

(2011) 11 DEL CK 0444

In the Delhi High Court

Case No : I.A. No. 6309 of 2010 in CS (OS) No. 2157 of 2009

Advance Magazine Publishers Inc and Another

APPELLANT

Vs

M/s Just Lifestyle Pvt. Ltd.

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 11 Rule 12, Order 13 Rule 8, Order 39 Rule 1

Citation : (2011) 185 DLT 564 : (2011) 126 DRJ 537 : (2012) 49 PTC 176

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Sandeep Sethi with Ms. Anuradha Salhotra and Mr. Amritesh Mishra, for the Appellant; Rajiv Nayar, with Ms. Manmeet Arora and Ms. Fareha A. Khan, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—By this order, I propose to decide the application being I.A. No. 6309/2010 filed by the plaintiffs under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 for amendment of the plaint and Order 1 Rule 10(2) CPC for impleadment of M/s. Priority Marketing Pvt. Ltd. as defendant No. 2.

2. The two plaintiffs, namely, Advance Magazine Publishers Inc., USA and Conde Nast India Private Limited, New Delhi, have filed the present suit for permanent injunction against the defendant M/s Just Lifestyle Private Limited, Mumbai, inter-alia, infringement of trademark and passing off in relation to the mark "VOGUE".

3. The suit as well as interim application was first time listed before the Court on 13.11.2009 when the summons were issued in the main suit and notice in the interim application being I.A. No. 14609/2009, the Court also restrained from using the registered trademark "VOGUE" as part of its trademark "JUST IN VOGUE" or any other deceptively similar trademark in relation to its goods and service.

4. The said order was challenged by the defendant by filing of an appeal being FAO (OS) No. 559/2009 before the Division Bench who stayed the operation of the impugned order dated 13.11.2009.

5. The plaintiffs thereafter filed a SLP against the order of the Division Bench. The Supreme Court vide order dated 14.12.2009 set-aside both the interim orders passed by the Single Bench and later on staying the order by the Division Bench and directed the learned Single Judge to decide afresh the application for injunction within six weeks and the suit itself expeditiously and preferably within a period of four months.

6. In view of the order passed by the Supreme Court, the defendant later on withdrew the appeal which was filed before the Division Bench, on 23.12.2009.

7. The learned Single Judge issued a direction for filing the reply to the interim application on behalf of the defendant as well as for rejoinder, if any, by the plaintiffs and listed the application for hearing on 14.01.2010.

8. Both the parties agreed that the arguments in the interim application would, more or less, replicate those that would be made at the time of final hearing of the suit. In view thereof, a suggestion was made that the suit be finally disposed of and the parties were willing to abide by the methodology recorded in the order dated 14.01.2010. In view of the consent order, admittedly, the plaintiffs did not produced any evidence by way of affidavit(s).

9. The court thereafter framed issues on 4.3.2010. Issue No. 1 was about the territorial jurisdiction of this Court. The suit as well as the interim application were also partly heard on the said date and also on subsequent dates.

10. However, it appears from the order dated 18.02.2010 that the schedule fixed by the Court in order dated 14.01.2010 was not followed by the parties, rather the defendant filed five applications; i.e., a) I.A. No. 343/2010 under Order 1 Rule 10 CPC read with Section 151 CPC for deletion of plaintiff No. 2 from the array of the parties, b) IA No. 344/2010 under Order 7 Rule 10(1) CPC for return of plaint, c) I.A. No. 2588/2010 under Order VI Rule 16 read with Section 151 CPC, d) I.A. No. 2589/2010 under Order XI Rule 12 read with Section 151 CPC and e) I.A. No. 5440/2010 under Order 13 Rule 8 CPC for impounding the document. Thus, the hearing on the main suit was not conducted.

11. Later on the plaintiffs also have filed two applications; one being I.A. No. 6308/2010 under Order VII Rule 14(3) CPC, and the other being I.A. No. 6309/2010 under Order VI Rule 17 CPC for amendment of plaint readwith Order 1 Rule 10(2) CPC for impleadment of M/s. Priority Marketing Pvt. Ltd. as defendant No. 2. The notices were issued and the matter was sent before the Joint Registrar for completion of pleadings on 08.07.2010. The matter was adjourned from time to time for completion of pleadings in the pending applications and for admission/denial of the documents. Record shows that instead of hearing of the case as directed by the Apex Court, both the parties

filed applications, therefore, hearing was postponed on one reason or the other.

