



2025:DHC:442



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 22nd January, 2025*

+ CS(COMM) 1564/2016

BAJAJ RESOURCES LIMITED & ANRPlaintiffs

Through: Ms. Kruttika Vijay, Ms. Geetanjali
Visvanathan, Mr. Sauhard Alung and
Mr. Shivansh Tiwari, Advocates.

versus

GOYAL HERBALS PRIVATE LIMITED & ORS.....Defendants

Through: Mr. Jaspreet Singh Kapur, Mr. Wasim
Ansari and Ms. Shweta Sharma,
Advocates.

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

AMIT BANSAL, J. (Oral)

I.A. 1586/2025 (condonation of delay in filing reply to application under Order VI Rule 17 of CPC)

1. This application has been filed on behalf of the defendants seeking condonation of delay of 19 days in filing reply to the plaintiffs' application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter 'CPC').
2. For the reasons stated in the application, the same is allowed.
3. Delay of 19 days in filing reply to the application is condoned.
4. Accordingly, the application stands disposed of.




I.A. 39862/2024 (Order VI Rule 17 of CPC)

5. The present suit has been filed for permanent injunction restraining the defendants from using the mark ‘ALMOND DROPS’ amounting to infringement of trade mark/ trade dress, passing off and infringement of copyright along with other ancillary reliefs.

6. During the pendency of the suit, the present application has been filed on behalf of the plaintiffs under Order VI Rule 17 of the CPC seeking leave to amend the plaint.

7. By way of the present application, the plaintiffs seek to amend the plaint to bring on record facts pertaining to the following:

7.1. Three trade mark registrations and one pending trade mark application, all of which were filed by the plaintiff no.1 after the institution of the suit. The details of the aforesaid registrations/ application are provided below:

S. No.	Trade Mark Application No.	Mark	Date of Application	Date of Publication	Date of Registration
1.	4964451	ALMOND DROPS	04.05.2021	06.03.2023	28.07.2023
2.	4979103	ALMOND DROPS	20.05.2021	25.09.2023	27.02.2024
3.	5842987		10.03.2023	04.03.2024	20.07.2024



4.	6253726	BAJAJ ALMOND DROPS	10.01.2024	Pending	Pending
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7.2. An interim order of injunction and a decree passed by this Court on 11th May, 2022 and 26th July, 2022 respectively in favour of the plaintiffs and against the defendants' bottle manufacturer in a subsequent suit, which would be relevant in the present suit.

7.3. The plaintiffs' sales turnover and advertising expenses in relation to their flagship product under the mark 'BAJAJ ALMOND DROPS HAIR OIL' subsequent to the filing of the suit.

7.4. The change in name and authorized signatories of the plaintiffs and the plaintiff no.1's conversion from a public company to a private limited company.

8. Briefly, the undisputed facts of the present case which are relevant in the present application are set out below:

8.1. The present suit was instituted in November 2016.

8.2. The plaintiffs had set up a case for infringement of trade mark/ trade dress as well as for passing off in the original plaint.

8.3. The issues in the present suit were framed on 2nd November, 2018.

8.4. The sole witness of the plaintiffs tendered his evidence by way of an affidavit on 6th September, 2019. The cross-examination of the plaintiffs' witness concluded on 2nd March, 2022.

8.5. The parties were thereafter referred to the Mediation Centre by this Court on 1st May, 2023. The mediation, however, failed on 6th October, 2023.

8.6. Since then, there has been no further proceedings in the present suit.




9. Ms. Kruttika Vijay, counsel appearing on behalf of the plaintiffs, has made the following submissions:

9.1. All the amendments sought to be introduced in the plaint are pursuant to events which occurred after the trial had commenced in the suit. Therefore, in spite of the plaintiffs' necessary due diligence, the aforesaid amendments could not have been introduced prior to the commencement of trial in the suit.

9.2. Subsequent to the registration of the trademarks 'ALMOND DROPS'



and '  ' in favour of the plaintiff no.1, it acquired statutory rights in relation to the same which include the right to institute a suit for infringement of the said trademarks/ trade dress against the defendants.

