
(2007) 10 DEL CK 0286

In the Delhi High Court

Case No : C.S. (OS) No. : 1083 of 2007

Merck Kgaa and another

APPELLANT

Vs

Bala Hegde and Dr. Hemnath Hegde

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15, Order 6 Rule 6, Order 7 Rule 7, 151

Citation : (2007) 7 ILR Delhi 162 Supp

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Anju Aggarwal, for the Appellant; Anil Sharma, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.

IA No. 10250/2007 in CS (OS) No. 1083/2004

1. This is an application by plaintiff u/s 151 of CPC seeking direction to place on record the copy of the plaint annexed as Annexure A in place of the original plaint dated 23rd September, 2004. Issue notice to the defendant. Mr. Anil Sharma accepts notice and states that he will argue the application on the basis of the record. The plaintiff/applicant has contended that the application has been instituted on account of frivolous or flimsy objections raised by the defendant that the plaint has not been properly verified and, therefore, the plaintiff has got the plaint verified and has filed the present plaint and prayer has been sought by the plaintiff to clear the irregularity of no verification in the plaint and to take the plaint on record with proper verification.

2. I have heard the learned counsel for the parties. The learned counsel for the plaintiff prays that the application be treated as an application for amendment of the plaint so as to incorporate the verification in the plaint which was omitted on account of inadvertence in the plaint dated 23rd September, 2004.

3. The plaintiff had filed the plaint dated 23rd September, 2004 along with an affidavit of the constituted attorney of the plaintiff, Sh. S.K. Dutt and the affidavit was properly verified. By the affidavit dated 23rd September, 2004 the averments made in the plaint in different paragraphs were reasserted and these averments were verified. In the circumstances not verifying the averments made in the plaint is an irregularity which can be cured and this Court can permit a party to rectify such irregularity as the cause of action sought to be brought out in the plaint is not ab intio completely absent.

4. A party cannot be refused relief merely because of some mistake, negligence or inadvertence infraction of rules of procedure was held by the Supreme Court in Ganesh Trading Co. Vs. Moji Ram, . It was held:

Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

5. In Vidyawati Gupta and Others Vs. Bhakti Hari Nayak and Others, it was held by the Supreme Court that Order VI Rule 15 relates to verification of pleadings and Sub-rule (4) was inserted mandating that the person verifying the pleading was also required to furnish an affidavit in support of its pleadings. It was further held the requirements of Order VI and Order VII of the Code, being procedural in nature, any omission in respect thereof will not render the plaint invalid and that such defect or omission will not only be curable but will also date back to the presentation of the plaint and rules of procedure are made to further the cause of justice and not to prove a hindrance thereto.

6. Consequently the application of the plaintiff to take the plaint with verification can be considered as an application for amendment of the plaint so as to incorporate proper verification in it. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down in various precedents. Though the amendment cannot be claimed as a matter of right and under all circumstances but the Courts while deciding such prayer do not adopt a hyper technical

approach. Liberal approach is the general rule particularly in cases where the other side can be compensated with costs. Technicalities of law cannot be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation. It is also no more res integra that pretrial amendments are allowed more liberally than those which are sought to be made after the commencement of trial or after conclusion thereof. Mere delay usually cannot be a ground for refusing a prayer for amendment because merits of amendment sought to be incorporated by way of amendments are not to be judged at the stage of allowing prayer for amendment.

7. Consequently, the amendment can be allowed to allow the plaintiff to cure the irregularity of not verifying the different paragraphs of the plaint. The proposed amendment sought by the plaintiff for verifying the averments in the plaint is, therefore, necessary for determination of real controversies between the parties. No such prejudice shall also be caused to the defendants which cannot be compensated in terms of money to the defendants in the facts and circumstances. Therefore, for all these reasons the application is allowed and the amended plaint with verification is taken on record subject to a cost of Rs. 25,000/- payable by the plaintiff to the defendants and the amended plaint along with the verification is taken on record. Cost be paid within four weeks.

CS(OS) No. 1083/2004

The plaintiff has not filed the evidence on affidavit despite time granted on 25th July, 2007 within four weeks. Last opportunity is granted to the plaintiff to file his evidence on affidavit within four weeks.

List before the Joint Registrar on 12.12.2007 for fixing dates for recording the cross examination of plaintiff and his witnesses and thereafter for recording the evidence of the defendants.