
(2009) 05 DEL CK 0377

In the Delhi High Court

Case No : I.A. No. 13469 of 2007 in CS (OS) No. 1123 of 2004

Prem Raj Parakh

APPELLANT

Vs

Shah Food Products and Another

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Citation : (2009) 40 PTC 472

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Dushyant K. Mahant, for the Appellant; Mohan Vidhani, Rahul Vidhani for the Defendant No. 1 and Joydeep Mazumdar, for the Defendant No. 2, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—By this order, I shall dispose of the application of the Plaintiff being I.A. No. 8 13469/2007 filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908.

2. Brief facts are that the Plaintiff had filed the suit against the Defendants in the year 1995 being CS (OS) No. 2554/1995 for restraining the Defendants by a decree of permanent and mandatory injunction for protecting their registered trademark "HEMA".

3. In pursuance to the notification of the Central Government whereby the pecuniary jurisdiction of this Court was enhanced from Rs. 5 lakhs to Rs. 20 lakhs, the suit being CS (OS) No. 2554/1995 was transferred to the District Courts for further proceedings and it was re-numbered as Suit No. 158/2003.

4. Before the Additional District Judge, the Plaintiff filed an application under Order 6 Rule 17 read with Section 151 CPC to enhance the pecuniary jurisdiction of the suit from Rs. 5,00,050/- to Rs. 20,00,050/- . The said application for amendment was allowed by the Additional District Judge vide order dated 12th July, 2004 and the plaint was ordered to be returned to counsel for the Plaintiff

for presentation before the proper court having pecuniary jurisdiction.

5. The Plaintiff re-filed the plaint before this Court and the same was re-numbered as Suit No. 1123/2004 i.e. the present suit.

6. It is contended by Learned Counsel for the Plaintiff that due to inadvertence, the amendment application and the amended plaint as filed did not contain the entire aspect of the amendment sought.

7. When the amendment was allowed by the ADJ, the Plaintiff was allowed to include the claim for rendition of accounts and the suit was valued for the purpose of rendition of accounts to the tune of Rs. 20,00,050/- and the Plaintiff also paid the deficit court fee of Rs. 14,600/- in this regard.

8. The Defendant has opposed the present application filed by the Plaintiff. Learned Counsel for the Defendant has argued that this Court has no jurisdiction to try the suit and therefore, the amendment could not have been allowed. The same is also contrary to the provisions of Section 135(1) of the Trademarks Act, 1999.

9. He has further argued that whatever amendment was sought by the Plaintiff was allowed by the Additional District Judge. In view of the said amendment being allowed, the jurisdiction of the Additional District Judge is not ousted as the Additional District Judge has ordered only for return of the plaint for want of jurisdiction.

10. Learned Counsel for the Defendant has further argued that although the Plaintiff has valued the relief of rendition of accounts for a tune of Rs. 20,00,050/- but no relief was claimed by the Plaintiff in the prayer clause in respect of rendition of account in the plaint. The prayer of damages in prayer clause remained the same. Therefore, the amendment sought by the Plaintiff in the present application is not to be allowed for want of jurisdiction of this Court and the matter has to be sent to the District Judge for adjudication.

11. Learned Counsel for the Defendant has also referred various judgments in support of his contention:

(a) Dharampal Premchand Ltd. Vs. Golden Tabacoo Products, .

(b) Anil Goel Vs. Sardari Lal, .

(c) Order dated 16th February, 2009 passed by this Court in I.A No. 45/2009 in CS (OS) No. 1574/2007 : 2009 (109) DRJ 78 titled Mr. Mahesh Gupta v. Mr. Ranjit Singh and Ors.

(d) Order dated 10th July, 2008 passed by this Court in CS (OS) No. 860/2007 titled M/s Taneja Mines (P) Ltd. v. M/s Divine International.

(e) M/s Globe Super Parts, Faridabad v. Domestic Appliances and Anr., 1981 PTC 78.

(f) Rakesh Chopra v. Taxali, 1999 RLR 83.