12. As decision of I.A. No. 6309/2010 under Order 6 Rule 17 will have bearing on the other pending applications, therefore, both the parties have argued the application at the first instance.

13. By virtue of this application, the plaintiffs want to amend the paragraphs-12, 14 & 33 of the plaint and to incorporate paragraph-29A in the plaint.

14. The following reasons have been given by the plaintiffs :

(a) That the defendant in the written statement has pleaded that it neither carries on its business in Delhi nor effects sale of any of its products in Delhi, therefore, no cause of action has arisen in Delhi. The burden on this issue was put upon the defendant.

(b) That in the month of April, 2010, they learnt that the aforesaid statement of the defendant was false to the knowledge of the defendant and in fact, the defendant was carrying on its business, particularly, at shop premises being No. 132-A, DLF Mall, Saket, New Delhi from where watches and other timepieces are being sold and the plaintiffs' representative made a purchase from the said shop on 10.04.2010.

(c) The said shop is being operated under the name and style of "Just Watches". An invoice was made out for the purchase made at the said shop from where the plaintiffs' representative purchased a watch on 10.04.2010 and the said watch was packed in a packet with the name of "JUST IN VOGUE", though the visiting card was issued in the name of "Just Watches" purporting that the said business was being carried on by the company known as "Priority Marketing Pvt. Ltd."

(d) On the inspection, it was transpired to the plaintiffs that the company "Just Lifestyle Pvt. Ltd." was earlier known as "Priority One Marketing Pvt. Ltd." and further, the "Priority Marketing Pvt. Ltd." is the holding of "Priority One Marketing Pvt. Ltd." and now known as "Just Lifestyle". Mr. Ashok Sinker who has signed the written statement is the authorized representative of M/s Priority Marketing Pvt. Ltd. The said company is doing business in Delhi.

15. In view thereof, the prayer is also made by the plaintiffs in the application that the said concern M/s Priority Marketing Pvt. Ltd. is a necessary party to the present suit and the same be impleaded as defendant No. 2, as the defendant is carrying on its business and work for gain in Delhi under the mark "VOGUE" through proposed defendant No. 2 also.

16. It is alleged in the application that the defendant has not made full and complete disclosure in the written statement and the defendant, in fact, took a false and dishonest plea that it was not carrying on business, in order to overreach and misled the Court. It is also stated that since the said facts have come to the knowledge of the plaintiffs after framing of the issues, therefore, the plaintiffs have filed the present application under Order VI Rule 17 CPC.

Therefore, the amendment as well as impleadment of defendant No. 2 sought by the plaintiffs are necessary in order to determine the real question in controversy between the parties.

17. It is also alleged in the application that the defendant cannot deny the fact that the defendant is carrying on business from a store at Central Mall, Gurgaon where the said goods under the name of "JUST IN VOGUE" are also available to the customers in Delhi through its store.

18. The plaintiff also sought an amendment in the plaint that plaintiff No. 2 has its office in Delhi who is carrying on advertisement sales, circulation sales and editorial activities. The exclusive distributor of VOGUE INDIA Magazine in India is Living Media India Ltd. which has its registered office at 9K, Connaught Circus, New Delhi and in the calendar year, 2009, eighty thousand and eighty five copies of the VOGUE INDIA Magazine were sold in Delhi.

It is alleged that the said averments by oversight were not incorporated in the original plaint which are necessary to be incorporated in the plaint. It is argued by the plaintiffs that in case the amendment is allowed, it does not in any manner affect the nature of the suit and no prejudice could be caused to the defendant and the application filed by the plaintiffs is not filed with malafide intention. There is no interim order against the defendant, no prejudice would be caused if the same is allowed. The present case is also a case of infringement of trademarks. The cause of action is continuous one, therefore, there is no harm incase the subsequent events are taken on record.

19. The amendments sought by the plaintiffs in paragraphs-12,14 & 33 of the plaint and by adding paragraph-29A, read as under:-

12. That the plaintiff's magazine published under the trademark VOGUE is sold/ circulated in around 145 countries round the world, including India and Delhi. There are subscribers to the magazine who reside in Delhi. The magazine under the said trademark has been available/sold in India including Delhi since at least the last two decades and has established enormous and enviable reputation and goodwill in India, among other countries. The trademark VOGUE was first used in India in the year 1939 and India and Indians have been regularly featured in the said magazine. That the first plaintiff is internationally well-known and is the registered proprietor of the trademark VOGUE in around 145 countries including India.

