

MANU/DE/0068/2011

Equivalent Citation: 180(2011)DLT167, 180(2011)DLT167, MIPR2011(1)168, 2011(45)PTC343(Del)**IN THE HIGH COURT OF DELHI**

I.A. Nos. 6505/2010 and 13661/2009 in CS (OS) No. 720/2009

Decided On: 17.01.2011

Appellants: **Bhatia Industries and Ors.****Vs.**Respondent: **Pandey Industries and Ors.****Hon'ble Judges/Coram:**

V.K. Jain, J.

Counsels:

For Appellant/Petitioner/plaintiff: Pratibha M. Singh, Jaspreet Singh Kapur and Saya Choudhary, Advs.

For Respondents/Defendant: Sanjeev Singh and Amit Jha, Advs.

Subject: Intellectual Property Rights**Acts/Rules/Orders:**

Copyright Act, 1957 - Section 2, Copyright Act, 1957 - Section 62(2); Code of Civil Procedure (CPC) - Section 151, Code of Civil Procedure (CPC) - Order 6 Rule 17, Code of Civil Procedure (CPC) - Order 7 Rule 10, Code of Civil Procedure (CPC) - Order 7 Rule 10A, Code of Civil Procedure (CPC) - Order 7 Rule 11, Code of Civil Procedure (CPC) - Order 8 Rule 10, Code of Civil Procedure (CPC) - Order 14 Rule 2

Cases Referred:

Saleem Bhai and Ors. v. State of Maharashtra and Ors. MANU/SC/1185/2002 : (2003) 1 SCC 557; Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner MANU/SC/0071/2004 : (2004) 3 SCC 137; K. Narayanan and Anr. v. S. Murali 2008 (3) R.A.J. 631 (SC); Archie Comic Publications, Inc. v. Purple Creations Pvt. Ltd. and Ors. MANU/DE/0635/2008 : 2008 (37) PTC 279 (Del.); A.V.R. Engineers v. Sharma Moulding Works and Ors. MANU/DE/2739/2008 : 2008(38) PTC 243 (Del.); Dhodha House and Patel Field Marshal Industries v. S.K. Maingi and P.M. Diesel Ltd. 2006 (32) PTC 1; Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon MANU/SC/0016/1969 : AIR 1969 SC 1267; Ajarjeet Singh v. Municipal Corporation of Delhi MANU/DE/0050/1992 : AIR 1992 Delhi 317; Hans Raj Kalra v. Kishan Kalra AIR 1977 (Delhi) 267 ; Anil Goel v. Sardari Lal MANU/DE/0200/1998 : 75 (1998) DLT 641

Disposition:

Application allowed

Citing Reference:

Discussed		3
Mentioned		5
Relied On		2

Case Note:

Trade Marks - Suit for Infringement of Trade mark - Maintainability questioned thereof on ground of lack of Territorial Jurisdiction - Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) - plaintiffs filed suit claiming trade mark and copyright infringement by Defendants and also filed for amendment of plaint — Defendants filed application for rejection of plaint on ground of lack of territorial jurisdiction of Court - Hence, present application - Held, nothing in law precludes the plaintiff from relying upon the admission made in the pleadings and/or documents of the Defendant to show that the Court has territorial jurisdiction to try the suit filed by him - If the Defendant makes averments, which constitute a territorial jurisdiction of this Court, the plaintiff is very much entitled to rely on those averments and to claim that the admission made by the Defendant in this regard is sufficient to prove the territorial jurisdiction of the Court - Application dismissed

Civil - Application for amendment of plaint - Held, an amendment, which is of clarificatory nature needs to be allowed since it causes no prejudice to either party - Further, court should allow all amendments, which are necessary for determining the matters in controversy between the parties

since the object of the Court is to decide the right of the parties and not to punish them for the mistake they make in conduct of their cases - In the instant case, by way of proposed amendment, the plaintiffs want only to clarify that the sale referred by them was being made by the Defendants in Delhi and that they have business activities in the jurisdiction of this Court - The proposed amendment does not change nature of the suit or the cause of action on which it is based and does not prejudice the Defendants in any manner - Application dismissed

Ratio Decidendi:

“An amendment, which is of clarificatory nature needs to be allowed since it causes no prejudice to either party.”

