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

% *Judgment reserved on: 20.11.2025*
Judgment pronounced on: 04.12.2025

\+ **CM(M) 1214/2023, CM APPL. 38959/2023 & CM APPL. 38962/2023**

TRANS ASIAN INDUSTRIES EXPOSITIONS PVT LTD
.....Petitioner

Through: Mr. Lakshay Dhamija, Ms. Liza Kesi and Ms. Vasudha Saini, Advocates

versus

M/S G S BERAR AND CO PVT LTD & ANR. .....Respondents

Through: Mr. Saurabh Prakash and Mr. Utsav Jain, Advocates

\+ **CM(M) 1215/2023, CM APPL. 38963/2023 & CM APPL. 38966/2023**

TRANS ASIAN INDUSTRIES EXPOSITIONS PVT LTD
.....Petitioner

Through: Mr. Lakshay Dhamija, Ms. Liza Kesi and Ms. Vasudha Saini, Advocates

versus

SONI DAVE .....Respondent

Through: Mr. Saurabh Prakash and Mr. Utsav Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

1. The captioned two petitions, brought under Article 227 of the Constitution of India were being taken up together on account of same legal

and factual matrix. Vide order dated 31.10.2025, the Supreme Court requested this court to take up CM(M) 1215/2023 for hearing expeditiously and see to it that the same is disposed of within a period of two months. On the basis of the said order of the Supreme Court, an early hearing application filed by the petitioners was allowed and the hearing dated 19.11.2025 in both these cases was preponed to 11.11.2025 and thereafter on day to day basis in order to ensure compliance with the directions of the Supreme Court.

2. Petitioner in both these cases is defendant in the two civil suits and has assailed dismissal of its applications for amendment of its written statements in the respective suits.

3. Briefly stated, circumstances relevant for the present decision are as follows.

3.1 The present respondents filed suit bearing no. CS(OS) 2331/2008 as co-plaintiffs against the present petitioner/defendant before the Original Side of this court for recovery of possession of the tenanted property, which is basement and a portion on the ground floor behind the front flat of the larger premises bearing no. M-1, Hauz Khas, New Delhi, claiming that plaintiff no.1 (*present respondent no.1 GS Berar & Company*) owns 5/6th share and plaintiff no.2 (*present respondent no.2 Soni Dave*) owns 1/6th share in the subject property. The present respondent Soni Dave filed suit bearing no. CS(OS) 2330/2008 as plaintiff against the present petitioner/defendant

before the Original Side of this court for recovery of possession of the tenanted property, which is front portion on ground floor of the larger premises bearing no. M-1, Hauz Khas, New Delhi, claiming herself to be owner thereof. On change in pecuniary jurisdiction of the District Courts in Delhi, both suits were transferred and assigned to the court of Additional District Judge, South District, Saket Courts, Delhi.

3.2 In both the subject suits, the present respondents/plaintiffs pleaded that the present petitioner/defendant had been inducted as a tenant on month to month basis in the subject property at a monthly rent above the ceiling stipulated under the rent protection laws. On account of certain disputes, including failure to pay the agreed rent and arrears of service tax, the present respondents terminated the oral tenancy by way of quit notices in the month of August 2008, thereby calling upon the present petitioner to vacate the subject property within 15 days from receipt thereof.

3.3 The present petitioner opted not to vacate the subject property and replied to the quit notices in which it admitted having been inducted as a tenant in the subject property, and also admitted that the tenancy stood terminated in respect of both properties, which are subject matter of these proceedings. However, in the replies sent on behalf of the present petitioner, there was some confusion which arose on account of two different subject properties with two different sets of landlords, so the respondents sent another communication to the petitioner, clarifying the status and also pointing out that the petitioner had carried out unauthorized construction in

the rear portion of the ground floor of the larger premises and had installed electricity generator in the subject property without obtaining permission from the present respondents. That followed, further correspondence between the parties on the issue of eviction of the subject property, but the said correspondence is not relevant for present purposes. Ultimately, the present respondents filed two separate suits for recovery of possession of the respective tenanted subject property as narrated above.

