.* **HIGH COURT OF DELHI : NEW DELHI**

+ **I.A No. 4979/2007 in CS (OS) No. 1372/2005**

Reserved on: 31st July, 2009

% Decided on: 8th September, 2009

Anil Nanda & Anr. ...Plaintiffs

Through : Mr. Sandeep Sethi, Sr. Adv. with
Mr. T.K. Ganju, Mr. P.K. Bansal and
Mr. Sindhu Sinha, Advs.

Versus

M/s Escorts Ltd. & Ors. ...Defendants

Through: Ms. Simran Mehta, Adv. for D-1, D-3 and D-5
Mr. Rajiv Nayyar, Sr. Adv. with
Mr. Rohit Puri, Adv. for D-2
Mr. Sanjeev Puri, Sr. Adv. with
Mr. Anshul Tyagi, Adv. for D-9
Ms. Shawana Bari and Ms. Monica Garg, Advs. for UOI

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MANMOHAN SINGH, J.

1. By this order I shall dispose of I.A. No. 4979/2007 filed on behalf of the plaintiffs under Order VI Rule 17 read with Section 151 of the Civil Procedure Code, 1908 for amendment of the plaint.

2. The plaintiffs filed the present suit seeking the following reliefs:

1A) a decree of declaration declaring that no amalgamation of EHIRC-Delhi took place with EHIRC-Chandigarh;

a) a decree of declaration declaring the amalgamation of EHIRC Delhi with EHIRC Chandigarh as non-est, void and bad in law in view of the provisions contained in the Societies Registration Act, 1860;

b) a decree of declaration thereby declaring the conversion of EHIRC Chandigarh (post amalgamation) into a Limited Company under the Companies Act, 1956, as being void and contrary to law;

c) a decree if permanent injunction in favour of the plaintiffs and against the defendant no. 9, injuncting its officers, agents and employees from transferring, alienating or otherwise creating any third party rights or interest with respect to the shares held by the defendant no. 9 in defendant no. 2;

d) a decree of permanent injunction in favour of the plaintiffs and against defendant no. 2, its officers, agents and employees from registering any transfer of shares effected by the defendant no. 9;

e) a decree of mandatory injunction directing the restoration of the assets, properties and facilities of the second defendant, and its ownership, management and control and its

character and structure to its original status of a public charitable institution, dedicated wholly and exclusively to public service;

f) award costs of the suit in favour of the plaintiffs and against the defendants.

3. The brief facts leading up to the present application are stated hereafter. EHIRC-Delhi was registered as a Charitable Society in 1981 under the Societies Registration Act, 1860 with the objective of making international standard heart specialists accessible to the general public and to carry on medical research and development in related areas. The said organization was allotted prime real estate at very subsidized rates by the Government due to its charitable motives, as well as several other tax benefits and exemptions.

4. In November 1999, another body by the name of EHIRC-Chandigarh was registered by defendant nos. 4 and 5. The objects of the two bodies, as contained in their respective Memorandum of Associations, were identical with the sole exception being that EHIRC-Chandigarh did not have the clause dealing with the leading intention of EHIRC-Delhi, i.e. that the proceeds/income of the society shall be used for promotion of the charitable aims and objects of the society. The necessary implication here, which is also the basic premise on which the present suit is filed, is that the income of EHIRC-Chandigarh would not be used for charitable purposes but for profit-making for personal use. In June 2001, the two societies were amalgamated. The Chandigarh society

had assets worth Rs.7000/- whereas the income (aside of assets) of the Delhi society was to the tune of Rs. 110 Crores as on March 31, 2000. Therefore, the amalgamation of the two societies afforded EHIRC-Chandigarh, a non-charitable society, the perfect opportunity to misappropriate the funds and assets of a charitable society for its personal use and gain.

5. The plaintiffs had originally prayed that the above-stated amalgamation be declared non-est and bad in law. However, later on, vide order dated March 6, 2006, Ld. Single Judge of this court allowed the amendment sought by the plaintiffs subject to the payment of cost of Rs, 20,000/- to the effect that the amalgamation was sought to be declared non-existent (viz. prayer clause 1A of the plaint).

6. Further, EHIRC-Chandigarh was converted into a Limited Company under Part IX of the Companies Act, 1956 with a paid up share capital of Rs. 20.06 Lac prior to formal incorporation, which increased to Rs. 200.03 Lac in six days due to transfer/allotment of shares to defendant no. 1 and other companies controlled by defendant nos. 4 and 5. This closing balance of the Chandigarh society was now the opening balance of the new limited company (present defendant no. 2). In this way, the charitable society EHIRC-Delhi with funds worth more than 110 Crores was converted into a Limited Company with defendant no. 1 as its 80% owner, the same having paid about Rs. 2 Crores.

