

**THE HIGH COURT OF JUDICATURE FOR THE STATE OF  
TELANGANA : HYDERABAD**

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**C.R.P.Nos.894, 895 and 897 of 2020**

C.R.P.No.894 of 2020:

MS Industries & Spirits (P) Ltd. .. Petitioner

Vs.

M/s. Allied Blenders and Distillers Pvt Ltd. .. Respondent

DATE OF THE JUDGMENT PRONOUNCED: 01 . 09.2020

**SUBMITTED FOR APPROVAL:**

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

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**M.S.RAMACHANDRA RAO, J**

**\* HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**+C.R.P.Nos.894, 895 and 897 of 2020**

**% DATED 01 SEPTEMBER, 2020**

C.R.P.No.894 of 2020:

# MS Industries & Spirits (P) Ltd. .. Petitioner

Vs.

\$ M/s. Allied Blenders and Distillers Pvt Ltd. .. Respondent

<Gist:

>Head Note:

! Counsel for Petitioner in all CRPs : Sri S.Ravi, Senior Counsel  
for M/s. R.S. Associates  
and Sri M.Naga Deepak

^Counsel for Respondent in all CRPs : Sri Sunil B.Ganu

? CASES REFERRED:

1. (2014) 2 MWN (Civil) 378
2. (2010) 2 ALD 702
3. 2004 (4) ALD 786
4. 2004(6) ALD 285

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO****C.R.P.Nos.894, 895 and 897 of 2020****COMMON ORDER :**

These three Revisions arise out of the same suit between the same parties and are therefore being disposed of by this common order.

2. The petitioner in the Revision Petitions is defendant in O.S.No.106 of 2020 on the file of XI Additional Chief Judge, City Civil Court at Hyderabad.

**THE CASE OF THE RESPONDENT/PLAINTIFF IN THE SUIT**

3. The respondent herein had filed the said suit against the petitioner contending that it is in the business of manufacturing and marketing of alcoholic beverages including Indian Made Foreign Liquor (IMFL); that it sells alcoholic beverages under various distinctive trade marks and labels, such as 'OFFICER'S CHOICE', 'OFFICER'S CHOICE BLUE', 'OFFICER'S CHOICE BLACK' etc; that it acquired the said 'OFFICER'S CHOICE' trade mark under a deed of assignment dt.26.02.1991 from its predecessor; that it has been using the same since 1988; that its products using the said trade mark have acquired reputation and goodwill as a result of their excellent quality, distinctive packaging etc.; that it has also secured registration of the trade mark 'OFFICER'S CHOICE' and its variants as mentioned in para-9 of the plaint not only in English but also in other languages as well which are still subsisting and it has

proprietary rights in the said marks; that the label 'OFFICER'S CHOICE' used by it has a distinctive design, colour scheme, font, layout and getup along with the epaulette as its trade dresses/labels which constitute an 'original artistic work' within the meaning of Section 2(c) of the Copyright Act, 1957 and that it is the owner of the said Copyright; that it has also registered its labels mentioned in para-11 of the plaint under the Copyright Act, 1957; that one of the labels contains a combination of red, white and gold/yellow.

4. It is contended by the respondent that the petitioner/defendant is also claiming to be a manufacturer and marketer of liquor brands and products in the States of Telangana and Andhra Pradesh; that the petitioner is using a label "Manjeera Classic No.1 Whisky", "Manjeera Classic Reserve Whisky" and "Manjeera Special Reserve Whisky" in these States which are similar and identical to the respondent's "OFFICER'S CHOICE" trade mark, trade dress and labels; and this conduct of the petitioner is dishonest and in bad faith and proves its intention to ride on the goodwill and reputation enjoyed by the respondent; that the petitioner's labels are deceptively and confusingly similar to the respondent's labels and violate the statutory rights and common law rights of the respondent.

5. Therefore the respondent sought perpetual injunctions (a) restraining the petitioner from infringing its registered trademark "OFFICER'S CHOICE" and its variants, (b) restraining the petitioner from infringing its copyright; (c) restraining the petitioner from manufacturing, selling, exporting etc with the labels "Manjeera

Classic” and “Manjeera Special” and from doing anything which is likely to cause confusion or deception leading to ‘passing off’ of the petitioner’s goods business as those of the respondent, damages etc.

**THE WRITTEN STATEMENT OF THE PETITIONER**

6. Written statement was filed by petitioner denying the said averments and justifying the use by it in the existing form of the marks and labels “Manjeera Classic” and “Manjeera Special”. It is also contended that there is no similarity with the respondent’s mark or labels.

**IA No.s 401,402 and 403 of 2020 filed under or.39 rule 1 and 2 CPC**

7. Pending suit, I.A.No.401 of 2020 was filed by the respondent under Order 39 Rules 1 and 2 C.P.C. for a temporary injunction restraining the petitioner from infringing its trade mark “OFFICER’S CHOICE”; I.A.No.402 of 2020 was filed under Order 39 Rules 1 and 2 C.P.C. by the respondent to restrain the petitioner from ‘passing off’ of its goods and business as that of the respondent; and I.A.No.403 of 2020 was filed under Order 39 Rules 1 and 2 C.P.C. to restrain the petitioner from infringing the respondent’s copyright.

