IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.04.2021	Pronounced on: 26 .04.2021

Coram::

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.Nos.4262 & 2581 of 2019
in C.S.No.194 of 2019

1. **G.I.Retail Private Limited,**
Having its registered office at:
C-9, ThiruVi.Ka.Industrial Estate, Guindy,
Chennai – 600 032,
Tamil Nadu. ... Plaintiff
in A.Nos.4262 of 2019

/versus/

1. **Hermes I Tickets Private Limited,**
Represented by its Director,
Mr.Manoj Kumar Sahu,
Having its registered office at:
Unit No.301 & 302, 3rd Floor, Campus 3B,
RMZ Millenia Business park,
No.143, MGR Main Road, Perungudi,
Chennai – 600 096.

2. **Wirecard AG,**
Einsteinring 35,
Represented by its Chief Financial Officer,
Alexander Von Knoop,
Einsteinring 35,
85609 Aschheim, Germany,

3. **Emerging Markets Investment Fund – Fund 1A,**
Represented by its Director Rohit Kumar,
Having registered Office at:
5th Floor,
Barkly Wharf, Le Canden,
Waterfron, Port Louis,
Republic of Mauritius.

4. **Mr.James Henry O'Sullivan,**
C/o.Senjo Group,
#56, One Raffle Place,
048616 Singapore.

5. **Mr.Jan Marsalek,**
Einstelnring 35,
85609 Aschhelm,
Deutschland,
Germany.

6. Goomo Orbit Corporate & Leisure Travels (I) Private Limited,
Office Number: 1003, Hallmark Business Plaza, SD Marg,
Opposite Guru Nanak Hospital, Bandra East,
Mumabi – 400 051
rep by its Director ... Defendants
in A.Nos.4262 of 2019

<u>**Prayer in A.No.4262 of 2019:-**</u> Application is filed under Order XIV and Rule 8 of the Madras High Court Original Side Rule read with Order VI Rule 17 & 18 of C.P.C.

To order the amendment of plaint as morefully stated in Schedule A to the Judges Summons and consequential amendments.

1. GI Smart E Cargoes Private Limited,
C9, Thiru Vi Ka Industrial Estate,
SIDCO Industrial Estate,
Guindy, Chennai,
Tamil Nadu – 600 0032 ... Applicant/3rd party proposed 2nd plaintiff in A.No.2581 of 2019

2. G.I.Retail Private Limited,
Having its registered office at:
C-9, ThiruVi.Ka.Industrial Estate, Guindy,
Chennai – 600 032,
Tamil Nadu. rep by its Director, Mr.Ramu Annamalai ... 1st Plaintiff in A.Nos.2581 of 2019

/versus/

1. **Hermes I Tickets Private Limited,**
Represented by its Director,
Mr.Manoj Kumar Sahu,
Having its registered office at:
Unit No.301 & 302, 3rd Floor, Campus 3B,
RMZ Millenia Business park,
No.143, MGR Main Road, Perungudi,
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Einstelnring 35,
85609 Aschhelm,
Deutschland,
Germany.

6. Goomo Holdings Services India Private Limited,
Office Number: 1003, Hallmark Business Plaza, SD Marg,
Opposite Guru Nanak Hospital, Bandra East,
Mumabi – 400 051,
rep by its Director ... Defendants
in A.Nos.2581 of 2019

Prayer in A.No.2581 of 2019:- Application is filed under Order XIV and Rule 8 of Original Side Rules and read with Order 1 Rule 10 of C.P.C:-

To allow the present application preferred by G.I.Smart E Cargoes Private Limited seeking permission to be added as an additional 2nd plaintiff/2nd applicant in O.A.No.266 of 2019 and C.S.No.194 of 2019.

For Applicant	: Mr.Srinath Sridevan, for Mr.R.Udhaya Kumar.
For D5	: Mr.Avinash Krishnan Ravi
For D6	: Ms.Anusha Devi
For D1,D2,D3,D4	: No appearance

COMMON ORDER

The suit is filed by one M/s.G.I.Retail Private Limited represented by its Director Mr.Ramu Annamalai. The field of operation of the said company is to enable consumers to make payments for e-commerce purchasers on various website. The 1st defendant is a Travellers Solution Providers. It is master distributor that uses its technology platform to distribute the inventory of principles through his agent network. The plaintiff is one such principal of 1st defendant, which offers several products and services. Alleging that the sale of shares in the 1st defendant made by the plaintiff and subsequent sale by defendant No.3 to defendant No.2, there was misrepresentation resulting in causing grave prejudice and injury in addition to huge losses both financially and mental agony to the plaintiff, the suit laid for permanent injunction to restrain the defendants their agents, representative from representing that the plaintiff or his shareholders, Director has made profit, earn out from the sale of share of the 1st defendant. Also defendants 1 to 6 jointly and severally to pay the plaintiff a sum of Rs.40 crores or for any higher amount due to alleged defamatory and malicious Act on the part of the 2nd and 3rd defendants. The suit filed for the above relief under the Commercial Courts Act with lengthy pleadings.

