

**Reserved on-** 28.03.2022

**Delivered on-** 07.04.2022

**Court No. - 10**

**Case :-** CIVIL REVISION No. - 448 of 2012

**Revisionist :-** M/S Rohit Surfactants Private Limited

**Opposite Party :-** M/S Kanodia Salt Company Ltd.And Another

**Counsel for Revisionist :-** Tarun Agrawal,Ravi Kant

**Hon'ble Rohit Ranjan Agarwal,J.**

1. Heard Sri Tarun Agrawal, learned counsel for the revisionist. No one has put in appearance on behalf of the respondents.

2. Office report dated 25.02.2020 indicates that an affidavit of service was filed by the revisionist which is dated 28<sup>th</sup> September 2012 pursuant to the *dasti* notices having been handed over to the counsel for revisionist fixing 15.10.2012. In view of the said fact, the notices on the respondents is deemed sufficient.

3. The present revision has been filed under Section 115 of the Code of Civil Procedure (in short 'CPC') against the judgment and order dated 24.08.2012 passed by Additional District Judge, Court No.16, Kanpur Nagar on an application No.324-Kha in Original Suit No.24 of 2010 dismissing the said application filed by the plaintiff-revisionist under Order VI Rule 17 CPC for amendment.

4. Case, in nutshell, is that the plaintiff-revisionist filed Original Suit No.24 of 2010 against the defendants-respondents for a decree of permanent injunction restraining the defendants, their servants, shopkeepers, agents, dealers, stockiest or any other person acting on their behalf from manufacturing, selling, offering for sale or soliciting business, advertising or displaying directly or indirectly, dealing in using the Trade Mark GHARI for salt or any other products under the plaintiff Trade Mark GHARI Lable. Further, a decree for rendition of accounts was also sought

and for a direction to the defendants for delivery and destruction of all impugned wrappers, labels cylinders, dies, cartons, boxes, packing's and any other infringing copies or media used by the defendants in pursuit of their illegal activities under the Trade Mark GHARI.

5. The 18<sup>th</sup> page of the plaint got mutilated and it was replaced and by sheer mistake 05.04.2010 was typed as date of verification. Though, the plaint was ready on 30.03.2010 and affidavit of plaint was sworn on 30.03.2010. According to plaintiff-revisionist, as soon as the mistake was discovered, an application for rectification thereof was moved and on 08.02.2011, the application was allowed and amendment was duly incorporated in the plaint.

6. The defendants moved an application 333-C praying for recall of order dated 08.02.2011. The said application was allowed by the Court on 05.09.2011. The trial Court then by order impugned dated 24.08.2012 has rejected the amendment application, hence the present revision.

7. Sri Tarun Agrawal, learned counsel submitted that the mistake which had occurred was not intentional, and the last page of the plaint got mutilated and was changed, the date of verification was wrongly transcribed as 05.04.2010. He contended that the mistake is merely clerical and no injustice would be done to the respondents in case, the application is allowed.

8. According to Sri Agrawal, the provisions of Order VI Rule 15 of CPC were complied with and it was only on the last page of the verification of pleading that 05.04.2010 was transcribed, for which the amendment application was immediately moved by the plaintiff which was initially allowed on 08.02.2011 and the amendment was carried out in the plaint. According to him, such an inadvertent clerical mistake could even be corrected by the Court exercising power under Section 151 CPC. Reliance has been placed upon the judgment of Apex Court in case of **Regu Mahesh @ Regu Maheshwar Rao Vs. Rajendra Pratap Bhanj**

**Dev and another 2004 (1) SCC 46.** Relevant paragraphs 9, 10, 12 and 13 are extracted hereasunder:

*“9. As Sub-rule (2) of Rule 15 prescribes that a person making a verification is required to specify by reference to the numbers of paragraphs of the pleadings what he believes on his own knowledge, and what he reveals upon information received and believed to be true. This admittedly has not been done in the present case.*

*10. In F.A. Sapa and Ors. v. Singora and Ors. [1991]2SCR752a a three-Judge Bench of this Court specifically dealt with an issue concerning defects in the verification of an election petition as well as of defects in the affidavit accompanying an election petition wherein allegations of corrupt practice are made. After considering the provisions of Sections 83 and 86 of the Act, as also the requirements of Form 25 prescribed by Rule 94-A of the Rules and relevant provisions of the CPC, it was held:*

