



A.No.6398 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 18.02.2025

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.6398 of 2024
in
C.S.(Comm. Div) No.2 of 2024

Bibin John
Trading as MELANGE DESIGNING STUDIO,
Dwarai Swami Lane,
MG Road, Ernakulam,
Kerala 682 035.

... Applicant/
Defendant

-VS-

LIFESTYLE INTERNATIONAL PRIVATE LIMITED,
Express Avenue, 49 50L, Block No.9,
Triplicane Village, Whites Road, Mylapore,
Chennai-600 014
Rep. by its Authorized Representative
Mr.A.Shyam Ravindhar

... Respondent/
Plaintiff

PRAYER: Judges summons filed under Order 14 Rule 8 of O.S. Read with Order VI Rule 17 r/w. Section 151 of the Code of Civil Procedure, 1908, praying to permit the Applicant/Defendant to Add the amendments as set out in the Schedule Judges Summons in the written statement in C.S.(Comm. Div.) No.2 of 2024.



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For Applicant

: Ms.Reshma Rajagopal
for M/s.M.S.Bharath

For Respondents

: Mr.Arun C. Mohan

ORDER

By this application, the defendant seeks leave to amend the written statement. The nature of amendments is clear from the schedule to the Judge's summons. The suit is at the stage of parties having filed affidavits of admission/denial in respect of documents filed by the counter party concerned. Issues have not been framed as on date.

2. Learned counsel for the applicant submits that the written statement contains the assertion that the defendant is a registered proprietor of the trade mark



under Class 40 and that, consequently, the suit for infringement is



not maintainable. Therefore, learned counsel submits that the amendment, by way of insertion of paragraph 21B, is in consonance with the written statement and does not cause prejudice to the plaintiff.

3. As regards the proposed insertion of paragraph 21A, learned counsel submits that non-use of the trade mark



by the plaintiff has been dealt with in the written statement at paragraphs 22 and 30. The proposed amendment, by insertion of paragraph 21A, merely expands on what is stated in the above mentioned paragraphs. Learned counsel further submits that the proposed amendment is intended to meet any objections that the invalidity of the plaintiff's trademark was not expressly asserted in the written statement.



4. In support of these contentions, learned counsel referred to

and relied upon the following judgments:

a. *Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Others*, MANU/SC/1093/2022, particularly paragraph 25 thereof, for the proposition that courts are more generous in allowing an amendment of the written statement as it is unlikely to cause prejudice to the plaintiff.

b. *Baldev Singh and Others v. Manohar Singh and Another*, 2006 SCC OnLine SC 799, especially paragraph 15 thereof, for the proposition that adding a new ground of defence or altering a defence does not raise the same problem as adding, altering or substituting any cause of action.

c. *B.K.Narayanan Pillai v. Parameswaran Pillai and Another*, 1999 SCC OnLine SC 1315, particularly paragraph 5 thereof, for the principle that pleas which are neither inconsistent nor repugnant to the pleas raised previously in the written statement should be permitted by way of amendment.



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d. *Thyro Laboratories v. Thyrocare Technologies Ltd.* order dated

11.12.2024 in A.No. 4843 of 2024 in C.S.No.57 of 2015, for the principle that amendments may be allowed in commercial suits even after the trial has commenced.

5. In response to these contentions, learned counsel for the respondent/plaintiff submits that the erstwhile counsel on record filed the written statement on 30.04.2024. Merely because the new counsel is of the view that additional pleas should be raised, in the absence of evidence that such additional pleas could not be raised in spite of the exercise of due diligence, the request for amendment is liable to be rejected. By referring to Order VIII of the Code of Civil Procedure, 1908 (the CPC), particularly Rules 1, 2, 3 and 3A thereof, learned counsel contended that the defendant is under an obligation to raise any jurisdictional objection by specifying the reasons for such objection and is, in fact, required, wherever able, to indicate the Court which has jurisdiction.



