

(2006) 07 DEL CK 0159

In the Delhi High Court

Case No : C.M. (M) No"s. 214 and 482 of 2005 and CM. No"s. 1780, 3672 and 4400 of 2005

Lunarmech Machinenfabric Ltd. and Another

APPELLANT

Vs

USF Filtration Ltd. and Another

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 11 Rule 12, Order 6 Rule 17, Order 6 Rule 18, Order 7 Rule 10
Companies Act, 1956 — Section 23(3)
Constitution of India, 1950 — Article 227
Copyright Act, 1957 — Section 15(2), 61
Transfer of Property Act, 1882 — Section 130, 6

Citation : (2006) 132 DLT 169 : (2006) 33 PTC 47

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Advocate : S.K. Mehra, Mamta Mehra and Mukta Kapur, for the Appellant;
Valmiki Mehta Amit Gaurav Singh, Binny Kalra and Ishani Sahiwal, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Singh, J.—This judgment will dispose of two petitions (i) Civil Miscellaneous (Main) No. 214/2005 under Article 227 of the Constitution of India against order dated 18.11.2004 passed by Additional District Judge, Delhi in suit No. 297/2003 (originally filed in High Court in March, 1995) & (ii) Civil Miscellaneous (Main) No. 482/2005 against orders dated 24.12.2004, 24.1.2005 & 17.2.2005 passed by Additional District Judge, Delhi in the same suit.

2. I have heard Mr. S.K. Mehra, Advocate, learned Counsel for the petitioners (hereinafter referred to as defendants) and Mr. Valmiki Mehta, Sr. Advocate, learned Counsel for the respondents (hereinafter referred to as plaintiffs), and have gone through the impugned orders and copies of all the documents of the trial Court placed on the files.

3. Perusal of the files shows that the suit is more than 11 years old. It was filed in the High Court on the Original side. Later it was transferred to the District Courts on enhancement of jurisdiction of District Courts. I will, Therefore, examine its history commencing from the trial, in the High Court.

4. Briefly the facts are that in March, 1995 the plaintiffs (respondents herein) had filed a suit for perpetual injunction for restraining the defendants (petitioners herein) from manufacturing, selling, advertising directly or indirectly CPF machines which are allegedly based on the engineering drawings of the plaintiffs; to prevent infringement of copy right of the plaintiffs; for rendition of accounts or profits illegally earned; for deliver of all infringed materials and damages on the ground that plaintiffs manufacture continuous polymer filter systems under the trade mark CPF. It is explained that CPF is a machine which is used for removing particulate contaminants from plastic material. The plaintiffs allege in the plaint that they have a large number of customers in India in Textiles and Film Industry. The plaintiff No. 1 had taken over the said business from Brunswick and continued its marketing activities in India through DEECO. plaintiff No. 2 is an American subsidiary of plaintiff No. 1 and manufactures a series of CPF machines referred to as 100 series in the trade parlance of the plaintiffs. There are five models of the said series. It is pleaded that the plaintiffs' drawings are the closely guarded secret of the plaintiffs. The drawings are alleged to be original artistic work of plaintiff No. 2. It is pleaded that by virtue of provisions of International Copy Right Order 1959 (as amended up to 1991), the Copy Rights Order extends to India and thus the plaintiff No. 2 is the owner of the copy right in the said drawings by virtue of the provisions of Indian Copy Right Act, 1957 on the basis of the Universal Copy Right Convention Countries. It is averred that defendant No. 1 had approached Brunswick in the year 1978 for distributorship rights of its CPF machines in India, which as mentioned above, have been taken over by plaintiff No. 1. in 1988, which shows that the defendant No. 1 had shown interest in the now plaintiffs technology as far back as in 1978.

5. In June, 1994 some personnel of plaintiff No. 2 attended a trade exhibition in Frankfurt, Germany where they saw an equipment identical to the equipment being manufactured by plaintiff No. 2 and the said equipment was being exhibited by defendant No. 2. On investigation it came to light that defendant No. 1 was manufacturing the said equipment in India by infringing plaintiffs' copyright. On further investigation it revealed that the defendants were supplying the copied equipment to Indian Companies as well. On further probing it came to their notice that defendants were copying the technology of the plaintiffs. The various similarities have been elaborated in the plaint to highlight the infringement and violation of the alleged copy right.

