Unique case relating to the Hague Evidence Convention: OP 1 of 2019 before the High Court for the State of Telangana

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The Hague Convention — on the Taking of Evidence Abroad in Civil or Criminal Matters, which is a multilateral treaty for the transmission of evidence from one state to another — was ratified by India in 2007 and very few cases have been reported so far. In this summary, we talk about a proceeding in which this Convention was invoked. This petition was filed before the High Court for the State of Telangana under the provisions of Order XXVI Rule 20(a) of the Civil Procedure Code, 1908 by the petitioners seeking appointment of a Commission under Rule 19 of Order XXVI for the collection of evidence, documents as well as for obtaining and recording testimony from the Respondent and its authorized representatives as per the letters rogatory / letter of request issued by the United States District Court for the District of Delaware. The United States District Court for the District of Delaware had issued the letters rogatory as regards a proceeding pending before it, filed by the Petitioners alleging patent infringement. The Respondent in the Petition before the High Court for the State of Telangana is not a party to the proceedings before the US District Court. The US District Court was of the opinion that for the US litigation to reach its logical conclusion, evidence, documents and testimony of the Respondent in India has to be collected as the Indian Respondent had performed the research and development of product in issue in the US Litigation and therefore it was believed that the Indian respondent and its employees possess information and documents that are relevant to prove infringement and defend the validity of the suit patents before the US Court. Therefore, on 19.11.2018, the U.S. District Court issued the letters rogatory requesting High Court for the State of Telangana for obtaining the deposition of and documents from the Respondent who was located within its territorial jurisdiction. A Letters Rogatory is essentially a written request made by a foreign court to obtain information or evidence from a specified person or company within the jurisdiction of an Indian court. Notice was ordered on 14.02.2019 to the Respondent. The counsel for Petitioners drew the attention of this Court to Rules 19 to 22 of Order XXVI of the Civil Procedure Code and stated that Commission may be issued for examination of a witness in India under sub-Rule (1) of Order XXVI Rule 19 on a request made by a foreign Court situated in a foreign country that it wishes to obtain evidence of a witness in any proceeding before it, which is of a civil nature, and the witness is residing within the limits of the High Court's appellate jurisdiction. He also stated that under Rule 21 of Order XXVI, such Commission under Rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides and since the witness / witnesses reside within the jurisdiction of this High Court, this present Petition has been filed. After hearing counsel on both sides, the Hon'ble Judge was satisfied that:

- the United States District Court for the District of Delaware is a foreign court situated in a foreign

country;

- that it wishes to obtain evidence in a proceeding of a civil nature pending before it;
- witnesses are residing within the limits of this High Court's appellate jurisdiction; and
- as per the Letter of Request issued by the said Court, evidence may be directed to be recorded by a Court.

Following the above, Hon'ble Justice MS Ramachandra Rao passed an order dated 12.03.2019 disposing off the Petition making the following directions:

- The Principal District Judge, Ranga Reddy, within whose jurisdiction the Respondent resides is directed to collect the evidence, documents as well as obtain and record the testimony from the Respondent and its authorized representatives.
- While recording the testimony or receiving documents, the Principal District Judge, Ranga Reddy shall adhere to the terms of the Protective Order dated 16.02.2018 issued by the U.S. District Court for the District of Delaware.
- All objections during the recording of testimony of the witnesses or receiving documentary evidence shall be recorded and decided by the Principal District Judge, Ranga Reddy only.
- The Principal District Judge, Ranga Reddy shall conduct the proceedings for recording of the said evidence / testimony in camera; and send the evidence / documents collected and the testimony recorded to the United States District Court for the District of Delaware in a sealed cover.
- This exercise shall be completed as expeditiously as possible preferably within four (04) weeks from the date of receipt of copy of this order.

The proceedings before the Principal District Judge, Ranga Reddy is ongoing. Team Anand and Anand comprised of Pravin Anand, Achuthan Sreekumar and Akshay Agarwal.

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