JUDGMENT

V.K. Jain, J.

1. This is a suit for permanent injunction. The Plaintiff No. 1 claims to be the owner of the trademark TIYA having acquired it by assignment from Plaintiff No. 2. It is alleged that the mark TIYA was registered in the name of Plaintiff No. 2 vide registration No. 299272 on 13th September, 1974. The registration of the trademark in the name of Plaintiff No. 1 M/s Tiya Industries was renewed for some years but the registration discontinued thereafter. The trademark is stated to have been assigned by Plaintiff No. 2 to Plaintiff No. 1 in the year 1983 and is being used by Plaintiff No. 1 since the year 1981 in respect of steel and rubber parts for the cycle and auto industries mainly of steel balls, nuts bolts, rings, spoke wires and cycle parts etc. The Plaintiffs claim to be the exclusive owner of the trademark TIYA with logo on account of its continuous user since the year 1974. This is also the case of the Plaintiffs that they are selling their products under a distinctive label and trade dress, which constitute an original artistic work within the meaning of Section 2(c) of the Copyright Act, 1957 and the copyright in that work vests in Plaintiff No. 1. Defendant No. 1 has obtained registration of this trademark in its favor since 19th July, 2004/28th April, 2006. The case of the Plaintiffs is that the Defendants having committed acts of infringement and passing off by adopting the trademark TIYA and using the trade dress, gets up, color combination and label identical to that of the Plaintiffs.

2. As regards jurisdiction of this Court, para 14 of the plaint, to the extent it is relevant, reads as under:

14. ...The Plaintiff came across the goods of the Defendants towards the end of March 2008 TIYA with Logo being imitating trademark and the Plaintiff inquired in the market at its level that the Defendant had started commercially using the trademark only recently and the Defendants were carrying their activities in a clandestine and deceitful manner....

Para 58 of the plaint reads as under:

58. That where the plaint schedule is within the jurisdiction of this Hon'ble Court.

3. The Defendants have contested the suit and have taken a preliminary objection that this Court has no jurisdiction to try the present suit since no cause of action arose within the jurisdiction of this Court. It is also alleged that the business activities of the Defendants including the acts of manufacturing and marketing of their goods are confined/limited to the territories of the State of U.P. and no components/parts/goods are being supplied outside the State of U.P. It has also been alleged that at no given point of time, the Defendants have made any business transaction within the territorial jurisdiction of this Court and they are not passing off their goods and business as that of the Plaintiffs within the jurisdiction of this Court. However, in para C of the preliminary objections, the Defendants have, inter alia, stated as under:

...The Defendants have been marketing and selling its goods throughout India since its inception in the year 1995. The Goods/products of the Defendants has been always available in Different markets of India in different parts and Defendants are well known among big dealers and distributors dealing in the said goods/products or allied or cognate goods. Accordingly, the Defendants enjoy goodwill and reputation throughout the country....

4. I.A. 13661/2009 has been filed by the Defendants under Order VII Rules 10 and 11 of the Code of Civil Procedure for rejection of the plaint on the ground that this Court has no territorial jurisdiction to try this suit as no cause of action arose within the jurisdiction of this Court.

5. I.A. 6505/2010 has been filed by the Plaintiffs for amendment of the plaint. The Plaintiffs wants to amend para 58 of the plaint as also the prayer clause in the following manner:

Existing Paragraph

That where the plaint schedule is within the jurisdiction of this Hon'ble Court

Proposed amendment paragraph No. 58

That this Hon'ble Court has got the territorial jurisdiction to entertain and try the present suit the Plaintiff has invoked the jurisdiction of this Hon'ble Court under Section 62(2) of the Copyright Act, 1957. Further, the Defendants have their business activities within the jurisdiction of this Hon'ble Court as they are selling the infringing goods within Delhi in clandestine manner without issuing the cash memo and their Trademark Application was filed, prosecuted and registered in Delhi claiming the use for all over India.

