



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 28th DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No.3227 of 2021

in

C.S. No.914 of 2010

Aarur Tamilnadan,
S/o.R.A.S.Rajan
8-A, M.G.R.Nagar,
II Cross Street,
Velachery, Chennai-600 042

...Plaintiff

-Versus-

1. Mr.S.Shankar,
Film Director,
No.6, Krishna Street,
T.Nagar, Chennai-600 017.

2. Mr.Kalanithi Maran,
Managing Director, Sun Prictures Private Limited,
No.4 Norton Street,
Mandaveli, Chennai-600 028.

3. M/s.Sun Picutres Private Limited,
Rep.by all its Directors
having Office at:No.4, Norton Street,
Mandaveli, Chennai-600 028.

.. Defendants

A.No.3227 of 2021

Aarur Tamilnadan,
S/o.R.A.S.Rajan
8-A, M.G.R.Nagar,
II Cross Street,
Velachery, Chennai-600 042

...Applicant/Defendant

-Versus-

1. Mr.S.Shankar,



Film Director,
No.6, Krishna Street,
T.Nagar, Chennai-600 017.

2. Mr.Kalanithi Maran,
Managing Director, Sun Prictures Private Limited,
No.4 Norton Street,
Mandaveli, Chennai-600 028.

3. M/s.Sun Picutres Private Limited,
Rep.by all its Directors
having Office at:No.4, Norton Street,
Mandaveli, Chennai-600 028.

.. Respondents/Defendants

4. Mr.Kalanithi Maran,
Director, Su TV Network Limited,
No.4, Norton Street,
Mandavelli, Chennai 600 028.

5. Sun TV Network Limited,
Rep.by its Directors,
Murasoli Maran Towers,
73, MRC Nagar Main Road,
MRC N Nagar, Chennai 600 028.

Application praying that this Hon'ble Court be pleased to implead the proposed defendants in the above suit namely Mr.Kalanith Maran, Director, Sun TV Network Limited No.4, Norton Street, Mandaveli, Chennai 600 028 as the 4th defendant and Sun TV Network Limited, Rep.by its Directors, Murasoli Maran Towers, 73, MRC Nagar Main Road, MRC Nagar, Chennai 600 028 as the 5th defendant.

This Application having been heard on 21.09.2021 in the presence of

Mr.G.Vairava Subramanian for M/s.P.T.Perumal, advocate for the applicant

herein and Mr.Arun C.Mohan for M/s.D.Saikumaran, Advocate for the 1st



respondent herein and Mr.T.R.Rajagopalan, Senior Counsel for M/s.B.K.Girish Neelakandan, advocate for the respondents 2 & 3 herein and Mr.J.Ravindran, Advocate for the proposed party fourth respondent herein and Mr.V.Dinesh Raja, Advocate for the proposed party fifth respondent herein and upon reading the Judges Summons and the affidavit of Aarur Tamilnadan filed herein, and the Counter Affidavit of Mr.M.Jyothibasur filed herein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto,

The Court made the following order:-

This application has been taken out by the plaintiff in CS No.914 of 2010 seeking to implead respondents 4 and 5 herein, as defendants 4 and 5 in the said suit.

2. The Original Suit has been filed by the applicant herein seeking (i) declaration that the plaintiff is the author and first owner of the copyright of the story 'Enthiran' on the contention that it is a pirated version of his original story 'Jugiba' which was published in April 1996; (ii) for declaring that the film 'Enthiran' is the infringing copy of the plaintiff's story 'Jugiba'; (iii) for damages of Rupees One Crore; (iv) for an injunction restraining the respondents from distributing, screening and exhibiting the infringing copy of the film 'Enthiran' in any cinema hall, electronic media,



etc., and (v) for a decree for accounts.

WEB COPY

3. The plaintiff would claim that he is a prolific Tamil writer and he has written many short stories, novels and poems. He has also written lyrics for many tamil movies. It is the contention of the plaintiff that he had written a short story titled 'Jugiba' in which he had depicted a Robot, which develops a human mind. According to the plaintiff, this plot of his story is the basis for the film 'Enthiran' and hence the defendants namely the Story Writer cum Director, the Producer and the Director of the Producer Company are guilty of infringing his copyright.

