

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) No.146/2009 & CM Nos.2769/09, 3094/09 &**
 3333/09

Reserved on: April 02, 2009

% Date of Decision: April 08, 2009

HALDIRAM (INDIA) PVT. LTD. & ORS. Petitioners
 Through: Mr. Sandeep Sethi,
 Senior Advocate with
 Mr. Mahender Rana, Mr.
 Mohit Bakshi,
 Mr. Sindhu Sinha &
 Nikhil Bhalla, Advocates

Versus

M/S. HALDIRAM BHUJIAWALA & ANR. Respondents
 Through: Mr. C. Mukund, Advocate
 with Mr. Ashok Jain,
 Mr. Pankaj Jain, Mr.
 Amit Kasera, Mr.
 Auneesh Garg, Mr.
 Shashank Sharma and
 Ms. Vandana Anand,
 Advocates

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

MANMOHAN, J

1. Present petition has been filed under Article 227 of Constitution of India impugning the order of trial Court dated 21st February, 2009 to the extent that it did not permit petitioners-plaintiffs to file an amended plaint, even though trial Court by virtue of impugned order had allowed petitioners-plaintiffs' application for amendment dated 20th May, 2004.

2. Mr. Sandeep Sethi, learned senior counsel for petitioners-plaintiffs stated that on 15th November, 1995, petitioners had moved I.A. No.12420/95 under Order 22 Rule 10 CPC for recording assignment of subject trade mark in favour of a company "Haldiram (India) Pvt. Ltd." and for allowing consequential amendment in the plaint. Mr. Sethi, stated that by order dated 27th August, 2001, trial Court allowed the said application and directed an amended plaint to be filed. On 14th December, 2001, petitioners-plaintiffs even filed an amended plaint.

3. However, on 20th May, 2004, petitioners moved an application for amendment of plaint on the ground that in the amended plaint filed on 14th December, 2001, paragraphs 11(b) and 15(2) were left out and paras 14 and 15 were not correctly reproduced. According to Mr. Sethi, petitioners' steno-typist

while preparing amended plaint added the amendments allowed by order dated 27th August, 2001 not to the existing plaint as on that date but to an earlier plaint dated 21st January, 1992. Therefore, by 2004 amendment application, petitioners only sought correction of typographical errors with respect to amendments earlier allowed and which order had become final. Along with 2004 amendment application, a copy of amended plaint was annexed. However, according to Mr. Sethi, the annexed amended plaint was not signed and verified by petitioners-plaintiffs, though it was signed by their counsel.

4. Unfortunately, the said application remained pending for almost five years. In the meanwhile, trial Court heard and decided respondents-defendants application for amendment and for vacation of interim order. It was only on 10th February, 2009 that petitioners-plaintiffs moved an application under Section 151 CPC for filing an affidavit of petitioners in support of the amended plaint as required by amendment in Civil Procedure Code in 2002. In the said application, it was averred that inadvertently, the said affidavit had not been filed with the amended plaint.

5. Mr. Sethi, stated that it was only during the course of arguments of the said applications that petitioners-plaintiffs realized that amended plaint annexed with the amendment application had not been signed by plaintiffs. He stated that

petitioners-plaintiffs had always believed that amended plaint annexed with the application dated 20th May, 2004 was complete in all respects including with respect to signatures of petitioners-plaintiffs.

6. Mr. Sethi stated that by impugned order, petitioners-plaintiffs' amendment application as well as its application under Section 151 CPC permitting the petitioners to file affidavit in support of plaint was rightly allowed. However, petitioners-plaintiffs were aggrieved by trial Court's direction that, *"it is made clear that the plaintiffs shall not insist for filing an amended plaint in consequence of this order."*

7. Mr. Sethi, submitted that the last direction of trial Court was liable to be set aside as it was wholly unreasoned as well as contrary to Order 6 Rule 18 CPC which gave the party, which is allowed to amend its pleading, a period of fourteen days to bring the amended pleading on record. He submitted that trial Court failed to appreciate that procedure is the handmaid of justice and intent of all Courts is to render substantial justice. In this connection Mr. Sethi relied upon a judgment of this Court in the case of ***Asman Industries v. K.L. Juneja*** reported in ***1998 RLR 297***. He further stated that trial Court failed to appreciate that a number of duly signed and verified plaints existed on record and by virtue of amended plaint, petitioners-plaintiffs had only corrected typographical errors.

8. Mr. C. Mukund, learned Counsel appearing for respondents stated that it was never the case of petitioners-plaintiffs that they wanted to file an amended plaint. He stated that the consistent and repeated plea of petitioners-plaintiffs before trial Court was that the amended plaint already stands filed on 20th May, 2004. He pointed out that petitioners by their application under Section 151 CPC filed on 10th February, 2009 only wanted to file an affidavit in support of amended plaint which was allowed by trial Court. He contended that for the first time before this Court, petitioners-plaintiffs advanced a plea that along with amendment application filed in 2004, petitioners-plaintiffs had only filed a draft plaint. He submitted that this contention of petitioners-plaintiffs was contrary to trial Court record and amounted to changing their case – which was not permissible in law.

