



2026:DHC:5627



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 13th July, 2026

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CM(M)-IPD 21/2026 & CMs 91/2026, 92/2026

LOREAL SA

.....Petitioner

Through: Mr. Pankaj Kumar, Advocate.

versus

VEKARIYA NIKUNJ ARVINDBHAI & ORS.

.....Respondents

Through: Mr. Parth Thummar and Mr. Nishant Verma, Advocates for R-2 to 5.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition is filed on behalf of the Petitioner under Article 227 of the Constitution of India for setting aside the impugned order dated 10.02.2026 passed by the learned District Judge-05, Saket District Court in Suit bearing No. CS(COMM) 171/2024.

2. To the extent relevant, case of the Petitioner is that it adopted and commenced use of the mark GARNIER BRIGHT COMPLETE



(device) and trade dress in September, 2020 in relation to various facial and skincare products and allied cosmetic products. By virtue of continuous use and promotion of the products under the said trademark/trade dress, Petitioner has acquired substantial goodwill and reputation.



Respondents are engaged in manufacture, marketing and sale of cosmetic and skincare products identical to those of the Petitioner and adopted the words/device marks GARUDA BRIGHT COMPLETE 30x and 6 DROPS BRIGHT COMPLETE 3x and VITAMIN C, similar to Petitioner's mark GARNIER BRIGHT COMPLETE and since this was causing confusion amongst consumers, Petitioner filed CS(COMM) 171/2024, seeking permanent injunction against the Respondents claiming passing off, dilution etc. before the Trial Court in which an *ex parte* ad interim injunction was granted on 16.05.2024.

3. It is stated that during the pendency of the suit, Petitioner had applied for trademark registration under application no. 6405978 in Class 03 on 26.04.2024 claiming user from 04.09.2020 and on 20.04.2025, registration was granted. Basis this registration, Petitioner filed an application under Order VI Rule 17 CPC on 01.07.2025 seeking to amend the plaint to incorporate the factum of registration and relief of infringement. Vide order dated 10.02.2026, the Trial Court dismissed the application on the ground that Petitioner had made no averment in the plaint regarding the existence or pendency of any application for registration and the suit as originally framed was predicated on the common law remedy of passing off. It was observed that subsequent registration of the device mark and trade dress had given rise to new and fresh cause of action for infringement with different parameters from passing off and hence, amendment could not be allowed.

4. Learned counsel for the Petitioner submits that the impugned order is legally unsustainable and Trial Court has misapplied the legal principles governing amendments under Order VI Rule 17 CPC. It is settled that amendment should be ordinarily allowed where it is necessary for determining the real controversy between the parties. Trial Court failed to



appreciate that the amendment was necessitated owing to registration of the trademark GARNIER BRIGHT COMPLETE during the pendency of the suit, which gave right to the Petitioner to sue the Defendant for infringement and therefore, instead of filing a separate suit, an application for amendment was filed as the facts/products/marks are the same for an action for passing off. Dismissal of the application will lead to multifarious proceedings with regard to the same products and marks and unnecessary increase the litigation between the parties.

5. Learned counsel appearing for Respondents No. 2 to 5 opposes the petition on the ground that there is no infirmity in the order and it is rightly held by the Trial Court that in the original plaint there is not even a whisper that Petitioner had applied for the registration of the trademark GARNIER BRIGHT COMPLETE and it was only pleaded that Petitioner was the prior user of the mark and suit was filed for passing off. The opposition by Respondents No. 2 to 5 is contested by counsel for the Petitioner on the ground that they did not appear before the Trial Court despite service and have been set *ex parte* and have no right to oppose this petition before this Court.

6. Heard learned counsels for the parties and examined their rival submissions.

7. From the narrative of the facts in this petition and from copy of the plaint dated 04.04.2024 filed with the petition, it emerges that the Petitioner filed a suit before the Trial Court seeking permanent injunction against the Respondents *inter alia* alleging passing off, dilution etc. When the suit was filed, the trademark GARNIER BRIGHT COMPLETE was not registered and hence, there was no claim for infringement in the suit. During the pendency of the suit, Petitioner applied for registration of the mark



GARNIER BRIGHT COMPLETE on 26.04.2024 in Class 03 and registration was granted on 20.04.2025 leading to filing of the amendment application immediately thereafter, wherein Petitioner sought incorporation of the factum of registration and consequential infringement of the mark as also amendment in the relief clause. Learned Trial Court dismissed the application on 10.02.2026 on the ground that existence of application for registration was not pleaded in the original plaint and thus gave rise to a new and fresh cause of action and shall not *ipso facto* merge with the already existing cause of action since considerations for an action for passing off and infringement of a trademark are different and hence, allowing the amendment would change the nature of the suit and introduce a new cause of action. Added reason for dismissal of the application is that Plaintiff's evidence stands concluded and allowing the application will turn the clock back.

