



A.No.2889 of 2022
in C.S.No.508 of 2018

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S.SOUNTHAR, J.

The instant application has been filed by the applicant/plaintiff seeking amendment of the plaint.

2. By way of amendment application, the plaintiff wants to include a partnership firm namely “M/s.Namma Veettu Kalyanam”, represented by its Managing Partner namely the applicant as the co-plaintiff in the suit.

3. According to the applicant, he adopted the mark Namma Veettu Kalyanam in the year 2012 and the said mark has been used by him and the partnership firm, M/s.Namma Veettu Kalyanam. It is further stated that the applicant is the Managing Partner of the firm and his wife is the other partner. It is also stated that the plaintiff has got six trademarks. He filed six trademark applications for registration of Namma Veettu Kalyanam and its formatives under various classes. The earliest application namely A.No.2442886 in Class 41 was already registered in the name of the proposed party namely, Namma Veettu Kalyanam firm. It is further stated by



the applicant that when he attempted to mark the documents pertain to the partnership firm in support of his case, the same was vehemently objected to by the defendant on the ground that the firm is not a party to the suit. Therefore, the applicant is constrained to file the present amendment application, so as to include the partnership firm as a co-plaintiff in the suit.

4. The amendment application was vehemently opposed by the learned counsel for the respondent/defendant on the ground that the proof affidavit of P.W.1 was filed on 13.08.2021. In the proof affidavit it was specifically averred by the applicant that the partnership firm was already closed and the firm was converted into a proprietary concern.

5. It is contented by the learned counsel for the respondent that the present averment of the applicant that the partnership firm is continuing is against the averments contained in the proof affidavit of the applicant, which was filed before the Court on 13.08.2021. The learned counsel further submitted that in view of the proviso to Order VI, Rule 17 of C.P.C, the person seeking amendment of the plaint, subsequent to the commencement of the trial must convince the Court that in spite of exercise



of due diligence by the applicant, he was prevented from seeking amendment of the pleadings before commencement of the trial. In the case on hand, in the affidavit filed in support of the amendment prayer, the applicant has not stated any reason for his failure to file the amendment application before the commencement of the trial. Therefore, the petition is liable to be dismissed. In support of his contention the learned counsel for the respondent relied on the decision of the Hon'ble Apex Court in the case of ***Pandit Malhari Mahale Vs Monika Pandit Mahale & Ors.*** made in ***Civil Appeal No.189 of 2020***, dated 10.01.2020.

6. It is seen from the records that the trial in the matter has already commenced and the proof affidavit of the applicant was filed on 13.08.2021. The applicant in his plaint averment clearly stated that he adopted the mark Namma Veettu Kalyanam and same is being used by him and the partnership firm. However, he failed to join the partnership firm as a co-plaintiff at the time of presentation of the plaint. Subsequently, he filed the proof affidavit stating that the partnership firm was closed and the partnership firm is converted into a proprietary concern. Now, the applicant has come up with a case that original partnership firm with Mr. G.Mohan



was dissolved, but the partnership firm is continuing with the wife of the applicant. It is specifically averred by the applicant in the plaint that the mark “Namma Veettu Kalyanam” has been used by the applicant along with the partnership firm. However, in the affidavit filed in support of the application for amendment of the plaint, he has not stated any reason for his failure to include the partnership firm as a co-plaintiff.

7. In the case of ***Pandit Malhari Mahale Vs Monika Pandit Mahale & Ors.*** made in ***Civil Appeal No.189 of 2020*** referred above by the learned counsel for the respondent, the Hon'ble Apex Court observed as follows;

“In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In Vidyabai & Ors. V. Padmalatha & Anr. [(2009) 2 SCC 409], this Court observed in para 19 as under:

“19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the code restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. The Court's jurisdiction in a case of this nature is



limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint.”

There being no finding by the Court that the Court is satisfied in spite of due diligence, the party could not introduce amendment before commencement of the trial, the Order of the Trial Judge is unsustainable. The High Court has not adverted to the above aspect of the matter. In view of aforesaid, we allow the appeal and set aside the order of the High Court as well as of the Civil Judge, the amendment application stands dismissed.”

8. In the above said case, the Hon'ble Apex Court after referring to the case of ***Vidyabai & Ors. V. Padmalatha & Anr.*** reported in ***[(2009) 2 SCC 409]*** observed that unless the person seeking amendment satisfy the Court that in spite of exercise of due diligence, he was unable to file the amendment application before commencement of the trial, such application cannot be entertained as mentioned earlier. In the case on hand, the existence of partnership firm was admitted by the applicant even in the plaint averment, in that case, the applicant has not shown any sufficient cause for his failure to include the firm as a co-plaintiff. Therefore, the



applicant failed to satisfy the proviso to Order VI, Rule 17 of C.P.C. and hence, the application for amendment cannot be entertained at this stage, after commencement of the trial.

9. The learned counsel for the plaintiff submits that when the applicant attempted to mark the documents pertain to the partnership firm, it was objected to by the learned counsel for the respondent. The partnership firm is not a separate entity. The firm is a name given to a group of individuals, who agree to share the profits of the business. In the case on hand, the applicant is said to be one of the partner of the firm M/s.Namma Vettu Kalyanam, in such case, the applicant is entitled to rely on the documents in the name of the firm in the suit subject to proof and relevancy. With these observations the application in A.No.2889 of 2022 is dismissed.

15.06.2023

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