

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

+ CS(OS)No.676/2007

% Date of Decision: 25th May, 2011

MILANO IMPEX PRIVATE LTD. Plaintiff
Through : Mr. Raj Panjwani, Sr. Adv.
with Mr. Anurag Mathur,
Adv.

versus

EGLE FOOTWEAR PVT. LTD. AND ORS..... Defendants
Through : Mr. Amarjit Singh and
Mr. Dhruva Bhagat, Adv.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

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

JUDGMENT (ORAL)

1. The plaintiff has filed this application for examination of its witness, Mr. Olefirenko V.V. through video conferencing. It is submitted that the witness, Mr. Olefirenko V.V. is the constituted attorney of JSC Egle Collection and is based in Moscow, Russia and is unable to visit India for recording of his evidence but is willing to do

so through video conferencing. It is submitted that the affidavit of the said witness has been filed as back as on 28th October, 2010.

2. Vide order dated 17th February, 2011, the Standing Counsel for Union of India was directed to confirm whether the facility of video conferencing and official Interpreter is available at the office of Consulate General at Moscow. The learned Senior Counsel has confirmed that the facility of video conferencing as well as interpreter is available at the Indian Embassy at Moscow and the same can be made available for recording of the evidence upon orders being passed by this Court.

3. The learned counsels for both the parties have referred to the following judgments with respect to the safeguards to be provided in the order relating to the examination of the witness through video conferencing:-

(i) **Twentieth Century Fox Film vs. NRI Film Production, AIR 2003 Karnataka 148 –**

“7. Coming to the merits of the matter, let me see as to whether the Audio-Video Link in the matter of evidence is permissible in law or not?

Order 18 of CPC provides for hearing of the suit and examination of witnesses. Order 18 Rule 3 provides for evidence where other issues are involved. Recording of evidence is provided under Order 18, Rule 4. The CPC is amended from time to time in the interest of speedy disposal and to avoid cumbersome procedure in the matter of conducting civil trials. It is a matter of fact that civil proceedings in this country take a few years as experience reveals. To get over this normal procedural delay, the Government has thought it fit to amend the Act in the larger interest of speedy disposal. The statement of objects and reasons of CPC Amendment Act 1999 would show that the maximum time is consumed in recording evidence by the courts and it is proposed to reduce such delay by making provision for evidence by affidavit. The object refers to the report of the Hon'ble Mr. Justice Malimath. and the Law Commission Recommendations. The Act was amended in 1999 in terms of the Act 46/1999 it was subsequently amended in CPC amendment Act of 2002. Order 18. Rule 4 provides for examination in chief of a witness by way of an affidavit. Sub-rule (2) provides for cross-examination and re-examination of witnesses being done in attendance whose evidence by affidavit has been furnished to the Court is to be taken by the Court or the commissioner appointed by it. The Court may also take into consideration the relevant factors as it think fit in terms of the rule.

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Audio-Video Link is a technology developed by electronic media to avoid the physical presence and to avoid the loss in time. It is a speedy method evolved for the purpose of speedy

decision. Even in Audio-Video Link party is definitely present in person and his presence is reflected on the screen. The word 'in attendance' under Order 18, Rule 3(4)(2) is to be understood as the person being present and it need not be physical presence. The presence on the screen is as good as attendance for the purpose of Order 18, Rule 3(4) (2) of the Rules. After all law only requires the presence of the witness and it does not matter as to how he is present.

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Order 18, Rule 3(4)(3) which provides for recording evidence either by writing or mechanically in the presence of a Judge. Audio-Video Link is a mechanical process where the party is present on the screen and there is a mechanical divisor recording the evidence...”

“10. In the light of these two judgments and in the light of the amendment to CPC, the observation of the learned trial Judge requires my interference. At the same time this Court is of the view that sufficient safeguards have to be provided for the purpose of recording evidence through Audio-Video Link. The safeguards are:

1. Before a witness is examined in terms of the Audio-Video Link, witness is to file an affidavit or an undertaking duly verified before a notary or a Judge that the person who is shown as the witness is the same person as who is going to depose on the screen. A copy is to be made available to the other side. (Identification affidavit).

2. The person who examines the witness on the screen is also to file an affidavit/undertaking before examining the witness with a copy to the other side with regard to identification.

