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

% Date of decision: 14.01.2025

+ CM(M) 2296/2024, CM APPL. 20369/2024 & CM APPL.  
49082/2024

USHA DRAGER PRIVATE LTD & ANR. ....Petitioners

Through: Mr. Manish Vashisht, Sr.  
Advocate with Mr. Vierat K.  
Anand, Mr. Kumar Shashank,  
Mr. Harish Nadda, Mr. Vikalp  
Singh, Ms. Apoorva Gulati &  
Mr. Vedansh Vashisht,  
Advocates

versus

DRAEGERWERK AKTIENGESELLSCHAFT & ORS.

.....Respondents

Through: Mr. Sudhir Makkar, Sr.  
Advocate with Ms. Shweta  
Bharti, Mr. J.K. Chaudhary,  
Ms. Sonali Khanna, Ms. Sukriti  
Verma, Ms. Vanshika Gupta &  
Ms. Adhya Shrotriya,  
Advocates

**CORAM:-**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**JUDGMENT (ORAL)**

**RAVINDER DUDEJA, J.**

1. Present petition has been filed challenging the order dated 16.03.2024, passed by learned trial court in CS DJ-11859/2016 titled



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“Usha Drager Private Ltd. & Anr. Vs. Draegerwerk Aktiengesellschaft & Ors.”, whereby, the application filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908 [“Code”] for amending the valuation of the suit for injunction and rendition of accounts was dismissed.

2. Before dwelling and discussing the merits of the order, it would be apposite to discuss the brief factual background of the case.

3. Petitioner filed a suit for permanent injunction and rendition of accounts arising out of the joint venture dated 09.05.1987 and Foreign Collaboration Agreement dated 20.02.1990. Originally, the suit was filed before this Court but was subsequently transferred to the District Court in February 2016, following changes in the pecuniary jurisdiction. The suit was valued at Rs. 1 lakh for the relief of rendition of accounts.

4. During the pendency of the suit, petitioner filed an application under Order 11 Rule 12 CPC, seeking discovery/production of certain documents for ascertaining the nature of equipments supplied and the amount of sales and revenue generated by the respondents. The said application was dismissed by the trial court. Petitioner assailed the order of the trial court before this Court vide CM(M) 1815/2019, but the same was also dismissed vide order dated 06.01.2020, directing the trial court to determine which items warranted rendition of accounts based on evidence provided by the petitioner.

5. Petitioners sought to amend the valuation by increasing it to Rs. 200 crores, citing evidence of respondent’s turnover and their claim of



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20% commission on sales and for this, an application under Order 6 Rule 17 CPC was filed by the petitioner before the trial court, which has been dismissed vide impugned order dated 16.03.2024.

6. The trial court dismissed the application of the petitioner mainly on the ground that petitioner was aware of the turnover figures since 2008 but failed to file the amendment application for 16 long years and such un-explained delay violated the due diligence requirement of proviso to Order 6 Rule 17 of the Code.

7. The trial court was also of the view that valuation of the suit has to be done at the time of filing of the suit and any amendment which seems to amend the suit, is relegated to the date when the plaint is filed, and as such, plaintiff can be permitted to make valuation as on the date of filing of the plaint and not on account of any subsequent events. The trial court also emphasized that the application has been filed by the petitioner after final argument had commenced, and therefore, allowing the amendments at this stage, would disrupt the proceedings and cause great prejudice to the respondents.

8. Mr. Vashisht, learned Senior Counsel appearing for the petitioner has submitted that in a suit for rendition of accounts, the actual value of the suit is not known at the time of filing of the suit. It is submitted that as per affidavit of Sh. A.S. Rajput, PW-1/2, the turnover of the defendants for the period 2005 to 2008 was Rs. 115 crores and thus calculating, the approximate turnover of the defendant from the date of filing of the suit should be Rs. 1000 crores. It is submitted that plaintiffs have sought a decree of payment of 20%



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commission on all sales along with interest and thus calculated the valuation of the present suit comes to approximately Rs. 200 crores. It is also argued that the amendment application cannot be rejected for the reasons that enhancement of valuation of the suit property would lead to suit being transferred to the High Court.

9. It is further submitted that right of party to the proceedings in civil suit to the pleadings is qualified by the consideration of its necessity for just determination of the real question in controversy. The discretion given by law to put an appropriate valuation to the reliefs in the nature of declaration and injunction at the threshold may generally be not open to the question but the move to make amendments in such valuation would have to pass the same test as is applied in case of amendment of pleadings, and thus, must be bona fide and not arbitrary or capricious or irreparably prejudicial to the defendants. It is submitted that it is an undisputed precedent that rejection of amendment application for the reason that enhancement of the valuation of the suit property, would lead to suit being transferred to the High Court is not justified.

