

Special Legal Issues Seminar

CPC Order VI Rule 17 - Different Types of Amendments to Different Types of IP Lawsuits

Introduction

❖ Pleadings:

- Statements (in writing) of the parties on which the suit proceeds.
- These are the material facts which helps plaintiff to define the cause of action and defendant to establish his defense in a civil suit.
- Pleadings should be properly drafted, and it should not contain any vague or unambiguous statements. Must contain all material facts, grounds and other necessary particulars of the dispute.
- No decisions can be based on the grounds outside the pleadings.
- Caution to be exercised in drafting of pleadings. Once framed, no one has the power to amend pleadings expect for the judge on his discretion.

❖ Object and Purpose of Pleadings:

- To acquaint the other party with the case he might face in the due course of time.
- To bring parties to the definite issues, reduce costs and to ensure the speedy delivery of justice.

Relevant Provisions of the Code of Civil Procedure, 1908

❖ Order VI: Pleadings generally:

- Rule 1: “*Pleading—...shall mean plaint or written statement.*”
- Rule 2: “*Pleading to state material facts and not evidence—*
 1. *Every pleading shall contain, and contain only, a statement in a concise form of the **material facts n which the party pleading relies for his claim or defence...but not the evidence by which they are to be proved...***” [Emphasis supplied]
- Rule 7: “*Departure—No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact **inconsistent with the previous pleadings of the party pleading the same**”*
- Rule 17: “*Amendment of pleadings—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*
Provided that- no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.” [Emphasis supplied]

Order VI Rule 17- Amendments to Pleadings

❖ Legislative History

- **The 1999 Amendment Act:** On recommendation of Justice Malimath Committee, the provision was removed from CPC, in view of inordinate delays caused in disposal of cases.
- **The 2002 Amendment Act:** Legislature reconsidered the objections of lawyers and public at large in deleting the provision and restored the same albeit insertion of the proviso.

❖ *Salem Advocate Bar Association, Tamil Nadu v. Union of India & Ors.* [AIR 1989 DEL 63]

- The validity of the 1999 and 2002 amendments were challenged. In dismissing the challenge, the Supreme Court observed -
“...*The proviso, to some extent, curtails absolute discretion to allow amendment at any stage...if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision...” [Emphasis supplied]*

Interpretation of Order VI Rule 17

❖ The provision can be divided into two parts:

- **The First Part: The Section**

- Discretionary (“*The Court may...*”)
- Gives unfettered discretion to the judge to allow amendments on case-to-case basis, whenever it appears to be just.
- To determine the real questions of controversy.
- Approach of the Court should be liberal and not hypothetical.

- **The Second Part: The Proviso**

- Mandatory (“*...no application for amendment shall...*”)
- Court to accept all applications necessary for the purpose of determining the real issue, if the same could not have been raised by the parties before the commencement of trial.

Basic Principles To Consider While Allowing Amendments

- ❖ *M/s Revajeetu Builders & Developers v. M/s Narayanaswamy & Sons [(2009) 10 SCC 84.]*
 - The Supreme Court formulated some basic principles to be taken into consideration while allowing or rejecting the application for amendment:
 - “...(i) Whether the amendment sought is imperative for proper and effective adjudication of the case?
 - (ii) Whether the application for amendment is bona fide or mala fide?
 - (iii) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
 - (iv) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
 - (v) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and
 - (vi) 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...” [Emphasis supplied]

Amendments in IP Suits: Relevant Case Laws

❖ *LT Foods Ltd v. Sachdeva & Sons Rice Mills Ltd. and Ors.* [2014 SCC Del 4616]

Facts: Trademark infringement suit [HERITAGE v. INDIAN HERITAGE] The Defendant sought to amend the written statement to insert certain additional grounds. The Plaintiff contested stating that the Defendant is attempting to take an entirely new defense of commonality of the word HERITAGE, which was inconsistent with its pleas in the unamended written statement claiming exclusivity over INDIAN HERITAGE.

Held: “...it is settled legal position that it is open to a defendant to take a new ground of defence by amending its written statement...It is true that it is open to a defendant to take alternative pleas in his written statement but the same should not be destructive of each other...” [Emphasis supplied]

❖ *Usha International v. Usha Television Ltd.* [2002 (25) PTC 184 Del]

Facts: The appellants had filed an application of amendment of the plaint under to include the relief of infringement of trademark in a suit for passing off, on the registration being granted by the TMR.

Amendments in IP Suits: Relevant Case Laws (Contd.)

Held: The Court overturned the order of the Single Judge declining the application and observed:

*“...In our opinion, the laws relating to infringement and passing off are fundamentally similar. **The supervening event of registration of trade mark ...is a fact which can be taken note of and on that basis the application for amendment deserves to be allowed...**The rule of amendment of pleadings has to be governed on the basic rule of justice, equity and good conscience...We are satisfied that the alternative plea that is sought to be raised by the appellant is **that the amendment application is only by way of expatiating his rights which he has secured by a statute...**” [Emphasis Supplied]*

❖ *Jiva Institute of Vedic Science & Culture & Ors. v. The Indian Hotels Company Limited & Anr. [2015 SCC OnLine Del 13813]*

Facts: The plaintiffs then filed an application for amendment of the plaint as they had reassessed the damages likely to be served and wanted to alter the relief for rendition of accounts from Rs 25 lac to Rs 1 crore in view of the statement of accounts produced by the defendants.