3. The witness has to be examined during working hours of Indian Courts. Oath is to be administered through the media.

4. The witness should not plead any inconvenience on account of time different between India and USA.

5. Before examination of the witness, a set of plaint, written statement and other documents must be sent to the witness so that the witness has acquaintance with the documents and an acknowledgement is to be filed before the Court in this regard.

6. Learned Judge is to record such remarks as is material regarding the demur of the witness while on the screen.

7. Learned Judge must note the objections raised during recording of witness and to decide the same at the time of arguments.

8. After recording the evidence, the same is to be sent to the witness and his signature is to be obtained in the presence of a Notary Public and thereafter it forms part of the record of the suit proceedings.

9. The visual is to be recorded and the record would be at both ends. The witness

also is to be alone at the time of visual conference and notary is to certificate to this effect.

10. The learned Judge may also impose such other conditions as are necessary in a given set of facts.

11. The expenses and the arrangements are to be borne by the applicant who wants this facility.”

(ii) **State of Maharashtra vs. Praful B. Desai, AIR 2003 SC 2053 –**

“19. ...Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place.

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Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of each other.

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The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same

manner as if he/she was in Court. All these objects would be fully met when evidence is recorded by video conferencing...”

“24. ...That officer will administer the oath. By now science and technology has progressed enough to not worry about a video image/audio interruptions/distortions. Even if there are interruptions they would be of temporary duration. Undoubtedly an officer would have to be deputed, either from India or from the Consulate/Embassy in the country where the evidence is being recorded who would remain present when the evidence is being recorded and who will ensure that there is no other person in the room where the witness is sitting whilst the evidence is being recorded. That officer will ensure that the witness is not coached/tutored/prompted. It would be advisable, though not necessary, that the witness be asked to give evidence in a room in the Consulate/Embassy. As the evidence is being recorded on commission that evidence will subsequently be read into Court. Thus no question arises of the witness insulting the Court. If on reading the evidence the Court finds that the witness has perjured himself, just like in any other evidence on commission, the Court will ignore or disbelieve the evidence. It must be remembered that there have been cases where evidence is recorded on commission and by the time it is read in Court the witness has given evidence in a Court in India and that then gone away abroad. In all such cases Court would not have been able to take any action in perjury as by the time the evidence was considered, and it was ascertained that there was perjury, the witness was out of the jurisdiction of the Court. Even in those cases the Court could only ignore or disbelieve the

evidence...”

(iii) **Amitabh Bagchi vs. Ena Bagchi, AIR 2005 Cal. 11**

“10. In addition to the above I fully agree with Supreme Court and Karnataka High Court at least to such extent that if the Law Courts do not permit technology development in the Court proceedings it would be bagging behind compared to other sectors. Technology is definitely a tool. But the following safe guards are to be taken for purpose of recording evidence through Audio-Video Link : (1) Before action of the witness under Audio-Video Link starts the witness will have to file an affidavit or an undertaking duly verified before a Judge or a Magistrate or a Notary that the person who is shown as the witness is the same person as who is going to depose on the screen with a copy of such identification affidavit to the other side. (2) The person who wishes to examine the witness on the screen will also file an affidavit or an undertaking in the similar manner before examining the witness with a copy of the other side with regard to identification before hand. (3) As soon as identification part is complete, oath will be administered through the media as per the Oaths Act, 1969 of India. (4) The witness will be examined during working hours of Indian Courts. Plea of any inconvenience on account of time difference between India and other country will not be allowed. (5) The witness action, as far as practicable, be proceeded without any interruption without granting unnecessary adjournments. However, discretion of the Court or the Commissioner will be respected. (6) Witness includes parties to the proceedings. (7) In case of non-party witness, a set of plaint, written statement and/or other papers relating to proceeding and

disclosed documents should be sent to the witness for his acquaintance and an acknowledgement in this regard will be filed before the Court. (8) Court or Commissioner must record any remark as is material regarding the demur of the witness while on the screen and shall note the objections raised during recording of witness either manually or mechanically. (9) Depositions of the witness either in the question answer form or in the narrative form will have to sign as early as possible before a Magistrate or Notary Public and thereafter it will form part of the record of the proceedings. (10) Mode of digital signature, if can be adopted in this process, such signature will be obtained immediately after day's deposition. (11) The visual is to be recorded at both the ends. The witness alone can be present at the time of video conference, Magistrate and Notary is to certify to this effect. (12) In case of perjury Court will be able to take cognizance not only about the witness gave evidence but who induced to give such evidence. (13) The expenses and the arrangements are to be borne by the applicant who wants to this facility. (14) Court is empowered to put condition/s necessary for the purpose."