*"28. From the text of the relevant provisions of the R.P. Act, Rule 94-A and Form 25 as well as Order 6 Rule 13 and Order 19 Rule 3 of the Code and the resume of the case-law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed Form 25 can be cured..."*

*12. It is, therefore, a settled position in law that defect in verification or an affidavit is curable. But further question is what happens when the defect is not cured. There is gulf of difference between a curable defect and a defect continuing in the verification affidavit without any effort being made to cure the defect.*

*13. In F.A. Sapa's case (supra) it was held that even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead*

*the Court in a given case to doubt the veracity of the evidence ultimately tendered. ”*

9. He has also relied upon another decision of the Apex Court in case of **Varun Pahwa Vs. Renu Chaudhary 2019 (15) SCC 628**. Relevant para-8 is extracted hereasunder:

*“8. The memo of parties is thus clearly inadvertent mistake on the part of the counsel who drafted the plaint. Such inadvertent mistake cannot be refused to be corrected when the mistake is apparent from the reading of the plaint. The rules of procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.”*

10. Reliance has also been placed on another decision of the Apex Court in case of **A. Manju Vs. Prajwal Revanna alias Prajwal R. and others 2021 SCC Online SC 1234** decided on 13.12.2021. Relevant para 25 is extracted hereasunder:

*“25. We may take note of the Constitution Bench judgment of this Court in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore [Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, (1964) 3 SCR 573 : AIR 1964 SC 1545] which opined that the defect in verification of an affidavit cannot be a sufficient ground for dismissal of the petitioner's petition summarily and such an affidavit can be permitted to be filed later. This Constitution Bench judgment was also referred to in G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715] to come to a conclusion that non-compliance with the proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could be remedied i.e. even in the absence of compliance, the petition would still be called an election petition. We cannot say that the High Court fell into an error while considering the election petition as a whole to come to the conclusion that the allegations of the appellant were not confined only to Section 33-A of the RP Act, but were larger in ambit as undue influence and improper acceptance of nomination of Respondent 1 were also pleaded as violation of the mandate under Sections 123 and 100 of the RP Act.”*

11. Heard learned counsel for the revisionist and perused the material on record.

12. The sole question to be answered is whether a clerical/procedural mistake which has occurred in the verification of pleadings can be rectified by moving application under Order VI Rule 17 CPC by the plaintiff before the commencement of the trial of the suit.

13. Before advertent to proceed to decide the issue in hand, a cursory glance of some of the provisions of the CPC is necessary for better appreciation of the case. Section 26, Order IV Rule 1 and Order VI Rule 14, 15 and Rule 17 of the CPC are extracted hereasunder:-

*“26. Institution of suits- Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.*

#### **Order IV**

*1. Suits to be commenced by plaint-(1) Every suit shall be instituted by presenting a plaint (in duplicate) to the Court or such officer as it appoints in this behalf.*

*(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.*

*(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).*

#### **Order VI**

*14. Pleading to be signed- Every pleading shall be signed by the party and his pleader (if any);*

*Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.*

*15. Verification of pleadings- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some person proved to the satisfaction of the Court to be acquainted with the facts of the case.*

*(2). The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his*

*own knowledge and what he verifies upon information received and believed to be true.*

*(3). The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*

*(4). The person verifying the pleading shall also furnish an affidavit in support of this pleadings.*

**17. Amendment of pleadings-** *The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner 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 questions in controversy between the parties;*

*Provided that no application for amendment shall be 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.”*

**14.** From the reading of the aforesaid provisions, it is clear that Section 26 provides for the institution of suits. It is on the presentation of a plaint accompanied by an affidavit that a suit is instituted. Order IV is the procedure where on a presentation of plaint in duplicate to the Court or such officer as appointed, the suit commences. The sub-Rule 2 of Rule 1 of Order IV provides that plaint shall comply with rules contained in Order VI and VII. Order VI contains pleadings generally, which constitutes both the plaints and the written statement.

**15.** Rule 14 of Order VI provides for the signing of pleading by the party and his pleader. Proviso to Rule 14 provides that where a party pleading is, by reason of absence is unable to sign the pleading and cause shown is sufficient, the same may be signed by the person duly authorised by him, or sue or to defend on his behalf.