14. That the second plaintiff is publishing a magazine under the trademark VOGUE INDIA in Mumbai. The second plaintiff has a branch office in Delhi at the address 1st Floor, Southern Park, Unit No. 15, Plot No. D-2, DDA District Centre, Saket, New Delhi. From its office in New Delhi, the second plaintiff sells advertisements, has circulation sales and carries on editorial activities. The Associate Advertising Director, the Circulation Sales Manager, a Fashion and Internet Editor of the magazine Vogue India are stationed at the second plaintiff's said Delhi office. The distribution of the said magazine is done through

the second plaintiff's exclusive/sole distributor Living Media India Ltd. which has its registered office at 9K, Connaught Circus, New Delhi-110001. Around 80,000 issues of the VOGUE INDIA magazine were sold in Delhi in the calendar year 2009.

33. That this Hon"ble Court has jurisdiction to entertain and try the present suit for the following reasons:

? the first plaintiff through its wholly owned subsidiary and exclusive licensee the second plaintiff is carrying on business within the jurisdiction of this Hon"ble Court. The second plaintiff has its branch office within the jurisdiction of this Court and its magazines under the trademark VOGUE are freely available within the jurisdiction of this Hon"ble Court.

? The defendant is servicing customers in Delhi through its store named JUST IN VOGUE in the Central Mall, Gurgaon which is a part of the National Capital Region. The cause of action has therefore arisen within the jurisdiction of this Hon"ble Court.

? The defendant is carrying on business at DLF PLACE MALL, Saket within the jurisdiction of this Hon"ble Court. The defendant is also using bags carrying the trademark VOGUE at its said store and the cause of action has therefore arisen within the jurisdiction of this Hon"ble Court.

29A. That the plaintiffs learnt that the defendants were carrying on business at Delhi particularly at shop premises being No. 132-A, DLF Mall, Saket, New Delhi. From the said shop watches and other timepieces are being sold. The said shop is being operated under the name and style of "Just Watches" and the said business was being carried on by company known as "Priority Marketing Pvt. Ltd." which is the holding of Priority One Marketing Pvt. Ltd. (now known as "Just Lifestyle", which is the defendant herein). A fortiori, the defendant company is "held" by the company operating the shop premises above referred at Delhi.

The defendant is also carrying on business in Gurgaon. The defendant's store in Gurgaon is situated in the Central Mall. A number of persons staying in Gurgaon work in Delhi and a number of persons staying in Delhi work in Gurgaon. Persons working or staying in Delhi therefore shop at the defendants Gurgaon store and the services of the defendant under the JUST IN VOGUE mark are available to customers in Delhi. The defendant is therefore carrying on business within the jurisdiction of this Court and the cause of action has also arisen within the jurisdiction of this Hon"ble Court.

20. The application is strongly opposed by the defendant. It is stated by the defendant that the said application has been filed with malafide intention in order to avoid the haring of the main suit. Since the issues in the matter have been framed and the parties have also argued the main suit itself from time to time before the Court with respect to the preliminary issue of the territorial jurisdiction, therefore, at the final stage of arguments, the filing of the present

application is not bonafide and the amendment cannot be allowed for the reasons stated in the application. It is stated that the plaintiff could have raised the aforesaid pleas before the commencement of final arguments, as the details about the advertisement of the trademark "VOGUE" were available with the plaintiffs at the time of filing of the suit. Even the averment in respect of plaintiff No. 2 was also within the knowledge of the plaintiffs at that time when the suit was filed. Therefore, the question of now allowing the amendments at this stage does not arise.

21. As regards the carrying on business, particularly, at the shop premises No. 132-A, DLF Mall, Saket, New Delhi is concerned, the defendant has specifically denied that it has ever sold watches under the name & style of "Just Watches" to any customer in Delhi from the said shop. As regards the impleadment of new defendant is concerned, it is stated that the present defendant does not have any subsidiary under the name & style of Priority Marketing Pvt. Ltd. and the defendant ceases to remain the subsidiary of the same. The plaintiffs have moved the present application for the said purpose at the belated stage in the proceedings for amendment to incorporate pleas which are false to the knowledge of the plaintiffs. It is also stated that the two companies are distinct and separate entities, therefore, the operation of the retail store by the purported holding company, i.e. Priority Marketing Pvt. Ltd. under the name & style of "Just Watches" cannot be deemed to be the business being carried on in the name of subsidiary of the defendant. However, the defendant submits that the mere factum of commonality of names and Directors of the company does not imply that the defendant is a subsidiary of Priority Marketing Pvt. Ltd. However, it is admitted that the said company holds a mere 3% of the equity shares in the defendant and does not exercise any control over the composition of the Board of Directors of the defendant. The defendant has also admitted that M/s Just Watches came into existence more than three months after the institution of the present suit. The plaintiffs, in the garb of incorporating additional new pleas by way of the present application, have also sought to delete certain portions of the plaint without seeking leave of this Court. The prayer is made by the defendant to reject the application.