9.3. The aforesaid amendments are necessary for determining the real question in controversy between the parties and the present application has been filed to avoid multiplicity of proceedings.

9.4. Neither the aforesaid amendments change the nature and character of the present suit nor do they set up a new case which is foreign to the case set up in the original plaint.

9.5. There is no interim injunction in favour of the plaintiffs and against the defendants in the present suit. Therefore, despite the fact that there will be an ostensible delay by way of the aforesaid amendments, no prejudice will be caused to the defendants if the present application is allowed.

9.6. In support of her submissions, counsel for the plaintiff has relied upon the following judgments: *Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another* [(2022) 16 SCC 1] and *Pravesh*



Narula Trading as M/s. Capital Enterprises v. Raj Kumar Jain Trading as M/s. Bholaram Puranmall and Another [2024 SCC OnLine Del 7537].

10. Mr. Jaspreet Singh Kapur, counsel appearing on behalf of the defendants, does not object to amendment mentioned in paragraph no.7.4 above. However, he opposes the remaining amendments sought to be introduced.

11. He has made the following submissions:

11.1. On the first date of hearing in the present suit, an *ex-parte ad interim* injunction in favour of the plaintiffs was denied on the ground that the plaintiffs did not have any registration for the mark ALMOND DROPS. Further, the defendants, in their written statement, pleaded that the plaintiffs cannot claim any statutory right over the descriptive words ‘ALMOND DROPS’, picture of almonds and colour combination of golden and brown and the same are not registrable. Despite the aforesaid, the plaintiffs took no steps to apply for registration of the mark ‘ALMOND DROPS’ until May 2021.

11.2. During the cross-examination of the plaintiffs’ witness, he stated that he is not aware if the plaintiffs have filed any application for the mark ‘ALMOND DROPS’ or for the colour combination of golden and brown.

11.3. The plaintiffs, on 31st May, 2022, moved an application for producing additional documents. However, they did not file copies of the trade mark applications for the mark ‘ALMOND DROPS’. The plaintiffs have therefore failed to exercise due diligence in bringing the aforesaid amendments on record.

11.4. The plaintiffs are intentionally delaying the present proceedings.



Further, by way of the present application, the plaintiffs have *mala fidely* endeavoured to improve the case set up in the original plaint.

11.5. The aforesaid amendments, if allowed to be taken on record, would change the nature and character of the suit as the parameters in a passing off action differ from those in an infringement action.

11.6. For the aforesaid reasons, the defendants would be prejudiced in case the present application is allowed and the aforesaid amendments are taken on record.

12. I have perused the material on record and heard the counsel for the parties.

13. The original plaint filed in the suit was in respect of infringement of trade mark/ trade dress, infringement of copyright and passing off. At the time of filing of the suit, the plaintiff only had one trade mark registration in its



favour, *i.e.*, for the mark  ' in Class 3.

14. Subsequently, during the pendency of the suit, the plaintiff no.1 applied for and obtained three other trade mark registrations, as mentioned hereinabove, as a result of which, the plaintiff no.1 now enjoys statutory rights in the said registered marks.

15. In *Life Insurance Corporation* (supra), the Supreme Court has elucidated the principles relating to amendment of the plaint which are set out



below:

“ 71. Our final conclusions may be summed up thus:

71.1. Order 2 Rule 2CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2CPC is, thus, misconceived and hence negated.

71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order 6 Rule 17CPC.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless:

71.4.1. By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.

71.4.2. The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the



amendment is liable to be allowed even after expiry of limitation.

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.”

16. In a recent judgment in ***Pravesh Narula*** (supra), a Coordinate Bench of this Court had also allowed an application for amendment of the plaint in similar circumstances where amendment was sought after the closure of the plaintiff's evidence. The Court relied upon the observations of the Division Bench in ***Usha International v. Usha Television Ltd.*** [2022 SCC OnLine Del 306], and the same are as under:

*“11. In ***Nichhalbhai v. Jaswantlal***, AIR 1966 SC 997 their Lordships of the Supreme Court observed that “**if the amendment is refused the plaintiff may have to bring another suit and the object of the rule for allowing amendments to the plaint is to avoid multiplicity of suits.**”*

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*13. We have heard the learned counsel for the appellants and carefully perused the judgments cited at the Bar. **In our opinion, the law relating to infringement and passing off are fundamentally similar. The supervening***



event of registration of trademark under the Trade and Merchandise Marks Act, 1958 is a fact which can be taken note of and on that basis the application for amendment deserves to be allowed.