4. The suit was resisted by the defendants mainly contending that the third defendant does not exist at all and Sun Pictures is a unit of a Public Limited Company called Sun TV Network Limited, therefore the suit laid against the third defendant itself is bad for misjoinder of parties. The second defendant filed a separate written statement contending that he is not the Managing Director of Sun Pictures Pvt Ltd., and that there is no such Company called Sun Pictures Pvt Ltd. According to the defendants Sun Pictures is a division of a larger Company called Sun TV Network Limited. Therefore, it is Sun TV Network Limited which is the producer of the movie and it ought to have been impleaded in the suit. This defence was set up in the written statement that was filed on 20.11.2015 by the defendants. The

plaintiff, however, did not take any steps to amend the plaint or to substitute



the correct parties.

WEB COPY

5. The suit went for trial and the evidence was recorded by the Additional Master. During the cross-examination of the plaintiff by the counsel for defendants 2 and 3 specific suggestions were put to him regarding the constitution of the third defendant. One Mr.Jyothibas, authorized signatory of Sun TV Network Limited, was examined as D.W.1, even in his proof affidavit the actual status and the constitution of the producer of the movie was stated. He was cross-examined on 24.04.2018 by the learned counsel for the plaintiff, wherein specific suggestion was put to him that he is representing Sun TV Network Limited and Sun TV Network Limited is not a party to the suit. After completion of the recording of evidence, the suit was posted for arguments and the learned counsel for the plaintiff in fact addressed the arguments for some time and it is at this stage this application has been filed seeking impleading of the defendants 4 and 5 namely Sun TV Network Limited and Mr.Kalanithi Maran, in his capacity as Director of Sun TV Network Limited.

6. This application is resisted by the defendants contending that the very application is ill-conceived. Separate counter affidavits have been filed by the third respondent and fifth respondent. The fourth respondent has adopted the counter filed by the fifth respondent. The respondents

would in unison contend that the application for impleading that too at this



belated stage ought not to be entertained. It is contended that even in the written statements filed in the year 2015, the respondents had disclosed the actual constitution of the producer of the movie namely Sun TV Network Limited. The plaintiff ought to have taken steps to have the plaint amended or to have the parties substituted even at that point of time. Having failed to do so, the plaintiff is not entitled to seek amendment of plaint at this distant point of time.

7. If the application is treated as one for amendment under Order VI Rule 17 of the Code of Civil Procedure, the respondents would contend that being a post trial amendment, the plaintiff is expected to give proper reasons for not filing the application in earlier point of time despite exercise of due diligence. Faulting the applicant/plaintiff for not disclosing any reason that would satisfy the requirements of the proviso to Order VI Rule 17 of the Code of Civil Procedure, the respondents would submit that the application has to be rejected.

8. I have heard Mr.G.Vairava Subramanian, learned counsel appearing for M/s. P.T.Perumal for the applicant/plaintiff, Mr.Arun C.Mohan, learned counsel appearing for Mr.D.Saikumaran, for the first respondent/first defendant, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for M/s.B.K.Girish Neelakandan, for respondents 2 & 3/defendants 2 and 3, Mr.J.Ravindran, learned counsel for the proposed



fourth respondent/fourth defendant and Mr.V.Dinesh Raja, learned counsel for the proposed fifth respondent/fifth defendant.

9. Mr.G.Vairava Subramanian, learned counsel appearing for the applicant/plaintiff, would draw my attention to the judgment in ***The Andhra Pradesh State Electricity Board and Others v. The Firm of M/s.Patel and Patel a registered Partnership firm, Hyderabad and others***, reported in ***AIR 1977 AP 172***, wherein a Single Judge of the Andhra Pradesh High Court had held that the correction of the description of the defendant in the suit can be made at any point of time and since it is only a mis-description that is sought to be corrected, the same will not be effected by limitation. Answering the contention that the suit is barred by limitation, as the Board was impleaded only when the plaint was amended correcting the description of the defendant, the Andhra Pradesh High Court held that being a case of correction of a mis-description it will not be affected by limitation and there is no question of application of the proviso to Sub Section (1) of Section 21 of the Limitation Act.

10. He would also rely upon the judgment of the Hon'ble Supreme Court in ***Kurapati Venkata Mallayya and another v. Thondepu Ramaswami and Co. and another***, reported in ***AIR 1964 SC 818***, wherein the Hon'ble Supreme Court pointed out that a mis-description can be corrected and the plaint could be amended at any point of time for the



purpose of showing the correct description of the plaintiff. In doing so, the

Hon'ble Supreme Court had observed as follows:

“The High Court has observed that even assuming that it would have been more appropriate for the Receiver to show in the cause title that it was the firm which was the real plaintiff and that the firm was suing through him it was merely a case of misdescription and that the plaint could be amended at any time for the purpose of showing the correct description of the plaintiff. We agree with the High Court that where there is a case of misdescription of parties it is open to the court to allow an amendment of the plaint at any time and the question of limitation would not arise in such a case.”

