

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13949 OF 2023

Techcruiser Solutions & Ors	... Petitioners
V/s.	
Bulletlink Technologies Through Its Partners	... Respondents

Mr. Pramod N Joshi, for Petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 8, 2023

P.C.:

1. The petitioners/original defendants are challenging order passed by the Trial Court allowing application for amendment filed before the commencement of trial in a suit for declaration, injunction and damages to incorporate pleadings in relation to legal proceedings initiated in United States.

2. The respondent/original plaintiff filed Civil Suit No.1 of 2016 seeking relief of permanent injunction and declaration restraining defendants from passing off services of plaintiff. The declaration with plaintiff be declared as exclusive owner of software work mentioned in the suit is also sought. It also sought that the permanent injunction restraining defendants from all benefit agents and representatives from using the plaintiff's software.

3. Before commencement of trial, the plaintiff on 29 August 2022 has filed an application for amendment of plaint to incorporate pleading that the plaintiff had initiated civil action in United States which was allowed directing payment of damages to the extent of amounts stated in the amendment. Therefore, pleadings to incorporate details of the proceedings and the amount of damages and prayer to incorporate cause of action of order passed in United States was sought to be amended.

4. The petitioner opposed the application on the ground that filing of such application is beyond the purview of suit, barred by delay and not necessary for real controversy between the parties.

5. The Trial Court by impugned order allowing the application holding that since, the application is filed before the commencement of the trial, and it will not change nature of the suit, was allowed subject to cost of Rs.3,000/-.

6. Learned Advocate for the petitioner submitted that proposed amendment is not necessary to decide the real controversy between the parties. It introduces new cause of action, it will change nature of the suit. Its application is barred after considerable time and, therefore, the Trial Court ought to have rejected in the application.

7. It is undisputed that the application is filed before commencement of the trial. The parameters for allowing application for amendment are well settled. All amendments which do not introduce new cause of action or change nature of suit or withdraw admission given in favour of other party need to

be allowed. In the facts of the case, on perusal of the plaint, I am satisfied that the amendment will not change nature of the suit nor it will introduce new cause of action nor its barred by limitation.

8. Whether the plaintiff is entitled to the amended relief, it is always open for the petitioner to raise all necessary defense permissible in law and, if such, defense are raised, the Trial Court needs to adjudicate on the justiciability to the grant of relief. Merits of the amendment cannot be the subject matter while adjudicating application for amendment of pleading.

9. Learned Advocate for the petitioner submitted that in view of Section 13 and 14 of the Code of Civil Procedure, 1908, it is not open for the plaintiff to rely on judgment of foreign Court. In relation to Section 13 and 14 of CPC, it is open for the petitioner to raise such contention in the suit and on such objection being raised the Trial Court is duty bound to decide such objection in accordance with the law, at the time of final hearing of the suit.

10. There is no error of jurisdiction committed by the Trial Court. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)