Existing prayer clause

1. to grant a permanent decree against the Defendants, their partners/proprietor, assigns in business, distributors, dealers and agents are restrained from manufacturing, selling, offering for sale, advertising directly or indirectly dealing in steel balls or any other cycle parts under the impugned trademark TIYA or the impugned label/trade dress pertaining thereto or any other trademark/lable/trade dress as may be deceptively similar to the trademarks Tiya label of the Plaintiffs Tiya with or without trademark or part thereof"

2. To grant a permanent injunction that goods of all the description in the name of the TIYA with mark shall be restrained from packaging, manufacturing and confiscating from the Defendant No. 1 and 2 along with their associates, dealers, distributor, agent stockiest and retailers in the channel

Proposed amended paragraph:

1.to grant a permanent decree against the Defendants, their partners/proprietor, assigns in business, distributors, dealers and agents are restrained from manufacturing, selling, offering for sale, advertising directly or indirectly dealing in steel balls or any other cycle parts under the impugned trademark TIYA or the impugned label/trade dress pertaining thereto or any other trademark/lable/trade dress as may be deceptively similar to the trademarks Tiya label of the Plaintiffs Tiya with or without trademark or part thereof which amounting passing off their goods as that of the Plaintiff

2.to grant a permanent decree against the Defendants, their partners/proprietor, assigns in business, distributors, dealers and agents are restrained from manufacturing, selling, offering for sale, advertising directly or indirectly dealing in steel balls or any other cycle parts under the impugned label/trade dress/TIYA LOGO placed at page 198 of the list of document or any other label/trade dress/logo/device which may be similar/deceptively similar to Plaintiffs Tiya logo and or amounting infringement of Copyright of the Plaintiff packaging material

The Plaintiffs are also seeking to amend the title of the suit as under:

SUIT FOR PERMANENT INJUNCTION RESTRAINING INFRINGEMENT OF COPYRIGHT, UNFAIR COMPETITION, PASSING OFF AND DAMAGES

6. Admittedly, a criminal complaint was filed by the Defendants at Varanasi and in para 8 of the complaint, the Defendants, inter alia, alleged as under:

...Due to the complainant's ability of maintaining quality control, the complainant's goods are demanded in large quantity and complainant is known country wide.

7. If para - "C" of the preliminary submissions in the written statement and the averments made in the criminal complaint filed by the Defendants are read without reference to other parts of the written statement, they contain an admission that the Defendants have been marketing and selling their goods throughout India since 1995 and their goods have always available in various parts of the Country, which obviously would include Delhi. On the other hand, the Defendants have also alleged in the written statement that all their business activities were confined to State of U.P. and they were neither manufacturing nor selling any goods outside the State of U.P.

8. In view of these seemingly contradictory pleas taken in the written statement, it is difficult for the Court to be certain at this stage as to whether the Defendants were actually selling any goods in the jurisdiction of this Court or not. If they have been selling goods in Delhi and thereby allegedly passing off their goods as those of the Plaintiffs, the Delhi Court would obviously have jurisdiction to try the suit since part of cause of action in that case arose within the territorial jurisdiction of this Court.