3.4 In both suits, the present petitioner filed written statements (*titled as amended Written Statement*), thereby denying the contents of the plaints. In the said written statements dated nil, the present petitioner mainly assailed the claim of the present respondents to recovery of possession of the subject property and narrated the facts related to the quantum of the claimed *mesne* profits. The petitioner also pleaded in detail, reference to the other multiple legal proceedings between the parties. The petitioner in the written statements also mentioned the names of the multiple owners and occupants of different portions of the larger premises no.M-1, Hauz Khas, New Delhi and stated that the petitioner is owner and occupant of one of those flats constructed on first floor of the larger premises. In the written statements, the present petitioner further pleaded that it handed over actual physical possession of the subject property to the present respondents on 19.10.2016.

3.5 The present respondents filed replications, denying the contents of the written statements and reaffirmed the plaint contents. After framing of issues, trial was commenced and it is thereafter that the present petitioner

filed applications seeking to amend the written statements in both suits. The said amendment applications were dismissed by way of the orders impugned in the present petitions.

4. Broadly speaking, the amendments sought by the petitioner in its written statements were as follows.

4.1 Subsequent to restoration of possession of the subject tenanted property by the petitioner to the respondents, the latter started interfering with the rights of the petitioner to access and enjoy common areas of the larger premises bearing no. M-1, Hauz Khas, New Delhi by illegally constructing fence around the front lawn, which is sanctioned as common area; and further, by illegally constructing a room in front of the exit door to the common terrace of the larger premises coupled with other illegal constructions in the common areas of the terrace, to which the petitioner, in its capacity as owner of one of the flats in the said larger premises and the remaining co-owners of the larger premises had rights and access.

4.2 The acts of the present respondents compelled the present petitioner to file a civil suit in the year 2017 before this High Court. In the said suit, South Delhi Municipal Corporation (SDMC) was impleaded as one of the defendants and it passed an order dated 12.10.2021 under Section 343(1) of the Delhi Municipal Corporation Act with respect to the larger premises, holding that no authorized status of construction exists at the entire premises and that the same were booked for demolition by the SDMC in the year

1985, but despite previous demolition orders, the present respondents did not stop unauthorized constructions, because of which the larger premises were booked again for deviations in the year 1995 and on 15.03.2021. Despite the sealing orders passed by the SDMC, the present respondents leased out the subject property to the petitioner and fraudulently earned exorbitant rentals.

4.3 The petitioner being owner of one of the flats in the larger premises is owner of 1/6th share of 5/6th undivided interest in the larger premises, but towards use and occupation charges, the respondents fraudulently pocketed money for the entire basement of the larger premises.

4.4 On these aspects, the petitioner sought extensive and elaborately worded amendments in the written statements. The petitioner sought to make changes in paragraph 3.3 (i) and to add paragraphs 3.22.1 to 3.22.16 in paragraph 3.22 of the written statements and to make changes in paragraphs no.5.4, 5.8.4 and 5.8.6.

5. The present respondents filed replies to the said amendment applications and after hearing both sides, the learned trial court dismissed the amendment applications by way of the impugned orders, mainly on the ground that the amendments sought in the written statements are such which could be pleaded in the originally filed written statements, had the petitioner been diligent.

6. Hence, the present petitions. I have heard learned counsel for both sides and examined the records.

6.1 During arguments, learned counsel for petitioner took me through the above mentioned factual matrix as pleaded by both sides and contended that the impugned orders are not sustainable in the eyes of law. It was argued that the amendments sought on behalf of petitioner are necessary in order to effectively adjudicate the controversy involved in the suits. It was also argued that in view of the admitted position as regards unauthorized construction in the larger premises, it would be travesty of justice if the petitioner/defendant is made to pay use and occupation charges of the entire subject property. Further, it was contended that since petitioner is admittedly owner of one of the flats in the larger premises, it cannot be denied user of common area, but the same is obstructed by the respondents by enacting a fence in the lawn and by constructing unauthorizedly on the terrace. Since the larger premises till date have not been issued completion certificate and occupation certificate, the subject property cannot fetch any rental or *mesne* profits, according to learned counsel for petitioner. Placing reliance on the judgment in the case of ***Baldev Singh & Ors. vs Manohar Singh & Ors.***, (2006) 6 SCC 498, learned counsel for petitioner submitted that since the amendments sought do not, in any manner aim to withdraw any admission already made in the written statement and since the question of limitation cannot be examined at the stage of examining an amendment application, the amendments sought ought to have been allowed. With the help of judgment in the case of ***Usha Balashaheb Swami & Ors. vs Kiran Appaso***