Reliance is also placed on the judgment of the Hon'ble Supreme Court in ***L.C.Hanumanthaappa v. H.B.Shivakumar***, reported in **2016 (1) SCC332**.

11. Mr.G.Vairava Subramanian, learned counsel would further draw my attention to an order of this Court made in ***K.V.Rajendran @ Varun v. A.R.Murugadoss and others***, reported in **2018 SCC online Mad 3244**,

wherein also the present third defendant was described as Sun Pictures,



represented by its Chief Executive Officer and it however chose to enter into a compromise with the plaintiff in the suit. Therefore, according to Mr.G.Vairava Subramanian, the mis-description in the original plaint cannot have the consequence of denuding the right of the plaintiff to sue the defendants for violation or infringement of its copyright. He would further contend that it is open to the Court in order to render justice between the parties to allow the erring party to correct the mis-description and bring on record the proper party who ought to have been sued. He would also point out that on facts the third defendant has been represented by the authorised agent of the proposed fifth respondent/fifth defendant namely Sun TV Network Limited. Therefore, according to him no prejudice would be caused to the defendants by allowing this application for impleading.

12. Contending contra, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for respondents 2 & 3 would submit that the application is one for impleading filed under Order 1 Rule 10(2). There is no prayer for substitution or correction of mis-description, if the instant application is allowed, the result would be both Sun TV Network Limited as well as Sun Pictures Pvt Ltd could be on record. This according to the learned counsel would lead to an anomalous situation where the same party would be on record in two different names and the prayer sought for as against the defendants 2 and 3 is not sought to be amended. Therefore, according to the



learned Senior Counsel, this application is wholly misconceived and the same cannot be entertained. Even treating the application as one for an amendment, the learned Senior Counsel would submit that an application seeking a post trial amendment must disclose reasons that prevented the plaintiff from filing the application before commencement of trial despite exercise of due diligence.

13. In support of his contention, Mr.T.R.Rajagopalan, learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court reported in *M.Revanna v. Anjanamma and others*, reported in **2019 (4) SCC 332**, wherein the Hon'ble Supreme Court had pointed out that an amendment of plaint after trial is not permissible except under conditions stated in the proviso. He would also point out that the Hon'ble Supreme Court has categorically held that the burden of showing due diligence on its part as contemplated in the proviso is on the plaintiff who seeks an amendment after commencement of trial. Taking me through the affidavit filed in support of the application, the Senior Counsel would submit that the affidavit is totally bereft of any reason whatsoever, as to why, the plaintiff did not chose to file the application before commencement of trial. To buttress his contention that there has been total carelessness in the attitude of the plaintiff by pointing out that the defendants had even in the written statement filed on 20.11.2015 pointed out the mistake despite the same, the



plaintiff had not taken steps to amend the plaint or remove the mis-description.

14. Drawing my attention to para 7 of the said judgment in

M.Revanna v. Anjanamma and others, which reads as follows:

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid



WEB COPY

multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

Learned Senior Counsel would submit that there is no scope for allowing an application for amendment unless the requirements of the proviso are satisfied. He would also point out that the view of the Hon’ble Supreme Court in ***M.Revanna v. Anjanamma and others***, was reiterated by the Hon’ble Supreme Court in ***Vijay Hathising Shah and Another v. Gitaben Parshottamdas Mukhi and others***, reported in ***2019 (5) SCC 360***.

15. Mr.Arun C.Mohan, learned counsel appearing for the first defendant would contend that this application ought not to be entertained at this belated stage and would substantially adopt the arguments of the learned Senior Counsel. Mr.J.Ravindran, learned counsel appearing for the proposed party namely the fourth respondent would submit that the application for impleading the fourth respondent in his personal capacity, would amount to an abuse of process of Court and he would also adopt the arguments of the learned Senior Counsel in respect of the maintainability of

the application. Mr.V.Dinesh Raja, learned counsel appearing for the other



proposed party namely the fifth respondent would submit that there is total lack of *bona fides* on the part of the plaintiff and despite having been informed about the constitution of the producer of the movie, the plaintiff did not chose to amend the plaint and therefore, he is not entitled to the relief at this belated stage.