**16.** Likewise, Rule 15 of Order VI provides for the verification of pleadings. It categorically provides that every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

**17.** Sub-Rule 2 of Rule 15 provides for person verifying to specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. Sub-Rule 3 of Rule 15 is of importance as the verification has to be signed by the person making it and shall state the date on which and the place at which it was signed. By the Amendment of 2002, Sub-Rule 4 of Rule 15 was added making it necessary that the person verifying the pleading shall also furnish an affidavit in support of his pleadings.

**18.** Thus, from the conjoint reading of Section 26, Order IV Rule 1, Order VI Rules 14 and 15 CPC what culls out is that on the presentation of a plaint a suit is instituted and the requirement of both the plaint and the written statement which constitutes pleading is that it should be signed and verified by the party and its pleader as given in Rules 14 and 15.

**19.** Further, Rule 17 of Order VI envisages a situation for amending of the pleading by either party at any stage by the leave of Court in such manner 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.

**20.** By the amendment of 2002, proviso was added to Order VI Rule 17 to cut down the undue delay in the litigation, the legislature by amendment restricted the power of amendment once the trial has begun and provided that only upon the recording of satisfaction by the Court that amendment was to be allowed.

**21.** In the present case, it is not in dispute that only the page no.18 of the plaint was signed and verified according to the plaintiff as 05.04.2010 and that too was due to mistake, as the last page had got mutilated and the same was changed and 05.04.2010 was transcribed in place of 30.03.2010. It was immediately after the institution of the suit by the plaintiff-revisionist, when the mistake was discovered, an application

under Order VI Rule 17 was filed on 15.10.2010. Against the said application, the defendants-respondents filed their detailed objections. The Court below, on 08.02.2011 finding the mistake to be genuine and not intentional, allowed the application under Order VI Rule 17.

22. As per the Order VI Rule 17, the parties to the pleading can at any stage move application for amending their pleading. In the present case, the application was moved immediately after the institution of suit and the trial had not commenced and the Court below after recording satisfaction having allowed the amendment application.

23. The Apex Court in case of **Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil, AIR 1957 SC 363**, while dealing with the amendments of pleading, held that all amendments ought to be allowed, which satisfies two conditions, (a) of not working injustice to the other side, and (b) of being necessary for the purpose for determining the real questions in controversy between the parties. The Court further held that basic doctrine is, that amendment should be refused only where the other party cannot be placed in the same position and if the pleadings had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.

24. In the present case, it was a specific case that initially the date was written manually and when the last page of the plaint was mutilated, a computer print out was taken out where the typist had typed 05.04.2010. It is not a case of intentional or deliberate mistake of the plaintiff, but a genuine and unintentional act which on discovery was tried to be rectified within few months of the institution of the suit.

25. The provisions of Rules 14 and 15 of the Order VI only prescribe for the signing and verification of the pleading by the parties, it nowhere restricts that if any genuine or bona fide mistake has occurred in the pleadings, the same cannot be cured. The purpose, for providing amendment of pleading under Rule 17 of Order VI is not by chance, but



to provide opportunities to the parties to the pleading under Order VI that in case, any fact had remained unpleaded or mistake occurred, the party can rectify through an amendment. The legislature also in the year 2002 had tried to curtail the power of unnecessary amendments which were made to delay the proceedings of the suit by inserting proviso once the trial has commenced. It is only after the Court records its satisfaction that an amendment can be made.

26. In the present case, no trial had commenced when the application under Order VI Rule 17 CPC was moved.

27. In **Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, 1969 (1) SCC 869**, the Apex Court held that rule of procedure are intended to be handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court further held that leave to amend a pleading is always allowed, unless it is satisfied that the party was acting mala fide, or that by his blunder, he has caused injury to his opponent which may not be compensated for by an order of costs. Relevant para 5 is extracted hereasunder:-

*“ 5. The order passed by the High Court cannot be sustained. Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party Applying, was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. In Amulakchand Mewaram and Ors. v. Babulal Kanlal Taliwala Beaumont, C.J., in delivering the judgment of the Bombay High Court set out the principles applicable to cases like the present and observed:*

*“... the question whether there should be an amendment or not really turns upon whether the name in which the suit is brought in the name of a non-existent person or whether it is merely a misdescription of existing persons. If the former is the case, the suit is a nullity and no amendment can cure it. If the latter is the case, prima facie, there ought to be an amendment because the general rule, subject no doubt to certain exceptions, is that the Court should always allow an amendment where any loss to the opposing party can be compensated for by costs.”*

