts must foster an environment where the reliability of testimony, whether delivered in person or remotely, remains unimpeachable. To this end, if a party harbours reservations about the efficacy of video conferencing for cross-examination, they must be afforded the opportunity to articulate their concerns and request an in-person examination, provided their reasons are compelling and justifiable. On this aspect, the only points that were time and again reiterated by counsel for Defendant were the concerns over document handling and witness demeanour assessment. Both these issues, in the opinion of the court can be easily handled and are adequately provided for in the Rules.

8. As, already stated, in the present matter, both parties applying are represented by counsel who are adept at navigating technological tools and their readiness and capability further mitigates the potential drawbacks associated with remote testimony.

9. In conclusion, while the court acknowledges the contra views presented in *T.G. Veeraprasad and Ors. Vs. Prakash Gandhi* , but remains unpersuaded to adopt the same reasoning for the reasons stated above. Further, while the Court respectfully recognizes the Karnataka High Court's



call for comprehensive empirical research regarding the impact of video conferencing mode as judicious, it is pertinent to distinguish the circumstances before this Court. Specifically, the Intellectual Property Rights (IPR) legal community here demonstrates a significant capacity for adapting and refining courtroom practices in line with technological advancements, such as video conferencing. This adaptability, fuelled by real-time feedback, underscores a readiness within this specific legal context that may not be directly comparable to the broader concerns addressed by the Karnataka High Court.

10. For the grounds and reasons stated above, the application is allowed, and the following directions are issued:

- (a) Examination of PW-1 and PW-2 will be conducted by video-conferencing in terms of VC Rules, 2021.
- (b) Mr. Vinay Gupta, District and Sessions Judge (Retired) [Contact No.: +919910384701], is hereby appointed as the Commissioner,² and shall preside over the proceedings at Court point, for recording of evidence, and for determining the granular details regarding recording PW-1's and PW-2's testimony, in terms of the Rules. PW-1 and PW-2 will be examined on the date and time as may be fixed by the Commissioner in consultation with the Remote Point Co-ordinator.
- (c) The Embassy of India in Houston, Texas, is requested to nominate an official of the Embassy as the Remote Point Co-ordinator.
- (d) The Deputy Registrar (Computers) is appointed as the Co-ordinator at Court Point, with respect to technical aspects of video conferencing for the purpose of conducting evidence.



- (e) The facility available at the Delhi High Court, for video conferencing, shall be treated as the Court Point as defined under Rule 2(5) of the Rules.
- (f) The Co-ordinators shall be physically present at their respective Points during the recording of evidence and render all functions and perform all duties of such Coordinators under the Rules.
- (g) Counsel for Plaintiffs shall forward a copy of this order to the Court Commissioner and the Co-ordinators.
- (h) The witness will be examined on the date and at the time as may be fixed by the learned Commissioner and the Remote Point Co-ordinator.
- (i) The encrypted master copy (with hash value) of the recording of the video conference shall be retained with the Commissioner.
- (j) The remuneration of the learned Commissioner is fixed at ₹2,50,000/- for the aforesaid purpose. In case the cross examination is not conducted in five hearings, the Local Commissioner should be paid Rs. 50,000/- per each additional hearing.
- (k) The Embassy may also indicate the costs/charges/remuneration for the services of the Remote Point Coordinator.
- (l) Plaintiffs shall bear the costs and expenses executing this Commission.
- (m) The Commissioner is directed to forward a copy of this order to the Embassy of India (Houston, Texas) and take steps necessary for the recording of evidence of PW-1 and PW-2 in terms of this order. He will also forward a copy of the VC Rules, 2021 to the Embassy and the Remote Point Co-ordinator.
- (n) All relevant provisions of the Rules must be strictly adhered to.

² In terms of Rule 2(ii) of the Rules.



11. List for completing the formalities and fixing of modalities ancillary thereto, before the Joint Registrar on 26th February, 2024.

