

MANU/DE/0998/2005

**Equivalent Citation:** 2005(31)PTC183(Del)**IN THE HIGH COURT OF DELHI**

IA 3205/2005 in CS(OS) 301/2003 and is 1637/2005 in CS(OS) 470/2004

Decided On: 28.07.2005

Appellants: **International Tractors Ltd.****Vs.**Respondent: **Punjab Tractors Limited****AND**Appellants: **Punjab Tractors Limited****Vs.**Respondent: **International Tractors Ltd. and Ors.****Hon'ble Judges/Coram:**

Swatanter Kumar, J.

**Counsel:**

For Appellant/Petitioner/plaintiff: Sudhir Chandra, Sr. Adv., Ameet Datta and Praveen Anand, Adv. in is 3205/2005 in CS(OS) 301/2003 and M.G. Ramachandran, Pratibha M. Singh, Atishi Dipankar and Tarun Singh, Adv. in is 1637/2005 in CS(OS) 470/200

For Respondents/Defendant: M.G. Ramachandran, Pratibha M. Singh, Atishi Dipankar and Tarun Singh, Adv. in is 3205/2005 in CS(OS) 301/2003 and Sudhir Chandra, Sr. Adv., Ameet Datta and Praveen Anand, Adv. in is 1637/2005 in CS(OS) 470/2004

**Subject: Civil****Acts/Rules/Orders:**

Code of Civil Procedure (CPC) - Section 10, Code of Civil Procedure (CPC) - Section 151, Code of Civil Procedure (CPC) - Order 6 Rule 17

**Cases Referred:**

Ragu Thilak D. John v. S. Rayappan and Ors., 2001(2) SCC 472; Charan Das v. Amir Khan, AIR 1921 PC 50, 2nd 48 Cal 110; L.J. Leach and Co. Ltd. v. Jardine Skinner and Co., AIR 1957 SC 357, 1957 SCR 438; Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393; Ganesh Trading Co. v. Moji Ram, (1988) 2 SCC 91; B.K. Narayana Pillai v. Parameswaran Pillai, (2000) 1 SCC 712, JT (1999) 10 SC 61; Indian Sulphacid Industries Ltd. v. Joginder Kaur and Anr., 1999 (2) PLR 734; Raghunath G. Panhale v. Chaganlal Sundarji and Co., (1999) 8 SCC 1; Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon, 1969 (1) SCC 86; Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy and Ors., JT 2001 7 SC 112; Balwant Singh v. Harbans Singh 1999(2) PLR 517

**Citing Reference:**

Discussed		1
Mentioned		10

**Case Note:**

**Civil - Amendment of Complaint - Section 151 and Order 6 Rule 17 of Code of Civil Procedure, 1908 (CPC) - Present two applications have been filed by plaintiff/applicant under Section 151 and Order 6 Rule 17 of CPC for amendment of complaint and amendment of written statement in separate suits - Held, applicant/plaintiff is enlarging scope of suit but primarily on same cause of action which had been pleaded by it in original complaint - Thus, it is a case of prayer for additional relief on additional facts within ambit and scope of original complaint and plaintiff is certainly not changing entire gamut and scope of original suit - Even issues have not been framed in present case - It will neither be just nor fair to compel plaintiff to file fresh litigation on basis of agreement of assignment which in turn is consequence of agreement between same parties - Multiplicity of litigation should be avoided and parties should be permitted to amend their pleadings is a settled canon of civil court - In view of above and in interest of justice, this application should be allowed as it would avoid multiplicity of litigation and would help in completely and finally determining real controversies between parties -**

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**Application is accordingly disposed of - So far proposed amendment of written statement is concerned, in any case it would be unnecessary because application of plaintiff for amendment in its own suit has already been allowed and both suits are consolidated - As such, no prejudice would be caused to applicant and present amendment application is ex facie unnecessary and is intended to prolong litigation between parties - No merit in this application and same is dismissed**

**Disposition:**

Application dismissed

**JUDGMENT**

**Swatanter Kumar, J.**

1. By this order, I would dispose of two applications is No. 3205/2005 in CS(OS) No. 301/2003 and is No. 1637/2005 in CS(OS) No. 470/2004 Both applications are under Order VI Rule 17 of the CPC read with Section 151 of the CPC. is 3205/2005 was filed by the plaintiff for amendment of the plaint in CS(OS) No. 301/2003 while is No. 1637/2005 was filed by the same applicant for amendment of the written statement in CS(OS) No. 470/2004 As common arguments have been addressed by the learned counsel appearing for the parties and both these suits are being heard and decided together, it will be appropriate to decide both these applications by a common order.