22. Mr. Rajiv Nayar, learned Senior counsel appearing on behalf of the defendant has argued that in the present case, one of the main disputes is that this Court has no territorial jurisdiction. He argues that the question as regards the jurisdiction of a Court is required to be determined with reference to the date on which the suit is filed and entertained and not with reference to the future date. He submits that the plaintiff in the present case is curing the defect of territorial jurisdiction by filing the present application, as the plaintiff was aware on the date of filing the amendment application that this Court has no territorial jurisdiction and on this objection, the matter was argued from time to time and the plaintiff was not able to satisfy the objection of jurisdiction, therefore, now the new pleas have been raised by the plaintiff in order to cover the said objection. He argues that the amendment of pleadings cannot be allowed after

the commencement of trial. His further submission is that the question of jurisdiction has to be decided on the basis of the averment made in the original plaint. In order to overcome and by taking the advantage of the provision of Order VI, Rule 17 CPC, no additional documents can be allowed to be produced once the trial begins. In support of his submissions, he refers the following decisions:-

- (i) Mohannakumaran Nair Vs. Vijayakumaran Nair,
- (ii) Rajkumar Gurawara (Dead) thr. L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another,
- (iii) Chander Kanta Bansal Vs. Rajinder Singh Anand,
- (iv) Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others,
- (v) Archie Comic Publications Inc. Vs. Purple Creations Pvt. Ltd., Nagji Kheraj Vira, Pankaj Nagji Vira and Dipak Nagji Vira, Directors, Purple Creations Pvt. Ltd.,

23. As per the case of the defendant, the trial in a suit is deemed to have commenced when the issues are settled. The issues, in the present case, have been framed on 04.03.2010 and, therefore, the trial is deemed to have commenced on the same date, i.e. 04.03.2010. The defendant had already concluded its final arguments on the issue of territorial jurisdiction and the plaintiffs were at the stage of rejoinder arguments. In order to overcome the serious lacunae with respect to jurisdiction, the plaintiffs filed an application for amendment of the plaint as late as on 11.05.2010, at a stage when rejoinder arguments were being addressed by the plaintiffs.

24. It is further submitted that each of the amendments, as sought to be incorporated are pertained to the plaintiffs themselves and have been in the knowledge of the plaintiffs much prior to the institution of the suit. There can be no manner of doubt that had the plaintiffs exercised the diligence, the aforesaid pleas could have been incorporated in the original plaint itself. The plaintiffs have merely given an explanation of an "oversight and bona fide error" in the application for amendment. Thus, the plaintiffs have not been able to satisfy the test as laid down in the proviso to Order VI, Rule 17 CPC and, therefore, the plaintiffs cannot be permitted to incorporate pleas which, with due diligence by the plaintiffs, could have been incorporated in the original plaint itself.

25. It is alleged by the defendant that the second category of amendments which pertain to the Defendant may be divided into the following :

- (a) amendments pertaining to the Defendant carrying on business in Gurgaon (paragraphs 29A and 33 of the amended plaint)
- (b) amendments pertaining to the operation of the shop "Just Watches" at Saket, Delhi (paragraphs 29A and 33 of the amended plaint)

26. It is submitted that the plaintiffs by way of an amendment has averred that

the operation of a store by the Defendant in Gurgaon confers jurisdiction on this Hon''ble Court as the goods sold in the retail store at Gurgaon are available to persons though residing in Delhi come to work in Gurgaon. The factum of the existence of the Defendant's shop at Central Mall has been to the knowledge of the plaintiff since on or about 20.11.2009, when the appeal paper book of FAO(OS) No. 559 of 2009 was received by the Plaintiffs. The Defendant, in the said appeal, had enlisted a list of stores run by the Defendant in India, which included the store at Gurgaon. The said list of stores was also filed by the Defendant before this Hon''ble Court on 12.01.2010 alongwith its reply to Order XXXIX Rule 1 and 2.

