

Savitri Minda Vs. Minda Indsutries

Savitri Minda Vs. Minda Indsutries

SooperKanoon Citation : sooperkanoon.com/699337

Court : Delhi

Decided On : Jul-01-1996

Reported in : 1996IIIAD(Delhi)385; 64(1996)DLT447

Judge : Lokeshwar Prasad, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Interim Application No. 327 of 1996 and Suit No. 1163 of 1993

Appellant : Savitri Minda

Respondent : Minda Indsutries

Advocate for Pet/Ap. : S.K. Bansal and; C.K. Mahajan, Advs

Judgement :

Lokeshwar Prasad, J.

(1) This Order will dispose of plaintiff's application filed under Order Vi Rule 17, Order Xxii Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'). The facts relevant for the disposal of the above mentioned application briefly stated are that the plaintiff as the sole proprietress of the trade mark 'MINDA', registered under Trade Mark No. 241844 in Class 9 and 357811 in Class 12 and also as proprietress of the artistic work entitled- 'MINDA', alleged to have been duly registered at No. A-47612/85 under

the Indian Copyright Act, 1957, filed a suit under Sections 105 & 106 of the Trade and Merchandise Marks Act, 1958 as well as under Section 55 of the Indian Copyright Act, 1957 for the relief of permanent injunction and rendition of accounts etc. against the defendant named above. The defendant resisted the claim of the plaintiff and filed a written statement inter-alia contending that the plaintiff has no subsisting right to file the present suit and unless the deed of assignment is executed under the relevant statutory provisions, on which reliance is being placed by the plaintiff, no cause of action can be said to have arisen in favor of the plaintiff. On merits it is contended that the alleged assignment deed dated the 10th May, 1993 is yet to receive legal validity and as such the plaintiff cannot base her claim on the basis of assignment deed dated the 10th May, 1993. In the written statement the defendant has also denied the other averments of the plaint. The plaintiff filed a replication controverting the contentions raised in the written statement and re-iterating the averments made in the plaint.

(2) On the pleadings of the parties and the material on record the learned Predecessor of this Court vide order dated 26.10.94 framed the following issues :

1. Whether the Deed of Assignment assigning the trade mark in question in favor of plaintiff is legal and valid? Off 2. Whether Delhi Courts have territorial jurisdiction to try the suit? 3. Whether plaintiff is entitled to relief of rendition of accounts? 4. Whether defendant has infringed the trade mark and copyright of the plaintiff? If so, its effect? 5. Whether defendants have passed off their goods as those of the plaintiff, as alleged? If so, its effect? 6. Whether plaintiff is the owner of trade mark and the copyright, as alleged? 7. Relief.

(3) On 2.2.95 the learned Counsel for both the parties agreed to have the evidence on affidavits and the parties were directed to file the affidavits of their witnesses within four weeks and within two weeks thereafter they were directed to file affidavits by way of evidence in rebuttal. The present application (IA 327/96) with the prayer to allow the suit to be amended and also to allow the suit to be continued by M/s Minda Industries Ltd. having its registered office at 36-A, Rajasthan Udyog Nagar, Delhi has been filed on behalf of the plaintiff-on 9.1.96.

(4) In the above said application it has been stated that the plaintiff vide deed of assignment dated the 19th January, 1995 executed between herself and M/s Minda Industries Ltd., a Company incorporated under the Companies Act, 1956, having its registered office at 36-A, Rajasthan Udyog Nagar, Delhi has assigned the trade marks 'Minda' together with the goodwill of the business on the goods for which the said trade marks are being used to said M/s Minda Industries Ltd. It is also averred in the application that the plaintiff also filed a request in Form No. Tm 24 dated the 6th June, 1995 before the Registrar of Trade Marks for the purpose of recording the assignment and to bring the subsequent proprietors on record. It is alleged that the Registrar of Trade Marks vide order dated 11.7.95 has allowed the said request and has allowed the said registration under Nos. 241844 and 357811 in favor of M/s Minda Industries Ltd. and necessary entries to that effect have been made in the relevant register (copy annexed with the application and marked as Annexure-1). It is averred that the plaintiff vide deed of assignment dated the 16th October, 1995 executed between herself and the above said Minda Industries Ltd. has assigned the registered Copy Right No. A-47612/85 to the above said Company i.e. M/s Minda Industries Ltd.

