

Beiersdorf Ag Vs Hindustan Unilever Limited

Court: Delhi High Court

Date of Decision: Aug. 27, 2021

Acts Referred: Code Of Civil Procedure, 1908 " Order 11 Rule 1(1), Order 11 Rule 1(2), Order 11 Rule 1(4), Order 11 Rule 1(5), Order 6 Rule 17

Hon'ble Judges: C .Hari Shankar, J

Bench: Single Bench

Advocate: Bharath MS, Ayush Sharma, Akshaya P Sachin, Krishna, C.M. Lall, Nishad Nadkarni, Ankur Sangal, Pragya Mishra

Judgement

C. Hari Shankar, J

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 (2015) 4 SCC 182, and Ramesh Kumar Agarwal v. Rajamala Exports (P) Ltd (2012) 5 SCC 337, to which Mr. Bharath has drawn my

attention. The relevant passages from the said decisions may be reproduced thus:

From Mount Mary Enterprises (2015) 4 SCC 182

“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 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.Ã¢â€â€

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 (2008) 8 SCC 511:

Ã¢â€â€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 AIR 1957 SC 363 : 1957 (1) SCR 595 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.Ã¢â€â€

(Emphasis supplied)

From Ramesh Kumar Aggarwal (2012) 5 SCC 337

Ã¢â€â€19. In Rajkumar Gurawara v. S.K. Sarwagi & Co. (P) Ltd. (2008) 14 SCC 364 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:

Ã¢â€â€18. Ã¢â€â€; It is settled law that the grant of application for amendment be subject to certain conditions, namely,

(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.Ã¢â€â€

20. In Revajeetu Builders & Developers v. Narayanaswamy & Sons (2009) 10 SCC 84 this Court once again considered the scope of amendment of

pleadings. In para 63, it concluded as follows:

Ã¢â€â€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 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 *Revajeevu 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.