
(2017) 09 DEL CK 0180

In the Delhi High Court

Case No : Civil Suit (COMM) No. 205 Of 2017

Surbhi Puranik @ Surabhi Puranik

APPELLANT

Vs

Mash Audio Visuals Pvt Ltd & Ors

RESPONDENT

Date of Decision : 22-09-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 6 Rule 17

Citation : (2017) 09 DEL CK 0180

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Amit Gupta, Mansi Kukreja, Bharat Gupta, Manish Singhal, Pramod Kumar, Mary Mitzy, Gopal, Ronak Karanpuria, Sumit, Atul Tripathi, Shikha Bhorla

Judgement

Mukta Gupta, J

IA 7062/2017

1. By this application under Order VI Rule 17 CPC read with Section 151 CPC plaintiff seeks amendment of the plaint. In the plaint the plaintiff has

sought a decree of permanent injunction restraining infringement and passing off the trade mark and restraining the defendants No.2 to 10 from using

or publicizing or projecting the profile of the photographs of the plaintiff taken by the defendant No.1 besides damages. The case of the plaintiff in the

suit is that she has been working as a fashion model and is now appearing in movies. Before her start of career in 2013 in the movies she has done

photo shoots with the defendant No.1 company in the year 2012-13 for a paltry sum when her signatures were received on payment receipts. Claim of

the plaintiff is that the defendant No.1 represented that her photographs would be used by defendant No.1 company for a limited duration of two years

and thus the plaintiff agreed to the same. However, the plaintiff found that the

defendant No.1 is permitting the photos of the plaintiff to be used by the defendant Nos.2 to 10 without her approval and authorization in respect of various products/ services of defendant Nos.2 to 10 on hoardings, Kiosks, leaflets, print media etc.

2. On summons being issued, defendant No.1 company which took the photo shoots of the plaintiff filed the written statement and documents to show

that the Model Release Forms with the photographs of the plaintiff were duly signed by her. Claim of the defendant No.1 is that the defendant No.1

owns irrevocable, unrestricted, worldwide and perpetual rights in the photo shoots of the plaintiff.

3. Pursuant to the written statement and Model Release Forms filed by defendant No.1, plaintiff seeks the present amendment in Paras 11 by

including the averment that it is for the first time from the documents filed that she has realised that certain agreements were entered into between the

parties and those documents were signed by the plaintiff under the mistaken belief on the basis of what was conveyed to her orally. It is claimed that

the plaintiff never consented by signing such documents. Consequential amendments in the prayer clause have also been sought seeking a decree of

declaration declaring the 9 Model Release Forms as null and void.

4. In the reply filed by defendant No.1 the claim of defendant No.1 is that the amendments sought by the plaintiff are not bona-fide. It is not the case

of the plaintiff that she did not sign the Model Release Form. Thus facts were deliberately concealed in the plaint so as to avail of an ex-parte ad-

interim order. It is further contended that the proposed amendment would constitutionally and fundamentally change the nature and character of the

suit and that the amendment sought to be introduced in the plaint are beyond the period of limitation.

5. Having heard learned counsel for the parties this Court finds that by the proposed amendments the plaintiff seeks a further decree of declaration in

respect of 9 Model Release Forms dated 22nd August, 2012, 7th August, 2013, 10th August, 2013, 6th November, 2013, 26th November, 2013, 10th

December, 2013, 8th January, 2014, 16th January, 2014 and 18th February, 2014. The claim of the plaintiff in the suit or even in the amendment is not

that she did not sign the Model Release Forms, however it is stated that the same were taken during the photo shoots and believing the representation

of defendant No.1 that they were for a year or two she signed the same. Documents bear the date of signature and in the plaint initially the averments are that she was made to sign certain documents and during the photo shoots her signatures were received on the payment receipts.

6. In *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons & Ors.* (2009) 10 SCC 84 Supreme Court laid down the factors which are required to be considered while dealing with an application for amendment as under:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally and fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

7. As noted above, the last Model Release Form is dated 18th February, 2014. Even in the proposed amendments plaintiff does not deny her

signatures on the Model Release Forms, however only claims that she had no knowledge thereof. There is no averment that the signatures or the

other portions of the handwriting of the plaintiff are forged and fabricated. The present suit has been instituted by the plaintiff on 27th February, 2017.

The amendment thus sought primarily seeking decree of a declaration declaring the 9 Model Release Forms, the last being 18th February, 2014, is

beyond the period of limitation. Therefore without going into the question whether the proposed amendments are bona-fide or not, since the same are

beyond the period of limitation, the amendments to the plaint cannot be allowed.

8. Application is dismissed.

1. Learned counsel for the defendant No.1 seeks an adjournment to seek instructions.

2. At request adjourned to 22nd March, 2018.

CS(COMM) 205/2017 & IA 3423/2017 (u/O XXXIX R 1&2 CPC)

1. List before the learned Joint Registrar for completion of pleadings and admission denial of documents on 25th October, 2017.

2. List before Court on 22nd March, 2018.