10. In support of his arguments, learned counsel places strong reliance on the decisions rendered by **Hon'ble Supreme Court on the cases of Lakha Ram Sharma Vs. Balar Marketing Ltd. (2008) 17 SCC 671 and Mount Mary Enterprises Vs. Jivratna Medi Treat Pvt. Ltd. (2015) 4 SCC 182.**

11. It has been submitted that trial court ought to have considered the decisions of the Supreme Court as well as various High Courts on



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the aspect that merely because an amendment may take the suit out of the jurisdiction of that court, is not a justifiable ground for refusing the amendment.

12. It is further argued that law regarding the amendment of pleadings is very liberal. The power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by the Supreme Court and various High Courts. Liberal approach should be the general rule, particularly in cases, where the other side can be compensated with cost and technicalities of law should not be permitted to hamper the Courts in administration of justice between the parties.

13. Learned counsel of petitioner thus contends that amendment is essential for accurately reflecting the financial stake of the petitioner in the suit as determined by the evidence during the trial, which is necessary for determining the relief of rendition of accounts claimed by the petitioner. It is also contended that the proposed amendment is bona fide and it in no way alters the fundamental nature of the suit or causes any prejudice to the respondents. In order to buttress his arguments, learned counsel of petitioner relies upon the following precedents:-

- i) Vasantha (Dead) through LR Vs. Rajalakshmi @ Rajam (Dead) through LR, (2024) (5) SCC 282;
- ii) Shivraj Gupta & Another Vs. The Registrar of Society & Ors. 259 (2019) DLT 33;
- iii) Rajeshwar Nath Gupta & Ors. Vs. Ashok Jain & Ors., (2024)



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SCC Online Del. 6468;

iv) L.J. Leach & Co. Ltd. & Anr. Vs. Jardine Skinner & Company, AIR 1957 SC 357;

v) M/s. Ganesh Trading Co. Vs. Moji Ram, (1978) 2 SCC 91

14. Mr. Makkar, learned Senior Counsel for the respondent has vehemently argued that petitioner has failed to demonstrate due diligence, as turnover figures relied upon were available to the petitioner since 2008. It is further contended that the valuation of suit must be determined as on the date of filing and retrospective amendments based on subsequent events are impermissible. It is also submitted that the amendments are being sought by the petitioners at a belated stage, after final arguments have been extensively heard for about 26 dates. It is argued that allowing the petitioner to amend the pleadings and that too just for revising the valuation for the purpose of rendition of accounts would cause unnecessary delay and prejudice to the respondents. It is further submitted that petitioner's reliance on legal precedents is misplaced as they apply in cases where amendments are sought prior to the commencement of the trial and are thus irrelevant in the context of the present case.

15. The learned counsel has also relied upon **Basavaraj Vs. Indira & Ors. (2024) SCC Online SC 208, South Konkan Distilleries & Ors. Vs. Prabhakar Gajanan Naik & Ors. (2008) 14 SCC 632 and Saiyid Sirajul Hasan Vs. Syed Murtaza Ali Khan (2022) DHC 4186** to argue that amendments cannot be allowed at the fag-end of trial unless due diligence is proven and the amendment should be of



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such a nature which is imperative for adjudicating the real controversy between the parties, which is not the case in the present petition.

16. Dealing first with the question of the right of the plaintiff to revise the valuation by way of amendment in its suit, the case is covered by the two decisions of the Hon'ble Supreme Court. In the case of *Lakha Ram Sharma Vs. Balar Marketing Private Limited (supra)*, the Supreme Court observed as under:-

“3 . A very short question is involved in this appeal. The appellant had filed a Suit claiming that he is a proprietor of a trademark 'KUNDAN' and 'KUNDAN CAB' in respect of PVC Wires and Cables and that the respondent was using the appellant's trademark. Permanent injunction, rendition of accounts and other reliefs were claimed. The appellant applied for an amendment of the Suit. The application for amendment was granted by the trial court. The High Court, however, by the impugned order, has disallowed only one portion of the amendment, namely, where the appellant sought to raise the valuation of the Suit from Rs. 1,00,000/- (Rupees One Lac) to Rs. 10,00,000/- (Rupees Ten Lac). The High Court has held that such a claim is arbitrary and not based on any cogent material. The High Court has held that the application to raise valuation is not bonafide as it is done with the purpose of taking the suit out of the jurisdiction of that court.

