



A.No.1355 of 2023
in C.S.No.110 of 2019

S.SOUNTHAR, J.

The present application has been filed seeking amendment of the plaint.

2. The applicants herein filed a suit for injunction restraining the defendant and his men from any manner copying, reproducing, adapting, creating derivative works or in any manner using the 1st plaintiff's copyrighted work in the computer programmes titled License Saver, Customs GRC Solution, Role Automation Tool, Security Assessment Cockpit, Master Data Analyzer and Terminal Lock that would amount to infringement of copyright in the said programmes, the applicants also sought for a direction to the respondents/defendants to surrender to them all infringing materials containing the infringing software. The applicants also sought for a preliminary decree directing the respondents/defendants to render true account of the profits earned by them by use of the plaintiff's copyrighted work.

3. The trial in the suit is not commenced. The applicant filed instant application seeking amendment of the plaint.



4. According to the applicants, the 1st applicant software 'AUDIBOT SOD ANALYSER for SAP SYSTEM' after several pilot runs was first published on 31.05.2012 in United States of America. The 1st applicant applied for copyright registration of the software 'AUDIBOT SOD ANALYSER for SAP SYSTEM' and got it registered bearing Registration No.TX 8-978-338 issued under the seal of the copyright office in accordance with title 17, United States Code with effect from 20.06.2021. The applicants/plaintiffs now wants to make necessary pleadings with regard to copyright certificate obtained by them in respect of their software. It is also further stated that subsequent to filing of the suit, the plaintiffs retrieved an e-mail communication between the defendants and their ex-employee Selvakumar and the said e-mail communication is necessary to establish copyright infringement pleaded by them. The plaintiff also wants to amend the documents table so as to include the e-mail communications and copyright registration certificate etc.

5. The respondents herein filed counter and opposed the application on the ground that the suit was filed in the year 2019 and the same is now ripe for trial. It is also stated that the case management schedule was already fixed by this Court and even thereafter, the trial has not been commenced. The respondents also averred that as per the google search conducted by them, there is yet another



Company in the name of 'AudiBot' at T.Nagar, Chennai and it was not known whether the 1st applicant herein is the original 'AudiBot' or not. The respondents also made averments on the merits of the suit by denying infringement of copyright.

6. The suit was filed in the year 2019. Subsequent to filing of the suit, the 1st applicant/1st plaintiff obtained copyright registration certificate for its software 'AUDIBOT SOD ANALYSER for SAP SYSTEM', the said copyright registration certificate was obtained on 29.06.2021. The applicants by way of amendment wants to introduce the fact that they obtained copyright registration in United States and the same would advance the case of the applicants in India also. The applicants have not prayed for amendment of the prayer. The nature and character of the suit is not changed by amending the plaint to introduce the fact of copyright registration obtained by the applicants. The trial in the suit is not yet commenced. The amendment sought to be made by the plaintiffs would not change the character and cause of action of the suit. In these circumstances, there is no impediment for this Court to allow the application seeking amendment of the plaint.



7. From the averments found in the affidavit, it is clear that the copyright registration was obtained by the plaintiff on 29.06.2021. Subsequently, the case management schedule was fixed by this Court as early as October-2021. But however, the trial is not yet commenced. The present application has been filed by the applicants only on 20th February, 2023 nearly after 1 ½ years from the date of obtaining copy right registration.

8. Ofcourse, the delay in seeking amendment is not a ground to reject amendment application. In this regard, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in **Varun Pahwa vs. Renu Chaudhary** reported in **MANU/SC/0307/2019**. The relevant observation of the Hon'ble Apex Court is as follows:-

“9. ... The Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.”

9. In the case on hand, the applicants/plaintiffs want to introduce the fact of obtaining copyright registration in the body of the plaint and they also want



to include certain documents relating to copyright registration, e-mail communications to establish alleged infringement in the schedule of documents.

10. Certainly, the amendment sought for is necessary to have comprehensive and satisfactory adjudication of the *lis*. In these circumstances, by taking into consideration, the delay of 1 ½ years for filing amendment application after obtaining copyright registration, this Court deems it appropriate to allow the application by imposing cost on the applicants.

11. In view of the discussions made earlier, the present application for amendment of the plaint is allowed subject to the condition that the applicants shall pay a cost of Rs.10,000/- to the respondents/defendants within a period of two weeks from today. The cost may be paid to the learned counsel for the respondents/defendants. If the cost is not paid within the stipulated time, the application shall stand automatically dismissed. The applicants/plaintiffs are granted a further time of two weeks from the date of payment of the cost to carry out necessary amendment in the plaint and to furnish amended copy of the plaint.

09.06.2023

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