



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CS(COMM) 379/2022 & I.A. 29993/2024****PRAVESH NARULA TRADING AS M/S. CAPITAL
ENTERPRISES**

.....Plaintiff

Through: Mr. A.K. Goel, Advocate with Mr.
Anshul Goel and Mr. Ranjeev Kumar,
Advocates
Mob: 9873815146
Email: ip@ashokalaw.com

versus

**RAJ KUMAR JAIN TRADING AS M/S. BHOLARAM
PURANMALL AND ANR.**

.....Defendants

Through: Mr. Abhinay, Mr. Pooran Chand Roy
and Ms. Parul Khurana, Advocates
for D-1.
Mob: 7999374176
Email: parul.khurana@aslp partners.in

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****29.10.2024****I.A. 29993/2024 (Application under Order VI Rule 17 read with Section 151 of Code of Civil Procedure, 1908 ("CPC") for amendment in plaint)**

1. The instant suit has been filed by the plaintiff praying for permanent injunction restraining infringement of copyright, delivery up, rendition of accounts, damages, etc. During the pendency of the suit, the present application has been filed on behalf of the plaintiff under Order VI Rule 17, read with Section 151 CPC, for amendment of the plaint.



2. The case, as canvassed by the plaintiff in the present application, is as follows:

2.1 At the time of filing of the present suit, the trademark/label



of the plaintiff was not registered. However, the



trademark/label of the plaintiff has now been registered on 03rd May, 2024 with the Registrar of Trademarks under Registration no. 4242962 with effect from 23rd July, 2019 in respect of hosiery, and related products in Class-25.

2.2 The plaintiff has sought various reliefs in the suit, including, relief of permanent injunction restraining the defendants from infringement of the



plaintiff's copyright in his packaging which contains the



mark/label and passing off goods, as that of the plaintiff. The defendant has illegally and unlawfully adopted and used the impugned



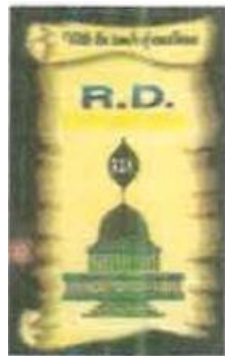
packaging/label, and .



2.3 The fact of registration of the plaintiff's trademark is a subsequent fact, which occurred during the pendency of the present suit. Therefore, the said fact was not incorporated in the plaint. After registration



of the trademark/label, the plaintiff is entitled to claim relief of permanent injunction, restraining the defendants from using the impugned



packaging and mark/label, on the basis of plaintiff's registered trademark.



2.4 Thus, it is necessary for complete adjudication of the present suit and to avoid multiplicity of litigation, that the proposed amendments, be allowed in the plaint, to incorporate the aforesaid facts.

3. On behalf of the plaintiff, it is submitted as follows:

3.1 Amendment can be allowed at any stage of the suit. The embargo, as provided under proviso of Order VI Rule 17 CPC, is not applicable in the



present suit, as registration of the plaintiff's label, was granted on 03rd May, 2024, which is a subsequent fact that occurred after closure of the plaintiff's evidence. Immediately thereafter, the plaintiff filed the present application for amendment of plaint.



3.2 The amendments are necessary for the purpose of determining the real questions in controversy between the parties.

3.3 Learned counsel appearing for the plaintiff has relied upon various judgments in support of his submissions, to submit that amendment in the pleadings can be allowed, even after the trial has commenced.

4. Per contra, on behalf of the defendants, it is submitted as follows:

4.1 Plaintiff obtained the registration certificate of the alleged trademark from the Trade Mark Registry, in complete contravention of various provisions of the Trade Marks Act, 1999. Aggrieved by the same, the defendant no. 1 has already filed a cancellation petition. Thus, it is submitted that the present application be kept in abeyance till the outcome of the cancellation petition filed by defendant no. 1.

4.2 The instant application is not maintainable as Order VI Rule 17 CPC itself strictly bars the amendment in the pleading, if the trial in the matter has already commenced.