2. International Tractors Limited filed a suit for permanent injunction restraining Punjab Tractors Limited, their employees and agents etc. from dealing in the tractors, tractor housings or tractor components which are an identical or substantial reproduction of the drawings of CMERI made from time to time in respect of tractors and including those subject matter of CS(OS) No. 858/1999 between the parties in respect of tractors up to 60 HP with the exception of 20 HP tractors and from infringing the copy right of the plaintiff in that regard as well as for rendition of accounts and other reliefs. According to the plaintiff, a Memorandum of Undertaking was signed on 30th April, 1999 with Renault of France and the plaintiff. Wide publicity was given to the joint venture. The plaintiff company had approached the Council for Scientific and Industrial Research for a license to manufacture tractors based on its own drawings and knowhow. Under cover of agreement dated 7th June, 1999, CSIR granted the plaintiff an exclusive license. NRDC also granted to the plaintiff company an exclusive license in relation to the tractors already being manufactured by it on 17th June, 1999. Under this license, the plaintiff has the exclusive right to manufacture such tractors with the use of its technology. In terms of the license deed, the plaintiff could not interfere with the technology or means of the defendant with respect to tractors of 20 HP manufactured by the defendant. On this premise, the plaintiff brought the present suit that the defendant was committing breach of rights of the plaintiff as controlled under the license deed and was infringing the copyright of the plaintiff.

3. This suit was contested by the defendant on merits. According to the defendant, in relation to the drawings of 20 HP tractors, it was not infringing any copyright as it was using the drawings which were different of the NRDC/CMERI drawings. The entire suit was stated to be motivated and has been used as a pressure tactics to obstruct the production activity of the defendant. The defendant also relied upon the pleadings made in the earlier suit (CS(OS) No. 858/1999) between the parties. It is the case of the defendant that all major aggregates of the tractor i.e. the gear box, differential housing and rear axle system, hydraulics front axle system were formulated and developed by the research and development team of CMERI. The hydraulic system was later patented in India. The Government of Punjab being desirous of setting up a factory to manufacture tractors based upon the said technology and knowhow, the defendant was promoted by the Government of Punjab Undertaking to undertake the manufacture and sale of tractors. The defendant is authorised manufacture of the tractors and even under the terms of the license agreement, the defendant has been duly protected in regard to the tractors referred to in the plaint.

4. The parties have done admission and/or denial of their documents but no issues have been struck of in the suit as yet. The plaintiff then filed an application for amendment of the plaint stating that in terms of the license deed dated 17th June, 1999, the plaintiff was not to interfere with the use of the technology by the defendant with respect to 20 HP tractors manufactured by the defendant. A further supplementary deed was entered into between the plaintiff and the CMERI on 3rd May, 2001 whereunder the knowhow and drawings licensed under the June 1999 agreement was extended to cover all horse powers up to 60 HP except 20 HP, the rights of which were vested with the NRDC. Thereafter again, a Deed of Assignment was executed by CSIR on 12th July, 2002 vide which the plaintiff became the sole exclusive owner of knowhow in respect of tractors up to 60 HP with the exception of 20 HP tractors. Still another Assignment Deed dated 13th August, 2004 signed between the parties and wherein the plaintiff was assigned all rights in the pertinent tractor knowhow for 20 HP tractors. According to the plaintiff, knowhow also includes any improvements/development or modification thereof made prior to or after the effective date for the manufacturing of 20 HP tractors in modified or unmodified form. In the light of these facts and particularly the deed of assignment dated 13th August, 2004, the plaintiff prays for amendment of the plaint and thereby widening the scope of the suit and making similar prayers by amending paragraphs 13 (1), 16, 18, 20 and 21 of the existing plaint.

5. This application of the plaintiff is contested by the defendant on various grounds. It is stated that the application is vexatious, frivolous, malafide and is liable to be dismissed with exemplary costs. According to

manupatra the non-applicant, the defendant was given a license to use the drawings of 20 HP model tractors and it remains unaffected by any assignment deed including the assignment deed dated 13th August, 2004. The right of the plaintiff to be absolute and exclusive owner of the know-how, intellectual property including the copyrights etc. in those drawings is specifically disputed and denied. It is stated that none of the prayed amendments are necessary for proper determination of the controversy in the present suit.

