

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

119

CO No. 4 of 2016 (O&M)

Date of Decision: 30.11.2016

Sehgal

.....PETITIONER

VERSUS

Sehgal

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: None.

AUGUSTINE GEORGE MASIH, J.

Request from Judge, Leverkusen Local Court, Leverkusen Germany for mutual legal assistance in civil matters to the Hague Convention of 18th March, 1970 on the taking of evidence abroad in Civil or Commercial matters, in the family matter Sumita Sehgal vs. Sumit Sehgal, was addressed to The Ministry of Law and Justice, Department of Legal Affairs, New Delhi with Case reference No. 38F 45/2016 for service on Mr. Sumit Sehgal, C/o S.K.Sehgal, House No. 1447, Vidya Niketan Road, Model Town, Near D-Park, Rohtak, which relates to the transfer of sole parental custody rights in favour of the petitioner in respect of the joint child so that she can take decisions alone in all important matters concerning the child as the joint exercise of parental custody together with the child's father would not be possible. The requesting judicial authority is Judge, Leverkusen Local Court, Leverkusen, Germany.

On receipt of the above request, The Ministry of Law and

Justice, Department of Legal Affairs (Judicial Section), Shastri Bhawan, New Delhi through the Assistant Legal Advisor, Government of India (Judl.), vide letter dated 14.09.2016/04.10.2016, has addressed a letter to The Registrar, High Court of Punjab and Haryana, Chandigarh, forwarding the request from Judge, Leverkusen Local Court, Leverkusen, Germany for taking of evidence abroad in civil or commercial matters in the family matter for service on Mr. Sumit Sehgal c/o S.K.Sehgal with reference to Case No. 38F 45/2016 and send a report of the same for onward transmission to Judge, Leverkusen Local Court, Leverkusen, Germany in pursuance of which and keeping in view the provisions of the Hague Convention and the Code of Civil Procedure, the same has been treated as Civil Original Petition.

The provisions for Commission issued by the Foreign Courts and the procedure thereof are provided for in Section 78 and Order 26 Rules 19 to 22 of the Civil Procedure Code, 1908.

On perusal of the request, as referred to above, dated 14.09.2016/04.10.2016, this Court is satisfied that the Judge, Leverkusen Local Court, Leverkusen, Germany situated in foreign country is to obtain evidence in a civil/family dispute. Thus, in terms of the powers enshrined in Order 26 Rules 20 (a) and 21 of the Code of Civil Procedure, this Court deems it appropriate to appoint the Chief Judicial Magistrate, Rohtak as Commission for the purpose of recording, obtaining and taking evidence by examining the respondent Mr. Sumit Sehgal on the evidentiary questions.

Registry is directed to issue warrant of Commission in the name of Sh. Lokesh Gupta, Chief Judicial Magistrate, Rohtak forthwith. The Registry shall append all the necessary papers filed in this petition with

a copy of this order with the warrant of Commission. The Commission shall serve an advance notice to Sumit Sehgal, C/o S.K.Sehgal, House No. 1447, Vidya Niketan Road, Model Town, Near D-Park, Rohtak, 124001 Haryana, of his visit to enable him to be available to get his evidence recorded on the evidentiary questions contained in the letter of request.

The Commission is directed to return the evidence so collected in a sealed cover to the Registrar (Judicial) of this High Court within a period of four weeks from the date of receipt of the warrant of Commission, who shall then forward it to the Assistant Legal Advisor, Government of India (Judicial), Ministry of Law and Justice, Department of Legal Affairs (Judicial Section), Shastri Bhawan, New Delhi along with the letter of request for transmission to the concerned foreign Court/person.

No costs.

Ordered accordingly.

November 30, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**