

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. Nos.3076 AND 3182 OF 2014

COMMON ORDER:

These two Civil Revision Petitions arise between the same parties out of the same suit. Therefore they are being disposed of by this common order.

2. The petitioner herein is the defendant in O.S.No.729 of 2010 on the file of the XIV Additional Chief Judge, (Fast Track Court), Hyderabad. The respondent/plaintiff filed the said suit against the petitioner for a perpetual injunction restraining the petitioner from using the name of the respondent-Institution i.e., Hyderabad Public School and to restrain the petitioner from giving advertisement in Daily News Papers and publication of pamphlets by using the name of respondent-Institution and for costs.

3. The gist of the plaint is that the petitioner is trying to mislead parents of the children who intend to get education in the respondent-Institution by giving an impression that the petitioner's school is related to the respondent's institution and to gain illegal benefits taking advantage of the Goodwill of the respondent-Institution.

4. Written statement was filed by the petitioner opposing the suit claim and taking a stand that the petitioner was registered as a body corporate and had registered the trade mark "Hyderabad Public School" with the Registrar of Trade Marks.

5. The respondent had also filed I.A.No.4268 of 2010 seeking an interim injunction against the petitioner restraining the petitioner from using the trade name "Hyderabad Public School" and also its abbreviated form 'HPS'.

6. Thereafter, the respondent filed I.A.No.1051 of 2013 in I.A.No.4268 of 2010 and I.A.No.1073 of 2010 in the suit seeking amendment of the pleadings in the affidavit filed in support of I.A.No.4268 of 2010 as well as in the plaint by including certain paragraphs therein and also intending to amend the plaint prayer by substituting the prayer originally sought for, with the prayer indicated in the application for amendment.

7. In the affidavit filed in support of these applications, the respondent had contended that on the advise of their earlier counsel Sri L.Ravi Chander to engage another advocate acquainted with law of trade marks and regularly attending the City Civil Court, they engaged the services of Sri K.Hema Prakasa Rao and his associates to attend the suit; on verifying contents of the affidavit in I.A.No.4268 of 2010 as well as the plaint, the said counsel advised the respondent to carry out certain amendments to both the plaint and affidavit in I.A.No.4268 of 2010, since they are necessary for the purpose of determining the real question in controversy between the parties and also to avoid multiplicity of suits; and that the said amendments would not change the nature of the suit and therefore the said I.As. be allowed.

8. Counter affidavit was filed to both these interlocutory applications by the petitioner opposing the amendments. It contended that the amendments sought for, would substantially alter the case and bring in new facts. It was contended by the petitioner that the reasons assigned for seeking amendment i.e., change of counsel, cannot be accepted, since these amendments, if permitted, will alter the nature of the suit itself; the cause of action on which the suit was filed stands barred by limitation; that the affidavit filed by the respondent did not disclose anywhere that amendment being sought is on account of bonafide mistake; that the amendment does not serve the purpose of determining the real question in controversy; and that the petitioner had already registered with the Registrar of Trade Marks certain trade

marks which are now mentioned in the proposed prayer; and therefore the applications have to be rejected.

9. By two separate orders dt.18.06.2014, the Court below allowed both the applications. It observed that on account of fault of previous advocate, certain averments were not made in the affidavit filed in support of the I.A.No.4268 of 2010 and in the plaint; that on the advise of new counsel, these amendments had been sought to avoid multiplicity of suits; and that the respondent cannot be allowed to suffer due to fault of the advocate. It further observed that if the plaint and the affidavit in I.A.No.4268 of 2010 are allowed to be amended, no prejudice would be caused to the petitioner, since the proposed amendment does not change the nature of the suit and the petitioner would get an opportunity to file an additional written statement on the said amendment. It also took note of the fact that the trial had not commenced.

10. Challenging the same, these two Revisions are filed.

11. Counsel for the petitioner contended firstly that the petitioner had already registered certain trade marks which are now mentioned in the proposed prayer in the suit by the respondent and therefore, the respondent cannot be allowed to seek any relief in respect there to.