6. The learned counsel appearing for the plaintiff with great emphasis contended that the plaintiff has prayed for leave to amend the suit on the basis of the subsequent events and with the intention to avoid multiplicity of litigation. The agreement dated 13th August, 2004 assigns rights to the plaintiff in a manner that the protection available to the defendant under the earlier agreements loses its significance and the exception in relation to drawing and technical knowhow of manufacturing of 20 HP tractors by the defendant is also now available to the plaintiff free of restriction and defendant has no right to infringe the copyright of the plaintiff in relation to various drawings and designs in relation to manufacture of that capacity tractors as well.

7. The learned counsel appearing for the defendant/non-applicant while referring to clause (iv) of the agreement dated 17th June, 1999 between the plaintiff and NRDC contended that the said clause specifically stipulated and protected the defendant. This clause fairly stated that notwithstanding anything contained in this agreement, the exclusive right of the licensee for seven years as specified above shall not, in any way, restrict the rights of the defendant to continue to manufacture and utilise the invention licensed earlier to it as per agreement of 31st July, 1972. This protection has not been disturbed by subsequent agreements. As such the plaintiff has no cause of action to amend the plaint. Furthermore, the plaintiff is changing the scope of the suit to the prejudice of the defendant. Thus the application is liable to be dismissed.

8. There is no doubt that the plaintiff is enlarging the scope of the suit by making the trade amendments. The plaintiff works to add necessary facts and prays for a larger relief than it had prayed in the original plaint relating to and based upon the contents of the agreement dated 13th August, 2004 executed between the plaintiff and NRDC which admittedly has been executed much after the institution of the present suit. The agreement is relating to assigning all rights in engineering drawings, designs, technology technical knowhow, technical knowledge and information in regard to the manufacturing and production of the tractors which according to the plaintiff even includes 20 HP tractors which so far being produced under a protected clause by the defendant. As a result of complete assignment, according to the plaintiff, its copyrights in these drawings are being infringed by the defendant and thus it prays for relief even in this regard in addition to the reliefs prayed for in the original plaint in relation to the manufacturing of all tractors up to 60 HP but with the exception of 20 HP tractors. In my view, the plaintiff is enlarging the scope of the suit but primarily on the same cause of action which had been pleaded by it in the original plaint. Thus, it is a case of prayer for additional relief on additional facts within the ambit and scope of the original plaint and plaintiff is certainly not changing the entire gamut and scope of the original suit. The plaintiff is not taking the defendant, by a surprise, to an extent that the plaintiff could be denied the relief of amendment at this initial stage of the proceedings. As already noticed, even the issues have not been framed in the present case, it will neither be just nor fair to compel the plaintiff to file fresh litigation on the basis of the agreement of assignment dated 13th August, 2004 which in turn is consequence of the agreement between the same parties dated 17th June, 1999 and 3rd May, 2001. The multiplicity of litigation should be avoided and the parties should be permitted to amend their pleadings is a settled canon of civil court. The contention of the defendant that plaintiff has no cause of action or that the plaintiff would not be entitled to any relief on the correct interpretation of the agreements in question including the agreement dated 13th August, 2004 as it no way alters or amends the protection granted to the defendant under clause (iv) of the earlier agreement, is a matter relating to the merits of the suit and which the parties would have to prove by leading proper documentary and/or oral evidence before the court during the trial. The court while dealing with the application for amendment would normally not comment upon or decide the merits of the controversy of the suit particularly when the amendment prayed for is merely asking for an additional relief within the permissible ambit and scope of the original plaint by mentioning certain additional and subsequent facts to the institution of the suit.

9. In the case of Ragu Thilak D. John v. S. Rayappan and Ors. 2001(2) SCC 472, the Supreme Court while dealing with the question of amendment of a plaint and the relief prayed for was barred by time as contended by the defendant where the relief of recovery of damages was being added by way of amendment to a suit for injunction, held as under:-

"5. After referring to the judgments in Charan Das v. Amir Khan MANU/PR/0043/1920 : AIR 1921 PC 50: 48 Cal 110, L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. MANU/SC/0009/1957 : [1957]1SCR438 , Ganga Bai v. Vijay Kumar MANU/SC/0020/1974 : [1974]3SCR882 , Ganesh Trading Co. v. Moji Ram (1988) 2 SCC 91 and various other authorities, this Court in B.K. Narayana Pillai v. Parameswaran Pillai MANU/SC/0775/1999 : AIR2000SC614

"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment

cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberty approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation."