4. In the recent case of **Mrs. Gurnam Kaur v. Pritam Singh Bhatia, CS(OS)No.1350/1995** vide order dated 2nd May, 2011, this court has held as under:-

"14 Science and technology has grown by leaps and bounds today and it is not essential for person to be physically present before the court for recording of

his/her statement.

15 Video Conferencing is an established mode of recording evidence of the parties. This method of recording the evidence has been accepted and implemented in the Sessions' trial at Karkarduma Court in Delhi, which are serious criminal matters.

16 So far as ensuring the identity of a person is concerned, the same can be adequately safeguarded by ensuring the appearance of the witnesses concerned on video conferencing at any convenient location."

"19 Having regard to the apprehensions expressed on behalf of the defendant and having regard to the nature of justice in the instant case, interests of justice merit that direction be issued to the Indian High Commission in Kuala Lumpur, Malaysia to facilitate the process of video conferencing.

20 Needless to say, the responsibility for bearing of the costs of the video conferencing at Delhi and Malaysia including those related to the technical aspects of the video conferencing will be borne entirely by the plaintiff.

21 I am informed by the Registry that video conferencing facilities can be made available in this Court.

22 In view of the above, it is directed as follows:-

(i) Evidence of the plaintiff shall be recorded through video conferencing between Delhi, India and Kuala Lumpur, Malaysia.

(ii) In Delhi, the video conferencing shall be conducted in the available facilities in the Annexe Block of the Delhi High Court.

(iii) Mr. Girish Sharma, Registrar (Computers) of this court is appointed as the coordinator with regard to the technical aspects of video conferencing in the Indian High Commission, Kuala Lumpur, Malaysia.

(iv) Directions be issued to the Indian High Commissioner in the Indian High Commission at Kuala Lumpur, Malaysia to nominate a senior officer not below the rank of Deputy Secretary of India to facilitate video conferencing. The officer nominated shall co-ordinate the video conferencing arrangements in Malaysia. He shall remain present at the time of recording of the evidence of the plaintiff.

(v) The officer nominated by the Indian High Commissioner in terms of the direction at serial no.(iv) above shall ensure that apart from his own presence, the only counsel for the plaintiff is present at the time of video conferencing. He shall ensure that no manner of prompting by word or signs or by any other mode is permitted.

(vi) The plaintiff shall bear the cost of the video conferencing in Malaysia.

Expenses which will be involved in the video conferencing to be undertaken in Malaysia shall be informed to the plaintiff through counsel by the Indian High Commissioner.

(vii) In case of any difficulty, the same may be communicated to the Registrar (Computers) of this Court by e-mail, who shall communicate the same to the plaintiff's lawyer in India. The officer of the Indian High Commission, who shall be nominated by the Indian High Commissioner shall be paid an amount of Rs. 30,000/- per day, as honorarium, as stated by the learned counsel for plaintiff.

(viii) The plaintiff shall deposit an amount of Rs. 10,000/- as cost of preparation of the certified copies with the Registry of this Court in the present case within two weeks from today. The Registry shall thereafter prepare certified copies of the entire record of the case, which shall be sent in separate folders clearly marked as order sheets; pleadings; applications; plaintiff's documents and defendant's documents. The same shall be forwarded to the office of Indian High Commissioner with the assistance of Ministry of External Affairs.

(ix) This record shall be made available to the officer, who is deputed by the Indian High Commissioner for the purpose of undertaking the video conferencing as it would be necessary for the record of the statement and cross examination.

(x) In case, the defendants are desirous of being physically present in Malaysia at the time of recording of the evidence, it shall be open for them to make arrangements on their own cost for appearance and their representation. The defendants shall ensure that prior intimation in this regard is filed in the Registry of this Court giving full particulars of the names of the persons as well as enclosing documents of authority in respect of the persons, who shall be representing them in the proceedings. Appropriate orders shall be considered.

23. The intimation in this regard as well as documents shall also be furnished to Indian High Commission in Kuala Lumpur, Malaysia, in any case not later than three weeks from today."

5. In the facts and circumstances of this case, the application is allowed and Mr. Olefirenko V.V. is directed to be examined through video conferencing on the following conditions:-

- (i) Evidence of the plaintiff shall be recorded through video conferencing between Delhi, India and Moscow, Russia.
- (ii) In Delhi, the video conferencing shall be conducted in the facilities available in the

Annexe Block of the Delhi High Court.