4.3 The exception as provided in Order VI Rule 17 CPC does not help the plaintiff, as the plaintiff did not claim right on the alleged mark in the plaint and did not even mention the use of the alleged mark in the entire plaint.

4.4 Present amendment is not necessary for the purpose of determining the real question in controversy between the parties, as the issues, have already been framed in the present matter, vide order dated 11th July, 2022. The real controversy between the parties is as to who is the rightful proprietor/owner and prior user of the mark in question. Therefore, once the prior user and ownership is established, the parties would be governed by the order of this Court.

4.5 Registration of the alleged trademark is not a subsequent fact for



these matters, as the plaintiff has not claimed any right on the alleged mark in his entire plaint.

4.6 Plaintiff, due to lack of his own due diligence, did not seek any relief qua the mark in question. Now, at this stage by bringing the registration certificate on record, the plaintiff is attempting to introduce a new cause of action, which shall not be permitted by this Court.

4.7 The plaintiff, by way of the present application, is trying to improvise his case, as when the plaintiff's witness, PW-1 was asked questions with respect to the alleged mark, the said witness identified the defendant's mark as his own mark. This shows that the plaintiff is not even aware of his own marks, and against which marks he is seeking relief in the plaint.

4.8 The plaintiff has sought amendment in the prayer of the plaintiff, as the plaintiff intends to convert the passing of prayer, into one of infringement of trademark. By the proposed amendment, the plaintiff wants to introduce an entirely different case/new mark, and if such amendments are permitted, it would seriously prejudice the defendants.

4.9 Plaintiff obtained the registration of defendant no.1's artistic work, by falsely representing that he is the owner of the copyright in the artistic work. Whereas, it is actually the defendant no. 1 who has conceived, coined, and authored and has been using the impugned artwork from around 2002.

4.10 The plaintiff is trying to delay the proceedings in the present matter. The evidence of the plaintiff's witness has been completed, and the evidence of the main defendant and his witness, i.e., DW-3, was concluded on 30th May, 2024. Now, only three defendants' witnesses are remaining for their examination. Thus, allowing the amendment at this stage will not only linger the suit, but also seriously prejudice the defendant.



5. I have heard learned counsels for the parties and have perused the record.

6. At the outset, it is to be noted that the present application for amendment of the plaint has been occasioned on account of the trademark/label of the plaintiff having been recently granted registration on 03rd May, 2024 by the Registrar of Trade Marks. Thus, the plaintiff seeks to introduce facts relating thereto, and pray for relief of permanent injunction restraining the defendants from using the impugned packaging and mark/label on account of infringement of the plaintiff's registered trademark.

7. Holding that the supervening event of registration of trademark is a fact, which can be taken note of and on that basis the application for amendment deserves to be allowed, a Division Bench of this Court in the case of *Usha International and Another Versus Usha Television Ltd.*¹, has held as follows:

“xxx xxx xxx

7. The Court further observed that “it is well settled that the main considerations to be borne in mind in exercising the discretion are that the rules of procedure have no other aim than to facilitate the task of administering justice, that multiplicity of suits should be avoided and that the interest of substantial justice should be advanced.”

8. Mr. Pravin Anand, the learned counsel for the appellants, also placed reliance on the judgment of the Madras High Court in *A. Abdul Karim Sahib v. A. Shanmugha Mudaliar* (1967 MLJ 468). The Court observed that “the statute law relating to infringement of trade mark is based on the same fundamental principles as the general law relating to passing off Though there may be some procedural differences between the two actions, in substance and in effect an action for passing off can easily be telescoped into an action for infringement of trade mark and vice

¹ 2022 SCC OnLine Del 306



versa. Hence a suit instituted for an injunction restraining the defendant from marketing certain goods under a mark which is deceptively similar to the plaintiff's mark can be amended into one for infringement of trademark under the Trade and Merchandise Marks Act, 1958 if the plaintiff has obtained registration of his mark under the Act after the institution of the suit. Such an amendment will not change the cause of action and would only be in the nature of an alternative relief. In this judgment the Court also observed that by allowing the amendment multiplicity of suits are also avoided.