6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in para 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for."

10. The material controversy in the suit between the parties is wide enough to take in its ambit the controversies relating to manufacturing of tractors alleged to have been covered by agreement of 13th August, 2004 This is a controversy to which the defendant would have every right to prove to the contrary and show to the court during the trial of the suit that the protection earlier given to it continues and it has a protected right to manufacture 20 HP tractors. Law of amendment should receive liberal construction and application in the suit. Reference in this regard can be made to the case of Indian Sulphacid Industries Ltd. v. Joginder Kaur and Anr. 1999 (2) PLR 734. It is a settled principle of law that law of amendment should be liberally applied to the suits particularly to avoid multiplicity of litigation and unless application for amendment was filed by the party who was acting malafide and would result in injury to the other side so as to take away a right or a benefit which had accrued to it as a result of negligence on the part of the applicant, the application should normally be allowed when it would cause no injustice to the other side and defendant would get full opportunity to meet the case of the applicant even if the amendment was allowed. Reference in this regard can be made to the judgments of the Supreme Court in Raghunath G. Panhale v. Chaganlal Sundarji and Co. MANU/SC/0657/1999 : AIR1999SC3864 and in Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon 1969 (1) SCC 86. It will also be appropriate not to compel the plaintiff to file a fresh suit which may liable to be stayed even under Section 10 of the CPC as the decision of the present suit is bound to have material bearing on the subsequent suit. Avoidance of multiplicity of litigation is one of the basic objects of procedural law and a party cannot be compelled to file other suit. In this regard, reference can be made to the judgment of the Supreme Court in Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy and Ors. MANU/SC/0503/2001 : AIR2001SC3685 and Balwant Singh v. Harbans Singh 1999(2) PLR 517.

11. In the interest of justice, this application should be allowed as it would avoid multiplicity of litigation and would help in completely and finally determining the real controversies between the parties. Consequently, is 3205/2005 is allowed. The plaintiff shall file the amended plaint within four weeks from today as well pay costs of Rs. 5,000/- to the defendant. The application is accordingly disposed of.

IA 1637/2005 in CS(OS) 470/2004

12. The plaintiff (defendant in CS(OS) No. 301/2003) had filed a suit praying that the defendant i.e. the plaintiff in CS(OS) No. 301/2003 its agents and employees etc. be restrained from doing acts amounting to infringement of the copyright vested in the drawings of the plaintiff to manufacture tractors and components and parts of the tractor as described in the schedule thereto and for rendition of accounts etc. The drawings which have been developed by the plaintiff in the suit have been annexed to the plaint as Annexure A-1 to A-11 and the infringing documents have also been placed on record. The claim of the plaintiff is limited to the infringement of the drawings which are annexed to the plaint and are relatable to only the product of the defendant.

13. The scope of the suit is limited. The defendants had filed an amended written statement to the amended plaint on 24th September, 2004 The agreement on which the plaintiff wishes to rely is dated 17th August, 2004 i.e. prior to the filing of the amended written statement to the amended plaint. No reference was made of the said agreement by the defendants in the amended written statement. Furthermore, No counter claim has been raised by the defendants in this written statement. While disposing of is No. 1137/2005, the court vide its order dated 15th February, 2005 had consolidated both the suits. The defendants by way of amendment cannot be permitted to convert the nature of the suit of the plaintiff as plaintiff is dominus litis. The proposed amendment of the written statement in any case would be unnecessary because the application of the plaintiff for amendment in its own suit has already been allowed and both the suits are consolidated. As such, no prejudice would be caused to the applicant and the present amendment application is ex facie unnecessary and is intended to prolong the litigation between the parties. I find no merit in this application and the same is dismissed while leaving the parties to bear their own costs.

14. is Nos. 3205/2005 in CS(OS) No. 301/2003 and 1637/2005 in CS(OS) No. 470/2004 are accordingly disposed of in the above terms.