6. In the written statement filed on behalf of defendant No. 1 preliminary objections regarding territorial jurisdiction, want of cause of action on the ground that the machine manufactured by the defendant was distinct from the one manufactured by the plaintiffs, are raised. It is further alleged that no copy right

vests with the plaintiffs. The term CPF is universal and cannot be registered as a trade mark and even if it is registered in the name of the plaintiffs it deserves to be cancelled. It is prayed that the suit be dismissed under Order VII Rule 11 CPC. The suit is stated to be malafide. It is also submitted that the plaintiff No. 1 itself is an infringer of copy rights of the said drawings which did not belong to it. The suit is stated to be not maintainable on account of mis-joinder and non-joinder of necessary parties. The suit is said to be barred by limitation. On merits the factual averments have been denied. There are repetitions after repetitions of the above said points.

7. In the replication to the written statement of defendant No. 1 all the preliminary objections are controverted and the averments in the plaint have been reaffirmed. This suit was originally filed in the High Court, as mentioned above, but on enhancement of jurisdiction of the District Court it was sent to the District Judge and in turn it was assigned to the Additional District Judge, Delhi, for disposal.

8. Application for grant of interim injunction was dismissed by the High Court. The operative portion of the order dated 26.3.1997 passed by the Single Bench of the High Court is as under :

8. The learned Counsel for the first defendant Mr. Mehra contended (1) that a corporate Company cannot be an owner of a copyright under the Copyright Act and only a human being can be the owner of the copyright; (2) this Court has no territorial jurisdiction over the subject matter of suit; (3) the plaintiffs ought to have registered the designs under the Designs Act.

9. I do not want to deal with those points because we are at the interlocutory stage and we are only on the prima facie case of the plaintiffs with reference to the copyrights claimed by them.

10. Having regard to the advancement of the technology around the world, just like T.Vs and Video instruments, there are some standards in the manufacture of those products and when each one manufactures a particular type of instrument they may look similar but in the working there will be difference. For the purpose of finding out the infringement in the copyrights broad similarities cannot be the main criterion in deciding the question. In this case though the learned senior counsel from the drawings attempted to show similarities, unless there is complete evidence before the Court by which the two machines could be compared the infringement cannot be detected. In my view, unless there is a complete trial on the facts put forth by the parties it will not be proper to adjudicate on the mere drawings now produced before the Court to come to the conclusion whether there has been any infringement of any copyrights or not. On a consideration of the materials placed before me, I am not able to persuade myself to hold, prima facie, that there has been any infringement by the first defendant of any copy rights of the plaintiffs. Leaving open all the questions for adjudication at the time of trial, I dismiss I.A.3254/95 for injunction. There shall

be no order as to costs.

9. On the same date the following order was passed on the application under Order VII Rule 10 CPC moved on behalf of the defendant No. 1:

11. First defendant has filed I.A.4569/95 under Order 7 Rule 10 CPC for the return of the plaint on the ground that this Court has no territorial jurisdiction. The question whether this Court has got territorial jurisdiction depends upon the adjudication on facts and, prima facie, on the materials now placed before me I am satisfied that this Court has got jurisdiction. In this view, I.A.4569/95 stands dismissed without prejudice to the contentions of the parties to agitate the question at the time of trial.

S. No. 910/95

10. Post the suit for framing of issues on the 15th of July, 1997. The parties shall file the affidavit of documents with complete list of documents within eight weeks from today.

Sd/- March 26, 1997 K. Ramamoorthy, J.

10. But the issues could not be framed on the said date. The above said order of the Single Bench was appealed against before DB which passed an order on 22.7.1998. Operative portion of the order is as under :

FAO (OS) 138/97

In this case it will have to be ascertained as to whether any kind of rights including copyright can be claimed in the design which is asserted by Memtec Ltd., or by Lunarmech. The question of Jurisdiction also has to be considered, and in view of what has been submitted, these are mixed questions of law and fact.

Both the parties have agreed before us that instead of passing or not passing injunction order it would be appropriate that day to day trial in this case is held.

Accordingly we direct that this matter be listed before the Joint Registrar on 17.8.1998 for admission and denial of documents. The admission and denial will go on until it is complete. The matter be listed before the learned single Judge on the Original Side on 24.8.1998 for framing of issues. The trial will commence after framing of issues sometime in the first week of October, 1998, and will go on day-to-day basis.

