

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

Pronounced on : 08.09.2009

+ OMP 516/2009

Mitre Sports International Limited Petitioner

Through : Mr. Gopal Jain with Ms. Namita Chadha and Ms. Svita Sarna,
Advocates for the petitioner.

Versus

Home Box Office, Inc. Respondent

Through : Mr. Rajeev Nayyar, Sr. Advocate with Ms. Jasleen K. Oberoi,
Advocate, for the respondent.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

HON'BLE MR. JUSTICE S.RAVINDRA BHAT, J. (Open Court)

Cav. No.83/2009

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Learned counsel for the caveator has entered appearance. The caveat stands discharged.

OMP No.516/2009

1. Heard learned counsel for the petitioner and the respondent, finally, with their consent..
2. The present proceeding seek the appointment of a Commissioner under the provisions of Order 26 Rules 19 and 20 of CPC to collect the evidence of three witnesses; two of them are named in the petition and name of the third witness is kept confidential. It is stated that the condition of confidentiality was imposed pursuant to an agreement arrived at by the parties to the US District Court, Southern District of New York (hereinafter called the "Requesting Court"). A copy of the

letter of request dated 10.08.2009 has been filed along with the oral transcript of proceedings dated 02.06.2009.

3. The respondent; (apparently the defendant in the proceedings before the US District Court), objects to the request for issuance of the Commission; it submits that the petitioner is taking its chances before different authorities without appropriate disclosure. It is contended that the letter of request which is a subject matter of the present proceeding is also the subject matter of proceedings before the Registrar General, Delhi High Court, Registrar General, Allahabad High Court and the Registrar, Punjab and Haryana High Court. It is further submitted that the petitioner has not disclosed that earlier, another letter of request dated 27.04.2009 was issued by the US District Court.

4. The respondents further contend that the Court should desist from issuing a commission since the Requesting Court has referred to the "Hague Convention of 18th March 1970 on the Taking Evidence Abroad in Civil or Commercial Matters".

5. Counsel on behalf of the respondents contend that though India is a signatory to the convention, it has significantly derogated from some provisions more specifically to the request for pre-trial evidence that could be gathered from the Indian Courts. It is submitted that in view of such reservation, this Court should not grant the request of the petitioner and appoint a Commissioner.

6. The petitioner, in reply to the objections, relies upon an affidavit dated 05.09.2009 stating that the letter of request pending consideration by the Registrar of various High Courts including this High Court was pursuant to the Requesting Court indicating the same authorities. It is submitted that in any event the petitioner has requested the Registrar by a letter dated 31.08.2009 not to proceed or execute the letter, so far as it pertains to Delhi.

7. As far as the other objections of the respondents are resisted, the petitioner relies upon a ruling of this Court in Upaid Systems Limited Vs. Satyam Computer Services and Anr. (decided on

17.07.2009 in OMP 127/2009). It is lastly urged that the earlier letter of request issued on 27.04.2009 and was valid only upto 01.06.2009 which necessitated an application for a fresh letter of request that was ultimately granted on 10.08.2009. Counsel points to the agreement of the parties recorded in the transcript of proceedings of the US District Court - a copy of which has been placed on record.

8. From the above discussions, the Court discerns the two main objections of the respondent. As far as the objection regarding maintainability, if it is termed to be so (in view of India's limited participation in the Hague Convention of 18th March 1970) is concerned, the issue stands concluded by the judgment of this Court in Upaid Systems Limited (supra) where it was held as follows :

15. It had been argued, at one stage that the letter of request explicitly refers to the Convention, to which India is a signatory, with express reservation, and, consequently, the court cannot give effect to it. The court finds this argument insubstantial. As observed earlier, so long as there is an enabling power in Indian law to give effect to letters of request issued by foreign courts, the fact that the foreign court refers to a convention to which India is a limited signatory is not relevant, or determinative of the question. Accepting Satyam's contention in fact would result in this Court giving effect to a treaty reservation, which finds no expression in enacted Indian law, contrary to the ruling of the Supreme Court. So long as there is power to appoint a commissioner, as facially, Order 26, Rule 19 undoubtedly establishes, that a treaty is not made the subject of a special law would not constitute a fetter on such power of the court, to issue letters of request."

9. The Court had earlier over-ruled a contention that the reference to the expression "Evidence" is confined to one or other mode of evidence and it extends to both oral testimony as well as production of documents through the named witnesses. This Court, therefore concludes that the respondent objections on this score, are not sustainable.

10. So far as the question of non-disclosure or withholding information is concerned, the respondent did not dispute that the earlier letter of request dated 27.04.2009 expired with effect from 01.06.2009. It is also not disputed that fresh letter of request which are sought to be

effectuated, were issued on 10.08.2009; the documents placed on record *prima facie* disclose that the respondents were aware of this order or request. At any rate they participated in the proceedings as may be noticed by the copies of the transcript of the US Courts proceedings. In these circumstances the Court finds that there is no question of any suppression of material facts which would persuade it to decline this petition.

11. So far as the last objection i.e. multiplicity of proceedings is concerned, the letter of request discloses in column 2 that the Central Authority of the Requested State was mentioned as “Ministry of Law and Justice of India”; the names of the Registrar, Punjab and Haryana High Court and the Registrar General of Delhi High Court and Registrar General of Allahabad High Court were shown. In these circumstances the maintainability of the present petition cannot be precluded. The petitioner in its affidavit states that it would not pursue with the proceedings pending before the Registrar General as far as the Delhi witnesses are concerned. It adverts to a letter dated 31.08.2009. In these circumstances in order to allay any further doubt on this score, this Court directs the Registrar General not to pursue the proceedings arising out of the “Request for International Judicial Assistance”, through the letter of request dated 10.09.2009 which is the subject matter of the present proceedings.

12. In the light of the above conclusions, the Court is of the opinion that the request requires to be granted. Ms. A.Banerji, Advocate (Mobile No. 9811362021) is hereby appointed as the Local Commissioner to execute the Commission and record the depositions of the two witnesses whose names are mentioned in para 10 of the petition as well as the witness whose name will be kept in a sealed cover and would be handed over to her (the Commissioner) along with the copy of this Court’s order. The Commissioner shall additionally ensure that the depositions are recorded in tune with the request as made in paragraphs 12 and 13 of the Request letter including the request to preserve depositions through video tape. The Local Commissioner shall file her report within six weeks. The Commissioner’s fee is fixed as Rs.1,50,000/-.

13. The Registrar General is hereby directed to ensure that the original letter of request pending in the administrative file is retained in a sealed cover and placed along with the file in this Case.

14. OMP 516/2009 is allowed in the above terms. Order Dasti.

IA No.11395/2009

No further orders required to be passed in the application in view of the disposal of the OMP. The application is disposed of accordingly.

S. RAVINDRA BHAT, J.

SEPTEMBER 08, 2009
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