16. I have considered the submissions of the counsel on either side.

17. There is no doubt in my mind that this application is an ill-conceived attempt to get over the technical objection on the part of the defendants. Once a mis-description is pointed out the plaintiff has got to correct the mis-description. He could do so either by seeking substitution of the correct party or by amending the cause title and showing the name of the proper party or the party who ought to have been impleaded as a party to the suit. Despite the specific contentions raised in the written statement even in the year 2015, the plaintiff has not chosen to seek either of the above two remedies that were available to them at that point of time. Again during the recording of evidence in the year 2018, the counsel for the plaintiff himself had cross-examined D.W.1 and had pointed out that Sun TV Network Limited, is not a party to the suit. These facts demonstrate the careless manner in which the suit has been conducted by the plaintiff.



18. As rightly pointed out by Mr.T.R.Rajagopalan, learned Senior Counsel appearing for defendants 2 and 3, this application for impleading is highly improper and allowing of the same would lead to a situation where a non-existent party will continue to be on record as defendant in the suit. By filing this application for impleading, the plaintiff had conceded that the original third defendant in the suit is not existence and the original second defendant in the suit is not the Director of the third defendant in the suit. But no prayer has been made for substitution.

19. If this application is to be treated as an application for amendment, the rigour of the proviso under Order VI Rule 17 would automatically operate and the plaintiff cannot maintain the application, unless he shows that he could not have filed the application despite due diligence. A reading of the affidavit of the plaintiff filed in support of this application does not disclose any reason, as to why, the plaintiff could not file the application prior to the commencement of trial despite exercise of due diligence. The manner in which D.W.1 has been cross-examined by the counsel for the plaintiff would show that the plaintiff was very much aware of the fact that Sun TV Network Limited, which is the actual producer has not been made a party to the suit and yet he chose to proceed with the trial and after completion of trial, he has now come up with this application for impleading.



20. The requirements of the proviso to Order VI Rule 17 has not been satisfied, therefore, there is no scope for allowing this application treating it as an application for amendment filed under Order VI Rule 17 of the Code. If it is treated as an application for substitution, then the absence of prayer comes in the way. As I already pointed out, impleading of the defendants 4 and 5 in the suit at this distant point of time would definitely prejudice the rights of the defendants 4 and 5.

21. The learned counsel for the plaintiff would submit that he should not be non-suited on a technicality. No doubt, Courts are there to resolve the disputes and not to throw out parties on technicalities. At the same time, parties are also required to be diligent and careful in prosecuting the suits that too when they are asserting their invaluable rights in the form of intellectual property.

22. As already pointed out the plaintiff ought to have filed an application for substitution and not impleading. If only an application for substitution had been filed the difficulty that is now faced by the Court would have been avoided. However, I do not think that I will be justified in rejecting this application and thereby depriving an opportunity to the plaintiff to have his claim adjudicated upon. No doubt the plaintiff has been thoroughly negligent, but a certain portion of this negligence is attributable

to the advisors of the plaintiff also. I do not think that the plaintiff should be



allowed to suffer for want of due diligence on the part of his counsel. I therefore treat this application, which has been filed under Order I Rule 10(2) seeking impleading, as one for substitution.

23. If the application is treated as one for substitution, then the proposed parties must be arrayed as defendants 2 and 3 in the suit and existing defendants 2 and 3 must be struck-off from the party array. Even here, I find that the impleading of the fourth defendant in his individual capacity as the Managing Director of the fifth defendant is wholly unnecessary. Once the Company, a juristic person, which is the producer of the movie is impleaded in the suit, I do not think that the impleading of the Managing Director of the Company in his individual capacity is necessary.

24. Therefore, this application is **partly allowed** by substituting the proposed party namely respondent No.5 in the place of defendant No.3 in the suit. The original defendant Nos.2 and 3 are struck-off from the party array. The application for impleading the fourth respondent namely, the Managing Director of Sun TV Network Limited, in his individual capacity will stand dismissed. The cause title of the suit will stand amended as follows:

Aarur Tamilnadan,
S/o. R.A.S.Rajan
8-A, M.G.R. Nagar,
II Cross Street, Velacherry,
Chennai 600 042.

... Plaintiff



Vs.

1. Mr.S.Shankar,
Film Director,
No.6, Krishna Street,
T.Nagar, Chennai 600 017.

2. Sun TV Network Limited,
Rep. by its Directors,
Murasoli Maran Towers,
73, MRC Nagar Main Road,
MRC Nagar, Chennai 600 208.