4 . It is settled law that while considering whether the amendment is to be granted or not, the Court does not go into the merits of the matter and decide whether or not the claim made therein is bonafide or not. That is a question which can only be decided at the trial of the Suit. It is also settled law that merely because an amendment may take the suit out of the jurisdiction of that Court is no ground for refusing that amendment. We, therefore, do not find any justifiable reason on which the High Court has refused this amendment. Accordingly, the impugned order is set aside and that of the trial court is restored. We, however, clarify that as the appellant has now raised the claim from Rs. 1 Lakh to Rs. 10 Lakh, the trial court will determine, whether or not Court Fees are correctly paid.”

17. A similar view was expressed by the Supreme Court in the case of *Mount Mary Enterprises Vs. Jivratna Medi Treat Pvt. Ltd. (supra)*,



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where it had turned down the objections raised by the respondent /defendant therein that the amendment application filed by the appellant/defendant in a suit for specific performance of the contract in relation to the suit property, for enhancing the value of the property in the plaint was belated and moved with oblique motives, and had observed as follows:

“2. The facts giving rise to the present litigation in a nutshell are as under : the appellant, who has been described as a plaintiff hereinafter, filed a suit against the present respondent, who has been hereinafter described as a defendant, for specific performance of a contract in relation to the suit property. The suit property was initially valued at Rs. 13,50,000 (Rupees thirteen lakhs and fifty thousand only). The plaintiff, thereafter, realised that market value of the property in question was around Rs. 1,20,00,000 (Rupees one crore and twenty lakhs only) and therefore, filed an application for amending the plaint. The said application for amendment was rejected by the trial court and thereafter, the aforestated writ petition was filed by the plaintiff challenging the order rejecting the amendment application. The said petition has also been dismissed and therefore, the plaintiff has approached this Court and prayed that the impugned judgment confirming the order rejecting the amendment of the plaint be set aside and the plaintiff be permitted to amend the plaint so as to state correct value of the property in question, which is Rs. 1,20,00,000.

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7. In our opinion, as per the provisions of Order 6 Rule 17 of the Civil Procedure Code, the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance and 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 appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint.



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9. The main reason assigned by the trial court for rejection of the amendment application was that upon enhancement of the valuation of the suit property, the suit was to be transferred to the High Court on its original side. In our view, that is not a reason for which the amendment application should have been rejected.

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11. In our opinion, on the basis of the aforesaid legal position, 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 in the plaint and 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.

12. For the afore-stated reasons, we are of the view that the amendment application should not have been rejected by the trial court and the High Court should not have confirmed the order of rejection. We, therefore, set aside the impugned judgment.”

18. Relying upon the aforesaid decisions, a Single Judge of this Court in **Geeta Abhayankar Vs. Vikram Abhayankar & Ors. CS (OS) 116/2004**, allowed the application under Order 6 Rule 17 of the Code for amendment of the valuation.

19. Similarly, in the case of **Jiva Institute of Vedic Science & Culture & Ors. Vs. The Indian Hotels Company Ltd. & Anr. (2015) 225, DLT 527**, plaintiff had sought to amend the suit by enhancing the pecuniary jurisdiction for the relief of rendition of accounts/damages from Rs. 25 lakhs to Rs. 1 crore. Relying upon the decisions in Lakha Ram Sharma and Mount Mary (*supra*), the learned Single Judge permitted such amendments by allowing the application.

20. The judgments rendered by the Supreme Court have the binding effect, and therefore, the request for amendment of valuation can be



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entertained if they are otherwise permissible under the law.

21. The law with regard to the amendment of pleadings is well-settled by now. Order 6 Rule 17 of the Code which deals with the amendment of pleadings, provides that the Court may at any stage of proceedings, allow either party to alter or amend its pleadings in such a manner or 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 question in controversy between the parties. From a bare perusal of this provision, it is clear that Order 6 Rule 17 consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend the pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Wide powers and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of the suit can be avoided and the suit can be disposed of expeditiously. It is also a settled law that amendment of the plaint can be made at any stage of the suit, even at the second appellate stage.

22. By Amendment Act 46 of 1999, the provision under Order 6 Rule 17 of the Code was deleted. It has again been restored by the Amendment Act 22 of 2002 but with an added proviso to prevent



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application for amendment being 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 proviso, to some extent curtails absolute discretion to allow amendment at any stage. Now, 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.

23. Hence, where the amendment is sought before the commencement of trial, the Court is required to be liberal in its approach, but no amendment shall be allowed in cases where the trial has already commenced, unless the party applying for amendment demonstrates that in spite of due diligence, it could not have raised the matter before the commencement of trial. The Apex Court in the case of **M. Revanna Vs. Anjanamma (Dead) by legal representatives & Ors. (2019) 4 SCC 332**, held that Order VI Rule 17 of the Code prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. The Court further held that amendment cannot be claimed as a matter of right and under all circumstances.

