

A.Nos.9837 to 9841 of 2019
in
C.S.Nos.497 & 677/2016, 734 & 893/2017 & 123/2018

Reserved on	04.03.2020
Pronounced on	18.03.2020

M.S.RAMESH.J.

Heard Mr.P.S.Raman, learned Senior counsel appearing on behalf of the applicant in all the applications and Mr.M.S.Bharath in C.S.No.677 of 2016, Mr.K.Muthuselvan in C.S.734 of 2017, Mr.S.Sakthivel in C.S.No.893 of 2017 and Mr.Navaore Roy in C.S.No.123 of 2018 for the respondent.

2. The reliefs sought for in all these applications filed under Order VI Rule XVII of the Civil Procedure Code are for amendments to the plaint for inclusion of certain registered Designs/Models of the applicant's products.

3. Mr.P.S.Raman, learned Senior counsel appearing on behalf of the applicant would submit that the present applications have been filed for inclusion of such designs along with the other designs for which

infringement has sought for. Since the cause of action for the right to institute a suit for infringement of such designs, which were pending under applications, did not arise when the suits were instituted, the present applications for amendment under Order 2 Rule 2 of CPC., are imperative. The learned Senior counsel would submit that the present applications neither introduces a new or a different cause of action or an inconsistent case and therefore, there is no impediment in allowing these applications.

4. Mr.M.S.Bharath, learned counsel appearing for the respondent in C.S.No.677 of 2016 on the other hand, would submit that, the plaintiff had prior knowledge of the present applications at the time of instituting the suits and the pendency of the applications were concealed by the plaintiff, with a mala-fide intention. Hence, the inclusion of these registered designs will affect the cause of action of the suit and thereby prejudice the defendants, particularly, when the plaintiff has also sought for the relief of permanent injunction restraining the defendants from passing off the plaintiff's products.

5. The learned counsels appearing for the respondent/defendant in the other suits have adopted the submissions made by the learned counsel Mr.M.S.Bharath in C.S.No.677 of 2016.

6. It is not in dispute that when the present suits were initiated, the applications seeking for registration of the copy right in the design was pending. The applications seeking for registration of the copy right in the design was made on 30.07.2014 and the registered Certificate was issued on 14.05.2019. Thereafter, the Legal User Certificate was issued by the registry on 08.07.2019 and thereafter, the present applications seeking for amendment was filed on 20.12.2019. On a *prima facie* view, it cannot be said that the present applications for amendment have been belatedly made or that the delay is inordinate in nature.

7. It is a settled proposition of law that the Courts have wide discretion while dealing with amendment applications, which powers should

be exercised judiciously and with great care and some of the major factors which requires to be taken into consideration are as to whether the amendments sought for is imperative and bona-fide; the prejudice or injustice that could be caused to the other side; whether the proposed amendments would change the nature and character of the suit; whether the amendments would, if brought in a fresh suit, be barred by limitation; etc.

8. Mr.P.S.Raman, learned Senior counsel relied upon various decisions of the Hon'ble Supreme Court, highlighting the scope and object of the applications under Order 2 Rule 2 of CPC. It would suffice to refer to one decision of the Hon'ble Supreme Court in the case of *Revajeetu Builders and Developers V. Narayanaswamy and Sons and others* reported in *2009 (10) SCC 84*, wherein various decisions of the Hon'ble Supreme Court were considered and the basic principles that requires to be taken into consideration, while dealing with an application under Order 2 Rule 2 of CPC., were summed up, as follows:-

“Factors to be taken into consideration while dealing with applications for amendments:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is bona-fide or mala-fide?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

9. While the arguments of the defendants seem to indicate that the present applications have been filed with a mala-fide intention since the pendency of the applications seeking for registration of the copy right was suppressed, no substantive grounds were canvassed as to how such an

alleged suppression would cause injustice/prejudice to the defendants or as to how it could be termed as a “suppression with a mala-fide intention”? The copyright in the design would accrue on the proprietor of the design only when the same is duly registered and when admittedly, the applications seeking for copyright was pending when the suits came to be instituted, it is apparent that the plaintiff did not have a right to institute a suit for infringement of such designs, during the pendency of the applications. Now that, the Legal User Certificates have been issued to the plaintiff, the right to sue has accrued and therefore, the present applications under Order 2 Rule 2 of CPC have been filed. Unless and until the defendants establishes that the suppression of the pendency of the applications seeking for registration was made with a view to either benefit the plaintiff or prejudice the defendants, the intention cannot be termed as “mala-fide”.

10. I do not find any valid reason to term the non disclosure of the pendency of the applications, to be with a mala-fide intention and thus, I am of the affirmed view that the present applications filed for amending the

plaint, is not only acceptable and permissible, but may also avoid multiplicity of litigation, which is also one of the factors laid down in *Revajeetu's case (supra)*.

11. Accordingly, the applications stand allowed. The plaintiff is permitted to amend the plaint, within a period of 10 days from the date of receipt of a copy of this order.

12. Registry is directed to post the main suits on 07.04.2020.

18.03.2020

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Order made in
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