... Defendants

25. The application is allowed to the extent indicated above. However taking note of the delay, the plaintiff is directed to pay a cost of Rs.50,000/- to the counsel for the defendants 2 and 3 in the original suit namely the respondents 2 and 3 herein, on or before 06.10.2021, failing which this application will stand dismissed. Upon payment of cost, the counsel for the plaintiff shall carry out the necessary amendment and file amended copies of the plaint on or before 22.10.2021.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
28th DAY OF SEPTEMBER 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)



KY

08.10.2021

WEB COPY

18

A. No.3227 of 2021
in
C.S. No.914 of 2010

ORDER

DATED:28.09.2021

THE HON'BLE MR.JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 11.10.2021

APPROVED ON: 11.10.2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****Reserved on
21.09.2021****Delivered on
28.09.2021****CORAM****THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN****Application No.3227 of 2021
in CS No.914 of 2010**

Aarur Tamilnadan,
S/o. R.A.S.Rajan
8-A, M.G.R. Nagar,
II Cross Street, Velacherry,
Chennai 600 042.

... Applicant/Plaintiff

Vs.

1. Mr.S.Shankar,
Film Director,
No.6, Krishna Street,
T.Nagar, Chennai 600 017.

2. Mr. Kalanithi Maran,
Managing Director, Sun Pictures Private Limited,
No.4, Norton Street, Mandaveli,
Chennai 600 028.

3. M/s. Sun Pictures Private Limited,
Rep. by all its Directors,
having office at: No.4, Norton Street,
Mandaveli, Chennai 600 028.

... Respondents / Defendants

4. Mr.Kalanithi Maran
Director, Sun TV Network Limited,
No.4, Norton Street,
Mandaveli, Chennai 600 028.

5. Sun TV Network Limited,
Rep. by its Directors,
Murasoli Maran Towers,
73, MRC Nagar Main Road,
MRC Nagar, Chennai 600 208.

Respondents/proposed defendants 4 & 5



Prayer: Petition filed under Order XIV Rule 8 of the Original Side Rules, read with Order I Rule 10(2) of the Code of Civil Procedure, praying to implead the proposed defendants in the above suit namely Mr.Kalanithi Maran, Director, Sun TV Network Limited No.4, Norton Street, Mandaveli, Chennai 600 028 as the fourth defendant and Sun TV Network Limited, Rep by its Directors, Murasoli Maran Towers, 73, MRC Nagar Main Road, MRC Nagar, Chennai 600 028 as the fifth defendant.

For Applicant : Mr.G.Vairava Subramanian,
for M/s. P.T.Perumal

For Respondents : Mr.Arun C.Mohan
M/s.D.Saikumaran, for R1

Mr.T.R.Rajagopalan, SC
M/s.B.K.Girish Neelakandan,
for RR 2 & 3

Mr.J.Ravindran,
for proposed party fourth respondent

Mr.V.Dinesh Raja,
for proposed party fifth respondent

ORDER

This application has been taken out by the plaintiff in CS No.914 of 2010 seeking to implead respondents 4 and 5 herein, as defendants 4 and 5 in the said suit.

2. The Original Suit has been filed by the applicant herein seeking

(i) declaration that the plaintiff is the author and first owner of the copyright



of the story 'Enthiran' on the contention that it is a pirated version of his original story 'Jugiba' which was published in April 1996; (ii) for declaring that the film 'Enthiran' is the infringing copy of the plaintiff's story 'Jugiba'; (iii) for damages of Rupees One Crore; (iv) for an injunction restraining the respondents from distributing, screening and exhibiting the infringing copy of the film 'Enthiran' in any cinema hall, electronic media, etc., and (v) for a decree for accounts.

3. The plaintiff would claim that he is a prolific Tamil writer and he has written many short stories, novels and poems. He has also written lyrics for many tamil movies. It is the contention of the plaintiff that he had written a short story titled 'Jugiba' in which he had depicted a Robot, which develops a human mind. According to the plaintiff, this plot of his story is the basis for the film 'Enthiran' and hence the defendants namely the Story Writer cum Director, the Producer and the Director of the Producer Company are guilty of infringing his copyright.

4. The suit was resisted by the defendants mainly contending that the third defendant does not exist at all and Sun Pictures is a unit of a Public Limited Company called Sun TV Network Limited, therefore the suit laid against the third defendant itself is bad for misjoinder of parties. The second defendant filed a separate written statement contending that he is not the



Company called Sun Pictures Pvt Ltd. According to the defendants Sun Pictures is a division of a larger Company called Sun TV Network Limited. Therefore, it is Sun TV Network Limited which is the producer of the movie and it ought to have been impleaded in the suit. This defence was set up in the written statement that was filed on 20.11.2015 by the defendants. The plaintiff, however, did not take any steps to amend the plaint or to substitute the correct parties.

