

## Special Legal Issues Seminar

### *“CPC Order I Rule 10 - Different Types of Potential/Actual Parties to IP LawSuits”*

## Object and Purpose

- ❖ A court of civil jurisdiction will be administered by the provisions of the Civil Procedure Code, 1908 (*CPC*).
- ❖ Order 1 of the Code of Civil Procedure deals with parties to the suit. It deals with necessity of bringing parties to the suit for proper and effectual adjudication of the matter in dispute.
- ❖ Order I Rule 10 of CPC enables the court to add any person as party at any stage of the proceedings, if the person whose presence before the court is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the suit..
- ❖ Avoidance of multiplicity of proceedings is also one of the objects of the said provision.
- ❖ The provisions of Order 1 Rule 10(2) C.P.C., are very wide and the powers of the court are equally extensive.

## Relevant Provisions of the Code of Civil Procedure, 1908

### ❖ Order I Rule 10- Rejection of Plaintiff:

*“10. Suit in name of wrong plaintiff. – (1) Where a suit has been instituted in the name of the **wrong person as plaintiff** or where it is doubtful whether it has been instituted in the name of the right plaintiff, the **Court may at any stage of the suit**, if satisfied that the suit has been instituted through a **bona fide mistake**, and that it is **necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff** upon such terms as the Court thinks just.*

*(2) Court may strike out or add parties.-The Court may at any stage of the proceedings, **either upon or without the application of either party**, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, **be struck out**, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or **whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.***

## Relevant Provisions of the Code of Civil Procedure, 1908 (Contd.)

### ❖ Order I Rule 10- Rejection of Complaint (Contd.):

*(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.*

*(4) Where defendant added, complaint to be amended.-Where a defendant is added, the complaint shall, unless the Court otherwise directs, **be amended in such manner as may be necessary**, and amended copies of the summons and of the complaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.*

*(5) Subject to the provisions of the [Indian Limitation Act, 1877 (15 of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.” [Emphasis Supplied]*

## Relevant Provisions of the Limitation Act 1963

### ❖ Section 21- Effect of substituting or adding new plaintiff or defendant:

- *“(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.*
- *Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date ....”*

## Necessary and proper parties to the suit

- ❖ There are two types of persons who may be added as party to the suit:
  - ❖ (1) Person who is a necessary party i.e., in the absence of whom relief claimed in the suit cannot be granted. In other words, it means that for the grant of relief claimed in a suit, a person who ought to have joined must be added,
  - ❖ (2) the second class of persons consists of those who are proper parties i.e., whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit.
- ❖ In *Kasturi v., Uyyamperumal & Ors (2005) 6 SCC 733*, the Hon'ble Apex Court observed that “*it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.*”

## Relevant Case Laws (Contd.)

### ❖ *Razia Begum v. Anwar Begum* [AIR 1958 SC 886]

*“(1) That the question of addition of parties under R.10 of O.1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; ...*

*(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;*

*(3) Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy; ...”*

## Relevant Case Laws (Contd.)

### ❖ *Mahadeva Rice & Oil Mills v. Chennimalai Gounder* [AIR 1968 Mad. 287]

1. *If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.*
2. *It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subjectmatter which could still have been decided in the pending suit itself;*
3. *The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;*
4. *Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and*
5. *It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit.*



## Relevant Case Laws (Contd.)

❖ ***Antony Devaraj v. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church rep by the Trustee, [2004(2) C.T.C. ]***

*“(iii). The person to be added as one of the parties must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to given on some of the questions involved, but it should make him as necessary witness.*

*(iv). The third party cannot be considered to be a necessary party for deciding the main issue framed in the suit. Mere ground that inclusion of the proposed third party would not alter the structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant.*

*(v). The Court may upon an application or suo motu, in a fit and proper case, implead a new party as defendant, even against the plaintiff’s consent under certain circumstances. The discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions contained in Order 1 Rule 10(2), CPC. Where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. If the question at issue between the parties can be worked out without anyone else being brought in, the stranger should not be added as a party.*

## Relevant Case Laws (Contd.)

*(vi) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit.*

*(vii) Persons whose interest would be affected by the litigation are entitled to come on record to protect their interest when those are jeopardized by the persons already on record”*

### ❖ ***Mumbai International Airport v. Regency convention Centre [AIR 2010 SC 3109]***

*“ 1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for nonjoinder of a necessary party.*

*2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party.*

## Relevant Case Laws (Contd.)

*But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.*

*3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.*

*4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms.”*

## Applicability of Order 1 Rule 10 CPC in IP Cases

### ❖ *Atul Kumar Singh v. Nitish Kumar & Ors* [CS(COMM) 258/2018]

- Atul Kumar Singh, a former JNU student has alleged that the book published by Patna-based Asian Development Research Institute (ADRI), through its member secretary Shaibal Gupta, and endorsed by Kumar, is a plagiarised version of his research work.
- The chief minister said in his application he had no direct or indirect association with other defendants and the book -- Special Category Status: A Case for Bihar. He also contended he had only endorsed the book and not authored it.
- The joint registrar noted that there were sufficient grounds to sue Kumar.
- *“Therefore, Kumar is both necessary as well as proper party to suit, as in his absence no effective decree can be passed in the present suit. Further, presence of Gupta is necessary in order to enable the court to effectually and completely adjudicate upon and settle all disputes in the suit,”*

## Applicability of Order 1 Rule 10 CPC in IP Cases (Contd.)

### ❖ *Mitsubishi Electric India Pvt Ltd v. Anup Mittal & Ors.* [CM(M)--1058/2014]

- The petitioner Mitsubishi Electric India Pvt. Ltd. (in short Mitsubishi) was impleaded as defendant No.6 in a suit filed by the respondent No.1 Anup Mittal and A Square Automation Pvt. Ltd.
- In the suit Mitsubishi filed an application under Order 1 Rule 10 CPC seeking deletion from the array of defendants as it was neither a necessary nor proper party.
- Vide the impugned order dated 26<sup>th</sup> March, 2014 the learned ADJ held that though Mitsubishi was not a necessary party, but it was a proper party whose presence would enable the Court to completely, affectively and adequately adjudicate upon the matter in issue in the suit and thus the application of Mitsubishi under Order 1 Rule 10 CPC was dismissed.

## Difference between Order 1 Rule 10(2) and Order 6 Rule 17 CPC

**Order 1 Rule 10(2)** covers two types of cases (a) of a party who ought to have been joined but not joined and is a necessary party, and (b) of a party without whose presence the question involved in the case cannot be completely decided.

The object of Order 1 Rule 10(2) CPC, is to bring before the court all persons at the same time who are involved in the dispute relating to the subject-matter so that the disputes may all be determined at the same time without delay, inconvenience and expenses on a separate actions and trials.

Order 1 Rule 10(2) CPC, confers powers also on the court without a motion from any of the parties to exercise the power

**Order 6 Rule 17** of the Code deals with amendment with the leave of the court by a party of his own pleadings if such amendment is necessary for determination of the real question in controversy.

Order 6 Rule 17 is therefore wider in its scope and ambit Order 6 Rule 17 of the Code deals with amendment with the leave of the court by a party of his own pleadings, if such amendment is necessary for determination of the real question in controversy.

Order 6 Rule 17 enables a party to seek amendment.

# THANK YOU!

## Questions?

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