7. The plaintiffs had also filed I.A No. 3983/2007 seeking impleadment of Fortis Healthcare Ltd. as defendant no. 9 and the same was allowed by this court vide order dated April 4, 2007.

8. The present application of the plaintiff is for an amendment of its plaint as regards certain disclosure concerning defendant no. 9. It has been submitted by the plaintiff that during the hearing proceedings of the present suit on September 30, 2005, the defendants disclosed that 90% of the shares of defendant no. 2 that were held by defendant no. 1 and certain other entities have been divested in favour of defendant no. 9 on September 28, 2005 for consideration of Rs. 585 Crores, in lieu of a share purchase agreement dated September 25, 2005. The plaintiff has contended that the above-mentioned share-purchase agreement as well as the issuance of shares of defendant no. 2 to defendant no. 9 is illegal and fraudulent as both acts are based on the fraudulent conversion of EHIRC-Delhi into a Limited Company. Since the assets and funds of EHIRC-Delhi were wrongly vested in defendant no. 2 in the first instance, the same cannot be again illegally transferred to defendant no.

9. The said shares of defendant no. 2 have allegedly been sold to defendant no. 9 for a consideration of Rs. 585 Crores. Further, the plaintiffs have alleged that the defendants have now raised more than Rs. 500 Crores from the public by issuing equity shares of defendant no. 9 @ 10/- each. In view of these events, the plaintiffs have prayed for amendments to be allowed in the plaint by addition of certain paras to the effect of what has been stated above, addition of the court fee para

and addition of two prayers. The additional prayers sought by the plaintiffs by way of this amendment application are as follows:

> "1B) pass a decree of declaration thereby declaring that the transfer of 90% shares held by defendant no. 1 and certain other entities in defendant no. 2, in favour of defendant no. 9 under the share purchase agreement dated 25th September, 2005, is illegal, non-est and bad in law;
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> 1C) pass a decree of declaration declaring that the Public Issue by defendant no. 9, which opened on 16.04.2007 and closed on 20.04.2007, is illegal, non-est, void and bad in law."

10. In its reply to the present application, defendant no. 1 has issued an outright denial of the alleged illegal conversion of EHIRC-Delhi into a Limited Company stating that the same was neither illegal nor a fraud. As per defendant no. 1, Plaintiff no. 1 was its Vice Chairman and Managing Director as well as on the Board of Governors on EHIRC-Delhi, and the documents evidencing the conversion of the society into a company as also the answering defendants' investment in defendant no. 2 are all signed by plaintiff no. 1.

11. As regards the plaintiff's allegation of a sum of Rs. 500 Crores being raised by the defendants, defendant no. 1 has submitted that as it is not a party to the said transaction (since it relates to defendant no. 9 and issuance of its equity shares to the public), it is in no position to comment on the same.

12. The main contention of the plaintiff based on which the present amendment has been sought i.e. the disinvestment by the answering defendant of the shares held by it in defendant no. 2 in favour of defendant no. 9, the defendants have submitted that the said factum of

disinvestment was stated before this court at the date of the first hearing of the present suit itself. The plaintiffs had full knowledge of the above-stated disinvestment on September 30, 2005 and despite having the said knowledge, the plaintiffs failed to include the current amendment sought in its amendment application being I.A. No. 1614/2006 which was allowed by this court vide order dated March 6, 2006. In view of this, the answering defendant has stated that the application suffers from delay and laches and is thus liable to be dismissed.

13. The defendants have further contended that the plaintiffs are seeking to amend their plaint in a piece-meal fashion only in an attempt to prolong the process of the court and in order to abuse it. It has been pointed out that the plaintiffs' application reveals no reason as to why the amendment being sought now was not included in the earlier amendment application.

14. In the reply filed by the defendants it is also stated that the amendment sought by the plaintiffs, if allowed, would entirely change the nature and character of the suit as the plaintiffs are trying to incorporate a new case by way of this amendment. It is also stated that the main subject matter of challenge in the suit was the process of amalgamation of the two societies and subsequent registration of the amalgamated society and all the reliefs prayed for in the suit were in relation to the said subject matter. However, in the present application, the plaintiffs are seeking relief with reference to a controversy that arose after the filing of the suit and is in relation to defendant no.1, which is

not connected in any manner with the process of incorporation of defendant no.2, which in fact is the main subject matter of the suit. It is stated that in this manner, the plaintiffs are seeking to add fresh reliefs based on allegations which admittedly even as per the plaintiffs pertain to a fresh cause of action and for the period subsequent to the filing of the suit and, therefore, the plaintiffs should not be allowed to completely change the nature and character of the suit.