5. The suit went for trial and the evidence was recorded by the Additional Master. During the cross-examination of the plaintiff by the counsel for defendants 2 and 3 specific suggestions were put to him regarding the constitution of the third defendant. One Mr.Jyothibas, authorized signatory of Sun TV Network Limited, was examined as D.W.1, even in his proof affidavit the actual status and the constitution of the producer of the movie was stated. He was cross-examined on 24.04.2018 by the learned counsel for the plaintiff, wherein specific suggestion was put to him that he is representing Sun TV Network Limited and Sun TV Network Limited is not a party to the suit. After completion of the recording of evidence, the suit was posted for arguments and the learned counsel for the plaintiff in fact addressed the arguments for some time and it is at this stage this application has been filed seeking impleading of the



Maran, in his capacity as Director of Sun TV Network Limited.

WEB COPY

6. This application is resisted by the defendants contending that the very application is ill-conceived. Separate counter affidavits have been filed by the third respondent and fifth respondent. The fourth respondent has adopted the counter filed by the fifth respondent. The respondents would in unison contend that the application for impleading that too at this belated stage ought not to be entertained. It is contended that even in the written statements filed in the year 2015, the respondents had disclosed the actual constitution of the producer of the movie namely Sun TV Network Limited. The plaintiff ought to have taken steps to have the plaint amended or to have the parties substituted even at that point of time. Having failed to do so, the plaintiff is not entitled to seek amendment of plaint at this distant point of time.

7. If the application is treated as one for amendment under Order VI Rule 17 of the Code of Civil Procedure, the respondents would contend that being a post trial amendment, the plaintiff is expected to give proper reasons for not filing the application in earlier point of time despite exercise of due diligence. Faulting the applicant/plaintiff for not disclosing any reason that would satisfy the requirements of the proviso to Order VI Rule 17 of the Code of Civil Procedure, the respondents would submit that the application



8. I have heard Mr.G.Vairava Subramanian, learned counsel appearing for M/s. P.T.Perumal for the applicant/plaintiff, Mr.Arun C.Mohan, learned counsel appearing for Mr.D.Saikumaran, for the first respondent/first defendant, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for M/s.B.K.Girish Neelakandan, for respondents 2 & 3/defendants 2 and 3, Mr.J.Ravindran, learned counsel for the proposed fourth respondent/fourth defendant and Mr.V.Dinesh Raja, learned counsel for the proposed fifth respondent/fifth defendant.

9. Mr.G.Vairava Subramanian, learned counsel appearing for the applicant/plaintiff, would draw my attention to the judgment in ***The Andhra Pradesh State Electricity Board and Others v. The Firm of M/s.Patel and Patel a registered Partnership firm, Hyderabad and others***, reported in ***AIR 1977 AP 172***, wherein a Single Judge of the Andhra Pradesh High Court had held that the correction of the description of the defendant in the suit can be made at any point of time and since it is only a mis-description that is sought to be corrected, the same will not be effected by limitation. Answering the contention that the suit is barred by limitation, as the Board was impleaded only when the plaint was amended correcting the description of the defendant, the Andhra Pradesh High Court held that being a case of correction of a mis-description it will not be affected by limitation and there



of the Limitation Act.

WEB COPY

10. He would also rely upon the judgment of the Hon'ble Supreme Court in ***Kurapati Venkata Mallayya and another v. Thondepu Ramaswami and Co. and another***, reported in ***AIR 1964 SC 818***, wherein the Hon'ble Supreme Court pointed out that a mis-description can be corrected and the plaint could be amended at any point of time for the purpose of showing the correct description of the plaintiff. In doing so, the Hon'ble Supreme Court had observed as follows:

“The High Court has observed that even assuming that it would have been more appropriate for the Receiver to show in the cause title that it was the firm which was the real plaintiff and that the firm was suing through him it was merely a case of misdescription and that the plaint could be amended at any time for the purpose of showing the correct description of the plaintiff. We agree with the High Court that where there is a case of misdescription of parties it is open to the court to allow an amendment of the plaint at any time and the question of limitation would not arise in such a case.”



Reliance is also placed on the judgment of the Hon'ble Supreme Court in

L.C.Hanumanthaappa v. H.B.Shivakumar, reported in **2016 (1) SCC332**.