Swami & Ors., (2007) 5 SCC 602, learned counsel for petitioner argued that amendment of plaint stands on a footing completely different from the amendment of written statement in the sense that amendment of written statement can be allowed to permit addition of new ground of defence or substituting/altering the already pleaded defence. Referring to the judgment of the Supreme Court in the case of ***Dinesh Goyal vs Suman Agarwal (Bindal) & Ors.***, AIR 2024 SC 4779, learned counsel for petitioner elaborated the legal position on the issue of amendment of written statements that for this purpose, a liberal approach is to be adopted by the court. Besides that, learned counsel for petitioner quoted few more judicial precedents on the above mentioned and other well established legal principles dealing with the amendment of written statements and also on quantification of *mesne* profits, which are not being reiterated herein for brevity (*and relevance insofar as the quantification of mesne profits is concerned*).

6.2 On the other hand, learned counsel for respondents supported the impugned order and taking me through the above circumstances contended that the petitioner solely aims to protract the proceedings by seeking amendment of the written statements, when the suits have travelled considerable distance in trial. Learned counsel for respondents also argued that none of the facts now sought to be pleaded by way of amendment of the written statements is such that could not be pleaded in the originally filed written statements. It was argued that since trial has already commenced, the issue of diligence gains significance and since that is lacking on the part of

the petitioner/defendant, amendment of written statements has been correctly denied by the trial court.

7. To recapitulate, in the suits currently confined to the quantification of *mesne* profits (*as the petitioner has already vacated the tenanted subject property*), subsequent to commencement of trial, the petitioner/defendant seeks permission to amend the written statements in order to plead that the respondents/plaintiffs have carried out unauthorized constructions and fencing of common areas; that according to the specific orders of the municipality, the larger premises, of which the subject property is a part, is unauthorizedly constructed and booked repeatedly for demolition; and that since the petitioner/defendant also owns one flat in the larger premises, it cannot be made to pay any rent or *mesne* profits with regard to the common areas to the extent of its undivided and indivisible interest therein. As mentioned above, the said averments are sought to be pleaded by way of extensive and elaborate pleadings in the written statements.

8. It would be apposite to extract the provision under Order VI Rule 17 CPC dealing with amendments of pleadings.

> *"**Amendment of pleadings**.—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:*
>
> *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."*

8.1 The proviso is a significant part of Order VI Rule 17 CPC, as it narrows down the scope of amendment of pleadings once trial has commenced. The wordings of the proviso to Order VI Rule 17 CPC clearly show that once trial has commenced, the Rule is not to allow amendment of pleadings; however, it also carves out an Exception, whereby such amendments can be granted; and that Exception is where the court comes to the conclusion that in spite of due diligence, the party concerned could not have raised the matter prior to commencement of trial. It would be significant to note that what is contemplated by the proviso to Order VI Rule 17 CPC is not to ask as to whether the amendment sought could have been pleaded in the originally filed pleadings; what the proviso contemplates is to ask as to whether the amendment sought could be so sought prior to commencement of trial. Any development subsequent to the filing of the written statement could obviously be not pleaded in the written statement; what the proviso contemplates is to examine if the amendment sought could have been raised prior to commencement of trial by exercising due diligence. Once trial has commenced, the amendment sought has to be tested on the anvil of due diligence by examining as to whether the amendment sought pertains to an issue which could be raised prior to commencement of trial, had the amendment applicant been duly diligent and if it is found that in spite of due diligence the amendment applicant could not have raised the matter prior to commencement of trial, such amendment can be allowed in the pleadings. The principle that delay is no ground to deny amendment of the pleadings, where such amendment would be necessary for decision of the real controversy between the parties, operates only till commencement of

