



2025:DHC:3800



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 5th May, 2025*

+ CM(M)-IPD 14/2025 and CM 111/2025

PUJA AGARWAL

.....Petitioner

Through: Mr. Abhinay, Mr. Pooran Chand Roy
& Ms. Parul Khurana, Advocates.

versus

PRAVESH NARULA

.....Respondent

Through: Mr. Ashok Goel, Mr. Anshul Goel &
Mr. Ranjeev Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present petition has been filed under Article 227 of the Constitution of India, challenging the order dated 7th April, 2025, passed by the learned District Judge (Commercial Courts-08), Central District, Tis Hazari, Delhi, in CS (COMM) No. 2732/2021.

2. *Vide* the impugned order, an amendment application filed on behalf of the respondent/ plaintiff has been allowed.

3. Since the impugned order is a very short order, the same is set out below:

“Written submissions filed on behalf of the defendant to the application U/o VI Rule 17 CPC of the plaintiff.

Arguments heard. I have gone through the record. The amendment is sought as at the time of filing of suit, the trademark of the plaintiff was



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not registered and during the pendency of the suit, the trademark/logo of the plaintiff has been registered. Keeping in view the submissions and the grounds mentioned in the application, the application is allowed and amended plaint is taken on record.

Put up for filing of WS to the amended plaint and framing of issues as well as case management hearing on 03.05.2025.”

4. Counsel for the petitioner/defendant submits that the impugned order is cryptic and does not deal with the submission of the petitioner that the proposed amendment allowed by the impugned order changes the nature of the suit.
 5. He submits that the suit was filed only for copyright infringement, and by the subject amendment, now the scope of the suit has been enlarged so as to include trademark infringement.
 6. On the other hand, counsel for the respondent/plaintiff submits that the only amendment sought to be brought about by the respondent/ plaintiff
- was in relation to the subsequent registration of the mark
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- bearing number 4242962, granted in favour of the respondent.
7. He has drawn attention of the Court to the plaint as originally filed, where a reference to passing off of the aforesaid mark has been made.
 8. I have heard counsel for the parties.
 9. There is no doubt that the impugned order has been passed in a cryptic manner and it does not deal with the submission of the petitioner that the proposed amendment was seeking to change the nature of the suit, from a copyright infringement, so as to also include trademark infringement.
 10. A perusal of the plaint, as originally filed, would show that the



plaintiff/respondent had made the necessary pleadings in respect of the



trademark/ logo 'RD SPECIAL/' and the fact that he had applied for registration of the said mark. Paragraph nos. 3 and 4 of the plaint are set out below:

"3. That the Plaintiff has adopted the trade mark/ logo



containing word R.D. prominently (hereinafter referred to as "said trade mark/ logo R.D. SPECIAL") in the year 1994 and since then the said trade mark/ logo of the Plaintiff has been used openly, continuously and extensively in respect of the said good.

4. That the Plaintiff had applied for registration of the said logo



under no.4242962 in respect of socks and other goods in class 25."

11. A perusal of the prayers made in the aforesaid suit would show that there was no relief claimed *qua* passing off.

12. Now by way of the amendment, the plaintiff is seeking to introduce a relief *qua* trademark infringement, which was not there in the original suit.

13. While it is correct that in the original plaint there was no prayer *qua* passing off or trademark infringement, however, the fact remains that the respondent/ plaintiff is free to initiate a fresh suit against the petitioner/ defendant, on the basis of a subsequent trademark registration.

14. It is a settled position of law that trademark infringement is a continuing cause of action, therefore it cannot be the case that the plaintiff was barred from filing a fresh suit on account of limitation.



15. It is a settled position of law that the Court should discourage multiplicity of litigation and therefore, be liberal in allowing amendments towards this end. In this regard, a reference may be made to the judgment passed by the Supreme Court in **Rajesh Kumar Aggarwal v. K.K. Modi**, (2006) 4 SCC 385, the relevant paragraphs of which is set out below:

“16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.”

[Emphasis supplied]



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16. It is also the undisputed position that the suit is still at an early stage, and issues are yet to be framed in this suit.
17. In the overall facts and circumstances of the case, I am of the view that the proposed amendments ought to be allowed.
18. Needless to state, the petitioner would have open, all his defences against his proposed amendments in the written statement to be filed *qua* the amended plaint.
19. I wish to make it clear, while allowing the amendment, this Court has not gone into the merits of the case.
20. The petition along with pending application(s) stand disposed of.

AMIT BANSAL, J

MAY 05, 2025

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