9. In my view, the averments made in para 14 of the plaint when read with para 58 thereof, can also be taken

manupatra to mean that the Plaintiffs had come across the goods of Defendants in Delhi as well. It would be pertinent to note here that though in para 14 of the plaint, the Plaintiffs do not specifically claim that they had come across the goods of the Defendants in Delhi and that the Defendants were carrying their activities in Delhi, they also do not say that the goods of the Plaintiffs were found by them outside Delhi. The Plaintiffs are based in Delhi and do not claim to have any office in the State of U.P. In para 58, the Plaintiffs alleged that the plaint schedule is within the jurisdiction of this Court. When read in light of para 58, the averments made in para 14 of the plaint can also mean that it was in the jurisdiction of this Court that the goods of the Defendants were found by the Plaintiffs. The Plaintiffs can, therefore, explain that the averments made by them in para 14 of the plaint were intended to refer the sale of the products of the Defendants in Delhi. Of course, no definite view in this regard can be taken at this stage.

10. Order XIV Rule 2 of the Code of Civil Procedure provides that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues. It further provides that where issues both of law and fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force.

Though issues have not been framed in this case so far, applying the principles contained in Sub-rule 2 of Rule 2 of Order XIV of the Code of Civil Procedure, it can safely be said that when the issue relating to territorial jurisdiction of the Court is a mixed question of fact and law and, therefore, cannot be decided without recording evidence, the Court will not be justified in taking a final view on the issue of jurisdiction without giving opportunity to the parties to lead evidence in this regard.

11. Order VII Rule 11 of the Code of Civil Procedure, which provides for rejection of plaint, to the extent it is relevant, empower the Court to reject the plaint where it does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law. The cause of action comprises bundles of facts, which the Plaintiff has to prove in order to obtain the relief claimed by him. If the plaint discloses facts which would entitle to the Plaintiff to the relief sought by him but it is found that the cause of action did not arise in the territorial jurisdiction of this Court, it would not be a case of the plaint not disclosing a cause of action and, therefore would not entail its rejection under Order VII Rule 11(a) of the Code of Civil Procedure. In such a case, the Court, in view of the provisions contained in Order VII Rule 10 of the Code of Civil Procedure, is required to return the plaint to the Plaintiff to present it to the Court in which the suit should have been instituted by him. Rule 10A of Order VII provides that in such a case, the Court shall, before returning the plaint, intimate its decision to the Plaintiff, who may then make an application to the Court specifying the Court in which he proposed to present the plaint after its return, praying that the Court may fix a date for appearance of the parties in the Court where he proposes to present the plaint and requesting that the notice of the date so fixed may be given to the parties to the suit. Sub-rule 3 of Rule 10A of Order VII of the Code of Civil Procedure specifically empower the Court to pass such an order despite the fact that it has no jurisdiction to try the suit. Therefore, in my view Clause (a) of Rule 11 of Order VII of the Code of Civil Procedure has no application where plaint does disclose a cause of action but not in the territorial jurisdiction of the Court where the suit has been filed. As far as Clause (d) of Rule 11 of Order VII of the Code of Civil Procedure is concerned, that would apply only where the averments made in the plaint show that the plaint is barred by any law. This clause has no application in a case where the Court has no territorial jurisdiction to try the suit though the suit is not barred by any law. Clause (d) would apply only in a case where it appears on the face of the plaint that the suit is barred under any law. This clause may apply when the jurisdiction of civil Court is altogether excluded under a provision of law but has no application where it is only territorial jurisdiction of the Court, which is alleged to be absent. Moreover, in order to ascertain whether the suit is barred by any law or not, it is only the averments made in the plaint, which have to be seen. In the case before this Court, the averments made in the plaint cannot be interpreted to mean that Delhi Court has no territorial jurisdiction to try this suit. Therefore, Clause (d) of Rule 11 of Order VII of the Code of Civil Procedure does not apply to this case.

12. It was contended by learned Counsel for the Defendants that while deciding an application under Order VII Rule 11 of the Code of Civil Procedure, it is only the averments made in the plaint which can be taken into consideration and, therefore, it is not permissible to look into the averments made in the written statement or the documents of the Defendants to make out territorial jurisdiction on the Court.