27. It is also contended that M/s. Priority Marketing Pvt. Ltd. is not the holding company of Priority One Marketing Pvt. Ltd. It has also been specifically pleaded by the Defendant that Priority Marketing Pvt. Ltd. is a mere 3% shareholder in Priority One Marketing Pvt. Ltd. The Defendant in its reply dated 24.07.2009 to the Cease and Desist Notice, disclosed the factum of change of name from Priority One Marketing Pvt. Ltd to M/s. Just Lifestyle Pvt. Ltd. The Defendant does not carry on business through "Just Watches" at Delhi, it is pertinent to state that "Just Watches" commenced operations in Delhi only on 26.02.2010. The present suit for infringement has been instituted by the Plaintiffs as early as on 12.11.2009 when evidently, "Just Watches" was not even in existence.

28. The defendant has also explained about the documents filed by the plaintiffs in support of application. It is alleged that the said trap transaction does not mean that the Defendant carries on business in Delhi and does not confer jurisdiction on this Hon''ble Court for the following reasons :

(i) The receipt with respect to the purchase of the Kenneth Cole watches was issued by the retail store of the Defendant at Gurgaon.

(ii) The credit of the sale of the Kenneth Cole watches purchased by the said customer is only to the account of the Defendant. Priority Marketing Ltd., who is the occupant of the store at Saket has drawn no benefit from this transaction.

(iii) "Kenneth Cole Watches" is admittedly, not the subject matter of dispute in the present proceedings and therefore, the "sale" of Kenneth Cole watches does not confer jurisdiction on this Hon''ble Court.

(iv) It has been expressly held by the Supreme Court in *Dhodha House Vs. S.K. Maingi*, that the mere sale or availability of goods at a place would not mean that a person carried on business at that place.

(v) Without prejudice to the submission that the Defendant does not have any store in Delhi, assuming the store at Saket is operated and managed by the Defendant, in view of Section 20(a) and (c) of the CPC and the Explanation thereto in the absence of any cause of action having arisen in Delhi, the mere fact that the Defendant operates as store in Delhi will not confer any jurisdiction on this Hon''ble Court. u/s 20(a) of the CPC a Defendant can only be sued at the

place where its registered office is situated, which in this case is Mumbai.

29. The object for adding proviso to Order VI, Rule 17 CPC is to curtail the delay and expedite the hearing of the case and to stall the proceedings by filing of the frivolous application. However, it cannot be an impediment and cannot bar in allowing the application if it otherwise deserves on merits, otherwise, the proviso would be in direct conflict to the expression "at any stage". The "trial" means here the commencement of actual trial or adducing of evidence.

30. Ordinarily, a suit is tried in all its stages on the cause of action as it existed on the date of its institution. But it is open to a Court (including a court of appeal) to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate; or (2) where it is necessary to take notice of the changed circumstances in order shorten the litigation, or (3) to do complete justice between the parties.

31. The test to be applied while adjudicating an application under Order VI Rule 17 of the Code has been laid down in the proviso of the said provision in case the amendment is sought after the commencement of trial. The proviso to Order VI Rule 17 of the Code stipulates that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

32. Despite of direction issued by the Supreme Court, it is the defendant who have filed five applications. When the matter came up before the Court on 14.01.2010 with the consent of the parties, it was ordered that the suit may be finally heard rather to address the arguments by the parties in the interim application. The parties also agreed to rely upon the documents already filed. In the said order, the parties have, in fact, waived trial and the matter was put up for final arguments. Therefore, no evidence by way of affidavit has been filed by the plaintiffs.

33. As far as the objection raised by the defendant about the proviso of Order VI, Rule 17 CPC is concerned, I am of the considered view that since the parties have already made a statement before the Court not to lead the evidence in the matter and on the basis of the pleadings the entire suit is to be decided, therefore, there is no warrant for proposition raised by the defendant of the commencement of trial. Hence, the decisions referred by the defendant in this regard are of no consequence.

34. It is also a matter of fact that while disposing of the SLP filed by the plaintiff on 14.12.2009, the directions were issued by the Supreme Court to decide the application for injunction within six weeks and the suit preferably within a period of four months.

35. On 04.03.2010 the issues were framed including the issue of territorial jurisdiction and the maintainability of the suit. The matter was heard from time to time by the predecessor Courts. In April, 2010, the plaintiff during the course of the arguments filed the present application when the suggestion was made that the issue of territorial jurisdiction be treated as preliminary issue.