15. I have gone through the contentions of both parties. As far as the first objection of the defendants regarding delay and laches in filing of the present application is concerned, it cannot be disputed that the plaintiffs had full knowledge about the disinvestment on September 30, 2005. However, it can also not be disputed that an earlier amendment application being I.A. No. 1614/2006 was allowed by this court vide order dated March 6, 2006 but subsequent to this order defendant no. 9 was ordered to be impleaded as a party vide order April 4, 2007 in I.A. No. 3983/2007. When this application was being considered, the defendants had raised, *inter alia*, objections regarding non-joinder of necessary parties as well as the maintainability of the suit and the court deciding the application, *inter alia*, had observed as under:-

> *".....The defendants appeared in the suit and objected to the maintainability of the suit inter alia on the ground of non-joinder of necessary party at the initial stages itself. It was urged by the defendants that the shareholding of the defendant no.1 in the defendant no.2 stood transferred to M/s.Fortis Healthcare Ltd. under a Share Holders Agreement dated 28th December, 2005. Detailed submissions in this behalf were made in this court at the time of hearing of IA no.7817/2005 filed by the plaintiff on 30th September, 2005. This court noticed*

the objections raised by the defendant and the submission to the effect that the share holding of defendant no.1 in the defendant no.2 stood transferred to a third party. The order of status quo was passed on 30th September, 2005 against the defendants."

16. The above-mentioned order of impleadment of defendant no. 9 was passed on April 4, 2007 and the present application for amendment was filed on August 4, 2007. It is no doubt that the plaintiffs had knowledge about the disinvestment on 30 September, 2005 and the delay in filing of the application is apparent, however, it appears from the record that the plaintiffs at the first instance intended to implead the defendant no.9 in the present matter, the amendment application being filed subsequent to the impleadment application. It is well settled law that mere delay cannot be the sole ground for refusal of amendment unless the delay defeats the rights of the opponent party and if the same is perpetrated with mala fide intention as observed in **Sampath Kumar v. Ayyakannu, AIR 2002 SC 3369 at page 3371**.

17. The next submission of the defendants is that the amendment sought by the plaintiffs will change the nature and character of the suit, if granted. It is a matter of fact that defendant no. 9 was impleaded as a party to the present matter vide order dated April 4, 2007 and the plaintiffs by virtue of this amendment desire to elaborate the factum of disinvestment. It is also argued by the learned counsel for the defendants that the amendments sought by the plaintiff in paras 1B and 1C of the prayer clause are contrary to law as no decree for declaration can be passed against the other entities, who have 10% remaining shares of the

defendant no.1 unless the said other entities are also impleaded as defendants in the present case. According to the defendants, a decree cannot be passed in the absence of the said other entities and therefore the said prayer sought by the plaintiffs is without any substance. I agree with the learned counsel for the plaintiffs that as far as the merit of the present case is concerned, the same is not to be gone into while deciding the present application. It is also well settled law, as observed in **Lakha Ram Sharma v. Balar Marketing Pvt. Ltd. 2003 (27) PTC 175 (SC)** that while considering an application for amendment, the merit of the case is immaterial.

18. The above view is supported by the findings of the Apex Court in the matter reported as **Usha Devi v. Rijwan Ahmad & Ors. AIR 2008 SC 1147** wherein it is held as follows:-

> *"As to the submissions made on behalf of the respondents that the amendment will render the suit non-maintainable because it would not only materially change the suit property but also change the cause of action it has only to be pointed out that in order to allow the prayer for amendment the merit of the amendment is hardly a relevant consideration and it will be open to the defendants-respondents to raise their objection in regard to the amended plaint by making any corresponding amendments in their written statement."*

19. It is settled law that the object of the rule is that the court should try the merits of the case that come before it 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.

20. In the case of **Om Prakash Gupta v. Ranbir B. Goyal AIR 2002 SC 665** it was observed as follows :

> *"11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.*
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> *12. Such subsequent event may be one purely of law or founded on facts. In the former case, the court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties."*

21. After due consideration of the matter, I am of the view that by allowing the amendment sought by the plaintiffs, the nature and character of the suit would not be changed. Rather, the amendment sought by the plaintiffs is necessary for the purpose of deciding the real dispute between the parties.

I.A. No. 4979/2007 is allowed accordingly.

CS (OS) No. 1372/2005

List this matter before the Court on 15th October, 2009.

MANMOHAN SINGH, J.

SEPTEMBER 8, 2009
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