8. The controversy in the present petition is in a narrow compass. Petitioner seeks amendment of the plaint to include the factum of registration of its trademark and seek additional relief of infringement basis the registration, granted during the pendency of the suit filed *inter alia* for passing off and therefore, the only question is whether Petitioner was entitled to amendment of the plaint in light of the subsequent development. In my view, learned Trial Court has erred in dismissing the application for amendment. It is trite that if the amendment is necessary for deciding the real controversy between the parties to arrive at a just decision, the same can be allowed at any stage. The power to allow amendment is wide and often, Courts have allowed amendments to bring on record facts, grounds and reliefs based on events that occur during the pendency of the suit provided the basic complexion and nature of the original suit does not drastically



change. In **Rajesh Kumar Aggarwal and Others v. K.K. Modi and Others, (2006) 4 SCC 385**, the Supreme Court held as follows:-

“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.”

9. This very issue came up in the context of a passing off suit before a Coordinate Bench of this Court in **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** and relying on the judgment of the Division Bench of this Court in **Usha International and Another v. Usha Television Limited, 2002 SCC OnLine Del 306**, Court held that the Plaintiff



could not be denied the opportunity to amend the plaint to incorporate an additional relief relating to infringement, post-registration of the trademark, inasmuch as cause of action and parameters for passing off action are based on same set of facts. After registration, in any event, the Plaintiff will be entitled to file a suit for infringement and therefore, in the interest of justice and for a complete and effective adjudication of the disputes in the case, it was imperative that amendment was allowed and multiplicity of proceedings was avoided.

10. The Court also held that since the infringement was based on similar and identical facts as the case of passing off, a liberal view should be taken allowing amendment of the pleading to incorporate the subsequent event as also that power of the Court to allow amendments even after commencement of the trial, was not restricted. It was also observed that Courts should not adopt a hyper technical approach and must not refuse *bona fide*, legitimate, honest and necessary amendments. Relevant passages from the judgment are as follows:-

“7. Holding that the supervening event of registration of trademark is a fact, which can be taken note of and on that basis the application for amendment deserves to be allowed, a Division Bench of this Court in the case of Usha International v. Usha Television Ltd.1, has held as follows:

“xxx xxx xxx

7. The Court further observed that “it is well settled that the main considerations to be borne in mind in exercising the discretion are that the rules of procedure have no other aim than to facilitate the task of administering justice, that multiplicity of suits should be avoided and that the interest of substantial justice should be advanced.”

*8. Mr. Pravin Anand, the learned counsel for the appellants, also placed reliance on the judgment of the Madras High Court in A. Abdul Karim Sahib v. A. Shanmugha Mudaliar (1967 Mad LJ 468). The Court observed that **“the statute law relating to infringement of trade mark is based on the same fundamental principles as the general law relating to passing off Though there may be some***



procedural differences between the two actions, in substance and in effect an action for passing off can easily be telescoped into an action for infringement of trade mark and vice versa. Hence a suit instituted for an injunction restraining the defendant from marketing certain goods under a mark which is deceptively similar to the plaintiff's mark can be amended into one for infringement of trademark under the Trade and Merchandise Marks Act, 1958 if the plaintiff has obtained registration of his mark under the Act after the institution of the suit. Such an amendment will not change the cause of action and would only be in the nature of an alternative relief. In this judgment the Court also observed that by allowing the amendment multiplicity of suits are also avoided.

9. The Full Bench of the Madras High Court in *Subramaniam v. Sundaram*, (1963) 1 Mad LJ 113 considered the propriety of a Court taking note of subsequent events. It is no doubt true that a suit has to be decided on the facts and circumstances existing on the date of its institution, but circumstances do warrant a Court taking into consideration supervening events as well provided the justice of the case requires. The Full Bench observed that "the discretion of the Court, under its inherent powers, to adjust the parties on the basis of events happening after the starting of the action, is well recognised and accepted as a rule of justice, equity and good conscience. In some case, it is almost the duty of the Court to advert to the subsequent events brought to its notice lest it should fail to do substantial justice between the parties." The Full Bench considered the propriety of a Court taking note of subsequent events. It is no doubt true that a suit has to be decided on the facts and circumstances existing on the date of its institution, but circumstances do warrant a Court taking into consideration supervening events as well provided the justice of the case requires.

10. In another case *Lydia Margaret Santhanam v. David Thamburaj*, (1966) 1 Mad LJ 408 the Madras High Court held that "the test for allowing applications for amendment of plaints would be, not merely whether a new cause of action is introduced but whether, if it is allowed, thereby the defence would in any way be prejudiced, either by deprivation of the plea of limitation or any other plea... A new cause of action can well be allowed to be taken by way of an amendment provided it is an alternative plea."

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."

12. We passed over the matter and waited for the counsel for the respondent, but none appeared for the respondent.



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.

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(Emphasis Supplied)

8. It is a settled proposition that if an amendment is necessary for deciding the real controversy between the parties and for arriving at a just conclusion, such amendment can be allowed even at a later stage. The power to allow amendment is wide and can be exercised at any stage of the proceedings. It has been laid time and again that in cases where cause of action arose during the pendency of a suit, amendments ought to be allowed, as the same did not change the basic structure of the suit, and merely changed the nature of the relief claimed. It is necessary for the Courts to take notice of subsequent events in order to shorten the litigation and to serve the ends of justice.....