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WEB COPY 6. Learned counsel next contended that Order VI Rule 17 of the CPC should not be construed in isolation in the context of a commercial suit. Put differently, his contention is that the proviso to Rule 1 of Order VIII prescribes an outer limit of 120 days after which the defendant forfeits the right of filing a written statement. Unless Order VI Rule 17 CPC is construed strictly in the light of the proviso to Rule 1 to Order VIII, he submits that the mandate of the proviso would be circumvented by filing a written statement bereft of particulars and thereafter lodging an application for amendment. In support of these contentions, learned counsel referred to an order of this Court in Application No.8944 of 2018 in C.S.No.282 of 2018, wherein this Court rejected an application for permission to file an additional written statement with a counter claim after noticing the outer time limit of 120 days prescribed in the proviso to Rule 1 of Order VIII.



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WEB COPY 7. Upon taking stock of the rival contentions, the first aspect to be noticed is that the suit is at the pre-trial stage. As per the proviso to Order VI Rule 17 of the CPC, an application for amendment should not be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence, the applicant was not in a position to raise the matter before the commencement of trial. The schedule to the Commercial Courts Act sets out the amendments to the CPC in its application to commercial disputes. Order VI Rule 17 remains unamended in its application in commercial disputes. Therefore, the requirements of the proviso to Order VI Rule 17 cannot be extended to and applied to a commercial dispute at the pre-trial stage. At the same time, the contention that the mandate of the proviso to Rule 1 of Order VIII of the CPC should not be permitted to be indirectly circumvented cannot be brushed aside.



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8. In my view, if the proposed amendments to the written statement are so extensive and would tantamount to a substitution of the written statement, it would facilitate the circumvention of the proviso to Rule 1 of Order VIII and should not be permitted. This determination should be made by examining the written statement and the proposed amendments, which I turn to next.

9. In proposed paragraph 21A, the defendant asserts that the plaintiff has not filed documents to prove the use of the trade mark “MELANGE” from the year 2004 as claimed by the plaintiff in the plaint. The defendant proceeds further in proposed paragraph 21A to assert that, in the absence of proof of actual use, the adoption was not honest and the registration is, consequently, invalid and liable to be cancelled. As regards non-use, as contended by learned counsel for the defendant, there are averments of non-use both in paragraphs 21 and 30. The consequential assertion that the adoption was not honest and that the registration is invalid and liable to be cancelled

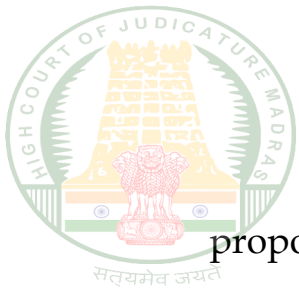


does not find place in the written statement. To that extent, the plaintiff would be prejudiced unless the plaintiff were to be given an opportunity to respond to such assertion.

10. As regards proposed paragraph 21B, it appears that the averments therein are intended to provide a foundation to challenge jurisdiction on the ground that the defendant is also the registered proprietor of the mark



Averments to that effect are contained in paragraph 22 of the written statement. The proposed paragraph 21B expands on paragraph 22 by further asserting that the Court does not have territorial jurisdiction and that the cause of action, including in respect of passing off, has not arisen within the jurisdiction of the Court. To the extent that



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proposed paragraph 21B expands on paragraph 22, it is just and necessary that the plaintiff be given an opportunity to respond thereto.

11. The precedents cited by learned counsel for the plaintiff instruct that applications for amendment at the instance of the defendant are liable to be construed liberally because they have no impact on the cause of action or the fundamental character of the suit. As noticed earlier, this application is at the pre-trial stage. By taking all these aspects into account, this application is allowed subject to the right of the plaintiff to file a reply statement in response. Such reply statement shall be filed on or before 18.03.2025.

Post the matter on 18.03.2025.

18.02.2025

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