2. On receipt of the suit summons, the 2nd defendant has filed written statement. Thereafter, Application No.4262 of 2016 is filed to amend the plaint as stated in the schedule – A of the Judges summon. Out of 22 paragraphs in the plaint, through their present application paragraph Nos.2, 5, 10, 11, 12, 22 sought to be amended and new paragraph No.23 to be inserted, besides amendment of the relief.

3. The 6th defendant in the suit has filed counter in this application stating that the above application is a frivolous and wholly unnecessary for the purpose of determining the real question in controversy between the parties. A superfluous reiteration of the averment already made is sought to be incorporated in the plaint by way of an amendment with intention to inflate the value of the claim by nearly 8 times of the original claim amount.

4. Point of consideration is whether the application will amends the nature of the suit or will prejudice the case of the defendant?

Order 6 Rule 17 of C.P.C reads as below:-

17. Amendment of pleadings:- *The Court may at any stage of the proceedings allow either party to alter or amend* *his pleading 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.

5. In this case, the plaintiff, by way of amendment wants to introduce new facts and averments in order to enhance the damages claimed from Rs.40 crores to damages to 300 crores. For the said purpose, the plaintiff had boasted the existing pleading with several new facts. The attempt to amend the plaint after filing the written statement will definitely cause prejudice to the defendants. Furthermore, in the relief part, the plaintiff had presently prayed for Rs.40/- crores or for any other higher amount which the Court deem fit. Having left the discretion to the Court to fix the damages at Rs.40 crores or any other higher amount, there is no necessity to amend the prayer or to permit the plaintiff to amend the prayer clause or for that matter to add new facts by way of amendment. If the plaintiff can place enough material before the Court and convenience the

Court that the action of the defendants has caused damages, the quantum of damages can be ascertained based on the material produced and needless to say that it should be only upto Rs.40 crores and not more than that. Particularly when the prayer for damages reads as below:-

> "The plaintiff is also seeking INR 300 Crores towards damages for the losses suffered by the plaintiff, against defendant Nos.1 to 6, jointly and severally, due to their defamatory and malicious acts:"

6. When amendment to pleadings should be permitted is explained in ***A.K.Gupta and sons Ltd -vs- Damodar Valley Corporation*** reported in ***AIR 1967 SC 96***, the relevant paragraph is extracted below:-

> *Rule 17 of Order 6 reads:*
>
> *"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".*

These indicate that the amendment should be in such manner as may be just and that, as a rule, all such amendments shall be made as be necessary for the purpose of determining the real questions in controversy between the parties. No amendment would be just if it so prejudices the interests of the other party for which that party cannot get any relief from the Court. The amendments which must be allowed can be those in the absence of which the Court may not be able to determine the real question in controversy between the parties. The real question in controversy must be gathered only from the plaint and to some extent from the allegations in the written statement. If the point to be decided as a result of the amendment is not covered by the controversy raised by the plaint and the written statement, the amendment is not to be allowed necessarily, for the simple reason that it is unnecessary for determining the real questions in controversy between the parties. The Court has to decide the suit instituted before it and with respect to the controversies raised in it. It follows that the amendments to be allowed relate to such matters which, due to bad drafting of the plaint, could not be clearly and precisely expressed, though the parties did really intend to have those matters determined by the Court. The object of the amendment of the pleadings is to clarify the pleadings for bringing into prominence the real controversy between the parties and not for helping a party by making such amendments which be beneficial to him in connection with some dispute between the *parties a dispute which has not been really taken to the Court for decision and which the parties did not really intend to be decided in that suit. This seems to me to be the real basis for an order of the Court in connection with such amendments sought by a party in its pleadings as would raise a claim which has become time-barred."*

7. The interpretation of Order 6 Rule 17 of C.P.C., post amendment is expressed by the Hon'ble Supreme Court as below in ***Mount Mary Enterprises -vs- Jivratna Medi Treat Private Limited*** reported in ***(2015) 4 SCC 182.***

> ***6.*** *We have heard the learned counsel and have also considered the facts of the case.*
>
> ***7.*** *In our opinion, as per the provisions of Order 6 Rule 17 of the Civil Procedure Code, the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance and initially the property had been valued at Rs 13,50,000 but as the market value of the property was actually Rs 1,20,00,000, the appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint.*

