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

+ **CS(COMM) 300/2021**

BEIERSDORF AG

..... Plaintiff

Through Mr. Bharath MS, Mr. Ayush Sharma, Mr. Akshaya P Sachin and Mr. Krishna, Advs.

versus

HINDUSTAN UNILEVER LIMITED

..... Defendant

Through Mr. C.M. Lall, Sr, Adv. with Mr.Nishad Nadkarni, Mr. Ankur Sangal and Ms. Pragya Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

ORDER (ORAL)

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27.08.2021

(Video-Conferencing)

IA 9051/2021 (Order VI Rule 17 CPC)

1. This is an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) seeking to amend paras 38 and 43 of the plaint in the present and to add documents, relevant to the averments contained in the amended paragraphs.

2. A reply has been filed to this application and the rejoinder has also been filed thereto.

3. I have heard Mr. Bharath, learned Counsel for the plaintiff and Mr. Lall, learned Senior Counsel for the defendant, at some length on this application.

4. Mr. Lall, learned Senior Counsel for the defendant, seriously objected to the present application on the ground that it was in the nature of an oblique attempt to introduce, into the proceedings, additional documents, in clear transgression of Order XI Rule 1(2) & 1(5) of the CPC as amended by the Commercial Courts Act, 2015. For ready reference, Order XI Rule 1(2) & 1(5) of the CPC, as amended by the Commercial Courts Act, 2015, may be reproduced thus:

“1. Disclosure and discovery of documents:-

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.”

5. Mr. Lall submits that the documents which have been now sought to be introduced under cover of this application under Order VI Rule 17 of the CPC were within the possession of the plaintiff at the time when the suit was filed. Additionally, he submits that the facts which are now sought to be introduced by way of the amendment were

also facts, which were known to the plaintiff at the time of filing of the suit. He relies, for this purpose, on an application, dated 1st July, 2021, which was served on him and has apparently been also filed with this Court but has not been registered and listed at any point of time. Mr. Lall submits that this application contained averments relating to all the facts which are sought to be introduced by the present amendment and, therefore, the documents, which are relevant to these assertions must also be treated as within the possession of the plaintiff even prior to the filing of the plaint. He submits that, in fact, the Court had heard the plaintiff for some time in this matter and that the present application is an attempt to improve the case set out in the plaint in view of the observations made by the Court during hearing.

6. Mr. Bharath, learned Counsel for the applicant/plaintiff, contests these submissions of Mr. Lall. He submits that the documents, which are being introduced along with the present application, were not in the custody of the plaintiff at the time when the suit was filed and have come into the plaintiff's possession only thereafter. He submits that, along with the suit, IA 7637/2021 had also been filed, under Order XI Rule 1(4) of the CPC, for permission to place additional documents on record. There were specific averments, in the said application, that the documents which the plaintiff desired to place on record, were not in its custody or possession at that point of time. He submits that this Court had, *vide* its order dated 5th July, 2021, allowed IA 7637/2021 and granted the plaintiff four weeks' time to place additional documents on record, subject to the right of the defendant to admit or deny the said documents. He submits that

the documents have been filed within the said period of four weeks and that, therefore, there can be no justifiable objection to their being taken on record.

7. Apropos the unnumbered application, to which Mr. Lall alludes, Mr. Bharath submits that this application did not annex any document therewith and, in fact, was filed in the Registry of this Court about ten days after the suit was filed but before the suit came up for preliminary hearing before the Court. Thereafter, consequent to the Court having granted the plaintiff permission to file additional documents, he submits that the present formal application under Order VI Rule 17 of the CPC has been filed along with the said documents.

8. Mr. Bharath also draws my attention to para 43 of the plaint, which specifically avers that the defendant was indulging in activities, which were perceived by the plaintiff to be unlawful in the past as well. He submits that, by the present amendment, he merely seeks to place instances of such activities on record along with the documents, which are relevant in that connection.

9. As such, he submits that there is no justification to deny the prayers contained in the present application.

10. In my view, subject to reserving the right of the defendant to admit and deny the documents, which are being placed on record along with the present application as well as to refute the averments on facts or in law, as contained in the amendments now being sought to

be made, there is no real justification for refusing to take the amendments on record.

11. The law, with regard to Order VI Rule 17 of the CPC is well settled. Amendments, which (i) seek to alter the case set out in the plaint or (ii) introduce a new cause of action or (iii) seek to introduce causes of action which are barred by time or (iv) which are intended to overcome an objection taken by the defendant in the written statement or in the reply filed in response to the plaint, may be justifiably refused. In all other cases, the law is that amendments ordinarily ought to be allowed, where the Court is of the opinion that they are necessary in order for a complete adjudication of the *lis* between the parties.

12. The position in law, in this regard, stands settled by the judgment of the Supreme Court in *Mount Mary Enterprises v. M/s. Jivratna Medi Treat Pvt Ltd*¹, and *Ramesh Kumar Agarwal v. Rajamala Exports (P) Ltd*², to which Mr. Bharath has drawn my attention. The relevant passages from the said decisions may be reproduced thus:

From *Mount Mary Enterprises*¹

“7. In our opinion, as per the provisions of Order 6 Rule 17 of the Civil Procedure Code, the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment

¹ (2015) 4 SCC 182

² (2012) 5 SCC 337

application because the suit was for specific performance and initially the property had been valued at Rs 13,50,000 but as the market value of the property was actually Rs 1,20,00,000, the appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint.”