13. In my view, the contention is misconceived in law. If the Defendant claims that the Plaintiff had no cause of action to file the suit and relies on the averments made and documents filed by him for this purpose, it is open to the Plaintiffs to say that it is only his pleadings and documents which can be looked into by the Court to decide whether the plaint discloses any cause of action or not and the pleadings and documents of the Defendants cannot be looked into for this purpose. This plea, however, is open only to the Plaintiff and not to the Defendant. Nothing in law precludes the Plaintiff from relying upon the admission made in the pleadings and/or documents of the Defendant to show that the Court has territorial jurisdiction to try the suit filed by him. In fact, if the Defendant himself pleads facts which constitute territorial jurisdiction of the Court, it is not open to him to claim that the Court has no territorial jurisdiction or to say that no part of cause of action arose within the jurisdiction of the Court and, therefore, the Court has no territorial jurisdiction to try the suit.

manupatra 14. The learned Counsel for the Defendants has referred to the decision of the Supreme Court in Saleem Bhai and Ors. v. State of Maharashtra and Others MANU/SC/1185/2002 : (2003) 1 SCC 557. In the case before the Supreme Court, the Appellant, who was Defendant in the suit, filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection under Clause (a) and (d) of Rule 11 of Order VII of Code of Civil Procedure. The Respondent, who was the Plaintiff in the suit, filed an application under Order VIII Rule 10 of the Code of Civil Procedure to pronounce judgment on the ground that the Appellant had not filed the written statement. An application was also filed by the Appellant/Defendant requesting the Court to decide the application under Order VII Rule 11 Code of Civil Procedure first. The learned trial Judge dismissed the application under Order 8 Rule 10 of the Code of Civil Procedure filed by the Respondent/Plaintiff as also the application filed under Section 151 CPC. As regards the application of the Appellant/Defendant, he directed the Defendant to file his written statement. Aggrieved from the order, the Appellant approached the High Court, which confirmed the order of the learned trial Judge. Setting aside the decision of the High Court, it was held by the Supreme Court that the power under Order VII Rule 11 of the Code of Civil Procedure can be exercised by the trial Court at any stage of the suit including before registering the plaint or after issuing summons to the Defendant on any time before conclusion of the trial. It was, in this context, that the Court was of the view that for the purpose of deciding an application under Clause (1) and (d) of Rule 11 of Order VII, the averments made in the plaint are germane and the pleas taken by the Defendant in the written would be wholly irrelevant at that stage and, therefore, the direction to file written statement before deciding the application under Order VII Rule 11 of the Code of Civil Procedure was a procedural irregularity. However, in the case before this Court, no specific direction was given by the Court to the Defendants to file the written statement before they filed an application under Order VII Rule 11 of the Code of Civil Procedure. On 2nd September, 2009 when the Defendants for the first time had put appearance before the Court, their counsel stated that he would file the written statement within four weeks. The written statement was accordingly signed by the Defendants on 6th October, 2009, as is evident from the photocopy of the written statement placed on record by the Plaintiffs and affidavit of Mr. Shashank Pandey, one of the partners of the Defendant firm sworn on 6th October, 2009 was also enclosed to it. Copy of the written statement was supplied to learned Counsel for the Plaintiffs. Of course, the written statement in original is still not before the Court. Replication to the written statement was filed by the Plaintiffs on 30th November, 2009. The application under Order VII Rules 10 and 11 of the Code of Civil Procedure was filed by the Defendants on 6th October, 2009. This application is also supported by the affidavit of Mr. Shashank Pandey on 6th October, 2009. It is, thus, evident that the I.A. No. 13661/2009 as also the written statement were signed and verified on 6th October, 2009 and the affidavits in support thereof were also sworn on the same date. Obviously, either the written statement was returned by the registry on account of some objection or the Defendants deliberately withheld its filing despite supplying its advance copy to the Plaintiffs.