12. In order to understand the contention of the parties, it is necessary to mention the relevant paras of valuation of the suit as well as prayer mentioned in the amended plaint which has been filed in compliance of order dated 12th July, 2004 passed by the ADJ as well as the amendment sought in the present application in the valuation para and prayer clause which reads as under:

17. (a) for an order of permanent injunction the relief is valued for purposes of court fee and jurisdiction at Rs. 200/- for the Plaintiff and accordingly a court fee of Rs. 20/- is affixed thereon; b) for an order of mandatory injunction the relief is valued for the purposes of court fee and jurisdiction at Rs. 200/- for the Plaintiff and accordingly a court fee of Rs. 20/- is affixed thereon; c) For an order of decree of rendition of accounts the present suit is valued for Rs. 20,00,500/- and court fee of Rs. 21,913/- shall be paid. The Plaintiff however expects that at the time of rendition of accounts it shall be entitled to an amount in excess of Rs. 20,00,000/- . Thus for the purposes of jurisdiction, the present suit for the relief of accounts is valued at Rs. 20,00,050/- . The Plaintiff undertakes to make up the deficiency of court fee after, if and when the accounts are found due and they are more than Rs. 20 lakhs. Accordingly a total court fee of Rs. 7300/- is affixed thereon. The Plaintiff undertakes to pay the deficient court fee once the suit is decreed. The Plaintiff prays that:

(a) The Defendants, their servants, agents and representatives be restrained by a permanent injunction from manufacturing, selling or in any other way using the trademark HEMA or HEMA SONU or any other trade mark deceptively similar to the trademark HEMA in relation of their goods;

(b) The Defendants, their servants, agents and representatives be ordered by a mandatory injunction to hand over to the Plaintiff all goods bearing the trade mark HEMA or HEMA SONU not of the Plaintiff's manufacture.

(c) The Defendants be ordered to pay to the Plaintiff an amount of damages of Rs. 5,00,050/- suffered by the Plaintiff by the use of HEMA by the Defendants and a decree be passed in favour of the Plaintiff and against the Defendants for the said amount.

(d) Costs of the suit be awarded to the Plaintiff; and

(e) Any other relief which the Hon"ble Court thinks fit and proper in the circumstances of the case be allowed.

13. In the present application, the Plaintiff has sought the amendment in same very paras in the following manner:-

17. (a) for an order of permanent injunction the relief is valued for purposes of court fee and jurisdiction at Rs. 200/- for the Plaintiff and accordingly a court of Rs. 20/- is affixed thereon;

(b) for an order of mandatory injunction the relief is valued for the purposes

court fee and jurisdiction at Rs. 200/- for the Plaintiff and accordingly a court of Rs. 20/- is affixed thereon;

(c) For an order of decree of rendition of accounts the present suit is valued Rs. 20,00,500/- and court fee of Rs. 21,913/- shall be paid. The Plaintiff however expects that at the time of rendition of accounts it shall be entitled to an amount in excess of Rs. 20,00,000/- . Thus for the purposes of jurisdiction, the present suit for the relief of accounts is valued at Rs. 20,00,050/- . The Plaintiff undertakes to make up the deficiency of court fee after, if and when the accounts are found due and they are more than Rs. 20 lakhs. Accordingly a total court fee of Rs. 21,913/- is affixed thereon. Clause (C) in prayer be amended as (c) The Defendant be called upon to allow inspection of their accounts to assist in ascertaining profits made by the Defendant by their unauthorized use of the trade mark HEMA and a decree be accordingly passed in favour of the Plaintiff the amount found due.

14. It appears from the amended plaint that as per order dated 12th July, 2004 by the ADJ, Delhi, there were certain discrepancies in the amended plaint filed inspite of allowing the amendment. The first discrepancy is that originally when the suit was filed the Plaintiff valued the suit for damages at Rs. 5,00,050/- in the valuation clause of Para 17 of the plaint and in the amended plaint, the Plaintiff in Para 17(c) of the valuation clause has valued the suit for Rs. 20,00,050/- and sought the decree for rendition of accounts and the court fee has been paid on the said total amount in place of relief of damages. The other discrepancy in the amended plaint filed earlier is that even in the valuation clause the suit has been amended which is more than Rs. 20 lakhs but in the prayer Clause (c), the Plaintiff still prayed the relief for damages of Rs. 5,00,050/- , it appeared that the plaint has not been amended in the prayer clause in consonance with Para 17(c) of the valuation clause. In order to cure the said discrepancies, the present application has been filed by the Plaintiff.

