

**(2005) 11 DEL CK 0043**  
**In the Delhi High Court**  
**Case No : Suit No. 301 of 2002**

International Tractors Ltd.

APPELLANT

Vs

Punjab Tractors Ltd.

RESPONDENT

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**Date of Decision :** 24-11-2005

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

**Citation :** (2005) 11 DEL CK 0043

**Hon'ble Judges :** Swatanter Kumar, J

**Bench :** Single Bench

**Advocate :** Sudhir Chandra and Pravin Anand, for the Appellant; M. Pratibha Singh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Swatanter Kumar, J.—This is second application filed by the plaintiff under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint in this case. The earlier application filed by the plaintiff being is 3205/2005 was disposed of vide this Court's order dated 28th July, 2005. The said application was partially allowed. That order has attained finally as none of the parties to the suit has challenged the said order as stated at the bar during the course of hearing of the present application.

2. Without any hesitation, the facts of the suit can be stated from the order of the Court dated 28th July, 2005. International Tractors Limited filed a suit for permanent injunction restraining Punjab Tractors Limited, their employees and agents etc. from dealing in the tractors, tractor housings or tractor components which are an identical or substantial reproduction of the drawings of CMERI made from time to time in respect of tractors and including those which are subject matter of CS(OS) No. 858/1999 between the parties in respect of tractors up to 60 HP with the exception of 20 HP tractors and from infringing the copyright of the plaintiff in that regard as well as for rendition of accounts and other reliefs. According to the plaintiff, a Memorandum of Undertaking was signed on 30th

April, 1999 with Renault of France and the plaintiff. Wide publicity was given to the joint venture. The plaintiff company had approached the Council for Scientific and Industrial Research for a license to manufacture tractors based on its own drawings and know how. Under cover of agreement dated 7th June, 1999, CSIR granted the plaintiff an exclusive license. NRDC also granted to the plaintiff company an exclusive license in relation to the tractors already being manufactured by it, on 17th June, 1999. Under this license, the plaintiff has the exclusive right to manufacture such tractors with the use of its technology. In terms of the license deed, the plaintiff could not interfere with the technology or means of the defendant with respect to the tractors of 20 HP manufactured by the defendant. On this premise, the plaintiff brought the present suit that the defendant was committing breach of rights of the plaintiff as controlled under the license deed and was infringing the copyright of the plaintiff. This suit was contested by the defendant on merits. According to the defendant, in relation to the drawings of 20 HP tractors, it was not infringing any copyright as it was using the drawings which were different from the NRDC/CMERI drawings. The entire suit was stated to be motivated and has been used as pressure tactics to obstruct the production activity of the defendant. The defendant also relied upon the pleadings made in the earlier suit (CS(OS) No. 858/1999) between the parties. It is the case of the defendant that all major aggregates of the tractor i.e. the gear box, differential housing and rear axle system, hydraulics front axle system were formulated and developed by the research and development team of CMERI. The hydraulic system was later patented in India. The Government of Punjab being desirous of setting up a factory to manufacture tractors based upon the said technology and know how, the defendant was promoted by the Government of Punjab Undertaking to undertake the manufacture and sale of tractors. The defendant is authorised manufacturer of the tractors and even under the terms of the license agreement, the defendant has been duly protected in regard to the tractors referred to in the plaint.

3. The parties have done admission and/or denial of their documents but no issues have been framed in the suit as yet. The plaintiff then filed an application for amendment of the plaint stating that in terms of the license deed dated 17th June, 1999, the plaintiff was not to interfere with the use of the technology by the defendant with respect to 20 HP tractors manufactured by the defendant. A further supplementary deed was entered into between the plaintiff and the CMERI on 3rd May, 2001 where under the know how and drawings licensed under the June 1999 agreement was extended to cover all horse powers up to 60 HP except 20 HP, the rights of which were vested with the NRDC. Thereafter again, a Deed of Assignment was executed by CSIR on 12th July, 2002 vide which the plaintiff became the sole/exclusive owner of know how in respect of tractors up to 60 HP with the exception of 20 HP tractors. Still another Assignment Deed dated 13th August, 2004 signed between the parties wherein the plaintiff was assigned all rights in the pertinent tractor know how for 20 HP tractors. According to the plaintiff, know how also includes any improvements/

developments or modification thereof made prior to or after the effective date for the manufacturing of 20 HP tractors in modified or unmodified form. In the light of these facts and particularly the deed of assignment dated 13th August, 2004, the plaintiff prays for amendment of the plaint, thereby widening the scope of the suit and making similar prayers by amending paragraphs 13 (1), 16, 20 and 21 of the existing plaint.