15. The learned Counsel for the Defendants has after arguments submitted photocopies of the decisions rendered in Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner MANU/SC/0071/2004 : (2004) 3 SCC 137, K. Narayanan and Anr. v. S. Murali 2008 (3) R.A.J. 631 (SC), Archie Comic Publications, Inc. v. Purple Creations Pvt. Ltd. and Ors. MANU/DE/0635/2008 : 2008 (37) PTC 279 (Del.), A.V.R. Engineers v. Sharma Moulding Works and others MANU/DE/2739/2008 : 2008(38) PTC 243 (Del.) and Dhodha House and Patel Field Marshal Industries v. S.K. Maing and P.M. Diesel Ltd. 2006 (32) PTC 1.

16. In the case of Sopan Sukhdeo Sable (supra), the Supreme Court referred to its earlier decision in the case of Saleem Bhai (supra), which I have already dealt with in the preceding paragraph.

17. In the case of K. Narayanan (supra), the Supreme Court referred to its decision in the case of Dhodha House (supra) wherein it had concurred with the view taken by a Division Bench of the Madras High Court to the effect that mere filing of a trademark application does not constitute a cause of action to file a suit for passing off. However, in the case before this Court, there are specific allegations that the Defendants were passing off their goods as those of the Plaintiffs and, as discussed earlier, the averments made in this regard in the plaint can also be interpreted to mean that the goods of the Defendants were also being sold in Delhi. Also, as noted earlier, the Defendants themselves have claimed in their written statement that they were selling goods throughout the country, which obviously, would include Delhi.

18. In the case of A.V.R. Engineers (supra), this Court reiterated the otherwise settled proposition of law that the Court has to see only the averments made in the plaint, to decide whether the suit discloses a tribal cause of action and whether the Court has jurisdiction in the matter. However, as noted earlier, the plea that only the averments made in the plaint can be looked into by the Court while considering an application under Order VII Rule 11 of the Code of Civil Procedure is open only to the Plaintiff and not to the Defendant. If the Defendant makes averments, which constitute a territorial jurisdiction of this Court, the Plaintiff is very much entitled to rely on those averments and to claim that the admission made by the Defendant in this regard is sufficient to prove the territorial jurisdiction of the Court.

19. For the reasons given in the preceding paragraphs, I find no merit in I.A. No. 13661/2009 and the same is hereby dismissed.

20. Coming to I.A. No. 6505/2010, though the settled proposition of law is that a Court having no territorial jurisdiction in the matter cannot allow an amendment, which will have the effect of conferring jurisdiction on the court, in case the case before this Court, as noted earlier, it cannot be said at this stage that the Court

manupatra has no territorial jurisdiction to try the present suit. As stated earlier, the averments made in the plaint are also capable of an interpretation that the Defendants were selling their goods in Delhi and were thereby allegedly passing them off as the goods of the Plaintiffs in the jurisdiction of this Court. This is besides Defendants' own averment alleging sale throughout the country, which, obviously, would include Delhi. Therefore, the Court will not be justified in refusing amendment on the assumption that it has no territorial jurisdiction to try the present suit. Of course, the Court also cannot give a definite finding at this stage that it does have territorial jurisdiction to try the suit. The question, which then comes up for consideration, is as to whether the proposed amendment should be allowed or should be refused at this stage.

21. As observed by the Supreme Court in *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon* MANU/SC/0016/1969 : AIR 1969 SC 1267 the rules of procedure are intended to be a handmaid to the administration of justice and amendments cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure by a party. It was further observed that the Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. The Court was of the view that, however, negligent or careless may have been the first omission, and, however, late the proposed amendment, it may be allowed if it can be made without injustice to the other side.