8. Counter-affidavits had been filed by the petitioner on 06.07.2020 opposing the said applications.

9. Rejoinders to the counter-affidavits were also filed by the respondent on 13.07.2020.

**10.** Written submissions were filed by the respondent on 21.07.2020 in the three I.As.

**I.A.Nos.489, 490 and 491 of 2020**

**11.** On 07.08.2020, the petitioner filed I.A.No.489 of 2020 in I.A.No.401 of 2020, I.A.No.490 of 2020 in I.A.No.402 of 2020 and I.A.No.491 of 2020 in I.A.No.403 of 2020 under Order VI Rule 17 C.P.C. contending that due to inadvertence a wrong reference was made to the paragraph Numbers in I.A.Nos.401, 402 and 403 of 2020 while filing counter-affidavits therein; these amendments are clerical in nature and typographical errors; and it is necessary to permit the petitioner to amend the incorrectly referred paragraph numbers in the said counter-affidavits.

**COUNTER-AFFIDAVITS FILED BY RESPONDENTS.**

**12.** Counter-affidavits were filed by the respondent to I.A.Nos.489, 490 and 491 of 2020 opposing the said applications.

**13.** It is contended that the said applications were not maintainable and that the petitioner cannot invoke Order VI Rule 17 C.P.C. to amend I.A.Nos.401, 402 and 403 of 2020 since Order VI Rule 17 C.P.C. applies only to 'pleadings' in the suit i.e. the plaint and the written statement only and will not apply to Interlocutory Applications.

**14.** It is also alleged that there were certain admissions made in the counter-affidavits filed by the petitioner in I.A.Nos.401, 402 and 403

of 2020 and that the filing of the amendment applications is an ingenious device to withdraw the said admissions by a back door method. It is stated that filing of these applications is an abuse of process of law.

**THE IMPUGNED ORDERS OF THE COURT BELOW**

**15.** By separate orders dt.07.08.2020, the Court below dismissed I.A.Nos.489, 490 and 491 of 2020.

**16.** It held that an affidavit is a solemn declaration of a party which is attested by an Advocate and therefore it cannot be permitted to be amended invoking Order VI Rule 17 C.P.C. which applies to pleadings.

**17.** It also held that subsequent to filing of counter-affidavit by the petitioner, the respondent filed reply affidavits also apart from written arguments taking a plea that there was failure on the part of the petitioner to deny that the respondent is a prior user of the trademark in the market or the reputation acquired by the respondent or the validity of trademark registrations, and the contention of the petitioner that there were typographical errors in the preparation of the counter-affidavit is not acceptable.

**18.** The Court below relied on **A.Govindasamy and another Vs. S.Saravanakumar<sup>1</sup>** and **Jai Bharat Plywood and Hardware, Hyderabad Vs. Vinod<sup>2</sup>**.

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<sup>1</sup> (2014) 2 MWN (Civil) 378

<sup>2</sup> (2010) 2 ALD 702

**The present CRPs**

**19.** Challenging the said orders passed by the Court below refusing to permit amendments to I.A.Nos.401, 402 and 403 of 2020 by dismissing I.A.Nos.489, 490 and 491 of 2020, the present C.R.Ps. are filed by the petitioner.

**20.** Heard Sri S.Ravi, learned Senior Counsel for M/s.R.S.Associates and Sri M.Naga Deepak, counsel for petitioner and Sri Sunil B.Ganu, learned counsel for respondent.

**Contentions of counsel for the parties**

**21.** Learned counsel for petitioner contended that the Court below erred in taking the view that there cannot be an amendment to affidavits filed in Interlocutory Applications.

He also contended that there was never any admission by the petitioner of any of the averments made either in the plaint or in the interim injunction applications I.A.Nos.401, 402 and 403 of 2020.

According to him, the petitioners, while drafting counter-affidavits in the I.A.Nos.401, 402 and 403 of 2020, referred to the paragraph numbers given in the plaint by the respondent on account of an inadvertent mistake instead of referred to the paragraph numbers given in the affidavits filed in I.A.Nos.401, 402 and 403 of 2020 and grave prejudice would be caused to the petitioner, if it is not permitted to amend the said counter-affidavits.



22. Learned counsel for respondent supported the order passed by the Court below.

**THE CONSIDERATION BY THE COURT.**

23. I have noted the contentions of the counsel for parties.

24. I shall first deal with the contention of the counsel for the respondent that affidavits filed in Interlocutory Applications cannot be amended invoking Order VI Rule 17 C.P.C.

25. No doubt, Order VI Rule 17 C.P.C. refers to amendment to 'pleadings'. The term 'pleadings' normally refers to the plaint and the written statement in a suit. Technically, an affidavit filed in an Interlocutory Application might not amount to a plaint or a written statement.