4. Now again the present application has been filed with a prayer that the plaintiff prays for leave to amend paragraph 13 of the plaint by inserting para 13(ii) at the end of paragraph 13(i). Further it is prayed that paragraph 16 of the plaint be permitted to be substituted by making the additions stated in paragraph 27 of the application. Lastly paragraphs 20 and 21 are sought to be amended by making addition to the clause relating to valuation of the suit for the purposes of Court fees and jurisdiction and prayer of a permanent injunction by adding sub-para (iv) in para 20 and sub-para (ii) in para 21 in the prayer clause respectively. All these amendments are founded or directly arise from the Memorandum of Understanding dated 30th April, 1999, Agreement dated 12th July, 2002 and Deed of Assignment dated 13th August, 2004. It is stated that in view of these agreements, the "know-how- also includes any improvements, developments or modifications made prior to or after the effective date for manufacturing of 20 HP tractor in modified and unmodified form. According to the plaintiff, defendant had continued unabated activities infringing the confidentiality of the plaintiff in relation to non-technology and know how. The defendant's continuing use of confidential information of the plaintiff is illegal and is liable to be restrained. The amended paragraphs are intended to be inserted in the plaint by saying that all engineering processes, methods or manners of manufacturing or production of the product are in the nature of confidential information/trade secrets. As a consequence of assignment from CSIR/CMERI, the plaintiff herein has complete and exclusive right of protection to the confidential information and can only exploit the same itself. This is the foundation for amending the paragraphs and a prayer is sought to be introduced by stating that a decree for permanent injunction be passed restraining the defendant, its agents etc from using/ exploiting/applying the confidential CMERI/CSIR/NRDC tractor technology, know how including any improvements/developments or modifications thereto relating to tractors up to 60 HP and now owned by the plaintiff, thereby amounting to breach of confidential information of the plaintiff.

5. This application is vehemently opposed by learned counsel for the non-applicant who has stated that plaintiff has filed the present application with intention to delay the proceedings in the suit and the application is abuse of the process of the Court. It is stated that plaintiff is referring to the same documents namely the Deeds of Assignment dated 30th April, 1999 and 13th August, 2004 which were referred to in the earlier application and different amendments were prayed for, which were partially allowed by the Court. It is also stated that perusal of the assignment deed dated 13th August, 2004 shows that it is with reference to the license agreement dated 17th June, 1999 and the assignment is

for future right in respect of 20HP tractors. This does not create any exclusivity in favor of the plaintiff. It is also stated that under terms of the assignment in favor of the plaintiff, the right of the defendant, as already stated, is duly protected.

6. The law of amendment has received liberal interpretation in the recent times, but in view of the amended provisions of Order 6 Rule 17 CPC, the Courts have been cautioned by the Legislature so as not to exercise the discretion vested in the Court too liberally and literally. The present application is the second application for amendment filed by the plaintiff in the present case. The Court can allow amendment of pleadings at any stage of the proceedings but the proviso clearly states that no application for amendment shall be allowed after the trial has commenced and unless the Court comes to the conclusion that in spite of due diligence the parties could not have raised the matter before commencement of the trial. In the present case, it cannot be stated that plaintiff has acted with due diligence at any stage of the suit. On the contrary the plaintiff with reference to the same documents has already moved applications for amendment which were partially allowed and the present application again is found and has reference to the same document. The plaintiff is seeking to establish now an entire new cause of action and a new relief, which are bound to affect the defendant prejudicially. Further more, it would even change the nature of the suit. Violation or infringement of confidential information and exclusive right of the plaintiff to exploit the technical know how could have been claimed by the plaintiff in the previous amendment. The obvious conclusion thereof is that the plaintiff would be deemed to have obtained the relief, if any, available to the plaintiff when he sought the earlier amendment. The substantial amendments prayed for were allowed in the previous order and now the plaintiff intends to add entirely a new dimension to the case of the parties. Once an amendment prayed for introduces an entirely new dimension to the case of the parties, adding a cause of action distinct from the one pleaded and attempting to claim a relief which was earlier available to the plaintiff and given up, then the plaintiff cannot be said to have acted with due diligence. Such conduct of the plaintiff cannot be condoned in law as it would tantamount to permitting a party to abuse the process of law. In the case of *Rikhy et Fils Associates Pvt. Ltd. v. Delhi Development Authority* (IA 6761/2004 in CS(OS) 2084/2002) decided on the same day, the Court held as under:-