10. With regard to the amendment of the plaint, the following observation has been made by this Court in *North Eastern Railway Admn. v. Bhagwan Das*³:

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*⁴ which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”

(Emphasis supplied)

From *Ramesh Kumar Aggarwal*²

“19. In *Rajkumar Gurawara v. S.K. Sarwagi & Co. (P) Ltd.*⁵ this Court considered the scope of amendment of pleadings before or after the commencement of the trial. In para 18, this Court held as under:

“18. ... It is settled law that the grant of application for amendment be subject to certain conditions, namely,

³ (2008) 8 SCC 511

⁴ AIR 1957 SC 363 : 1957 (1) SCR 595

⁵ (2008) 14 SCC 364

(i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation.”

20. In *Revajeetu Builders & Developers v. Narayanaswamy & Sons*⁶ this Court once again considered the scope of amendment of pleadings. In para 63, it concluded as follows:

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should

⁶ (2009) 10 SCC 84

decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

21. *It is clear that while deciding the application for amendment ordinarily the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.*

22. In view of the fact that the amendment application came to be filed immediately after the filing of the suit (suit came to be filed in 2007 and the amendment application was filed in 2008) i.e. before the commencement of the trial and taking note of the fact that the learned Single Judge confined the relief only to a certain extent and also that in the proposed amendment the plaintiff wants to explain how the money was paid, though necessary averments in the form of foundation have already been laid in the original plaint, we hold that by this process the plaintiff is not altering the cause of action and in any way prejudice the defendants.”

(Emphasis supplied)

13. The principles enumerated in ***Revajetu Builders & Developers***⁶, when applied to the present case, all justify grant of the prayer to amend the plaint.

14. Regarding the objection of Mr. Lall, relating to Order XI Rule 1(1) and (5) of the CPC as amended by the Commercial Courts Act, 2015, I am of the opinion that Order XI Rule 1(1) and (5) of the CPC, really does not arise for consideration, as it deals with the right of the plaintiff to rely on documents, which are on record. The stage of reliance is yet to be reached and it would always open to the defendant to oppose the right of the plaintiff to rely on the documents, which are on record.

15. Regarding Order XI Rule 1(1) and (5) of the CPC, Mr. Bharath has pointed out that, while it is true that, with the plaint, the statement of truth filed by the plaintiff, stated that all documents in the custody and control of the plaintiff were being filed with the plaint, IA 7637/2021, nonetheless, sought permission to rely on additional documents, which may not have been, at that stage, in the custody of the plaintiff. Para 7 of the present application Order VI Rule 17 of the CPC, reads thus:

“7. It is humbly submitted that even now, the Plaintiff is having limited access to the documents that are spread across its offices in various countries which are under different stages of lockdown with no or partial access to office and records. It is to be noted that the Plaintiff is still in the process of collecting evidence pertaining to the unlawful activities of the Defendant, its subsidiaries and affiliates. Nevertheless, the Plaintiff humbly submits that it undertakes to file other additional documents regarding the above mentioned and place it on record as and when it is accessible and made available to the Plaintiff.”

16. Mr. Bharath submits that the documents now being sought to be placed on record were documents, which were not in the custody of the plaintiff at the time when the plaint was filed and have, thereafter,

come into the custody of the plaintiff. As such, he submits that there can be no justification to reject the present application on the ground that it seeks to introduce additional documents, especially as the documents have been filed within the period granted by this Court *vide* order dated 5th July, 2021 in IA 7637/2021, which was never assailed by the defendant at any point of time.

17. The submissions of Mr Bharath merit acceptance.

18. Further, a perusal of the averments, which are sought to be introduced by way of the present amendment, *vis-a-vis* those which are already contained in the plaint, indicates that no fresh cause of action is sought to be pleaded and that the amendment cannot be treated as an attempt to overcome an objection which has been taken by the defendant in the written statement, as no written statement has been filed till date. In this view of the matter, there is no justifiable reason to refuse the prayer for amendment as contained in the present application. As the amendment merely seeks to refer to specific instances in support of the assertions in the plaint, I am of the opinion that it would be necessary, for a complete adjudication of the dispute between the parties, that the averments, as sought to be introduced by the amendments are permitted to be taken on record, irrespective of the merits and demerits thereof.

19. Besides, I am also in agreement with the submission of Mr. Bharath that permitting the present amendments to be taken on record, would really not result in any prejudice to the defendant. The

defendant is at complete liberty to refute or rebut the assertions, which are sought to be introduced by way of the present amendments. The right of the defendant to admit or deny the documents which have been filed in support therewith, would also remain available to it.

20. The defendant has, fairly, not assailed the prayer for amendment of the plaint as lacking in *bona fides*.

21. In view of the aforesaid observations, the prayer for amendment, in my view, deserves to be allowed.

22. Accordingly, IA 9051/2021 stands allowed in terms of the prayers made therein. The right of the defendant to refute the assertions introduced by way of present amendments, therefore, also remains alive. The period of four weeks for filing the written statement granted to the defendant, shall stand reckoned from today.

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23. List the matter before the Joint Registrar for completion of pleadings etc. on 12th October, 2021. The date of 1st September, 2021 already fixed before the Joint Registrar stands cancelled.

C. HARI SHANKAR, J.

AUGUST 27, 2021/r.bararia