trial, and once trial has commenced, the focus on delay must give way to the focus on due diligence. This distinction is important to be kept in mind so as to ensure a meaningful differential interpretation to the general rule of amendment under Order VI Rule 17 CPC and the exception carved out by proviso to the provision followed by an exception to the exception in the nature of "due diligence" carved out within the proviso. The expression "at any stage of the proceedings" used in the provision under Order VI Rule 17 CPC is the rule. The proviso to Order VI Rule 17 CPC does not in any manner restrict that expression, in the sense that after commencement of trial also, the amendment can be sought at any stage till the suit remains on board of the court. The only effect brought in by proviso to Order VI Rule 17 CPC is to examine as to whether the amendment sought could not be raised prior to commencement of trial in spite of due diligence of the amendment applicant.

8.2 In the case of ***Chander Kanta Bansal vs Rajinder Singh Anand***, (2008) 5 SCC 117, the Supreme Court held thus:

> *"11. In order to find out whether the application of the defendant under Order 6 Rule 17 for amendment of written statement is bona fide and sustainable at this stage or not, it is useful to refer to the relevant provisions of CPC. Order 6 Rule 17 reads thus:*
>
> > *"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."*

This Rule was omitted by the Code of Civil Procedure (Amendment) Act, 1999. However, before the enforcement of the Code of Civil Procedure (Amendment) Act, 1999, the original rule was substituted and restored with an additional proviso. ***The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. The liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment****.*

12. With a view to shorten the litigation and speed up the trial of cases Rule 17 was omitted by amending Act 46 of 1999. This Rule had been on the statute for ages and there was hardly a suit or proceeding where this provision had not been used. That was the reason it evoked much controversy leading to protest all over the country. Thereafter, the Rule was restored in its original form by amending Act 22 of 2002 with a rider in the shape of the proviso limiting the power of amendment to some extent. The new proviso lays down that no application for amendment shall be allowed after the commencement of trial, 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. But ***whether a party has acted with due diligence or not would depend upon the facts and circumstances of each case. This would, to some extent, limit the scope of amendment to pleadings, but would still vest enough powers in courts to deal with the unforeseen situations whenever they arise****.*

13. ***The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other's case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same****. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.*

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> *16. The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."*
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> *(emphasis supplied)*

8.3 In the case of ***Basavaraj vs Indira & Ors***, (2024) 3 SCC 705, the Supreme Court reiterated that the proviso to Order VI Rule 17 CPC prevents an amendment application once the trial has commenced unless, the trial court comes to the conclusion that despite due diligence, the party concerned could not have raised the issue and that the burden is on the party seeking to amend the pleadings after commencement of trial to show that in spite of due diligence, the amendment could not be sought earlier. The Supreme Court observed thus:

> *"10. The proviso to Order 6 Rule 17CPC provides 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.* ***In the case in hand, this is not even the pleaded case of Respondents 1 and 2 before the trial court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment****. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial*

especially when admittedly the facts were in knowledge of Respondents 1 and 2-plaintiffs."

(emphasis supplied)

9. In the present case also, since the amendment applications which led to the impugned orders, were filed subsequent to the commencement of trial, the test to be applied is as to whether in spite of due diligence, the petitioner could not have raised the matter prior to commencement of trial; and if answer to the test query is in negative, the proviso to Order VI Rule 17 CPC would operate as a bar to allow amendment of the written statements.

10. The issues in the subject suits were framed on 30.10.2017 and trial commenced on 20.09.2021 while the amendment applications are dated 11.07.2022 (*pertaining to the suit that led to CM(M) 1214/2023*) and 30.11.2022 (*pertaining to the suit that led to CM(M) 1215/2023*). In other words, the amendment applications in both these cases were filed almost one year after commencement of trial. That being so, what is to be seen is as to whether the amendments now sought to be brought in the written statements could not have been sought to be brought prior to commencement of trial in spite of due diligence on the part of the present petitioner. It would be significant to note that the petitioner, at no stage, took a stand that in spite due diligence, it could not have sought the amendments in the written statements, which are now being sought.