With the aforesaid observations, the appeal is disposed of.

22nd July, 1998 Sd/- Acting Chief Justice Mukul Mudgal, J.

11. But the issues could not be framed even on 24.8.1998 because of the applications. One application was is No. 8511/98 and another was is No. 8315/99 being moved by the defendants for dismissal of the suit on the ground that ownership of the plaintiffs had changed and the suit had become infructuous.

Both the above said applications were dismissed vide order dated 14.7.2000 and the application for amendment of the plaint was allowed holding that change in ownership of a company is no ground for dismissal of the suit and the High Court further opined that the corporate legal entity does not mutate or transform itself or undergo a transfer with each change in its shareholders. Even if the total share of the company is purchased by a person or a group of persons acting in a concert, legal consequence is not that the company ceases to exist or undergoes a cataclysmic metamorphosis leading to its complete disappearance and there is a difference in change between a shareholding and amalgamation. Further opined that even where amalgamation takes place due care is taken to transfer the assets and debts of one company to the other so as to, inter alia, protect pending litigations. The objections of defendants were held to be without merit.

12. Another application is No. 10258/99 under Order XI Rule 12 CPC was filed by the defendants, it was prayed that the plaintiffs should give discovery on oath of all the relevant documents which are in their possession and power in respect of acquisition of Brunswick Corporation by the plaintiffs and thereafter acquisition of present plaintiffs by the US Filtration Limited and USF filtration and Separation Group Inc. and again thereafter acquisition of the said company by M/s Vivendi and further prayed that the plaintiffs should be directed to file all the documents in the Court. While dismissing the application the High Court made observations that defendant had by reverse engineering manufactured the machines. It was observed that if the plaintiff fails to prove the ownership it runs the danger of dismissal of the suit and the application was dismissed with Rs. 2000/- as costs.

13. The following issues were framed and an order was passed on 31.7.2000 :

1. Whether this Hon"ble Court has territorial jurisdiction to entertain the present suit OPP.
2. Whether Mr. Bnett Johnson was the General Counsel and Company Secretary of the original plaintiffs Memtec Ltd. And Director of the original plaintiff No. 2 Memtec America Corporation; and was duly authorized to sign, verify and institute the recent suit OPP.
3. Whether the plaintiffs are carrying on their business through DEECO in India, if yes, whether they have the permission of Reserve Bank of India under Foreign Exchange and Regulation Act OPP.
4. Whether the plaintiffs have any copy right in the drawings of machine known as CPF 100 Series OPP.
5. Whether the Defendants have infringed the copyrights, if any, of the plaintiffs in relation to drawings of CPF Machine 100 Series by method of reverse engineering or by any other method OPP.
6. Whether the Defendants had any access to the machine and technical drawings of the plaintiffs OPP.

7. Whether the plaintiffs claim of copyright in the design of manufacturing of CPF Machine 100 Series is not barred u/s 15(2) of the Copy Right Act OPP.

8. Whether plaintiffs suit is not barred u/s 61 of the Copy Right Act OPP.

9. Whether the Defendants are the prior manufacturer of their machine OPS to the machine of the plaintiffs CPF Machine 100 Series If so to what effect OPD.

10. Whether the suit is bad for misjoinder/non joinder of parties OPD.

11. Whether the suit of the plaintiff is within limitation OPP.

12. Relief.

14. Mr. Mehra presses that the following issue be also framed:

Whether Ms. Susan Jean Bullar is the originator and the author of technical drawings of CPF Machine 100 Series OPP.

I find that this is not a relevant issue because who had developed the machine prior to its copy right having come into the ownership of the plaintiffs is of no consequence.

No other issue arises, or is pressed

15. After this the matter was transferred to the District Courts on enhancement of jurisdiction of the District Courts. The District Judge assigned the matter to Additional District Judge, for disposal. PW-1 Bryan Patric Dwyer was being cross-examined since several days. On 5.8.2002 in answer to a couple of question be stated that USF Filtration & Separations Group Inc. has been recently taken over by Pall Corporation and he was sent by Pall Corporation. The witness however stated that it was incorrect to suggest that USF Filtration & Separations Group Inc. was left with no interest in the suit.