9. The Full Bench of the Madras High Court in *Subramaniam v. Sundaram*, (1963) 1 MLJ 113 considered the propriety of a Court taking note of subsequent events. It is no doubt true that a suit has to be decided on the facts and circumstances existing on the date of its institution, but circumstances do warrant a Court taking into consideration supervening events as well provided the justice of the case requires. The Full Bench observed that "the discretion of the Court, under its inherent powers, to adjust the parties on the basis of events happening after the starting of the action, is well recognised and accepted as a rule of justice, equity and good conscience. In some case, it is almost the duty of the Court to advert to the subsequent events brought to its notice lest it should fail to do substantial justice between the parties." The Full Bench considered the propriety of a Court taking note of subsequent events. It is no doubt true that a suit has to be decided on the facts and circumstances existing on the date of its institution, but circumstances do warrant a Court taking into consideration supervening events as well provided the justice of the case requires.

10. In another case *Lydia Margaret Santhanam v. David Thamburaj*, (1966) 1 MLJ 408 the Madras High Court held that "the test for allowing applications for amendment of plaints would be, not merely whether a new cause of action is introduced but whether, if it is allowed, thereby the defence would in any way be prejudiced, either by deprivation of the plea of limitation or any other plea... A new cause of action can well be allowed to be taken by way of an amendment provided it is an alternative plea."

11. In *Nichhalbhai v. Jaswantlal*, AIR 1966 SC 997 their Lordships of the Supreme Court observed that "if the amendment is refused the plaintiff may have to bring another suit and the object of the rule for allowing amendments to the plaint is to avoid multiplicity of suits."

12. We passed over the matter and waited for the counsel for the respondent, but none appeared for the respondent.



13. We have heard the learned counsel for the appellants and carefully perused the judgments cited at the Bar. In our opinion, the law relating to infringement and passing off are fundamentally similar. The supervening event of registration of trademark under the Trade and Merchandise Marks Act, 1958 is a fact which can be taken note of and on that basis the application for amendment deserves to be allowed.

14. The rule of amendment of pleadings has to be governed on the basic rule of justice, equity and good conscience. When this principle is applied, the amendment as prayed has to be allowed. We are satisfied that the alternative plea that is sought to be raised by the appellant in the amendment application is only by way of expatiating his rights which he has secured by a statute. Apart from this, the main consideration for allowing the application is to avoid multiplicity of proceedings which means saving of precious judicial time and saving of avoidable expenses for the litigants.

xxx xxx xxx”

(Emphasis Supplied)

8. It is a settled proposition that if an amendment is necessary for deciding the real controversy between the parties and for arriving at a just conclusion, such amendment can be allowed even at a later stage. The power to allow amendment is wide and can be exercised at any stage of the proceedings. It has been laid time and again that in cases where cause of action arose during the pendency of a suit, amendments ought to be allowed, as the same did not change the basic structure of the suit, and merely changed the nature of the relief claimed. It is necessary for the Courts to take notice of subsequent events in order to shorten the litigation and to serve the ends of justice. Thus, in the case of **Rajesh Kumar Aggarwal and Others Versus K.K. Modi and Others**², Supreme Court has held as follows:

“xxx xxx xxx”

² 2006 SCC OnLine SC 320



15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

xxx xxx xxx”

(Emphasis Supplied)

9. There is no bar to allowing an amendment even after commencement of the trial, if it is shown that in spite of due diligence, such amendment could not have been sought earlier. In the present case, the plaintiff intends



to incorporate an additional relief relating to infringement, post registration of the trademark. It is to be noted that the cause of action for infringement and passing off actions, are based on same set of facts. After registration of its mark, the plaintiff would be entitled to maintain a suit for infringement. Therefore, for a complete and effective adjudication of the disputes involved in the case, it is imperative that amendment is allowed, to avoid multiplicity of proceedings.