11. Mr.G.Vairava Subramanian, learned counsel would further draw my attention to an order of this Court made in ***K.V.Rajendran @ Varun v. A.R.Murugadoss and others***, reported in **2018 SCC online Mad 3244**, wherein also the present third defendant was described as Sun Pictures, represented by its Chief Executive Officer and it however chose to enter into a compromise with the plaintiff in the suit. Therefore, according to Mr.G.Vairava Subramanian, the mis-description in the original plaint cannot have the consequence of denuding the right of the plaintiff to sue the defendants for violation or infringement of its copyright. He would further contend that it is open to the Court in order to render justice between the parties to allow the erring party to correct the mis-description and bring on record the proper party who ought to have been sued. He would also point out that on facts the third defendant has been represented by the authorised agent of the proposed fifth respondent/fifth defendant namely Sun TV Network Limited. Therefore, according to him no prejudice would be caused to the defendants by allowing this application for impleading.

12. Contending contra, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for respondents 2 & 3 would submit that the application is one for impleading filed under Order 1 Rule 10(2). There is no prayer for



substitution or correction of mis-description, if the instant application is allowed, the result would be both Sun TV Network Limited as well as Sun Pictures Pvt Ltd could be on record. This according to the learned counsel would lead to an anomalous situation where the same party would be on record in two different names and the prayer sought for as against the defendants 2 and 3 is not sought to be amended. Therefore, according to the learned Senior Counsel, this application is wholly misconceived and the same cannot be entertained. Even treating the application as one for an amendment, the learned Senior Counsel would submit that an application seeking a post trial amendment must disclose reasons that prevented the plaintiff from filing the application before commencement of trial despite exercise of due diligence.

13. In support of his contention, Mr.T.R.Rajagopalan, learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court reported in *M.Revanna v. Anjanamma and others*, reported in **2019 (4) SCC 332**, wherein the Hon'ble Supreme Court had pointed out that an amendment of plaint after trial is not permissible except under conditions stated in the proviso. He would also point out that the Hon'ble Supreme Court has categorically held that the burden of showing due diligence on its part as contemplated in the proviso is on the plaintiff who seeks an

amendment after commencement of trial. Taking me through the affidavit



filed in support of the application, the Senior Counsel would submit that the affidavit is totally bereft of any reason whatsoever, as to why, the plaintiff did not chose to file the application before commencement of trial. To buttress his contention that there has been total carelessness in the attitude of the plaintiff by pointing out that the defendants had even in the written statement filed on 20.11.2015 pointed out the mistake despite the same, the plaintiff had not taken steps to amend the plaint or remove the mis-description.

14. Drawing my attention to para 7 of the said judgment in ***M.Revanna v. Anjanamma and others***, which reads as follows:

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an



WEB COPY

amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

Learned Senior Counsel would submit that there is no scope for allowing an application for amendment unless the requirements of the proviso are satisfied. He would also point out that the view of the Hon’ble Supreme Court in ***M.Revanna v. Anjanamma and others***, was reiterated by the Hon’ble Supreme Court in ***Vijay Hathising Shah and Another v. Gitaben Parshottamdas Mukhi and others***, reported in **2019 (5) SCC 360**.

15. Mr.Arun C.Mohan, learned counsel appearing for the first defendant would contend that this application ought not to be entertained at this belated stage and would substantially adopt the arguments of the

learned Senior Counsel. Mr.J.Ravindran, learned counsel appearing for the



proposed party namely the fourth respondent would submit that the application for impleading the fourth respondent in his personal capacity, would amount to an abuse of process of Court and he would also adopt the arguments of the learned Senior Counsel in respect of the maintainability of the application. Mr.V.Dinesh Raja, learned counsel appearing for the other proposed party namely the fifth respondent would submit that there is total lack of *bona fides* on the part of the plaintiff and despite having been informed about the constitution of the producer of the movie, the plaintiff did not chose to amend the plaint and therefore, he is not entitled to the relief at this belated stage.

16. I have considered the submissions of the counsel on either side.

17. There is no doubt in my mind that this application is an ill-conceived attempt to get over the technical objection on the part of the defendants. Once a mis-description is pointed out the plaintiff has got to correct the mis-description. He could do so either by seeking substitution of the correct party or by amending the cause title and showing the name of the proper party or the party who ought to have been impleaded as a party to the suit. Despite the specific contentions raised in the written statement even in the year 2015, the plaintiff has not chosen to seek either of the above two remedies that were available to them at that point of time. Again during the

recording of evidence in the year 2018, the counsel for the plaintiff himself



had cross-examined D.W.1 and had pointed out that Sun TV Network Limited, is not a party to the suit. These facts demonstrate the careless manner in which the suit has been conducted by the plaintiff.