16. After the above mentioned answers the learned Counsel for the defendants instantly raised objection that in view of the above answers the plaintiffs had lost their locus standi to continue the present suit and almost immediately moved an application u/s 151 CPC on behalf of the defendants for dismissal of the suit reproducing therein a small portion of un-concluded statement of PW-1 and also referred to the earlier applications which stand dismissed by the order dated 14.7.2000 passed by the High Court (supra) and also to the application under Order VI Rule 17 CPC for change of the name, which was allowed by the above mentioned order dated 14.7.2000. It was alleged that in view of statement of PW-1 the plaintiffs had seized to own the business as well as the copyright in manufacturing the said machine and were left with no interest and there are no plaintiffs left to pursue the suit and sought dismissal of the suit. In the reply preliminary objections were raised that the application was misconceived and that application under Order VI Rule 17 read with Order I Rule 10 CPC has already been moved for impleading Pall Corporation who has acquired the shares of the existing plaintiffs and had become the ultimate owner but the business

activities of the said plaintiffs continue to remain the same and so do their registration numbers and the only difference is that the names of the plaintiffs have been changed as follows :

plaintiff No. 1 USF Filtration Ltd. has been renamed as Pall Filtration & Separations Pty. Ltd.

plaintiff No. 2- USF Filtration and Separation Group Inc. has been renamed as Pall Filtration and Separation Pty. Ltd.

17. Further plaintiff No. 2 has assigned its copy right in the subject matter of the present suit to Pall Corporation and executed a confirmatory agreement dated 23.8.2002. It is submitted that there is continuity in the title and ownership of the subject matter of the suit and the plaintiffs continue to be interested in the further prosecution of the suit and are indeed determined to take the proceedings to their logical conclusion.

18. It is further submitted that in the corporate world such transactions are routine but their implications are often vast and involve voluminous documentation and also take considerable time and the plaintiffs counsel were intimated about the status of the stock purchase of the plaintiffs company on 1.8.2002 and that the defendants could not colour the response of the plaintiffs" witness to the questions put by the defendant's counsel. It is re-asserted that the plaintiff No. 2 continues to manufacture the CPF machines in question while having assigned its copyright to Pall Corporation who is sought to be imp leaded in these proceedings and the plaintiffs have not lost interest in the present proceedings merely on account of purchase of the shares of the plaintiffs company. It was denied that there were no plaintiffs before the Court.

19. Vide impugned order dated 18.11.2004 the learned Additional District Judge, Delhi has disposed of the said two applications. The application for dismissal of the suit has been dismissed and application for amendment of the plaint has been allowed subject to cost of Rs. 20,000/-.

20. While allowing the amendment the learned Additional District Judge opined that the amendment was more or less in the nature of clarification and earlier a similar application was allowed by the High Court (when the mater was pending in the High Court on original side) vide order dated 14.7.2000. The learned Additional District Judge directed that the amended plaint be filed, if not filed earlier.

21. Learned Counsel for the petitioners-defendants has emphasized before this Court that plaintiff No. 3 was a stranger to the pending suit; the trial Court had no jurisdiction to implead a stranger. Further, mere right to sue could not be transferred and the documents regarding transfer of the said rights etc. executed in a foreign country can not be taken note of Courts in India without due authentication of the said documents. As many as seven so-called questions of law and facts have been framed in the petition as if this Court has to treat this

petition as a second appeal u/s 100 of the Code of Civil procedure.

22. It is submitted by the learned Counsel for the respondents-plaintiffs that it is common for a company to undergo a change of name during the pendency of legal proceedings and the CPC also provides for the steps to be taken in that event and the plaintiffs also relied upon the provisions of Section 23(3) of the Indian Companies Act, 1956. Section 23(3) of the Indian Companies Act is as under :