**28.** In **M/s Ganesh Trading Co. Vs. Moji Ram 1978 (2) SCC 91**, the Apex Court held that even if, a party or its counsel is insufficient in setting out its case initially, the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay cost for the inconvenience or expense cost to the other side from its omission. Relevant paragraphs 3, 4 and 5 are extracted hereasunder:-

*“ 3. Order 6, Rule 2, Civil Procedure Code says:*

*Every pleading shall contain, and contain only a statement in a concise form or the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.*

*Order 6, Rule 4 indicates cases in which particulars of its pleading must be set out by a party. And, Order 6, Rule 6 requires only such conditions precedent to be distinctly specified in a pleading as a party wants to put in issue. Order 6, Rule 5 provides for such "further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleadings..." as the Court may order, and "upon such terms, as to costs and otherwise, as may be just." Order 6, Rule 7, contains a prohibition against departure of proof from the pleadings except by way of amendment of pleadings. After some provisions relating to special cases and circumstances, and for signing, verification and striking out of pleadings, comes Order 6, Rule 17 which reads as follows:*

*The Court may at any stage of the proceedings allow either party to alter or, amend his pleadings in such manner 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 questions in controversy between the parties.*

*4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.*

*5. It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation; to be put on every defective state of pleadings. Defective pleadings are generally curable, if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute cause of action where there was none, provided necessary conditions, such as payment of either any additional court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings.”*

29. In **Regu Mahesh (Supra)**, the Court while dealing with compliance of Rule 15 (2) of Order VI relying upon its earlier judgment in case of **F.A. Sapa Vs. Singora, 1991 (3) SCC 375**, held that defect in verification or an affidavit is curable. The Court also explained the difference between a curable defect and a defect continuing in the verification of affidavit without any effort being made to cure the defect.

30. In the present case, the mistake/defect which had occurred in the verification of the last page of the plaint was tried to be rectified by the plaintiff within few months of the institution of the suit by filing an application under Order VI Rule 17. Thus, the defect in verification is curable and the application under Order VI Rule 17 CPC is maintainable.

31. In **A. Manju (Supra)**, the Apex Court, while dealing with an election petition, found that a defect in verification of an affidavit cannot be sufficient ground for dismissal of the petition summarily.

32. Thus, the Court below was not correct in recalling the order dated 08.02.2011 and rejecting the amendment application filed by the plaintiff. The defect in the verification clause was curable and was not working injustice to the other side.

33. As pointed out above, the defect was a curable defect and the plaintiff immediately in October, 2010 after the institution of suit had moved an application for rectifying the mistake which had occurred at the time of institution of suit. The very purpose of Rule 17 in Order VI CPC is to give liberty to a party in a suit to amend his pleading at any stage in such manner and on such terms as may be just. The rules of procedures are intended to be handmaid to the administration of justice and such amendment cannot be refused because of some mistakes, negligence, inadvertence or even infraction of rules of procedures.

34. Moreover, Rules 14 and 15 do not put any embargo that any mistake occurring in verification of a pleading cannot be cured subsequently. Amendment of pleading has been provided in Order VI

Rule 17 subsequent to Rules 14 and 15 which are signing and verification of the pleading. The very purpose of providing Rule 17 in Order VI, is that in case of any mistake or omission having occurred, the parties to the pleading could get it amended by moving application under Order VI Rule 17 CPC.

**35.** The Apex Court categorically in case of **Regu Mahesh (Supra)** held the defect in verification or an affidavit to be curable. The Court below was not correct in refusing the amendment.

**36.** Thus, in view of the judgment of the Apex Court in case of **Regu Mahesh (Supra)**, the defect in the verification clause being a clerical defect can be cured on the application moved by the plaintiff under Order VI Rule 17 CPC. Thus, question framed above stands answered in affirmative.

**37.** Considering the facts and circumstances of the case, I find that the order dated 24.08.2012 rejecting the application under Order VI Rule 17 CPC is unsustainable in the eye of law and the same is, hereby, set aside.

**38.** The revision stands **allowed**.

**39.** However, no order as to costs.

**Order Date :- 07.04.2022**  
SK Goswami