Furthermore, nothing material has been stated in the application as to why the steps were not taken earlier by the applicant. The applicant has been negligent in pursuing its right and the omission stated to have been made is without any substantial cause. The DBA in its notice which has been impugned in the present suit has claimed the sum of Rs. 96,14,969 on account of mis-user charges and it is not necessary at this stage to require the DDA to state bifurcation of the said amount as it can be stated in evidence of the parties. The amendment would serve no purpose and in fact it will only delay the further proceedings in the suit. In this regard, reference can also be made to the Judgment of Punjab and

Haryana High Court in the case of Hardayal Singh and Ors. v. Kirpal Singh 1993 123 PLR 258 where the Court held as under:-

6. Learned counsel for the petitioner relied upon the Judgment of the Supreme Court in the case of Shanti Rani Das Dewanjee (Smt.) v. Dinesh Chandra Das (dead) by LRs 1998(1) PLJ 667 to argue that the counter claim can be raised at any time even after filing the written statement. The Judgment relied upon is the Judgment of the Highest Court of the land and there could be no dispute to the legal proposition enunciated in this Judgment. However, the learned counsel has not been able to show as to what advantage would be of this Judgment to the petitioner, in the facts and circumstances of the case in hand. The trial Court did not reject the application on the ground that counter claim could not be filed after filing written statement. The reasons given for rejecting the application, amongst, others, are altering the case completely to the prejudice of the other party, filing application for amendment at a belated stage, without any sufficient cause or Explanation. Further more, the defense sought to be raised by amendment appears to be an after thought. These facts were also in the knowledge of the defendants. They sought to have pleaded and proved these averments at the initial stage of the trial.

8. In view of the above enunciated principles, it is clear that the amendment sought for by the plaintiff is a mere casual attempt and is not, in any way, an essential fact required for determination of the controversies in the present suit. The plaintiff has already challenged the impugned demand of the DDA challenging the fact with regard to the purchase of the land in auction by the plaintiff. As has already been stated, whether there was unauthorised construction or not is a matter of evidence and whether DDA has any authority to impose mis-use charges or not is already a stated controversy in the suit.

7. Counsel appearing for the defendant non-applicant has also relied upon the Judgment of the Supreme Court in Surya Sikander and Others Vs. Netha Spinning Mills and Others, and Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another, to argue that the discretion of the Court for allowing or disallowing an amendment should be exercised as per the settled norms of civil jurisprudence and where the applicant has acted callously and without due diligence, the Court should dismiss such application. She relied upon the following observations of the Supreme Court:-

...Learned counsel urged that at the High Court stage, the permission to amend the written statement, but no order was passed by the High Court and, Therefore, we may permit the amendment of the written statement. In this case, what we find is that the suit was filed in the year 1980 and in the written statement neither any such plea was taken nor any issue in this regard was framed. It is too late now to permit the amendment of the written statement. We, Therefore decline to permit the appellants to amend the written statement.

8. In the present case, the plaintiff had ample opportunity to claim this relief

right from the date of very institution of the suit which was filed in the year 2003. Even if the Deed of Assignment of 13th August, 2004 is taken as the basis for seeking these amendments, the plaintiff had admittedly filed an application for amendment of this plaint on earlier occasion also. Either the plaintiff could consciously have not taken up such pleadings in the application for amendment or could not have claimed any relief against the defendant in regard to violation of his exclusive rights of exploitation and infringement of the confidential information of the plaintiff. This is a very vital factor and cannot be ignored by the Court. A party when approaches the Court of law is expected to act with responsibility and cannot take the procedure of the Court as a hand made to frustrate the very object of the civil Court for expeditious disposal of the suit. In the present case, the plaintiff has not given any cause much less a sufficient cause for not claiming these reliefs in the earlier amendment application. The law comes to the rescue of a litigant who acts with due diligence and does all that of demanded if him in law and equity. In the present case, the applicant has failed to satisfy any of these ingredients. The amendments sought for by the plaintiff are, in no way, essential for determining the controversies raised and reliefs prayed for by the plaintiff in the suit. plaintiff having not claimed any of these reliefs for all this time, now cannot be permitted to materially alter the entire nature of the suit to the serious prejudice of the defendant.

9. In view of the above discussion, this application of the plaintiff for amendment is dismissed with costs of Rs. 5,000.