3. The change of name shall not effect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

23. It is submitted that there has been no merger or amalgamation of the plaintiffs with any other company.

24. The contentions in the present applications and the replies thereto are rather similar to the pleas in the is No. 8511/98, is No. 8315/99 and is No. 2238/99. The said earlier applications were decided by the High Court vide order dated 14.7.2000 (supra). The learned Additional District Judge has also referred to the said order dated 14.7.2000 (supra) in the impugned order. Some portions of the said High Court order dated 14.7.2000 have been reproduced above. Earlier also the defendants had alleged that due to change of name the suit had become infructuous. Even now they allege that due to change of name, transfer of ownership and partial statement of a witness, the suit has become infructuous. The allegations are denied by the plaintiffs. Earlier also the defendants had opposed the amendment for changing the names of plaintiffs. Even now they are saying so. The only distinction is that now a new plaintiff No. 3 has been added. The cause of action, in my view, survives until the controversies are decided. The legal position almost remains the same and the learned Additional District Judge has rightly held that the matters which have to be raised and decided after the amendment of the plaint cannot be gone into at this preliminary stage of the amendment. In my view also the only consideration for granting amendment is as to whether the amendment is necessary for deciding the real questions in controversy and as to whether any valuable right accrued to the defendants will be taken away by the amendment. In my opinion the answer to both the questions is : No. The third consideration is whether in the given facts and circumstances subsequent events should be allowed to be raised by way of amendment. In my view the answer is: Yes. The established legal position is also that the sale of shares or even giving the copyright to a particular party does not mean that the original owner of the copyright can no more continue the business. If the argument of the learned Counsel for the defendants is accepted, it will mean that any commercial establishment after filing a suit against an alleged infringer of law, should stop its expansion, cannot enter into any sort of arrangement with any other company as long as the suit is pending and if at all it

does so, the suit should be dismissed and it should be left to the new company or new associate company to file a fresh suit and in the meanwhile the defendants may continue to violate the trade laws as were and are the allegations of the plaintiffs and its new associates or changed names of the plaintiffs. If law is to be interpreted in this way, then the Courts shall be giving premium and reward to the alleged violators of commercial laws. The suit is not only for infringement but also for rendition of accounts and damages. If the suit is dismissed, where will the plaintiffs go for rendition of accounts and damages which emanate from the alleged infringement.

25. The learned Counsel for the defendants has, in my view, tried to confuse the matter in an attempt to distract the attention from the main issues and has referred to Section 6(e) & Section 130 of the Transfer of Properties Act, 1882. Section 6(e) deals with non-transfer of mere right to sue under the Transfer of Properties Act and Section 130 of the said Act deals with the transfer of actionable claims by means of a written instrument and has also emphasized that if the amendment is allowed, it will amount to champerty. Again I have to say that the learned Counsel for the defendants wants this Court to go into the questions of facts and law and the issues without leading any evidence and wants the suit to be thrown out at the threshold. Similar arguments were addressed before the Single Bench of the High Court and the DB of the High Court when the matter was at the first instance filed in the High Court and even at that time the High Court had declined to go into the merits, facts and law applicable in the controversies arising in this suit [order dated 26.3.1997 and order dated 22.7.1998 passed by the High Court (supra)].

26. In my view no party can be permitted to side track the main issues and in a way allowed to control the Court proceedings, sometimes by going to the elementary procedural law and sometimes by pressing hyper-technicalities with the sole motive of delaying the disposal of the main suit and in the meanwhile to continue with the violations alleged by the plaintiffs and thus keep on reaping the fruits at the cost of prolonging the decision on the main controversies. In my opinion hotly contested suits are not decided or thrown out on reading just one sentence out of context of all the disputes, specially when issues have been framed.

27. In my view the change of names, the sale of shares and the subsequent events should be incorporated in the plaint to effectively and completely decide the matter. Issues have already been framed and after the filing of amended written statement to the amended plaint and the replication it is open to the trial Court to frame additional issues, if any.

28. Considering all the facts and circumstances of the case in my view the learned Additional District Judge has passed a well reasoned order based on established precedents and has rightly dismissed the application for dismissal of the suit and has rightly allowed the application for amendment of the plaint.

29. As regards C.M.(M) No. 482/2005, in the impugned order dated 24.12.2004 the learned Additional District Judge had taken up an application u/s 148 of the CPC moved by the plaintiffs in which the plaintiffs had sought four weeks time to file amended plaint and the affidavit on the ground that earlier constituted attorney had left the plaintiffs and the plaintiffs were in the process of appointing a fresh constituted attorney who would sign the amended plaint. The learned Additional District Judge noted that vide order dated 18.11.2004 (supra) an application under Order VI Rule 17 CPC moved by the plaintiffs had been allowed and amended plaint was ordered to be filed, if not filed earlier. It is noted that on 22.12.2004 the Judge was on leave, Therefore the application was taken up on 24.12.2004. The learned Judge directed that amended plaint be filed by 15.1.2005 and its copy be supplied to the learned Counsel for the defendants against receipt. The matter was adjourned to 24.1.2005. The main grievance of learned Counsel for the defendants is that this order was passed without notice to the petitioners-defendants. I will deal with this objection after referring to the other impugned orders.

