



2025:DHC:11267



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 12.12.2025

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CM(M) 2416/2025, CM APPL. 78531/2025 & CM APPL. 78530/2025

OM PRAKASH

.....Petitioner

Through: Mr. Pankaj Vivek, Advocate.

versus

BRAHM SINGH

.....Respondent

Through: None.

CORAM: JUSTICE GIRISH KATHPALIA**J U D G M E N T (O R A L)**

1. Petitioner/defendant has assailed order dated 19.11.2025 of the learned trial court, whereby his application for amendment of Written Statement was dismissed. Having heard learned counsel for petitioner/defendant, I do not find it a fit case to even issue notice.

2. Broadly speaking, after closure of plaintiff's evidence (*in which as many as six witnesses were examined*), at the stage of recording the defendant's evidence, the petitioner/defendant filed an application under Order VI Rule 17 CPC seeking to amend the Written Statement in order to incorporate reference to two writ petitions, filed before this Court. The petitioner/defendant in his application took a stand that since the said two writ petitions were filed subsequent to filing of the Written Statement, he



could not have incorporated those writ petitions in the Written Statement. The learned trial court, by way of the impugned order, elaborately discussed the factual matrix as well as a judicial precedent, flowing from the Supreme Court, and took a view that the amendment sought is hit by proviso to Order VI Rule 17 CPC, so the amendment application was dismissed.

3. Learned counsel for petitioner/defendant contends that the impugned order is not sustainable in the eyes of law because the petitioner/defendant was admittedly not a party to the said two writ petitions and as such, the learned trial court has wrongly overstretched the meaning of the expression 'due diligence' used in proviso to Order VI Rule 17 CPC. It is contended that petitioner/defendant cannot be expected to keep checking the institution of all legal proceedings related to the dispute pending trial.

4. To begin with, it would be necessary to take record of the relevant dates, as submitted by learned counsel for petitioner/defendant. The Written Statement was filed by the petitioner/defendant on 04.08.2023; the issues were framed on 01.02.2024; the trial commenced on 09.04.2024; and the amendment application was filed by the petitioner/defendant on 07.07.2025. The writ petitions, sought to be incorporated through amendment in the Written Statement, were filed on 19.12.2023 (*prior to framing of issues*) and 15.03.2024 (*prior to commencement of trial*).

5. Of course, going by the dates mentioned in paragraph 4 hereof, nobody can expect the mention of the said writ petitions in the originally



filed Written Statement. For, as per the petitioner/defendant, he came to know about those writ petitions subsequent to filing of the Written Statement. But that does not take the issue out of clutches of proviso to Order VI Rule 17 CPC, unless it is shown that in spite of due diligence, it was not possible for the petitioner/defendant to raise the issue of those writ petitions prior to commencement of trial.

6. As recently held by this Court in the case of ***Trans Asian Industries Expositions Pvt. Ltd. vs. M/s G S Berar and Co. Pvt. Ltd. & Anr.***, 2025:DHC:10841, once trial has commenced, due diligence is the core test for permitting an amendment. After reference to the cases titled ***Chander Kanta Bansal vs Rajinder Singh Anand***, (2008) 5 SCC 117 and ***Basavaraj vs Indira & Ors***, (2024) 3 SCC 705, this court in ***Trans Asian Industries*** (supra), held thus:

“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.”

7. Of course, the petitioner/defendant cannot be expected to keep checking as to what all legal proceedings relevant for the present suit have been or are being instituted. But the petitioner/defendant ought to have disclosed as to when and in what manner he came to know about institution of those two writ petitions. That would have reflected the due diligence or lack thereof in bringing the amendment application. There is nothing on record to infer that in spite of due diligence, the petitioner/defendant could not have sought amendment of the Written Statement till evidence of the plaintiff got concluded. There is not even a whisper that in spite of due diligence, the petitioner/defendant could not have raised the matter prior to



commencement of trial.

8. To reiterate, the petitioner/defendant has not disclosed as to when he came to know about the said two writ petitions. In case the petitioner/defendant came to know about those two writ petitions immediately or soon after filing of the Written Statement, but kept waiting till the stage of defendant's evidence, the lack of due diligence would be writ large and consequently the amendment would have to be denied.

9. There is another aspect. In case the amendment application is allowed in the present case, it would cause serious prejudice to the respondent/plaintiff, on whose behalf entire evidence has been led. The respondent/plaintiff would be deprived to deal with the pleadings *qua* those two writ petitions. In the alternative, there would be fresh opportunity to file replication, followed by amendment of issues, if required, and followed by fresh or further evidence to be led by the respondent/plaintiff and consequent delay and protraction of the trial.

10. In view of the aforesaid, I am unable to find any infirmity in the impugned order, so the same is upheld and the present petition as well as the pending applications are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

DECEMBER 12, 2025/dr