14. The rule of amendment of pleadings has to be governed on the basic rule of justice, equity and good conscience. When this principle is applied, the amendment as prayed has to be allowed. We are satisfied that the alternative plea that is sought to be raised by the appellant in the amendment application is only by way of expatiating his rights which he has secured by a statute. Apart from this, the main consideration for allowing the application is to avoid multiplicity of proceedings which means saving of precious judicial time and saving of avoidable expenses for the litigants.”

17. In *Pravesh Narula* (supra), the Court also relied on the observations of the Supreme Court in *Rajesh Kumar Aggarwal v. K.K. Modi* [(2006) 4 SCC 385], which are as under:

“ 15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain



opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the 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.”

18. In light of the aforesaid judgments, the Court, in **Pravesh Narula** (supra), held that the power of the Court to allow amendment even after commencement of trial is not restricted. It was also observed that if the amendment is not allowed, the same would result in unnecessary multiplicity of litigation between the parties.

19. In the present suit, the aforesaid three registrations in favour of the plaintiff no.1 were clearly granted subsequent to the commencement of the trial in the present suit.

20. It cannot be disputed that the plaintiff no.1 has the statutory right to institute a fresh suit for infringement of trademarks/ trade dress, which were subsequently registered in its favour. Therefore, by allowing the aforesaid amendments to be taken on record in the present suit, the Court would avoid multiplicity of litigation between the parties.

21. It is the concern of the defendants that taking the aforesaid amendments on record would delay the suit as, pursuant thereto, the defendants would be filing an amended written statement, resulting in framing of additional issues and the requirement for leading fresh evidence.

22. It is, however, an admitted position that there is no interim injunction in favour of the plaintiffs and against the defendants. Therefore, in my view, any delay in the disposal of the suit would not prejudice the defendants.



23. The original plaint filed in the suit was in respect of infringement of trade mark/ trade dress and passing off, among other reliefs. Therefore, the aforesaid amendments do not, in any manner, change the nature and character of the present suit.

24. In light of the aforesaid, I am of the considered view that the amendment to take on record subsequent trade mark registrations in favour of the plaintiff no.1 and a pending trade mark application ought to be allowed.

25. By way of the present application, the plaintiffs also seek to bring on record facts, along with supporting documents, pertaining to a subsequent suit against the defendants' bottle manufacturer, which was decided by this Court in favour of the plaintiffs. The aforesaid suit and orders/judgment therein are judicial records and would be relevant for the adjudication of the present suit. Therefore, amendment with regard to the aforesaid is liable to be allowed.

26. Further, the plaintiffs seek to place on record their updated sales turnover and advertising expenses in relation to their flagship product under the mark 'BAJAJ ALMOND DROPS HAIR OIL' from the financial year 2015-16 to 2023-24 to substantiate their enhanced goodwill and reputation under the aforesaid mark subsequent to the institution of the present suit. The aforesaid figures are for the period subsequent to the filing of the present suit and do not set up any new claim or cause of action in the present suit. Hence, the amendment with regard to the aforesaid is also liable to be allowed.

27. In view of the discussion above, the present application for amendment of plaint is allowed and the plaintiffs are permitted to place on record the amended plaint.



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28. In view of the order passed above in I.A. 39864/2024, the plaintiffs shall file the amended plaint within two (2) weeks.
29. The defendants shall file their amended written statement within thirty (30) days thereafter.
30. Mr. Kapur submits that rectification petition in respect of one of the trade mark registrations granted in favour of the plaintiff no.1 subsequent to the institution of the present suit has already been filed on behalf of the defendants. He submits that in view of the aforesaid, the present suit is liable to be stayed.
31. Let the defendants move an appropriate application in this regard.
32. List before the Joint Registrar on 19th March, 2025 for completion of pleadings.

AMIT BANSAL, J

JANUARY 22, 2025

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