36. The law of amendment of plaint is that the merit of the case is immaterial and cannot be looked into while considering an application for amendment.

37. It is further trite that the correctness and falsity of the amendment cannot also be gone into at the stage of the amendment (Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others,) Further, in Usha Devi Vs. Rijwan Ahamd and Others, it was held as follows:

As to the submissions made on behalf of the respondents that the amendment will render the suit non- maintainable because it would not only materially change the suit property but also change the cause of action it has only to be pointed out that in order to allow the prayer for amendment the merit of the amendment is hardly a relevant consideration and it will be open to the defendants-respondents to raise their objection in regard to the amended plaint by making any corresponding amendments in their written statement.

38. In the case of Savitri Minda vs. Minda Industries, 1997 PTC 257, this Court allowed the amendment of the plaint under Order VI Rule 17 observing that the courts should be liberal in the matter of allowing amendment unless serious injustice or irreparable loss is caused to the other side. The Courts exist to decide the rights of the parties and not to punish them for the mistake they make in the conduct of their cases.

39. In the case of Shri Saif-ul-Islam Company L.P. v. Roshan Lal Arora, 2003 AIHC 2966 (2968) (Del), it was held that where pleadings are defective, amendment would be allowed. It is also settled law that amendments to plead material facts left by oversight and which does not cause prejudice to other side would be allowed.

40. The Supreme Court, in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, , observed in para 63 as under:

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

63. On critically analyzing 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.

41. There is no dispute about the fact that the question of jurisdiction has to be determined on the basis of the averments made in the plaint as originally filed and in the absence of territorial jurisdiction to entertain the plaint, the Court has no jurisdiction to entertain the application under Order VI, Rule 17 CPC and to allow the amendment if it finds that on the basis of averment made in the original plaint shows that the court has no territorial jurisdiction. The defendant has referred the judgment in the case of Archie Comic Publications Inc. Vs. Purple Creations Pvt. Ltd., Nagji Kheraj Vira, Pankaj Nagji Vira and Dipak Nagji Vira, Directors, Purple Creations Pvt. Ltd., . However, the facts in the present case are materially different. In the present case, in para 33 of the original plaint, the plaintiffs have made the specific statement that the plaintiff No. 1 through plaintiff No. 2 carries on its business within the jurisdiction of this Court. The plaintiff No. 2 in the present case admittedly carries on its business in Delhi. These facts were not there in the case of Archie Comic (supra). There is no dispute that all the objections raised by the defendant on merit of the case as well as on the point of territorial jurisdiction have to be determined even if the application is allowed. In the present case, this Court has not yet determined or made its mind as to whether the court has or has not got the territorial jurisdiction on the basis of averment made in the original plaint or the plaintiffs have or not have any cause of action against the defendant in Delhi. Therefore, in view of settled law, the points raised by the defendant about the territorial jurisdiction can not be decided while dealing the present application. Infact the plaintiffs by virtue of the present application want to elaborates the facts already stated and wish to bring subsequent events happened after filing the suit on record by also adding one more party i.e. defendant No. 2 which according to them has nexus with the main defendant. this Court is of the considered view that the plaintiffs are entitled to bring the additional facts and improve its case by way of amendment as it is clear that the cause of action remains the same and nature of the suit would also not be changed if the amendment is allowed.

42. 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. If the aforesaid test is applied in the

instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimize the litigation.

43. Since it is well settled law that the approach of the Court while dealing with the application for amendment, should be liberal and the said provision is designed to resolve the controversy between the parties and in order to avoid the multiplicity of the litigation.

44. As far as the validity of the documents and affidavits filed by the plaintiffs in order to show that the defendant's goods are available within the jurisdiction of this Court and the material produced in support of that, all the said questions and objections raised by the defendant are to be considered when the matter is heard on merits.

45. Therefore, the present application is accordingly allowed as prayed for. M/s. Priority Marketing Pvt. Ltd. is also impleaded as defendant No. 2.

The application is disposed of.

CS (OS) No. 2157/2009

46. The amended plaint be filed by the plaintiff within two weeks from today. Summons be issued to the defendant No. 2 for the next date i.e. 15.3.2012. Written statement to the amended plaint be filed by both the defendants on or before the next date when the remaining pending applications of the parties and arguments in the main suit in terms of order dated 14.01.2010 will be heard.