
(2018) 10 DEL CK 0118

In the Delhi High Court

Case No : Civil Suit No.(COMM) 56 OF 2017

Bata India Limited

APPELLANT

Vs

Subhash Kapoor & Ors

RESPONDENT

Date of Decision : 05-10-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2018) 10 DEL CK 0118

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

JAYANT NATH, J Â

IA No.10852/2017 and 15042/2017

1. Both these application are filed by the plaintiff seeking amendment of the plaint.

2. IA No. 10852/2017 is filed seeking to add certain additional facts which, it is stated, have arisen after filing of the suit. These facts relate to the steps

taken by defendants No. 2 and 3 to delete the word "Bata" from the trailer/film.

3. As far as IA No.15042/2017 is concerned, by this application the plaintiff seeks to add that defendant No.5 has applied for registration of the trade

mark "KHILADI" in Class 25 which relates to footwear. The grievance of the plaintiff is that defendant No.5 is a Brand Ambassador for a brand

which is said to be a rival brand of the plaintiff. Hence, it is necessary to place on record the fact that defendant No.5 is dealing in/proposing to deal in

footwear.

4. Learned counsel for defendants No. 1 to 5 and 8 has opposed the present application. He has submitted that as far as the first application is concerned, a plea has been taken that the trailer of the film in question is still available on different links on YouTube. He submits that YouTube has been deleted as a party. He further submits that applications are mala fide and only to put obstacles in the adjudication of the application filed by defendant No.5 under Order 1 Rule 10 CPC for his deletion from the array of parties. It is pleaded that defendant No. 5 who is a known film star has been added as a party only to gain publicity. The said defendant No. 5 has not uttered any defamatory statement against the plaintiff and the amendments are only for the purpose to continuing to drag him in the present frivolous litigation.

5. At this stage, it is not possible to go into the issue as to whether the averments proposed to be added in the plaint are correct or not as has been urged by the learned counsel for defendant Nos.1 and 2. These are issues which have to be gone into at the time of adjudication of the suit. Reference in this context may be had to the judgment of the Supreme Court in *Raj Kumar Bhatia v. Subhash Chander Bhatia*, AIR 2018 SC 100.

6. Further, merely because the facts sought to be added will have a bearing on the application filed by defendant No. 5 under Order 1 Rule 10 CPC would not be a ground to deny amendment. The proposed amendments do not change the nature of the suit in any manner.

7. The principles of the amendment are quite well known. Reference may be had to the judgment of the Supreme Court in the case of *Revajeevu Builders and Developers vs. Narayanaswamy and Sons & Ors*, (2009) 10 SCC 84. The Supreme Court held as follows:-

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 VI Rule 17. These are only illustrative and not exhaustive.â??

8. The amendments sought are necessary for the purpose of determining the real question of controversy between the parties. The proposed amendments cannot be said to be malafide. Â

9. The application is allowed subject to payment of costs of Rs.20,000/-.

Amended plaint be filed within two weeks. Written statement to the amended plaint be filed within four weeks thereafter.

10. The application stands disposed of.

IA No. 5045/2017 and 6540/2017

11. List before the Joint Registrar on 15.11.2018 for adjudication.

12. The Joint Registrar is requested to expeditiously dispose of these applications.