30. Vide order dated 24.1.2005 only an adjournment has been granted. It is noted by learned Additional District Judge that reply to the application dated 15.1.2005 of the plaintiffs has been filed by the learned Counsel for the defendants. learned Counsel for the defendants acknowledged that he had received copy of the amended plaint. In the said application dated 15.1.2005 u/s 151 CPC a prayer was made by the plaintiffs to take on record faxed copy of the amended plaint being filed by the plaintiffs for compliance within stipulated time and prayed for three days more time to place on record the original plaint and the affidavit in support on the ground that plaintiff No. 1 was situated in Australia and the plaintiff No. 2 & 3 were situated in America. The learned judge adjourned the matter to 1.2.2005 for hearing arguments on the application for raising value of the suit. The learned Additional District Judge noted that a nearer date was being given because the case pertained to the year 1995. It was also noted that an application under Order VI Rule 17 CPC dated 5.12.2003 moved by the plaintiffs for raising value of the suit was pending. The learned Counsel for the defendants objected that the Court should not hear arguments on the said application under Order VI Rule 17 CPC and that the applications u/s 148 and 151 CPC should be first disposed of. It appears that since the application under Order VI Rule 17 CPC was pending for about two years, Therefore, the learned Judge posted the said application for arguments on 1.2.2005. At that stage learned Counsel for the defendants objected that he should be given sufficient time to prepare the arguments and that date be changed because no earlier date suited the learned Counsel for the defendants. The date already fixed 1.2.2005 was cancelled and the matter was adjourned to 17.2.2005 for arguments on the application under Order VI Rule 17 CPC filed on 5.12.2003. The grievance of the learned Counsel for the defendants is that matter should not have been fixed for arguments on the application dated 5.12.2003.

31. Impugned order dated 17.2.2005 is also a procedural order. When the

arguments were going to be heard on the application dated 5.12.2003, the learned Counsel for the defendants informed the Court that order dated 18.11.2004 passed by the learned Judge, allowing amendment of plaint, had been challenged in the High Court where the next date of hearing was 31.3.2005 when he shall be making a prayer in the High Court for stay of the Trial Court proceedings.

32. Learned Counsel for the plaintiffs opposed the adjournment on the plea that no stay was granted by the High Court. The learned trial Court judge, however, without entering into any controversy adjourned the matter to 23.3.2005 for hearing arguments on the application under Order VI Rule 17 CPC dated 5.12.2003 and the application u/s 151 CPC dated 15.1.2005 for extension of time by 3 days and again noted that a nearer date was being given because the matter pertained to the year 1995.

33. Learned Counsel for the petitioners-defendants has repeatedly submitted that under no circumstances time to file amended plaint could be extended beyond 30 days and has referred to the provisions of order VI Rule 18 CPC and Section 148 CPC and states that the provisions are mandatory. The said provisions are reproduced hereunder :

Order VI Rule 18 :

18. Failure to amend after order.- If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

Section 148. :

48. Enlargement of time.- Where any period is fixed or granted by the Court for the doing any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Amendments : Objects and Reasons. - Clause 13.- Section 148 of the Code provides for enlargement of time by the Court. Where any period is fixed or granted by the Court for doing any act prescribed or allowed by the Code, Court has discretion to enlarge such period. Clause 13 seeks to put a limit on enlargement of such period by inserting the words not exceeding thirty days in total in Section 148 with a view to minimize the procedural delay at the instance of either party to a suit.

34. In my view the interpretation being given by learned Counsel for the defendants to these provisions is totally misplaced. Firstly on 18.11.2004 the learned Additional District Judge had directed that the amended plaint be filed, if not already filed. On 22.12.2004 which was the next date of hearing the learned

judge was on leave and the matter was taken up on 24.12.2004 when none appeared for the defendants and the time to file amended plaint was extended up to 15.1.2005 on which date the faxed copy of the amended plaint was filed on record along with an application u/s 151 CPC for further time of 3 days to file the original amended plaint and as assured in the said application dated 15.1.2005 the original amended plaint was filed on 18.1.2005. The said application dated 15.1.2005 is still pending before the trial Court.