24. In **Kishan Dass Roop Chand vs. Rachappa Vithoba Shilwant, ILR (1909) 33 Bom 644**, which was reiterated in the decision of *J. Samuel Vs. Gattu Mahesh*, (2012) 2 SC 300, it was



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explained that the amendment can be allowed only on satisfaction of **two conditions; firstly** no injustice must be done to the other side; and the **secondly**, the amendment must be necessary for the purpose of determination of real controversy between the parties.

25. Now, that the proviso has been added, there is another condition which needs to be satisfied is that the Court must come to a conclusion that despite the exercise of due diligence, the said amendment could not have been made by the party before the commencement of the trial.

26. The suit was filed more than 20 years ago. Petitioner's own claim that it came to know about the basis on which he is trying to revalue the present suit, was the affidavit PW-1/2, the plaintiff's own witness. Such affidavit was filed way back in the year 2008. The application for amendment was filed almost after 16 years, despite the fact that petitioner had become aware of the valuation on the basis of turnover of five years on the basis of affidavit PW-1/2. Petitioner has failed to demonstrate that despite exercise of due diligence, the said amendment could not have been made before the commencement of trial.

27. The attention of the Court has been drawn to Para 36 of the written statement, wherein, respondent took objection to the valuation of the suit. The learned Senior Counsel for the petitioner submits that having taken such objection, it does not lie in the mouth of the respondents to oppose the amendment application filed for the purpose of correction of the valuation.



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28. A Coordinate Bench of this Court in a recent judgment of **Saiyid Sirajul Hasan Vs. Syed Murtaza Ali Khan (2022) DHC 4186**, held that the right of party to the pleadings in a Civil Court to amend the pleadings is qualified by consideration of its necessity for determination of the real question in controversy.

29. Vide order dated 17.04.2007, following issues were framed for trial:-

“1. Whether Mr. A. S. Rajput has been duly authorised to sign and verify the plaint and institute the present suit on behalf of plaintiff No.1? OPP

2. Whether the defendants No.2 to 4 are group companies of defendant No.1? OPP

3. Whether the defendant No.1 breached the Joint Venture Agreement dated 9.5.1987 by conducting sales of medical equipments/appliances/instruments through defendants No.2 to 4? OPP

4. Whether the defendants by their conducted breached the Joint Venture agreement dated 9.4.1987 or sought to take over the plaintiff No.1 company? OPP

5. Whether the action on behalf of the defendants complained of in the plaint are correct? OPP

6. Whether the Distributor Agreement dated 22.2.1999 is a valid and binding agreement on the plaintiffs? OPD

7. Whether the plaintiffs are entitled to a decree of permanent injunction as prayed for in the plaint? OPP

8. Whether the plaintiffs are entitled to a decree for rendition of accounts and for payment of found due and payable to it on such rendition? OPP

9. Whether the plaintiffs are entitled to interest on the amounts claimed? OPP

10. Whether the plaintiffs have no locus standi to file the present suit? OPD

11. Whether the Joint Venture Agreement dated 9.5.1987 has come to an end? OPD

12. What is the effect of the judgments and orders dated 10.11.2006 and 8.12.2006 passed in C.P. No. 261/2005 and order dated 8.1.2007 passed in

Company Appeal No.1/2007? Onus on parties

13. Relief.”



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30. Even though in the written statement, respondents have taken the objection to the valuation of the suit for the purpose of court fees, but it seems that the same was never pressed by the respondents, inasmuch as, there is no issue framed regarding the valuation of the suit. The question of valuation of the suit is not in issue. On being asked, the learned Senior Counsel appearing for the respondents confirms that respondents shall not raise challenge to the suit on the ground of valuation. Petitioners have thus failed to demonstrate how the valuation of the subject property is a real question in controversy in the present case. The application therefore deserves to be dismissed even on this ground.

31. The timing of amendment application and lack of any substantive justification and due diligence strongly points out that petitioner intends to delay the proceedings. Such conduct constitutes an abuse of the judicial process. Therefore, the Court does not find any merit in the present petition. The proposed amendment is neither bona fide nor necessary for the adjudication of the real controversy between the parties. Allowing such an amendment would undermine the procedural integrity and certainly would prejudice the respondents.

32. For the reasons stated above, the present petition is dismissed. The impugned order dated 16.03.2024 passed by the learned District Judge-01, South-East District, Saket is affirmed.

33. No order as to cost.

**RAVINDER DUDEJA, J.**

**JANUARY 14, 2025/RM**