- (iii) Mr. Girish Sharma, Registrar (Computers) of this court is appointed as the coordinator with regard to the technical aspects of video conferencing in the Indian High Commission, Moscow, Russia.
- (iv) The Indian High Commissioner at Moscow, Russia shall nominate a senior officer not below the rank of Deputy Secretary of India to facilitate video conferencing. The officer nominated by the Indian High Commission shall co-ordinate the video conferencing arrangements in Moscow, Russia and shall remain present at the time of recording of the evidence of the plaintiff.
- (v) The officer nominated by the Indian High Commissioner in terms of the direction at serial no.(iv) above shall ensure that apart from his own presence, the only counsel for the plaintiff is present at the time of video conferencing.

He shall ensure that no manner of prompting by word or signs or by any other mode is permitted.

- (vi) The officer nominated by the Indian High Commission shall verify the identity of the witness before commencement of his examination.
- (vii) As soon as identification part is complete, oath will be administered by the respected Joint Registrar (J.R.) through the media as per Oaths Act, 1969.
- (viii) The witness shall be examined during working hours of Indian Courts. The plea of any inconvenience on account of time difference between India and Russia shall not be allowed. However, the convenience of the Indian Consulate in Russia shall be taken into consideration in fixing the time and schedule.
- (ix) The cross-examination, as far as practicable, be proceeded without any interruption and without

granting unnecessary adjournments. However, discretion of the Court (J.R.) shall be respected.

- (x) The Court (J.R.) may record any material remarks regarding the demur of the witness while on the screen and shall note the objections raised during recording of evidence.
- (xi) The deposition of the witness shall be signed immediately in the presence of the nominated officer of the Indian High Commission. The said officer shall certify/attest the signatures of the witness.
- (xii) The audio and visual shall be recorded at both the ends and copies thereof shall be provided to the parties at the expense of the plaintiff.
- (xiii) The Indian Consulate in Moscow shall provide an official translator to facilitate the translation of questions from English language to Russian language and answers from Russian language to English language for the recording of evidence of witness in English language.

- (xiv) The plaintiff shall bear the cost/expenses of the video conferencing. The expenses for the video conferencing to be undertaken in Moscow shall be informed to the plaintiff through counsel by the Indian High Commissioner. However, in case of any difficulty, the same may be communicated to the Registrar (Computers) of this Court by e-mail, who shall communicate the same to the plaintiff's lawyer in India.
- (xv) The officer of the Indian High Commission to be nominated by the Indian High Commissioner shall be paid a lump sum amount of Rs.50,000/- as honorarium, as stated by the learned counsel for plaintiff.
- (xvi) The plaintiff shall deposit an amount of Rs. 10,000/- as cost of preparation of the certified copies with the Registry of this Court in the present case within two weeks from today. The Registry shall thereafter prepare certified copies of the entire record of the case, which

shall be sent in separate folders clearly marked as order sheets; pleadings; applications; plaintiff's documents and defendant's documents. The same shall be forwarded to the office of Indian High Commissioner with the assistance of Ministry of External Affairs.

(xvii) This record shall be made available to the officer nominated by the Indian High Commissioner for the purpose of undertaking the video conferencing as it would be necessary for recording the statement and cross examination of the witness.

(xviii) In case, the defendants are desirous of being physically present in Moscow, Russia at the time of recording of the evidence, it shall be open for them to make arrangements on their own cost for appearance and their representation. The defendants shall ensure that prior intimation in this regard is filed in the Registry of this Court giving full particulars of

the names of the persons as well as enclosing documents of authority in respect of the persons, who shall be representing them in the proceedings. The intimation in this regard as well as documents shall also be furnished to Indian High Commission in Moscow.

6. List for fixing the date for recording of the evidence of the plaintiff's witnesses through video conferencing and for completing the formalities required for recording of the evidence before the learned Joint Registrar on 27th May, 2011.

7. Copy of this order be given 'Dasti' to learned counsels for the parties under signatures of Court Master. Copy of this order be also sent to Mr. Girish Sharma, Registrar (Computers) of this Court.

J.R. MIDHA, J.

MAY 25, 2011

This print replica of the raw text of the judgment is as appearing on court website (authoritative source)

Publisher has only added the Page para for convenience in referencing.