22. If the proposed amendment is not allowed, there is likely to be objection by the Defendants to the Plaintiffs producing evidence to prove that the Defendants were selling their goods in the territorial jurisdiction of this Court. In the event of such an objection being upheld, the Plaintiffs would be denied an opportunity to prove such a sale, thereby resulting in miscarriage of justice. The Defendants on the other hand are not likely to be adversely affected, if the Plaintiffs are allowed to lead such evidence since they would have opportunity to lead evidence to rebut the evidence, which may be produced by the Plaintiffs in this regard. I, therefore, feel that the appropriate course of action in the facts and circumstances of the case would be to allow the proposed amendments. In fact, the amendments proposed by the Plaintiffs can also be said to be clarificatory in nature by clarifying that the sales alleged in para 14 of the plaint were in Delhi and, therefore, Delhi Court has jurisdiction to try the present suit. It is settled proposition of law that an amendment, which is of clarificatory nature needs to be allowed since it causes no prejudice to either party.

23. In *Ajarjeet Singh v. Municipal Corporation of Delhi* MANU/DE/0050/1992 : AIR 1992 Delhi 317, the Plaintiff alleging to be an allottee filed a suit for perpetual injunction against the MCD seeking injunction against dispossession or demolition of the stall, which he was occupying. He later filed an application for amendment of plaint to plead that, in fact, one Amrik Singh was the tenant of the stall in question under MCD and he made a WILL thereof in favor of the Plaintiff, who had, thus, been in possession for over 12 years. Noticing that the plea sought to be taken by the Plaintiff was not totally new or inconsistent or contradictory and the proposed amendment was of a clarificatory nature to show how the Plaintiff became the allottee of the stall, the amendment was allowed by this Court.

In the case before this Court, the Plaintiffs have already alleged in para 14 of the plaint that they had come across the goods of the Defendants bearing the trademark TIYA with logo and on enquiry, the Plaintiffs came to know that the Defendants had started commercial use of the trademark and were carrying their activity in a clandestine and deceitful manner, without issuing any formal bills/invoices and without even mentioning the address on the packaging. By way of proposed amendment, the Plaintiffs want only to clarify that the sale referred by them was being made by the Defendants in Delhi and that they have business activities in the jurisdiction of this Court. The proposed amendment does not change nature of the suit or the cause of action on which it is based and does not prejudice the Defendants in any manner. It is also a settled proposition of law that the Court should allow all amendments, which are necessary for determining the matters in controversy between the parties since the object of the Court is to decide the right of the parties and not to punish them for the mistake they make in conduct of their cases.

24. In the case of *Archie Comic Publications (supra)*, referred by the learned Counsel for the Defendants, this Court, referring to its earlier decision in *Hans Raj Kalra v. Kishan Kalra* AIR 1977 (Delhi) 267 and *Anil Goel v. Sardari Lal* MANU/DE/0200/1998 : 75 (1998) DLT 641, held that if the Court, on the basis of averments made in the plaint as originally filed, finds that it does not have jurisdiction to entertain the suit, the Plaintiff's application under Order VI Rule 17 of the Code of Civil Procedure would not be maintainable and cannot be entertained. However, as stated earlier, at this stage, it cannot be said that the averments made in the plaint do not necessarily make out a case of territorial jurisdiction of this Court to entertain this suit. These averments can also be interpreted to mean that the Defendants were passing off their goods as those of the Plaintiffs in Delhi and, therefore, this Court has territorial jurisdiction to try the present suit. Moreover, in the case before this Court, the Defendants themselves have made averment, which may constitute jurisdiction of this Court to try the present suit.

25. I.A. 6505/2010 filed by the Plaintiff is, therefore, allowed, subject to payment of Rs. 10,000/- as costs. Amended plaint be filed within four weeks from today.

CS(OS) No. 720/2009 and I.A. No. 5353/2009 (O.39 R.1 and 2 CPC), I.A. No. 464/2010 (S. 151 CPC)

26. Written statement to the amended plaint by the Defendants can be filed within four weeks of the filing of

manupatra the amended plaint. Replication thereto, if any, can be filed within four weeks thereafter.

27. List the matter on 22nd March, 2011 for framing of issues and disposal of applications.

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