18. As rightly pointed out by Mr.T.R.Rajagopalan, learned Senior Counsel appearing for defendants 2 and 3, this application for impleading is highly improper and allowing of the same would lead to a situation where a non-existent party will continue to be on record as defendant in the suit. By filing this application for impleading, the plaintiff had conceded that the original third defendant in the suit is not existence and the original second defendant in the suit is not the Director of the third defendant in the suit. But no prayer has been made for substitution.

19. If this application is to be treated as an application for amendment, the rigour of the proviso under Order VI Rule 17 would automatically operate and the plaintiff cannot maintain the application, unless he shows that he could not have filed the application despite due diligence. A reading of the affidavit of the plaintiff filed in support of this application does not disclose any reason, as to why, the plaintiff could not file the application prior to the commencement of trial despite exercise of due diligence. The manner in which D.W.1 has been cross-examined by the counsel for the plaintiff would show that the plaintiff was very much aware



not been made a party to the suit and yet he chose to proceed with the trial and after completion of trial, he has now come up with this application for impleading.

20. The requirements of the proviso to Order VI Rule 17 has not been satisfied, therefore, there is no scope for allowing this application treating it as an application for amendment filed under Order VI Rule 17 of the Code. If it is treated as an application for substitution, then the absence of prayer comes in the way. As I already pointed out, impleading of the defendants 4 and 5 in the suit at this distant point of time would definitely prejudice the rights of the defendants 4 and 5.

21. The learned counsel for the plaintiff would submit that he should not be non-suited on a technicality. No doubt, Courts are there to resolve the disputes and not to throw out parties on technicalities. At the same time, parties are also required to be diligent and careful in prosecuting the suits that too when they are asserting their invaluable rights in the form of intellectual property.

22. As already pointed out the plaintiff ought to have filed an application for substitution and not impleading. If only an application for substitution had been filed the difficulty that is now faced by the Court would have been avoided. However, I do not think that I will be justified in

rejecting this application and thereby depriving an opportunity to the



plaintiff to have his claim adjudicated upon. No doubt the plaintiff has been thoroughly negligent, but a certain portion of this negligence is attributable to the advisors of the plaintiff also. I do not think that the plaintiff should be allowed to suffer for want of due diligence on the part of his counsel. I therefore treat this application, which has been filed under Order I Rule 10(2) seeking impleading, as one for substitution.

23. If the application is treated as one for substitution, then the proposed parties must be arrayed as defendants 2 and 3 in the suit and existing defendants 2 and 3 must be struck-off from the party array. Even here, I find that the impleading of the fourth defendant in his individual capacity as the Managing Director of the fifth defendant is wholly unnecessary. Once the Company, a juristic person, which is the producer of the movie is impleaded in the suit, I do not think that the impleading of the Managing Director of the Company in his individual capacity is necessary.

24. Therefore, this application is **partly allowed** by substituting the proposed party namely respondent No.5 in the place of defendant No.3 in the suit. The original defendant Nos.2 and 3 are struck-off from the party array. The application for impleading the fourth respondent namely, the Managing Director of Sun TV Network Limited, in his individual capacity will stand dismissed. The cause title of the suit will stand amended as



Aarur Tamilnadan,
S/o. R.A.S.Rajan
8-A, M.G.R. Nagar,
II Cross Street, Velacherry,
Chennai 600 042.

... Plaintiff

Vs.

1. Mr.S.Shankar,
Film Director,
No.6, Krishna Street,
T.Nagar, Chennai 600 017.

2. Sun TV Network Limited,
Rep. by its Directors,
Murasoli Maran Towers,
73, MRC Nagar Main Road,
MRC Nagar, Chennai 600 208.

... Defendants

25. The application is allowed to the extent indicated above. However taking note of the delay, the plaintiff is directed to pay a cost of Rs.50,000/- to the counsel for the defendants 2 and 3 in the original suit namely the respondents 2 and 3 herein, on or before 06.10.2021, failing which this application will stand dismissed. Upon payment of cost, the counsel for the plaintiff shall carry out the necessary amendment and file amended copies of the plaint on or before 22.10.2021.

Sd./-R.S.M.J
28.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.