



A.Nos.5083, 5085 & 5087 of 2022

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in
C.S.(Comm Div).No.212 of 2022

C.SARAVANAN, J.

These applications have been filed by the applicant/plaintiff to amend the long and short cause title in A.No.4462 of 2022 and O.A.No.646 of 2022.

2. These applications have been filed to substitute the name of the second and the seventh respondent as follows:

*2.Shaji Nadesan,
Sole Proprietor of August Cinemas,
Kairali Nagar – 100,
Kuravanakonam Vayalikkada Road,
Kowdiar P.O.,
Thiruvananthapuram,
Kerala – 695 003.*

*7. P.M.Bava,
Sole Proprietor of Saina Video Vision,
22/1, Saidapet Road,
Sarvamangala Colony,
Vadapalani,
Chennai – 600 026.*



3. The learned counsel have already entered appearance for the parties whose names are sought to be substituted to the names of the second and seventh defendants after the suit summons were served on the address of the second and seventh defendants. It is submitted that they are proprietary concerns and not companies.

4. It is submitted that amendment in the cause title by substituting the names would result in serious prejudice to the respondents as the entities against whom the applicant had filed the suit were not non-existing entities and if the date of service of suit summons on these two parties is reckoned based on the names and addresses given in the long and short cause title in the suit and the applications in A.No.4462 of 2022 and O.A.No.646 of 2022, it will denude their right to file a written statement in terms of amendment provisions of Code of Civil Procedure (CPC), as made applicable to commercial dispute under the Commercial Courts Act, 2015, before this Commercial Division.



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5. That apart, it is submitted that under Order 1 Rule 10 (1) of CPC, the Court may at any stage of suit, allow the name of the plaintiff to be substituted or added upon such terms as it may think just where there is a *bona fide* mistake or where the suit is instituted in the name of the wrong plaintiff.

6. As far as defendants are concerned, whether they have been wrongly impleaded or have to be added, it has to be under Order 1 Rule 10 (2) of CPC.

7. I have considered the arguments advanced by the learned counsel for the applicant/plaintiff and the learned counsel for the contesting respondents/defendants, and the learned counsel for the second and the seventh respondents, who now represent the interest of the respective proprietary concerns whose name are proposed to be substituted instead of the names of the second and seventh defendants as originally arranged.



8. Substitution of the names of the non existing entity or an entity which is not in existence with the new names cannot be allowed under Order 1 Rule 10 (2) of CPC. Therefore, there cannot be any amendment to the long and short cause title of plaint. The court may however in exercise of its power under Order 1 Rule 10 (2) of CPC either strike out the names and/or include the names in order to enable the Court to effectually and completely adjudicate the dispute involved in the suit.

9. Order 1 Rule 10 (2) of CPC reads as under:

“(2) Court may strike out or add parties – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of nay person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

10. It is only as a consequence of the order passed under Order 1 Rule 10(2) of CPC, the Court can direct or amend the plaint as may be necessary.



11. As per Order 1 Rule 10 (5), subject to the provisions of the [Indian Limitation Act, 1877 (15 of 1877), Section 22], proceedings against any person added as defendant shall be deemed to have begun only on the service of the summons.

12. Therefore, these applications can be ordered by adding the two names which is sought to be substituted with name of the second and seventh defendants as Defendant Nos.12 and 13 in view of separate order passed in A.Nos.5088, 5090 and 5091 of 2022. The names of the second and seventh defendant shall however be struck off and left blank in the plaint with an endorsement of having been struck off pursuant to this order, as otherwise the entire body of the plaintiff will have to be amended fully by altering the ranks of the defendants. Accordingly, the applications stand allowed.

13. The plaintiff is directed to carry out only the necessary amendment in the body of the plaint and the long and short cause title of the plaint by adding the two names now substituted as 12th and 13th defendant by this order. The plaintiff shall also file a clean copy of the plaint.



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14. Incidentally, it was mentioned that the address of the 6th defendant has also been given wrongly in the plaint. A Memo to that effect has been filed by the learned counsel for the 6th defendant. Memo is taken on record and the address of the 6th defendant also stands amended by substituting the address of the 6th defendant as Mr.Aravind Swami, No.24-A, Cathedral Road, Gopalapuram, Chennai – 600 086. The plaintiff is directed to incorporate the corrections in the address of the 6th defendant.

**25.01.2023
(2/4)**

rgm

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