Amendments in IP Suits: Relevant Case Laws (Contd.)

Placing reliance on: *Mount Mary Enterprises v Jivratna Medi Treat Pvt Ltd* [2015 4 SCC 182] where the Supreme Court held that, “...the nature of the suit was not to be changed by virtue of granting the amendment application because...initially the property had been valued at Rs 13,50,000 but as the market value of the property was actually Rs 1,20,00,000...The amendment application made by the plaintiff should have been granted, especially in view of the fact that it was admitted by the plaintiff that the suit property was initially undervalued...by virtue of the amendment application, the plaintiff wanted to correct the error and wanted to place correct market value of the suit property in the plaint.” [Emphasis Supplied]

Held: “It is a commercial dispute and the Court dealing with the commercial matters should not have the narrow approach, as the Court has to examine the application from commercial angle, though the same is subject to the condition that a valid case for amendment is made out, once the said condition is fulfilled, the prayer has to be allowed.” [Emphasis Supplied]

❖ *Just Lifestyle Pvt. Ltd. v. Advance Magazine Publishers Inc. & Anr.* [2013 SCC OnLine Del 117]

Facts: The Respondent (Plaintiff in the original suit) sought to amend the plaint in order to implead the Petitioner’s holding company as a party to the suit.

Amendments in IP Suits: Relevant Case Laws (Contd.)

The Petitioner (Defendant in the original suit) opposed the amendment application claiming that the Respondent sought to implead party only to invoke territorial jurisdiction of the Court which otherwise did not lie. The Respondent claimed that it was a bona fide error.

Held: “...it is not the case of the respondents that the facts...were not known to them before the filing of the suit or commencement of trial in the suit... As per proviso appended to Order VI Rule 17 CPC no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial...The respondents could have easily incorporated amendments...but they failed to do so due to oversight and bona fide error...”

“...the respondents sought to add a new ground for invocation of territorial jurisdiction...one distinct cause of action cannot be substituted for another, nor the subject-matter of the suit can be changed by means of an amendment. Applying the same analogy, it can safely be concluded that it is impermissible for a plaintiff to change the ground for invocation of jurisdiction of a Court by means of an amendment. In that view of the matter, the application for amendment of plaint filed by the respondents...could not have been allowed...”

[Emphasis supplied]

Amendments in IP Suits: Relevant Case Laws (Contd.)

- ❖ *Association for Investment Management and Research and Anr. v. Institute of Chartered Financial Analysts of India & Anr.* [2008 SCC Del 894]

Facts: The plaintiffs then sought to add more defendants to the suit by way of amendment, stressing that it was necessary for the purpose of determining the real questions in controversy between the parties.

Held: “...the amendment sought by the plaintiffs by seeking to implead the proposed defendants and thereupon carry out consequential amendments in the plaint are necessary for the purpose of determining the real questions in controversy between the parties...During the pendency of the present proceedings, the defendants filed an additional affidavit stating inter alia that certain States had passed enactments for creation of universities bearing the acronym ICFAI and thus the defendants could not be enjoined from using such an acronym. It is in the aforesaid background that the plaintiffs filed the present application seeking impleadment of the aforesaid universities as proposed defendants in the present proceedings. The plaintiffs cannot be prevented from seeking the amendments in question as the same are based on the occurrence of subsequent events which were brought to the notice of the plaintiffs by the existing defendants themselves.” [Emphasis supplied]

Allowed	Disallowed
✓ For grant of consequential relief	✗ Not necessary to determine the real question in controversy
✓ To avoid multiplicity of proceedings	✗ Alters/substitutes materially or substitutes cause of action or the nature of claim
✓ Taking notice of subsequent events	✗ Takes inconsistent pleas in written statement
✓ Where the amendment is a formal in nature	✗ Where the effect of the proposed amendment is to take away a legal right accrued in Adversary's favour
✓ Where the amendment is formal in nature	✗ When it is not <i>bona fide</i>
✓ Where the parties in the plaint are wrongly described	✗ When the application for amendment is filed after commencement of trial
✓ Where some properties are omitted from the plaint by inadvertence	✗ Where several opportunities are given to parties to apply for amendment of pleadings, but they still do not act on it
✓ Where there is a mistake in the statement of cause of action	✗ When it leads to the needless complications in the case.
✓ <i>Bona fide</i> omission in making the necessary averments in the plaint	✗ The amendment of the written statement sought by the defendant wholly displaces the position of the plaintiff.

Conclusion

- Provisions relating to amendment of pleadings must be liberally construed with a view to promote the ends of justice and not to defeat them.
- The purpose and object of the rules of pleadings is to decide the real controversy between the parties and not to punish them for their mistakes, negligence or shortcomings.
- The exercise of discretionary power must be governed by judicial considerations and the wider the discretion, the greater care and circumspection.
- Rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.
- The court should not go into correctness or falsity of the case in the amendment, while dealing with the application for amendment.
- Amendments should be refused only where the other party cannot be placed in the same position before the amendment, but the amendment would cause him an injury which could not be compensated in costs.

THANK YOU!
Questions?

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