10. Holding that a Court may allow either party to amend the pleadings, if it is established that the proposed amendment is necessary for determining the real question in controversy between the parties, even if the prayer for amendment was a belated one, Supreme Court in the case of *State of Madhya Pradesh Versus Union of India and Another*³, has held as follows:

“xxx xxx xxx

7. *The above provision deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it must be shown that in spite of due diligence, such amendment could not have been sought earlier.*

8. *The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.*

³ 2011 SCC OnLine SC 1108



xxx xxx xxx

10. This Court, while considering Order 6 Rule 17 of the Code, in several judgments has laid down the principles to be applicable in the case of amendment of plaint which are as follows:

(i) Surender Kumar Sharma v. Makhan Singh [(2009) 10 SCC 626 : (2009) 4 SCC (Civ) 294] , at para 5 : (SCC p. 627)

“5. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment.”

(ii) North Eastern Railway Admn. v. Bhagwan Das [(2008) 8 SCC 511] , at para 16 : (SCC p. 517)

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side; and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”

(iii) Usha Devi v. Rijwan Ahamd [(2008) 3 SCC 717 : (2008) 1 SCC (Civ) 922] , at para 13 : (SCC p. 722)



“13. Mr Bharuka, on the other hand, invited our attention to another decision of this Court in *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498] . In para 17 of the decision, it was held and observed as follows : (SCC pp. 504-05)

‘17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion on the court to allow an amendment of the written statement at any stage of the proceedings.’”

(iv) *Rajesh Kumar Aggarwal v. K.K. Modi* [(2006) 4 SCC 385] , at paras 15 & 16 : (SCC pp. 392-93)

“15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.”

(v) *Revajeetu Builders and Developers v. Narayanaswamy and Sons* [(2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37] , at para 63 : (SCC p. 102)

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;



- (2) whether the application for amendment is bona fide or mala fide;
(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

The above principles make it clear that courts have ample power to allow the application for amendment of the plaint. However, they must be satisfied that the same is required in the interest of justice and for the purpose of determination of real question in controversy between the parties.

xxx xxx xxx”

(Emphasis Supplied)

11. The proposed amendments do not change the nature and character of the case, as a case for infringement is essentially based on similar and identical facts, as that of a case for passing off. It has been held in a catena of judgments that the Courts ought to take a liberal view in favour of allowing amendments and allow a party to amend the pleadings, by taking note of subsequent events. The power of the Court to allow amendments even after the commencement of the trial, is not restricted. If the amendments, as sought in the present case, are not allowed, the same will lead to unnecessary multiplicity of litigation.

12. Thus, holding that Courts should not adopt a hyper technical approach and must not refuse *bona fide*, legitimate, honest and necessary amendment,



Supreme court in the case of ***Ramesh Kumar Agarwal Versus Rajmala Exports Private Limited and others***⁴, has held as follows:

“xxx xxx xxx

19. In *Rajkumar Gurawara v. S.K. Sarwagi & Co. (P) Ltd.* [(2008) 14 SCC 364] this Court considered the scope of amendment of pleadings before or after the commencement of the trial. In para 18, this Court held as under: (SCC p. 369)

“18. ... It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation.”

20. In *Revajeetu Builders & Developers v. Narayanaswamy & Sons* [(2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37] this Court once again considered the scope of amendment of pleadings. In para 63, it concluded as follows: (SCC p. 102)

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

⁴ 2012 SCC OnLine SC 313,



(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

21. It is clear that while deciding the application for amendment ordinarily the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

xxx xxx xxx”

(Emphasis Supplied)

13. Merely because rectification proceedings have been initiated by the defendants challenging the registration of the mark in favour of the plaintiff, is no ground for not allowing the present application for amendment of the plaint.

14. Considering the detailed discussion hereinabove, this Court holds that there is no impediment in allowing the present application and the amended plaint to be brought on record. Accordingly, the present application is allowed. The amended plaint filed along with the present application, is taken on record.



2024:DHC:8405



15. With the aforesaid directions, the present application is disposed of.

OCTOBER 29, 2024
au/ak/kr

MINI PUSHKARNA, J