8. *It is also pertinent to note that the defendant had made an averment in Para 30 of the written statement filed in Suit No. 1955 of 2010 that the plaintiff had undervalued the subject-matter of the suit. It had been further submitted in the written statement that the market value of the suit property was much higher than Rs 14 lakhs. The defendant had paid Rs 13.5 lakhs for the said premises in the year 2002 when the said premises had been occupied by a tenant bank. Even according to the defendant, value of the suit property had been undervalued by the plaintiff in the plaint. If in pursuance of the averment made in the written statement the plaintiff wanted to amend the plaint so as to incorporate correct market value of the suit property, the defendant could not have objected to the amendment application whereby the plaintiff wanted to incorporate correct value of the suit property in the plaint by way of an amendment. The other contention that the valuation had already been settled cannot also be appreciated since the High Court has held that the said issue was yet to be decided by the trial court.*

9. *The main reason assigned by the trial court for rejection of the amendment application was that upon enhancement of the valuation of the suit property, the suit was to be transferred to the High Court on its original side. In our view, that is not a reason for which the amendment application should have been rejected.*

10. *With regard to the amendment of the plaint, the following observation has been made by this Court in North Eastern Railway Admn. v. Bhagwan Das [(2008) 8 SCC 511] : (SCC p. 517, para 16)*

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363 : (1957) 1 SCR 595] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs."

8. In the instant case, it is not mere amendment of value of the relief which is even as per the original plaint is open end. It is an attempt to introduce several new facts which will substantially change the tenure of the plaint and will cause prejudice to the defendants, who has already filed the written statement.

This application, therefore dismissed as devoid of merits.

A.No.2581 of 2019

In the suit originally filed by G.I.Retail Private Limited, for permanent injunction, mandatory injunction and damages prayed on specific set of facts. Now the present application is filed by G.I Smart E Cargoes Private Limited, to implead them as 2nd plaintiff on the ground that it is subsidiary Company of the plaintiff and his interest is also to be protected from the Act of the defendants.

10. The present suit is filed by G.I Retail Private Limited through its Director against the defendants alleging that, it is a Company incorporated under the Companies Act and it is the holding Company of G.I Technology which develop I-cash card and also majority shareholder in Hermes i-tickets Private Limited (1st defendant). Alleging that, in the course of the sale of the shares of 1st defendant by the plaintiff and the subsequent sale by the 3rd defendant from the 2nd defendant, certain representation to the public regarding the transactions had caused disrespect to the plaintiff. Hence, the relief of permanent injunction, mandatory injunction and damages to a tune of Rs.40 crores sought in the plaint. The petition to enhance the claim of damages from Rs.40 crores to Rs.300 crores and amend the plait, declined by dismissing the Application No.4262 of 2019.

11. Now the applicant, with an allegation that being the subsidiary company of the plaintiff, it is also been a target of attack by the 2nd defendant and due to the misrepresentation made by the 2nd defendant his reputation affected and had incurred loss of Rs.3.58 crores during the financial year 2018-2019 and continue to make further losses, want to join with the plaintiff to pursue the suit together since the act of the 2nd defendant adversely affected the credibility and goodwill of the applicant Company, which is the subsidiary Company of the plaintiff.

12. The 6th defendant has filed counter to this application stating that the parties sought to be impleaded as an additional plaintiff is claiming as a subsidiary of the plaintiff only to protect the proceeding and plug the loopholes in the plaint averments. The plaintiff, by adding the applicant, tries to made untenable claim, which is hopelessly barred by limitation. Just to circumvent the bar under limitation and to renew the lapsed cause of action under the garb of application seeking addition of the plaintiff, the present application is filed.

13. On perusing the affidavit and counter, this Court is in total agreement with the 6th defendant, who has pointedly objected this application on the ground of limitation and locus. The Applicant herein is a Company incorporated under the law and enjoy the status of separate legal entity. Even if it is a subsidiary company of the plaintiff, it cannot claim damages on the alleged ground of defamatory content in the suit filed by the Principal Company. If he has any cause of action to sue the defendant, it has to be initiated independently, subject to limitation of time prescribed. They cannot seek relief under the umbrella of the plaintiff.

14. This Court is clearly of the view that, by filing a petition to amend the plaint and to add the applicant herein as one of the plaintiffs in the Suit No.194 of 2019, the plaintiff wants to delay the process and harass the defendants without proceeding further towards the completion of the trial.

15. This Court is unhappy with the dubious attempt made by the applicants filing these two petitions, which is nothing but frivolous and beyond the scope of law. Hence, both the Applications Nos.4262 & 2581 of 2019 are dismissed with costs of Rs.1,00,000/- each payable to 6th defendant, who is the contesting party.

16. In the result, Application No.4262 of 2019 dismissed with costs of Rs.1,00,000/- payable to 6th defendant. In application No.2581 of 2019 dismissed with costs of Rs.1,00,000/- payable to 6th defendant. Costs to be paid on or before 30.05.2021.

26.04.2021

Index :Yes/No.
Speaking Order/Non-speaking order
bsm

Dr.G.Jayachandran,J.

bsm

Pre-delivery common order in
A.Nos.4262 & 2581 of 2019
in C.S.No.194 of 2019

26.04.2021