11. Admittedly, the petitioner was inducted as a tenant in the subject property in the year 1989 and it surrendered the possession thereof on

19.10.2016. Also admittedly, the other suit pertaining to the alleged illegal fencing and unauthorized construction was filed by the petitioner in the year 2017. In other words, by the time issues were framed, the petitioner was fully aware about the alleged fencing of lawns and the alleged unauthorized construction in common areas, but opted not to seek amendment of the written statements for almost five years till the second half of the year 2022. It cannot be said that about the alleged illegal fencing and unauthorized constructions petitioner could not have sought amendment of the written statements prior to 20.09.2021, when trial commenced. Therefore, on this aspect, the amendment applications are clearly hit by proviso to Order VI Rule 17 CPC.

12. Coming to the demolition order dated 12.10.2021 passed by the SDMC, according to the petitioner, the same was brought to its knowledge on 15.10.2021 when a copy thereof was filed and served on it in the other civil suit; by that date, issues in the subject suits had already been framed and trial had just commenced.

12.1 But despite the trial having already commenced, the petitioner showed complete laxity in seeking to amend its written statements till second half of the year 2022. As mentioned above, the written statements were sought to be amended only in July 2022 in one suit and in November 2022 in the other. There is not even a whisper to explain as to why the amendment of the written statements in order to incorporate the SDMC order was not sought immediately or soon after the petitioner came to know about the same.

12.2 Further, admittedly the petitioner not only took the subject property on lease but also purchased one of the flats in the larger premises way back in the year 2004-05, and if at that stage itself, the petitioner opted not to try to find out the status of construction in the larger premises, lack of due diligence is writ large.

12.3 As mentioned above, according to petitioner's own case also, the larger premises were booked for demolition by the SDMC in the year 1985 and again in the year 1995, followed by again on 15.03.2021. Also according to the petitioner's own case it made efforts and took pains to get the subject property converted from residential property to commercial property in the year 2006, so it is obvious that the petitioner was actively involved with the SDMC pertaining to the larger premises. Further, it is also the case of the petitioner that the larger premises were sealed by the SDMC for about 08 months from March 2010.

12.4 It is the petitioner only, who filed the other civil suit in the year 2017 pertaining to the alleged unauthorized construction and impleaded SDMC as a party in the same. It is not believable that in the year 2017 (*when pleadings were being completed in the subject suits*), the petitioner was not aware that larger premises, of which the subject property is a part was lying booked by the SDMC for demolition.

12.5 Therefore, this part of the amendment sought also would be hit by proviso to Order VI Rule 17 CPC as it cannot be said that in spite of due

diligence, the petitioner could not have raised the matter related to the SDMC order prior to commencement of trial.

13. Then comes the amendment sought to plead in the written statements that being the owner of one of the flats in the larger premises and being holder of 1/6th share of 5/6th undivided interest, the petitioner was not liable to pay use and occupation charges towards entire basement, and the respondents fraudulently pocketed money. Even this amendment is hopelessly delayed and grossly hit by proviso to Order VI Rule 17 CPC, insofar as the petitioner was always aware since the year 2004-05 as regards the portion purchased by it by way of sale deeds. It remains unexplained as to why these averments were not pleaded in the originally filed written statements, instead of sleeping over the matter till this stage when trial has commenced.

14. The above conspectus clearly establishes that the petitioner/defendant sought amendment of the written statements at extremely belated stage of trial and in the backdrop of above discussion, it cannot be said that in spite of due diligence the petitioner/defendant could not have raised the matter before commencement of trial. That being so, the present cases do not fall within the exception to the exception carved out in the proviso to Order VI Rule 17 CPC.

15. Therefore, I am unable to find any infirmity in either of the orders impugned in the present petitions. Both impugned orders are upheld. Both

petitions are not just devoid of merits, but also are totally frivolous, filed with oblique purposes to somehow protract the trial. As such, both petitions and the accompanying applications are dismissed with costs of Rs.25,000/- each petition to be deposited by the petitioner within one week from today online with *www.bharatkeveer.gov.in*.

GIRISH KATHPALIA

Digitally signed by GIRISH KATHPALIA
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GIRISH KATHPALIA
(JUDGE)

DECEMBER 04, 2025/*ry*