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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 588/2015**

KANUNGO MEDIA PVT LTD Appellant
Represented by: **Mr.Pradyuman Dubey, Advocate**

versus

M/S RGV FILM FACTORY & ORS Respondents
Represented by: **Mr.Neel A.Masou, Advocate with**
Ms.Riolhima, Advocate for R-3

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
12.01.2016

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1. Recognizing the fact that a subsequent fact which arises during pendency of a suit and is relevant and material can be incorporated in the pleadings by either party, the learned Single Judge has declined amendment of the plaint sought for by the appellant vide IA No.7687/2015. The learned Single Judge has observed that the appellant can file a fresh suit incorporating in its pleading the subsequent fact. The reason given by the learned Single Judge to decline amendment is that it would bring the suit back to square one.

2. The reasoning given by the learned Single Judge is unsound in law for the reason whether instant suit is brought back to square one or the fresh journey commences from square one, if the appellant were to file a fresh suit would make no difference to the defendants but would cause an injury to the

appellant, who would be required to file court fees afresh.

3. As per the amended provisions of Order 6 Rule 17 of the Code of Civil Procedure, an amendment can be allowed at any stage of a suit, with the only limitation being that if trial has commenced the Court would be required to be more strict in dealing with an application seeking amendment of a pleading.

4. The only fact to be noted is that the appellant claimed propriety interest in the trademark 'NISHABD' when the suit was filed and alleged passing of by the defendants. Seeking amendment, the appellant wanted to incorporate the fact that during the pendency of the suit the appellant had obtained registration of the trademark and thus the continued use of the trademark by the defendants would amount to infringement of the registered trademark of the appellant.

5. Allowing the appeal and setting aside the impugned order dated July 20, 2015, IA No.7687/2015 filed by the appellant is allowed.

6. Amended plaint shall be filed within six weeks. Since the defendants were ex-parte in the suit, and as observed by the learned Single Judge, a cause of action which may amount to a fresh cause of action is being pleaded, summons of the amended suit would be issued afresh for service upon the defendants. We note that in the appeal, only defendant No.3, impleaded as respondent No.3 in the appeal, appears. The defendants would be entitled to file a written statement taking all defences permissible by law concerning the amended plaint.

7. The suit which has been listed in the final hearing matters would be now listed before the learned Joint Registrar (Judicial) on March 01, 2016. The learned Joint Registrar would proceed to issue summons in the amended

suit to the defendants. Respondent No.3 who is defendant No.3 would not be served afresh because learned counsel for said respondent notes the amendment being allowed and waives summons. Counsel for the appellant would supply to learned counsel for respondent No.3 the amended plaint within six weeks to which respondent No.3 would file a written statement to within 30 days thereafter.

8. No costs.

CM No.24117/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

JANUARY 12, 2016

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