(5) Thus M/s. Minda Industries Ltd., as per the case of the plaintiff are the proprietors of the trade marks duly registered under No. 241844 in Class 9 and 357811 in Class 12 and the registered Copy Right under No. A-47612/85. It is further averred that as a consequence of the above assignments in favor of M/s Minda Industries Ltd. of the above said trade marks and copy right by the plaintiff the 'Permitted User' agreements referred to in para 6 of the plaint do not survive. It is further alleged that Shri H.C. Dhamija, Dgm (Finance)-cum-Company Secretary has been duly authorised to continue the present suit as also to do all acts necessary for the conduct of the instant suit including signing and verifying the pleadings and depose the facts. It is prayed that in view of the above facts and circumstances the plaintiff be permitted to amend the plaint as prayed in paragraph 10 of the application and be also permitted to continue the suit in the name of M/s Minda Industries Ltd., having its registered office at 36-A, Rajasthan Udyog Nagar, Delhi.

(6) The defendants filed a reply to the above application resisting the prayer of the plaintiff. In the reply the defendants have taken preliminary objections to the effect that the registration of the trade mark in favor of the plaintiff is not proper and valid and, therefore, no right is conferred on the plaintiff and that the validity of the assignment being in dispute the plaintiff could not further assign the trade mark; that the entire transaction of assignment is in contravention of the various provisions of the Act and the plaintiff cannot seek any protection for the infringement under the Act and that the defendant had challenged the original assignment and, therefore, the plaintiff was not empowered to further assign the trade mark. It is contended that the above fact ought to have been disclosed by the plaintiff to the Registrar of Trade Marks and it appears that the plaintiff has played a fraud upon the Registrar of Trade Marks by withholding the true facts. On merits it is contended that the plaintiff could not have executed a deed of assignment as there was no proper and valid assignment in favor of the plaintiff herself. The defendant in the reply have also contended that the plaintiff is not entitled to amend the plaint as prayed as the proposed amendment would change the nature of the suit and is not necessary for determining the real question of controversy between the parties. It is contended that the plaintiff is not entitled to any relief and the application filed by the plaintiff is liable to be dismissed.

(7) I have heard the learned Counsel for the parties at length and have also carefully gone through the material on record. As per settled law the Courts should be liberal in the matter of allowing amendments since they exist to decide the rights of parties and not to punish them for the mistakes they make in the conduct of their cases. Two limitations on the power are these. An amendment cannot be allowed which would have the effect of substituting one cause of action for another or changing the subject-matter of the suit. The other is that an amendment ought not ordinarily to be allowed which would deprive the other side of a legal right accrued by lapse of time - The relevant point of time being the time when the question falls to be considered. An amendment of pleadings adding a new cause of action or a new defense, should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs. It is the duty of the Court to allow amendment of pleadings when it is necessary for the purpose of determining the real questions in controversy in the suit. It is a

duty which has been cast upon Courts so that substantial justice may be done for which alone Courts exist : : AIR1951 Cal262 .

(8) The Supreme Court in case Hari Das Aildas Thadani & Ors. v. Godrej Rustom Kerntani : AIR 1983 SC319 have held that the Courts should be extremely liberal in granting prayer of amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. The Supreme Court in case C.M. Vereeklttty v. C.M. Mathukutty : (1980)1SCC537 have held that the Courts can allow amendment where certain properties were not correctly and fully described and some properties had been omitted from the original plaint schedule. In case Bikram Singh & Ors. v. Ram Baboo & Ors. : AIR 1981 SC2036 the Supreme Court have held that a consequential amendment should be allowed by the Court. The Division Bench of this Court in a recent case of Mrs. Evelyn J. Disney v. Rajeshwar Nath Gupta & Ors. reported as : AIR1996 Delhi86 have held that it is a trite proposition of law, culled out from various pronouncements that bonafide amendments vital for adjudication of the real question in controversy between the parties should be allowed howsoever neglected the first omission and howsoever delayed the proposed amendment, if the opposite party can be compensated with costs or other terms to be imposed in the order. It may be observed that in the present case there is no element of delay and the plaintiff has approached for the proposed amendments within a reasonable time. In the present case the necessity for amendment of plaint has arisen out of circumstances which happened after the filing of the suit i.e. subsequent assignment of the Trade Mark and the Copyright by the plaintiff in favor of M/s. Minda Industries Ltd. As a result of the proposed amendment there is no alteration in the fundamental/basic character of the suit and no prejudice is going to be caused to the defendant.

(9) In view of the above discussion, the application (IA 327/ 96) filed by the plaintiff under Order Vi Rule 17 and under Order Xii Rule 10 read with Section 151, Cpc is allowed subject to payments of costs. Costs fixed Rs. 2.000.00 (Rupees two thousand only) and awarded to the defendant.

(10) The application stands disposed of in above terms. List on 12th August, 1996 for payment of costs in terms of the above orders and also for further directions.

