

(2014) 03 DEL CK 0356
In the Delhi High Court
Case No : CS (OS) 1399/2012

Consolidated Contractors International Company S.A.L	APPELLANT
Vs	
Consolidated Construction Consortium Ltd. and Others	RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 5, Order 39 Rule 2A, Order 39 Rule 4, Order 6 Rule 17, 151

Citation : (2014) 03 DEL CK 0356

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Girija Krishan Varma, Manoj K. Chhabra and Deepika Sehgal, Advocates for the Appellant; Saurabh Srivastava and Shilpa Gupta, Advocates for the Respondent

Judgement

G.S. Sistani, J.

I.A. 13930/2013.

1. This is an application filed by plaintiff under Order VI Rule 17 CPC seeking amendment in the plaint.
2. Learned counsel for the plaintiff/applicant submits that the amendment sought is formal in nature and the same was missed out inadvertently as it could not be stated in the plaint that there is violation under the Copyright Act as well.
3. Learned counsel for the defendants opposes this application primarily on the ground of delay. Counsel further submits that issues in this matter have already been framed and in case the present application is allowed the plaintiff should be burdened with costs.
4. Heard. For the reasons stated in the application and in view of the stand taken by counsel for the parties, present application is allowed. Let amended plaint be taken on record subject to payment of costs of Rs.20,000/- to be paid by plaintiff

to the defendants.

5. Application stands disposed of.

CS(OS) 1399/2012

6. Let written statement to the amended plaint be filed by defendants within four weeks from today. Replication, if any, be filed within four weeks thereafter. Parties seek and are granted four weeks time to file documents, if any, which are in their possession and power.

7. List the matter before Joint Registrar for admission/denial of documents on 10.7.2014.

8. List the matter before Court for framing of issues on 21.8.2014, when parties shall bring suggested issues to Court.

I.A. 14466/2013.

9. By the present application filed under Order XVI Rule 5 CPC the plaintiff seeks framing of additional issues in view of the amendment, which has been allowed today.

10. The prayer made in this application is not opposed by counsel for the defendants, however, it is agreed by the counsel for the parties that the prayers made in this application will be considered after admission/denial of documents is over.

11. Accordingly, present application stands disposed of in view of above.

I.A. 14038/2012.

12. This is an application filed by plaintiff under Order XXXIX Rule 2A CPC read with Section 151 CPC alleging wilful disobedience of the order dated 15.5.2012.

13. Plaintiff has filed the present suit for permanent injunction, restraining passing off of trademarks, infringement of copyright, delivery up of goods, rendition of accounts and damages.

14. While issuing summons in the suit and notice in I.A. 9246/2012 on 15.5.2012 the defendants were restrained from using the logo of the plaintiff. It was further directed that the interim order would become operative from the date of service of interim order. On an application, being I.A. No.11336/2012, filed by defendant under Order XXXIX Rule 4 CPC, learned Single Judge on 1.6.2012 modified the interim order dated 15.5.2012 to the extent that the defendants were permitted to use the corporate name, however, three weeks" time was granted to the defendants to change the impugned logo without prejudice to the rights and contentions of the defendants to contest the matter on merit at the time of hearing of the interim application. An appeal filed by the defendants against the said order was disposed of on 15.6.2012 and further three weeks extension of time was granted by the Division Bench to enable the

Single Judge to take a view on the pending applications. When the matter was listed on 3.7.2012 the Single Judge kept in abeyance the order dated 1.6.2012 by which the defendants were directed to modify/change the impugned logo. The effect of the aforesaid, in my opinion, was that uptill the final hearing of the application for injunction defendants were restrained from using the logo of the plaintiff. It may, however, be noticed that the interim application was finally heard by the Single Judge and the interim order was vacated on 21.8.2012. It may further be noticed that the appeal filed before the Division Bench and the Special Leave Petition filed before the Supreme Court by the plaintiff herein were dismissed, as a result of which the order dated 21.8.2012, dismissing the stay application, has attained finality.

15. The complaint of the plaintiff in this application is that during the period when the injunction order was in force and before it was vacated, defendants continued to use the logo. Supporting photographs have been placed on record with respect to a project site at Vasant Kunj wherein the logo has been embossed on the dividers.

16. Learned counsel for the defendants submits that he has instructions to submit that the defendants at the outset tender an unqualified apology for the lapse, which may have occurred, but it is stated that the defendants had no wilful intention to violate the order of injunction. It is further submitted that the defendants did not, after the order of injunction, use fresh logos in any of their products or in their day-to-day business but it seems that the metal dividers referred to, could not be changed inadvertently.

17. Before considering the rival submissions of counsel for the parties, it would be useful to refer to the observations of the Supreme Court in the case of Kapildeo Prasad Sah and Others Vs. State of Bihar and Others, , wherein it has been held that for holding a person guilty of contempt it has to be shown that the disobedience was wilful and intentional. The Apex Court has cautioned that the power to punish for contempt is to be resorted to when there is clear violation of the Court's order, as the punishment for contempt entails far reaching consequences. Paragraph 8 of the judgment reads as under:

"9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of the Court's order. Since notice of contempt and punishment for contempt is of far reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the Court's orders and its implication. Disobedience of the Court's order strikes at the very root of the rule of law on which our system of governance is based.

Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice."

18. It would also be useful to refer to the case of Kalyaneshwari Vs. Union of India (UOI) and Others, and more particularly paragraph 7, which reads as under:

"7. The rule of law has to be maintained whatever be the consequences. The 'welfare of people' is the supreme law and this enunciates adequately the ideal of 'law'. This could only be achieved when justice is administered lawfully, judiciously, without any fear and without being hampered or throttled by unscrupulous elements. The administration of justice is dependent upon obedience or execution of the orders of the Court. The contemptuous act which interfered with administration of justice on one hand and impinge upon the dignity of institution of justice on the other, bringing down its respect in the eye of the commoner, are acts which may not fall in the category of cases where the Court can accept the apology of the contemner even if it is tendered at the threshold of the proceedings."

19. Applying the settled law to the facts of this case, it may be noticed that the defendants were restrained from using the logo of the plaintiff by an interim order dated 15.5.2012. No doubt on final hearing of the application, the interim order was vacated and the order of dismissal of the application was upheld even before the Division Bench and by the Supreme Court of India, however, it is not in dispute that the logo was used by the defendant during the period the injunction order was in force.

20. During the course of hearing, counsel for the defendants submitted that defendants have tendered an unqualified apology and moreover the violation was not intentional and deliberate, for the reason that there was no fresh use of the logo by the defendant and the plaintiff has produced photographs of the logo embossed on the divider at the construction project at Vasant Kunj, Delhi, which was of much prior to the passing of the order and inadvertently, the logo could not be removed, but at all other places the logo stands removed.

21. It has also been repeatedly held that Court should be slow in exercising the power of punishing a person for guilty of contempt, unless the act is deliberate and intentional. Since the defendants herein have tendered unqualified apology and the explanation which has been rendered, I am of the view that no further orders are required to be passed in this application. The apology is accepted. The application is dismissed.