9. There is no bar to allowing an amendment even after commencement of the trial, if it is shown that in spite of due diligence, such amendment could not have been sought earlier. In the present case, the plaintiff intends to incorporate an additional relief relating to infringement, post registration of the trademark. It is to be noted that the cause of action for infringement and passing off actions, are based on same set of facts. After registration of its mark, the plaintiff would be entitled to maintain a suit for infringement. Therefore, for a complete and effective adjudication of the disputes involved in the case, it is imperative that amendment is allowed, to avoid multiplicity of proceedings.

10. Holding that a Court may allow either party to amend the pleadings, if it is established that the proposed amendment is necessary for determining the real question in controversy between the parties, even if the prayer for amendment was a belated one, Supreme Court in the case of *State of Madhya Pradesh v. Union of India*, has held as follows:



“xxx xxx xxx

7. The above provision deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent 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 must be shown that in spite of due diligence, such amendment could not have been sought earlier.

8. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

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10. This Court, while considering Order 6 Rule 17 of the Code, in several judgments has laid down the principles to be applicable in the case of amendment of plaint which are as follows:

(i) *Surender Kumar Sharma v. Makhan Singh* [(2009) 10 SCC 626 : (2009) 4 SCC (Civ) 294], at para 5 : (SCC p. 627)

“5. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have 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. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in



our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment.”

(ii) *North Eastern Railway Admn. v. Bhagwan Das* [(2008) 8 SCC 511], at para 16 : (SCC p. 517)

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side; and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”

(iii) *Usha Devi v. Rijwan Ahamd* [(2008) 3 SCC 717 : (2008) 1 SCC (Civ) 922], at para 13 : (SCC p. 722)

“13. Mr. Bharuka, on the other hand, invited our attention to another decision of this Court in *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498]. In para 17 of the decision, it was held and observed as follows : (SCC pp. 504-05)

‘17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion on



the court to allow an amendment of the written statement at any stage of the proceedings.”

(iv) *Rajesh Kumar Aggarwal v. K.K. Modi [(2006) 4 SCC 385], at paras 15 & 16 : (SCC pp. 392-93)*

“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.”

(v) *Revajeetu Builders and Developers v. Narayanaswamy and Sons [(2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37], at para 63 : (SCC p. 102)*

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.



These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

The above principles make it clear that courts have ample power to allow the application for amendment of the plaint. However, they must be satisfied that the same is required in the interest of justice and for the purpose of determination of real question in controversy between the parties.

xxx xxx xxx”

(Emphasis Supplied)

11. The proposed amendments do not change the nature and character of the case, as a case for infringement is essentially based on similar and identical facts, as that of a case for passing off. It has been held in a catena of judgments that the Courts ought to take a liberal view in favour of allowing amendments and allow a party to amend the pleadings, by taking note of subsequent events. The power of the Court to allow amendments even after the commencement of the trial, is not restricted. If the amendments, as sought in the present case, are not allowed, the same will lead to unnecessary multiplicity of litigation.

12. Thus, holding that Courts should not adopt a hyper technical approach and must not refuse bona fide, legitimate, honest and necessary amendment, Supreme court in the case of Ramesh Kumar Agarwal v. Rajmala Exports Private Limited, has held as follows:

“xxx xxx xxx

19. In *Rajkumar Gurawara v. S.K. Sarwagi & Co. (P) Ltd.* [(2008) 14 SCC 364] this Court considered the scope of amendment of pleadings before or after the commencement of the trial. In para 18, this Court held as under : (SCC p. 369)

“18. ... It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation.”

20. In *Revajeetu Builders & Developers v. Narayanaswamy & Sons* [(2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37] this Court once again considered the scope of amendment of pleadings. In para 63, it concluded as follows : (SCC p. 102)



“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

21. It is clear that while deciding the application for amendment ordinarily the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

xxx xxx xxx”

(Emphasis Supplied)”

11. In my view, the case of the Petitioner is squarely covered by the



aforesaid judgments. In the instant case, the cause of action for infringement based on the registration of the mark granted during the pendency of the suit, is based on the same set of facts, same rival trademarks and products and relegating the Petitioner to filing a fresh suit for infringement by dismissing the amendment application will only lead to multiplicity of proceedings. The impugned order itself shows that the Trial Court was conscious of the fact that the application for registration was filed only after the suit was filed and therefore, the observation that there was no mention of the application in the original plaint, is completely erroneous. Courts have permitted amendments wherever it is felt that they are necessary for deciding the real controversy between the parties and to arrive at a just decision. The fact that the trial has commenced, can also not be a reason enough for dismissing the application for the simple reason that Respondents No. 2 to 5 are already *ex parte* and secondly, dismissal of the application will lead to yet another suit, which will only increase and prolonging the conclusion of litigation *inter se* the parties with respect to the same trademark and products.

12. For all the aforesaid reasons, the impugned order dated 10.02.2026 passed in CS(COMM) 171/2024 is quashed and set aside and the application under Order VI Rule 17 CPC is allowed. Learned Trial Court will take the amended plaint on record and proceed accordingly.

13. Petition stands disposed of along with pending applications.

JYOTI SINGH, J

JULY 13, 2026

S.Sharma