26. But we have to take note of Section 141 C.P.C. which states:

*"141. Miscellaneous proceedings :- The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.*

*Explanation:- ....."*

27. An Interlocutory Application is a miscellaneous proceeding and Section 141 C.P.C. permits the 'procedure' in regard to suit to be applied to such interlocutory applications as well.

**28. In Gunnam Venkateswara Rao Vs. Vetcha Vanaja Kumari and others<sup>3</sup>**, the sole plaintiff in a suit for recovery of money had died pending the suit.

The deceased plaintiff had 3 sons and 3 daughters. One daughter Vetcha Vanaja Kumari ( the respondent in the Revision) filed I.A. under Order 22 Rule 3 C.P.C. to come on record as his legal representative on the basis of a Will said to have been executed in her favour by the deceased.

The petitioner in the Revision opposed the said application contending that she is not the sole legal heir and there were three other brothers and two sisters of the respondent, who were also the legal heirs.

The respondent Vanaja Kumari then filed I.A.No.847 of 2001 to implead her three brothers and sisters in the earlier I.A. filed under Order XXII Rule 3 C.P.C. by her.

This application was allowed by the trial Court.

The said order of the trial Court was challenged in Revision before the Andhra Pradesh High Court.

A contention was advanced by the petitioner that Order I Rule 10 C.P.C. is applicable only to suits and not to Miscellaneous Applications like applications filed under Order XXII Rule 3 C.P.C.

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<sup>3</sup> 2004 (4) ALD 786

This contention was rejected by the High Court relying on Section 141 C.P.C. and holding that the procedure provided in relation to suits equally applies to miscellaneous proceedings as well. The order passed by the trial Court impleading the three brothers and two sisters of the respondent was upheld and the revision was dismissed .

**29.** In **Yale Malleshappa and others Vs. Chinna Hotur Bale Eramma**<sup>4</sup>, the Andhra Pradesh High Court held that Order XVI Rule 1 C.P.C. which deals with issuance of summons to a witness at the instance of a party to a suit equally applies to applications filed under Order 39 Rule 1 and 2 C.P.C. in a suit. There also Section 141 C.P.C. was invoked and it was held that the procedure that is adopted in a regular suit can also be applied to Interlocutory matters.

**30.** Therefore as a matter of principle, in view of Section 141 C.P.C., it cannot be said that Order VI Rule 17 C.P.C. which applies normally to suits, cannot apply to Interlocutory Applications such as Order 39 Rules 1 and 2 C.P.C.

**31.** No doubt in the decision in **A.Govindasamy** (1 supra), an observation is made that a solemn declaration made in an affidavit, which was also attested by an Advocate cannot be permitted to amended and that only an additional affidavit can be permitted to be filed to make further averments.

**32.** But no precedent of any High Court is cited by the learned Judge to take the said view.

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<sup>4</sup> 2004(6) ALD 285

When the pleadings in the main proceeding i.e. a suit can be amended, I do not see any reason why an affidavit filed in an Interlocutory Application in a suit, cannot be amended.

When such amendment is being made through a Court order after obtaining permission of the Court, any technical view that solemn declaration of a party contained in an affidavit being prohibited from amendment, cannot be taken.

Once amendment is permitted, the party who has secured permission for the amendment, would any way file a fresh affidavit incorporating the amendments with a similar solemn declaration as was given in the original affidavit and the amended affidavit would also be attested by an Advocate.

**33.** Therefore I do not agree with the view taken in the said decision by the Madras High Court. Moreover, the said decision is only a persuasive value and is not binding on this Court.

**34.** Coming to the other plea about alleged admissions made by the petitioner in the counter-affidavits filed earlier in I.A.Nos.401, 402 and 403 of 2020 being taken away if the amendments as sought by the petitioner are permitted is concerned, I do not agree with the said contention of the counsel for the respondent.

**35.** I have perused the contents of the written statement and there is no admission by the petitioner of the nature claimed by the respondent.

**36.** No inference of any admission by the petitioner of the contents of the affidavit filed along with I.A.Nos.401, 402 and 403 of 2020 can be drawn merely because while drafting the counter-affidavits to the said I.As, by oversight the petitioner referred to the corresponding paragraphs in the plaint instead of the affidavits filed in the said I.As. Drawing such an inference of admission by the petitioner by the trial Court, in my opinion, is clearly perverse and unwarranted in the facts and circumstances of the case.

**37.** Accordingly, the C.R.Ps. are allowed; the orders dt.07.08.2020 in I.A.Nos.489, 490 and 491 of 2020 of the XI Additional Chief Judge, City Civil Court at Hyderabad are set aside; and the said I.As. are allowed. The Court below shall proceed to decide I.A.Nos.401, 402 and 403 of 2020 after permitting the petitioner to file amended counter-affidavits in the said I.As. within two (02) weeks from the date of receipt of copy of this order. No costs.

**38.** As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 01 .09.2020

Note: L.R. copies to be marked.  
B/o Vsv