15. Learned Counsel for the Defendant has argued that this Court has no jurisdiction to consider the amendment sought in the present application. The second objection raised by Learned Counsel for the Defendant is that in case the amendment is allowed, the nature of the suit would be changed as earlier the Plaintiff has claimed only the reliefs of damages. But by way of amendment which was allowed by Additional District Judge, the Plaintiff had changed the said prayer from damages to rendition of account which is not permissible in law.

16. I have considered the decisions referred by Learned Counsel for the Defendants. I am of the considered view that in the facts and circumstances of the present case, none of the decision as referred by Learned Counsel for the Defendants is applicable. In the present case, no doubt after the amendment in the valuation clause, the Plaintiff has not amended the prayer clause but the fact of the matter is that valuation of the suit has been fixed at more than Rs. 20 lakhs, therefore, the jurisdiction of Additional District Judge is ousted who had allowed the amendment by order dated 12th July, 2004. Further the Defendant

has not challenged the order passed by the Additional District Judge, Delhi whereby the amendment was allowed, therefore, the Defendant at this stage can not make its submission that the said order was passed contrary to the law and amendment ought not to have been allowed. In case there are still discrepancies appearing in the plaint, the Plaintiff is entitled to amend and to cure the same in accordance with law and this Court has the power and jurisdiction to consider the same at its own merit.

17. In the case of Lakha Ram Sharma Vs. Balar Marketing Pvt. Ltd., , it was held that "while considering whether the amendment is to be granted or not, the court does not go into the merits of the matter and decide whether or not the claim made therein is bona fide or not. That is a question which can only be decided at the trial of the suit. It is also settled law that merely because an amendment may take the suit out of the jurisdiction of that court is no ground for refusing that amendment. We, therefore, do not find any justifiable reason on which the High Court has refused this amendment. Accordingly, the impugned order is set aside and that of the trial court is restored.

18. The objection raised by the Defendant regarding the ouster of jurisdiction of court of District Judge has no force in view of the judgments given by this Court in the case of Ziff-Davis Inc. Vs. Dr. J.K. Jain and Others , wherein it was held in para 7 and 9 as follows:

7. In my considered view, in a normal situation if a Court ceases to have pecuniary jurisdiction, the plaint ought to be returned to be presented before the competent Court. However, the facts in the present case and in such other similar cases are peculiar arising from a situation where the plaint is originally presented before a competent jurisdiction, but is transferred on account of increase of pecuniary jurisdiction of that Court and thereafter has to actually continue in the same Court where it was originally pending. The transfer has taken place in pursuance to notification issued in this behalf increasing the pecuniary jurisdiction and stating that the suits ought to be transferred to the trial Court. In the past when such pecuniary jurisdiction has been increased, some category of cases have been retained while other categories of cases have been transferred. The notification in this regard was issued in the year 2003 where probate matters and certain arbitration matters were sought to be retained irrespective of their pecuniary jurisdiction. The object of such transfer is only to place the matter before the Court which has now acquired pecuniary jurisdiction in pursuance to the amendment.

9. The orders passed by the District Judge thus, in my considered view, must be read as orders to place the matters back before the High Court which again acquires jurisdiction in view of the amendment made by the Plaintiff to the plaint. It is at this stage, when such a date is fixed for the parties to appear before the High Court, the High Court when it proceeds with the matter can b exercise powers u/s 24 of the Code and thus proceed with the matter from the stage which the matter had reached by that date. This reasoning is also

supported by the fact that even the trial Court was required to continue the proceedings from the stage it had reached in the High Court by reason of transfer of the matter to the trial Court and the High Court again starts the matter from where it had left or in addition some steps have been taken by the trial Court.

19. In view of the above, it appears that the amendment sought by the Plaintiff is merely for curing of the defects/discrepancies occurred in the amended plaint filed by the Plaintiff and the amendment sought by the Plaintiff is accordingly allowed. The amended plaint filed by the Plaintiff is taken on record. The Defendant is to file the amended written statement, if any, within three weeks from today.

19. List all the pending applications including the application under Order 39 Rules 1 & 2 for hearing as well as for framing of issues and evidence on 27th May.