

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 858 OF 2024

Bobby Suresh Shah]
 Age: Adult, 601 Blue Daimond, Juhu Road,]
 Santacruz West Mumbai 400 009] ...Appellant
 (Original Plaintiff)

V/s.

Shehnaz Sania & Ors.]
 A 702, Milton CHS, Juhu Azad Road,]
 Santacruz W, Mumbai 400 009]

1A. Sonia Mudbhatakal]
 A 702, Milton Apt, H.D. Gawde Rd,]
 Santacruz W, Mumbai 400 009]

1 B. Shahzia Haldipur]
 501- A- Deccan CHS, Union Park, khar]
 West Mumbai- 400050]
 1A and 1B being Daughters, Heirs and]
 legal representatives of the Org]
 Defendant No. 1, Shehnaz Sani both]
 of Mumbai, Indian Citizens, residing at]
 above mentioned addresses]

2. Win Cable Entertainment Pvt. Ltd]
 Ground Floor, Pukhraj Mahal, Kinking]
 Road, Khar West Mumbai-400052]

3. Win Cable Data Com Pvt. Ltd]
 Rahejas, 4th Floor, V.P. Road]
 Santacruz W, Mumbai 400054] ...Respondents
 (Original Defendants)

Mr. Bobby Suresh Shah for Appellant in person.

Mr. Durgesh Rege for Defendant No. 1(B)

CORAM	: KAMAL KHATA, J.
RESERVED ON	: 19TH DECEMBER 2025.
PRONOUNCED ON	: 7TH JANUARY 2026.

Judgment:

1) By this Appeal from Order, under Order VI Rule 17, the Appellants challenge the order dated 05th August 2024 passed by the learned Judge, Bombay City Civil Court, in Chamber Summons No. 700 of 2024 filed by the Appellant.

2) By the said order, the relief seeking amendments to the Plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908(CPC), was rejected.

Brief facts:

3) The Appellant (appearing in person) states that the Suit was filed under grave urgency as the Respondent No.1 (Deceased) and 2 had illegally usurped the Appellant's proprietary business by deploying several antisocial elements (Goondas) forcibly taking control of the Appellant's office, restraining his entry, and severing all communication with the staff present therein. He further states that, when he attempted to resist, he was physically expelled and

informed that his rights stood extinguished, with Respondent No.1 claiming to have purchased all rights, title and interest in the Appellant's company. He also states that subsequent to the illegal takeover, Respondent No.2 issued an "IMPORTANT NOTICE" on their letter head to the Appellant's long-standing subscribers falsely stating that the business had been legally transferred and that the Appellant was no longer associated with the entity.

4) Being aggrieved by the actions of the Respondent No. 1 (since deceased) and the Appellant instituted a Short Cause Suit No. 5407 of 2006 before the Bombay City Civil Court.

5) The Appellant further states that, during the hearing for ad-interim reliefs, he discovered that the Respondent No.1 and 2 has grossly misused a "Note" dated August 1, 2003 which was executed in the context of an intimate eleven-year relationship between the Appellant and Respondent No.1. The said Note was not part of the plaint when the suit was filed. The Appellant states that Respondent No.1 had assured him that the said Note had been destroyed, and the Appellant had relied upon such representation due to blind trust and faith reposed in Respondent No.1. The Appellant further emphasizes that the proposed amendment is necessary to bring on record the facts explaining how and under what circumstances the said Note

came into existence.

6) Following the ad-interim orders, the Appellant alleges that the Respondents engaged in court proceedings amounting to gross contempt, defamation and acts causing substantial business losses, including loss of assets, and reputation. This ultimately resulted in a protracted string of litigations across the Metropolitan Court, City Civil Court, Hon'ble High Court, TDSAT (Telecom Dispute Settlement Tribunal), and the Hon'ble Supreme Court. The Appellant further asserts that Respondent No. 1 was a persistent and deceitful litigant, forcing the Appellant to defend multiple Notices of Motion and Appeals causing the delay in moving the Application for amendment.