12. Given the critical role that differing time zones will play in this case, the Court hereby grants the Local Commissioner the authority and responsibility to determine the timing of proceedings. This determination shall be made at the Local Commissioner's discretion, following thorough consultation with all involved stakeholders to ensure the most accommodating and efficient schedule for all parties.


13. Disposed of.

I.A. 22647/2023 (for appropriate directions)

14. The Plaintiff, through this application, seeks imposition of costs on the Defendant for unduly denying the Plaintiff's documents, listed in paragraph No. 10 of the application, in contravention with Order XI Rule 4 of Code of Civil Procedure, 1908.

15. Further relief has been sought for directions to allow the said documents to be admitted in evidence so that the Plaintiff is not put to the burden of proving the same.

16. The documents in question and the reason for denial by the Defendant are as follows:

Plaintiff's list of documents dated 24th April 2022, filed with the Plaintiff		
S.No.	Details of documents	Reason of denial given by the Defendant
1.	Registration certificate (along-with renewal certificate) for the Plaintiff's trademark  under TM No. 551399 along-with the status page.	Plaintiff has fraudulently obtained assignment of the trademark registration no. 551399 on the basis of a forged and incomplete assignment deed dated 23.02.2004. That the Defendant has already instituted rectification proceedings against the said registration and the



		same is liable to be cancelled.
2.	Copies of few trademark registration certificates issued by the United States Patent & Trademark Office (USPTO) in respect of the Plaintiff's registered '76' trademarks in the USA.	The said document is a third-party document and the existence and veracity of the same cannot be verified by the Defendant. The said document is required to be proved as per the provisions of the Indian Evidence Act, 1872.
3	Screenshot of the website www.xe.com reflecting 'US Dollar to Indian Rupee Exchange Rate Chart' as on 30th September 2023.	The said document is a third-party document and the existence and veracity of the same cannot be verified by the Defendant. The said document is required to be proved as per the provisions of the Indian Evidence Act, 1872.
4.	Copy of Plaintiff along-with pleadings in I.A. Nos. 3133/2021 and 4316/2021 filed in Suit under CS (COMM) No. 100 of 2021.	Existence, correctness of contents, execution, issuance/ receipt and line of custody of the Document has been partially admitted stating that "The pleadings filed by the Defendant herein are admitted, rest are denied."
Plaintiff's list of documents dated 9th November 2022, filed with the Replication		
5.	Trademark application for Defendant's Trademark No. 4588437	The said document is denied for having no relevance to the present proceedings.

17. Document at serial No. 1 is concerned with the registration certificate of Plaintiff's trademark registered in India. Plaintiff has provided the certified copy of the certificate. The Defendants are only disputing the said document on the issue of relevance. The existence of said document is not denied. Accordingly, the certified copy of the said documents will be admitted in evidence.

18. Likewise, the existence of copies of the trademark registration certificate issued by the United States Patent Trademark Office (USPTO), mentioned at serial No.2, is not disputed by the Defendant. The Defendant's objection is limited to relevance and correctness of the said documents.



Accordingly, the said documents are also admitted in evidence.

19. The document at serial No. 3, is a screenshot of the website, which in the opinion of the Court, will have to be proved by the Plaintiff. No directions can be issued in respect to the said documents.

20. The document at serial No. 4 is a copy of pleadings. Although, it is not a certified copy, nonetheless, since the Defendants have admitted the same and are only denying the correctness and relevance, the same are admitted in evidence.

21. The document at serial No. 5 is a trademark application of the Defendant's trademark. The said document is not a certified copy, however, Defendant's denial is not on existence of the said document, but on relevance. The same is admitted in evidence.

22. Accordingly, the application is allowed to the above extent and disposed of.

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23. List this matter before the Joint Registrar, who shall put exhibit marks on the documents in terms of the above directions. The Plaintiff would not have to formally prove the existence of the said documents. The admissibility, relevance, correctness would always be open to challenge.

24. List before the Joint Registrar on 26th February, 2024.

SANJEEV NARULA, J

FEBRUARY 15, 2024

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