35. Against the order dated 24.12.2004 the main grievance of the learned Counsel for the defendants is that the order was passed without giving notice to the defendants. Secondly, the trial Court could not have extended the time for filing the amended plaint up to 15.1.2005 because there is a mandatory bar u/s 148 CPC and Order VI Rule 18 CPC.

36. At this stage, I may mention that the amendment of the plaint was allowed vide order dated 18.11.2004. The concluding line of the said order is that amended plaint be filed, if not filed earlier. As a normal practice a copy of the proposed amended plaint is filed along with the application for amendment of the plaint, to facilitate the presiding officer and the parties to have a better view for appreciation. This shows that no fixed time was given for filing amended plaint, which normally means that it should be filed before or by the next date of hearing which was 22.12.2004 in the present case. The application u/s 148 CPC dated 22.12.2004 was filed on behalf of the plaintiffs mentioning therein that the amendment had been allowed resultantly plaintiff No. 3 was allowed to be impleaded. The amended plaint had to be filed on that day i.e., 22.12.2004. The plaintiffs had sent the amended plaint and affidavit in support thereof to the USA, but since a fresh attorney was to be appointed, the plaintiffs were unable to file the amended plaint and affidavit on that day, four weeks time was sought to file the original amended plaint and the affidavit in support thereof. The application was supported with an affidavit of the learned Counsel for the plaintiffs.

37. On 22.12.2004 the learned Judge was on leave and the application was taken up on 24.12.2004. The learned Additional District Judge after referring to the order granting amendment and the grant of time for filing the amended plaint and noting the contentions of the applicant, directed that the amended plaint be filed by 15.1.2005 and its copy be supplied directly to the learned Counsel for the defendants against receipt. In my view, the grievance of the defendants that no notice was given to them or their learned Counsel is uncalled for because the matter was already listed for 22.12.2004. On that day the defendants or their learned Counsel was expected and duty bound to be present, but they absented and as is the practice in District Courts, when the presiding officer is on leave, the matter is adjourned for a short date.

38. The reason why neither the defendants nor their learned Counsel appeared on 22.12.2004 is obvious i.e., to delay the matter. Had the defendants or their learned Counsel appeared, they would have got copy of the application u/s 148

CPC and would have come to know about the next date i.e., 24.12.2004. The defendants cannot take undue advantage of their own wrongs. In my opinion their non-appearance on 22.12.2004 was intentional and was meant to delay the matter.

39. In my view the reason given in the application was plausible and it was for the Court to extend time by exercising judicial discretion and the said discretion in the facts and circumstances of the case has been rightly exercised. The matter was then adjourned to 24.1.2005, by the learned Additional District Judge.

40. On 15.1.2005, the learned Counsel for the plaintiffs filed an application u/s 151 CPC stating therein that a faxed copy of the amended plaint had been received which be allowed to be placed on record to meet the compliance date and further submitted that plaintiff No. 1 was situated in Australia, whereas plaintiffs No. 2 & 3 were situated in the USA. The original signed plaint with affidavit were expected to arrive by courier on 18.1.2005 and only three days time was sought to place on record the original signed plaint and affidavit. Notice of the application was sent to the learned Counsel for the defendants for the date fixed because this application was not moved on an actual date of hearing. Order sheet further shows that on 18.1.2005 the learned Counsel for the plaintiffs filed the amended plaint on record as assured by him in the application dated 15.1.2005. The application dated 15.1.2005 is still pending.

41. I have already referred to the order dated 24.1.2005 which has been impugned, according to which copy of the amended plaint had been received by the learned Counsel for the defendants. But the learned Counsel for the defendants, in my view, raised frivolous objections to delay the hearing of the matter and progress of the case, as mentioned above. I have also referred to the order dated 17.2.2005 in which despite there being no stay from the High Court, no fruitful arguments were allowed to be heard and the matter was got deferred simply by saying that the order dated 18.11.2004 had been challenged in the High Court.

42. All these facts and circumstances show that the learned trial Court judge was not being allowed to proceed further for disposal of the matter and at every step hurdles were being created in an already 11 years old suit and the sole motive and objective of the defendants was to prolong the litigation because there was no interim stay against the defendants regarding the alleged manufacture and infringement of the alleged rights of the plaintiffs.

