



Neutral Citation Number: [2023] EWHC 2560 (Comm)

Case No: CL-2020-000729

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **10 October 2023**

Before :

Dame Clare Moulder DBE
Sitting as a judge of the High Court

Between :

Bank of Baroda and others
- and -
GVK and others

Claimants

Defendants

Karishma Vora (instructed by **Reed Smith LLP**) for the **Claimants**

Hearing dates: **10th October 2023**

RULING

Dame Clare Moulder
(10:36am)

Tuesday, 10 October 2023

Ruling by **DAME CLARE MOULDER DBE**

1. The first issue is whether the Court should grant a right to Mr Nayar to address the Court and make submissions on behalf of the Defendants on the Defendants' application to adjourn the trial.
2. Mr Nayar is present in Court this morning but no other representative is present either in person or via the remote link on behalf of the Defendants. This is somewhat surprising as the Defendants have been communicating by email in relation to these proceedings through the Legal Department of the First Defendant with the Court and the Claimants' solicitors over the past week and one might have assumed that someone from the Legal Department at the very least would have been present via the remote link, given the significance of this claim and the amount at issue of over US\$ 2 billion.
3. The Defendants were previously represented by counsel and by Norton Rose. However a notice that the Defendants would be acting in person was filed at Court on 26 September 2023. I note that the Defendants parted company with their previous solicitors shortly before the original trial in May 2022 (which was then adjourned to October 2023).
4. I note that at my direction yesterday an email was sent to the Legal Department of the First Defendant in the following terms:

“As set out in the previous email from the Court before permission can be granted for a representative to act on behalf of the Company the Court will require “clear evidence that the company or other corporation reasonably could not have been legally represented and that the employee has both the ability and familiarity with the case to be able to assist the court and also unfettered and unqualified authority to represent and bind the company or other corporation in dealings with the other parties to the litigation or with the Court.”

These matters need to be addressed in evidence.

As far as securing representation from counsel is concerned it is open to the Defendants to secure representation on the application to adjourn irrespective of whether they have representation for the trial and counsel are often instructed at short notice for urgent applications.” [emphasis added]

5. The Defendants said in an email to the court -- although I have nothing in formal evidence -- that Mr Nayar is not an employee of the Defendants but is a qualified lawyer, which I understand to be a qualified Indian lawyer, and for these purposes is a representative of the Defendants. The email said that he is familiar with the details of the case and fully capable of providing assistance to the court for the adjournment application. However, I have received no evidence in support of the statements in that email.
6. CPR 39.6, “Representation at trial of companies or other corporations” provides:

“A company or other corporation may be represented at trial by an employee if -

- (a) the employee has been authorised by the company to appear at trial on its behalf;
and
(b) the court gives permission.”

7. Paragraph M3.1 of the Commercial Court Guide states:

“ Although rule 39.6 allows a company or other corporation with the permission of the Court to be represented at trial by an employee, the complexity of most cases in the Commercial Court generally makes that unsuitable. Accordingly, permission is likely to be given only in unusual circumstances, and is likely to require, at a minimum, clear evidence that the company or other corporation reasonably could not have been legally represented and that the employee has both the ability and familiarity with the case to be able to assist the court and also unfettered and unqualified authority to represent and bind the company or other corporation in dealings with the other parties to the litigation or with the Court.”

8. Mr Nayar does not fall within the rules set out above as he is not an employee of the Defendants.
9. The Court suggested by email from the Court Office that the Defendants might seek representation from (English) counsel for the adjournment application. However there is no evidence before me that such assistance was sought. There was merely an assertion in an email from the legal department of the Defendants to the Court which stated:

“We want to reiterate that, despite continuous efforts, the defendant has been unable to secure alternative legal representation for the application fixed for hearing tomorrow.”

10. In the experience of the Court, it would usually be possible to obtain urgent assistance from counsel on an application of this nature. There is no suggestion that the Defendants are unable, due to financial constraints, to obtain representation and whether or not they could obtain representation for the ongoing trial having parted company shortly before the trial with their solicitors and counsel -- it remains my view that they could have obtained counsel to appear at this hearing should they have chosen to do so.
11. The Court has a discretion to grant a special right of audience to an individual in relation to particular proceedings, as set out in the White Book, Volume 2 Section 13 G1. The White Book states:

“13.13 The 2007 Act Sch.3, para.1(2) (as did 1990 Act s.27(2)(c)), recognises and assumes the long-standing existence of a court’s inherent ability to grant a right of audience to any person in respect of particular proceedings (the special right of audience) (see Arbuthnot Leasing International Ltd v Havelet Leasing Ltd [1992] 1 W.L.R. 455, ChD; D. v S. (Rights of Audience) [1997] 1 F.L.R. 724, CA; Bank St Petersburg PJSC v Arkhangelsky [2015] EWHC 2997 (Ch) at para.75). It is a power designed to be exercised on a case by case basis (see McKenzie Friends below).

...

The inherent discretionary power acknowledged in schedule 3, paragraph 1.2, may be seen as the frontier on which, on a case-by-case basis, the defence's scheme are constantly probed. The provision has given rise to a good deal of case law in which

clash can be observed between, on the one hand, the need to preserve the integrity of the statutory scheme and other arrangements for granting rights of audience, and on the other the need to do justice in individual cases to parties acting in person and to provide the court, in such cases, with at least some of the assistance that it might normally expect to receive from a qualified advocate.

In dealing with applications for the granting of rights of audience on this basis the courts have stressed that the statutory scheme is in the public interest, enabling those engaged in legal proceedings to know that they are briefing a person who has been properly trained and approved by an appropriate professional body, and it provides judges with the assurance that they can rely on the professionalism and integrity of advocates appearing before them...”

12. In order to decide whether to exercise its discretion in this case in relation to the adjournment application, the Court needs to weigh the need to do justice in an individual case against the need to preserve the integrity of the statutory scheme. The Court therefore has to consider whether it would be assisted by allowing Mr Nayar to have a right of audience and whether it is necessary to do justice.
13. Mr Nayar has confirmed that he has no further evidence or papers that he wishes to bring to the Court's attention this morning. He is not an English qualified lawyer, so he cannot, therefore, assist the Court on questions of English law, or make submissions, for example, on the authorities relied on by the Claimants in their skeleton. The facts and grounds for the application to adjourn are set out in the Defendants' application and the witness statement already submitted. The witness statement submitted on behalf of the Defendants was made by Mr Nayar himself, so the Court already has his statement of the facts relied on by the Defendants in support of their application and the correspondence which he relied on to support his evidence in his witness statement and is exhibited to that statement.
14. Although I understand Mr Nayar is an Indian qualified lawyer, it seems to me that there is little disadvantage to the Defendants in not allowing Mr Nayar to make submissions on this application and any disadvantage is outweighed by the greater public interest of limiting rights of audience before the High Court to those who have been granted rights of audience in accordance with the statutory provisions. The statutory scheme is in the public interest, enabling those engaged in legal proceedings to know that they are briefing a person who has been properly trained and approved by an appropriate professional body. It provides judges with the assurance that they can rely on the professionalism and integrity of the advocates appearing before them.
15. In the circumstances of this case, for the purposes of the application to adjourn, I am not satisfied that this is an appropriate case where the Court should exercise its discretion and allow Mr Nayar to address the Court on behalf of the Defendants.