9. He further submitted that petitioners were not entitled to any relief due to non-disclosure and/or incomplete reproduction of material facts and non-filing of relevant and necessary orders passed by trial Court in the present petition. He stated that neither the order of Hon'ble Supreme Court of India dated 01st October, 2008 directing disposal of present suit preferably within six months from date of its order was highlighted nor other orders passed by trial Court on the same date as the impugned order dismissing other applications filed by

petitioners-plaintiffs were disclosed to this Court. He stated that by order dated 21st February, 2009, while dismissing two other applications filed by the petitioners under Order 7 Rule 14 CPC the trial Court had passed strictures on petitioners-plaintiffs for delaying the suit proceedings. Mr. C. Mukund submitted that due to dishonest and fraudulent conduct of petitioners-plaintiffs, no relief should be given to petitioners under Article 227 of Constitution.

10. Mr. C. Mukund, also stated that respondents had an apprehension that in case this Court were to allow the petitioners-plaintiffs to file an amended plaint, petitioners-plaintiffs would use this order to further delay the proceedings by claiming a right to file additional documents and by asking for additional issues to be framed. He submitted that the intent in filing the present petition was to somehow delay the disposal of the suit filed by petitioners despite a categorical direction by Hon'ble Supreme Court to conclude the same expeditiously.

11. In rejoinder, Mr. Mahender Rana, Advocate, for petitioners, stated that petitioners had annexed a copy of Hon'ble Supreme Court's order dated 01st October, 2008 and further petitioners had averred in the present petition that their other applications had been dismissed by trial Court on the same date the impugned order had been passed. He further

stated that petitioners had made it clear that they would be independently challenging the other orders. Mr. Mahender Rana, further submitted that it was the respondents who had suppressed and concealed facts. In this connection he drew my attention to order passed by this Court in ***Anand Kumar Deepak Kumar & Anr. v. Haldiram Bhujia Wala & Anr.*** reported in ***1999 V AD (Delhi) 41*** wherein this Court had observed, *“otherwise it would be a deliberate attempt on his (respondent) part to have concealed a material fact to obtain registration in the latter’s (respondent) name.”*

12. After having heard the parties, I am of the view that in the present case, petitioners-plaintiffs have been remiss in not realizing that their plaint annexed with the amendment application dated 20th May, 2004 was neither signed nor verified. But in my opinion, the said mistake is neither a part of a design by petitioners-plaintiffs to delay the suit proceedings nor is it a result of gross negligence. In fact, non-signing and non-verification of the plaint seems to be an inadvertent mistake or oversight on the part of petitioners-plaintiffs and their counsel.

13. Moreover, though I find merit in the argument of respondents that it was never the case of petitioners before trial Court that only a draft plaint had been filed with the

amendment application, I am of the opinion that substantive rights of a party cannot be allowed to be defeated on account of either procedural irregularity or mistake by a party which is curable. After all, the rules of procedure are meant to advance cause of justice and not to thwart them.

14. Undoubtedly, Article 227 is a discretionary and an equitable remedy. A party which suppresses facts or which does not make a complete disclosure is not entitled any relief from this Court. In the present case, I find that petitioners have mentioned the relevant facts but have done them in a guarded and passing manner. For instance, though order of Hon'ble Supreme Court dated 01st October, 2008 was mentioned but it was not sufficiently highlighted either in the list of dates or on the dates when the matter was heard ex parte. Accordingly, I am of the opinion that though disclosure has been made by petitioners-plaintiffs but the same had not been done in a forthright manner. Consequently, in my view, the ends of justice would be met if petitioners are warned to be careful in future and costs are imposed while disposing of present petition. In any event, dismissal of petitioners' present petition on this short ground would be imposing a disproportionate and too harsh penalty /punishment.

15. Consequently, petitioners-plaintiffs are allowed to sign and verify the plaint annexed with their amendment application dated 20th May, 2004. Petitioners-plaintiffs are further allowed to strike out para 6(a) of their plaint as undertaken by them before this Court vide their affidavit dated 23rd March, 2009. However, it is made clear that verification and signing of the plaint on record would not vest any right in the petitioners-plaintiffs for filing any additional document or for seeking reframing of issues or for filing of fresh pleadings or applications. However, as petitioners-plaintiffs have been remiss in not realizing that their plaint was not signed and verified, they are allowed to rectify their mistake subject to payment of costs of Rs.50,000/- to Prime Minister Relief Fund.

16. With aforesaid observations, present petition is partially allowed and pending applications are disposed of. The interim order dated February 26, 2009 is vacated and the trial Court is directed to expeditiously dispose of petitioners' suit as directed by Hon'ble Supreme Court of India. The parties are directed to appear before the trial Court on 13th April, 2009.

MANMOHAN, J

April 08, 2009
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