43. The law is well established that the procedure is meant for advancing the cause of justice and not to become a stumbling block in the justice delivery system. In the judgment titled Salem Advocate Bar Association v. Union of India reported in AIR 2005 SC 3354 several provisions of the amended CPC have been discussed including Section 148 CPC on the point of extending time. The Supreme Court opined that extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for the reasons

beyond the control of the party. Further, there can be many cases where non-grant of extension beyond 30 days would amount to failure of justice. The object of the Code is not to promote failure of justice. Section 148, Therefore, deserves to be read down to mean that where sufficient cause exists or events are beyond the control of a party, the Court would have inherent power to extend time beyond 30 days.

44. In my view, the faxed copy of the amended plaint has been filed in less than 30 days counting from 24.12.2005, as explained above and even if it has been filed beyond 30 days the above mentioned judgment comes to the rescue of the plaintiffs. The original plaint has also been filed on 18.1.2005. Application dated 15.1.2005 for extension of time by 3 days is still pending in the trial Court. In my view the challenge to all the three orders in the second petition is without merit.

45. Before parting with this judgment I feel constrained to record that it has become a practice with some litigants not to allow the trial Court to proceed further and reach decision of the main suit. On every interlocutory and procedural order they rush to the higher Courts and more often than not want the higher Courts to go into deep details of the matters to which the trial Court has still to apply its mind and in this way they want to pre-empt the orders to be passed by the trial Courts and want the higher Courts to take up the work of the trial Courts. Such litigants cannot be allowed to hijack the justice delivery system and mould it according to their whims and fancies.

46. In these times of international commercial transactions, our justice delivery system should not lag behind and allow the litigation to go on for years and decades especially when foreign companies are involved. Any act of commission or omission on the part of any party is going to adversely effect the prestige, reputation and economy of the country. Our justice delivery system should not become a bottleneck in the economic development, liberalization and globalization of the country's trade and commerce.

47. In my view, the learned Counsel for the defendants has unnecessarily stretched this matter beyond all reasonable limits. Perusal of the above said three orders on the face of it shows that these are just procedural and interlocutory orders which are passed from time to time during progress of a case. Against such orders a Civil Revision Petition is not maintainable because such orders do not finally dispose of a suit or other substantial proceedings. Apparently, Therefore, these petitions have been filed under Article 227 of the Constitution of India.

48. The extra ordinary jurisdiction is exercised only when an order passed by the Court or tribunal has resulted in gross failure of justice . In the present case, none of the impugned orders has resulted in gross failure of justice, rather the undue delay being caused at every step at the instance of the defendants is resulting in gross failure of justice and such a tendency of the delaying tactics of the parties has to be curbed with a strong hand.

49. Since the petitioners-defendants have challenged interlocutory and procedural orders and have dragged the matter unduly with a view to delay the disposal of the main suit despite direction of the High Court for day-to-day hearing, some observations had to be made while disposing of these petitions.

50. On 22.7.1998 the interim injunction was not granted and both the parties agreed to have the matter fixed for day-to-day hearing so that the matter could be decided without delay [High Court order dated 22.7.1998 (supra)], but the defendants have been defiant and backed out from the said agreement rather an undertaking given to the High Court on 22.7.1998.

51. The present petitions, in my view, are malafide and vexatious. These have delayed the disposal of the matter and have wasted precious time of the High Court. The delaying tactics of the defendants have brought bad name to the legal system of country and their such acrobatics have to be checked.

52. The petitions are, Therefore, dismissed with Rs. 4,00,000/- (Rupees Four Lacs) as costs [Rs. 2,00,000/- (Rupees Two Lacs) each petition] against the petitioners-defendants and in favor of the respondents-plaintiffs. The pending applications in each petition do not survive in view of dismissal of the petitions.

53. The trial Court judge will dispose of the pending applications within 2 weeks even if he has to fix the matter for day to day hearing. If he finds any application by any of the parties to be frivolous or vexatious or any party or learned Counsel does not appear to argue, the same be dismissed with heavy and exemplary costs and if the suit remains in District Courts, it be disposed of within 3 months.

54. Nothing said herein will tantamount to expression of opinion on the merits of any pending applications or the main suit.