12. I am unable to agree with the said submission because at the stage while considering whether or not to allow amendment, the correctness or the legitimacy of the said plea cannot be gone into.

13. Counsel for the petitioner further contended that while considering an application for amendment, the Court has to see if the amendment is necessary to decide the real dispute between the parties and that

exercise has not been done by the Court below. He placed reliance on the judgment of the Supreme Court in ***Rajesh Kumar Aggarwal and Ors. v. K.K.Modi and Ors.***

14. Counsel for the respondent on the other hand refuted the above contentions and stated that after filing of the suit, the respondent had to change his counsel due to some compelling circumstances and the new counsel, who came on record, suggested changes in the plaint as well as in the I.A. in order to make suit proceedings more comprehensive and to avoid multiplicity of proceedings without altering the nature of the suit. He also contended that the purpose of incorporating para 10(a) was to indicate how the petitioner was indulged in passing off services using the abbreviated form of HPS of 'Hyderabad Public School', along with the details of marks containing HPS. It was also contended that no prejudice would be caused to the petitioner, if the amendments are allowed.

15. Order VI Rule 17 CPC states—

“O.VI R.17 CPC—Amendment of pleadings — The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be 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”

16. In ***Rajesh Kumar Aggarwal's*** case(1 supra) cited by the counsel for the petitioner, the Court explained that the said rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in

controversy between the parties. It observed that the said rule consists of two parts, whereas the first part is discretionary and leaves it to the Court to order amendment of pleading and the second part is imperative and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. It also observed that 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.

17. It is true that in ***Rajesh Kumar Aggarwal's*** case(1 supra), the Court also observed that it is the primary duty of the court to decide whether such amendment is necessary to decide the real dispute between the parties. But the said observation relates to the latter part of Order VI Rule 17 CPC and not to the earlier part. As stated above, the earlier part of Order VI Rule 17 CPC is discretionary and leaves it to the Court to order amendment of pleadings and the latter part is imperative i.e., the Court is mandated to allow amendments which are necessary for the purpose of determining the real question in controversy between the parties. It is only while dealing with the latter part, these observations are made.

18. The Supreme Court therefore cannot be held to have declared that the earlier part is to be ignored and that in every case application for amendments should be allowed only if such amendments were necessary for the purpose of determining the real question in controversy between the parties.

19. In ***Abdul Rahman and another v. Mohd. Ruldu and Others*** the Supreme Court also observed that parties to the suit are permitted to bring forward amendments of their own pleadings at any stage of the proceedings for the purpose of determining the real questions in

controversy between them and that the Courts have to be liberal in accepting the same, if the same is made prior to the commencement of trial. The Court observed that if such application is made after commencement of trial, in that event, Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. It also observed that the object of the rule is to ensure that the Court should try merits of the case that comes before them, and that the power to allow amendments is wide and can be exercised at any stage of the proceedings in the interests of justice because its main purpose is to minimize the litigation. Similar view has been expressed in ***Raj Kumar Gurawara(died) thr. L.Rs. v. M/s. S.K.Sarwagi and Co. Pvt. Ltd. And another.***

20. In the present case, admittedly the trial in the suit had not been commenced. Therefore, proviso to Order VI Rule 17 has no application. I am also of the opinion that the proposed amendment does not alter the nature of the suit, nor does it even cause any prejudice to the petitioner, since the power to amendment is wide and is not confined only to situations where amendments are warranted to decide the real question in controversy between the parties. Further, the petitioner would also have ample opportunity to file an amended written statement or additional written statement refuting the case set up by the respondent.

21. Therefore, I am of the view that no error of jurisdiction had been committed by the Court below in allowing the applications I.A.No.1073 of 2013 in O.S.No.729 of 2010 and I.A.N0.1051 of 2013 in I.A.No.4268 of 2010 in O.S.No.729 of 2010.

22. There are no merits in these Civil Revision Petitions and they are accordingly dismissed. The petitioner however shall have liberty to

file additional written statement or to amend its existing written statement in I.A.No.4268 of 2010 as well as in the suit, raising all contentions available at law. There shall be no order as to costs.

23. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

11th September, 2015.

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