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Application Nos.3493 & 3494 of 2021

in C.S.No.633 of 2015

(Comm.Suits)

N. ANAND VENKATESH. J.

These applications have been filed by the applicant/plaintiff for impleading the proposed plaintiff as a party to the suit and for permitting the plaintiff to amend the plaint.

2.The applicant filed the suit against the respondents with a grievance that the first respondent who was working with the applicant company tendered his resignation during March 2011 and later it was found that he had breached the non-solicit, non-compete and confidentiality agreements and misused the plaintiff's proprietary design, data and information and misrepresented himself to be the authorised dealer of the plaintiff and was supplying goods along with the other defendants and thereby was making unlawful profits and causing financial loss and loss of reputation to the plaintiff Company.

3.The pleadings are complete and the suit is at the stage of framing issues. At this point of time, the above applications came to be filed by the plaintiff.



4.The application in Application No.3493 of 2021, has been filed on the ground that the plaintiff Company is a subsidiary of M/s. Goodwin PLC and hence the applicant wants to implead the parent Company as one of the plaintiff in this suit. The further averment made in the affidavit is to the effect that the parent Company had the exclusive rights over the industrial drawings in the slurry pumps and parts thereof and that the applicant is the licensee of the industrial drawings/blue prints in respect of the pumps and its spare parts. To substantiate the same, the copy of the license agreement dated 7-8-2006 has also been filed by the applicant.

5.Insofar as the amendment of plaint is concerned, the applicant wants to add the relief of copyright infringement and consequently wants to add certain pleadings.

6.The respondents have filed counter-affidavit in both the applications and they have taken a stand to the effect that there is absolutely no material for the alleged infringement of the intellectual property of the applicant and the proposed amendment will change the very nature of the suit. The respondents have also taken a stand to the effect that the proposed plaintiff is not a necessary party in these proceedings.



7. Heard M/s. Subashiny, learned for the applicant and Mr. V. Selvaraj, learned counsel for respondents.

8. A careful reading of the averments made in the affidavit filed in support of Application No. 3493 of 2021 along with the license agreement dated 7-8-2006, shows that the applicant is the subsidiary Company of Goodwin PLC, England and they have also been given license to use the intellectual properties and proprietary know how to manufacture, produce, market, distribute, etc slurry pumps. The applicant being the *dominus litus* has the right to add any party whom is the applicant thinks is a proper or necessary party. Since the applicant is deriving the right from the holding Company Goodwin PLC, the applicant wants to add that Company as a co-plaintiff. This Court does not find any ground to reject the application made by the plaintiff in this regard. By adding the holding Company as a co-plaintiff, the respondents cannot have any grievance. Hence, A.No. 3493 of 2021 deserves to be allowed.

9. Insofar as the application seeking for amendment, it is seen from the pleadings in the plaint that the applicant has made sufficient averments on the exclusivity of the design and the drawings of the slurry pump technology.

The right has been derived by the applicant through the license agreement



dated 7-8-2006. A cursory reading of the agreement shows that the holding Company has assigned the intellectual property rights in favour of the applicant.

The applicant could have made sufficient averments and added the relief of copyright infringement even at the time of filing of the suit. However, it is stated in the affidavit that the applicant was not able to make the necessary averments and add the relief of copyright infringement due to the urgency shown at the time of filing the suit.

10. The amendment sought for by the applicant is a pre-trial amendment and the same can always be leniently considered by the court unlike a post-trial amendment. In any case, the respondents will always get the opportunity to file additional written statement and defend themselves with regard to the amendments sought for by the applicant. The respondents will not be prejudiced if the amendment is allowed and the amendment does not certainly change the character of the suit. However, this Court has to take into consideration the delay that has occasioned in filing the present application and appropriate cost has to be imposed on the applicant.

11. In view of the above discussion, this Court is inclined to allow both the applications filed by the applicant/plaintiff.



12. In the result, Application No.3493 of 2021, is allowed and considering the facts and circumstances of the case, there will be no order as to cost. Application No. 3494 of 2021, is allowed subject to the payment of cost of a sum of Rs.10,000/- [Rupees Ten Thousand Only] payable by the applicant/plaintiff to the Tamilnadu State Legal Services Authority on or before 04-01-2022.

22.12.2021

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N. ANAND VENKATESH.,J.

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Pre-Delivery Common Order in
Application Nos.3493 & 3494 of 2021
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Reserved on 20.12.2021

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