7) This present Chamber Summons (No. 700 of 2024) was filed seeking amendment of Plaint to incorporate the above events occurring 2006 onwards, including a certified copy of the Appeal from Order St. No. 22093 of 2008, which contains various exhibits, affidavits and alibi material relied upon by the Appellant, various interim orders and the Hon'ble Supreme Court's order dated December 13, 2007, by adding paragraphs 42 to 53 and Sub-paragraphs (A) to (OO).

8) On the other hand, the Learned Counsel for the Respondent No. 1 (B) opposed the said Chamber Summons on the ground that it

is not maintainable for the following reasons:

- a) The Chamber Summons is not in the prescribed format, as the annexed schedule fails to contain the specific text of the purported amendments.
 - b) Issues having been framed on December 11, 2019, the trial had commenced, and therefore, the Chamber Summons filed thereafter is barred by the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC).
 - c) The facts sought to be pleaded were within the Plaintiff's knowledge prior to the institution of the suit and the proposed amendment is therefore an "afterthought" intended to fill lacunae in the original pleadings.
- 9) The learned Counsel for the Respondents also highlighted that the Appellant had filed an application for framing additional issues which came to be rejected on 28th February 2024, and that the present Chamber Summons is a reactionary measure following the rejection of the said application filed with the sole object of delaying and derailing the trial proceedings.
- 10) Having heard the Appellant in person and the Advocate for Respondent No.1 (b) and upon perusing the records, I have arrived at the following conclusions.

11) Order VI Rule 17 CPC, as is well-known, pertains to the amendment of pleadings in a civil suit. It reads as under:-

“17. 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.”

12) The proviso to Order VI Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after commencement of trial, unless the court is satisfied that despite due diligence, the party could not have raised the matter earlier. The proviso, therefore curtails the otherwise wide discretion of the Court. The burden thus lies on the party seeking amendment to demonstrate due diligence. An amendment cannot be claimed as a matter of right, and although amendments are ordinarily permitted to avoid multiplicity of proceedings, the Court must consider whether the application is bona fide or malafide and whether it causes such

prejudice to the opposite party as cannot be compensated in monetary terms.

13) In the present case, the Appellant has been unable to explain the delay from the year 2008 (being the date of filing of the appeal) until 2024 (being date of filing of the chamber summons) which is wholly inexcusable. The Appellant's contention that he is a party-in-person who has been wronged and dragged in a string of litigations, does not entitle him to relief by disregarding the principles of procedural law.

14) Further, the Appellant has neither demonstrated how the documents now sought to be introduced are relevant for the final adjudication of the suit, nor how it does not expand the scope of the pleadings as originally filed.

15) In *M. Revanna vs Anjanamma (Dead) by Legal Representatives & Others*¹: The Supreme Court has held that a leave to amend may be refused where the amendment introduces a wholly new inconsistent case or challenges the fundamental character of the suit.

16) In *Vidyabai & Ors. vs Padmalatha & Anr*²: the Supreme Court has held that the Order VI Rule 17 CPC is couched in

1. 2019:SCC 4 332.
2. (2009) SCC 2 409

mandatory terms and that unless the jurisdictional fact contemplated by the proviso is satisfied, the court lacks jurisdiction to allow the amendment.

17) In the present case, from a perusal of the order, it is evident that the Respondents had not been able to fulfil the said precondition.

18) In *Salem Advocate Bar Association, T.N. v. Union of India*³: the Supreme Court held that an amendment should not 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.

19) In the present case too, the Appellant has failed to satisfy this Court as to why the proposed amendments were not sought earlier, particularly when the facts were admittedly within his knowledge.

20) In my view, allowing the amendment at this stage would cause serious prejudice to the Respondents, necessitate re-appreciation of evidence and require further cross-examination. It would also amount to permitting the Appellant to improve his case filing lacunae in the evidence that has come on record which is impermissible.

3. (2005) SCC 6 344

21) The Courts have consistently held that once trial has commenced, the proviso to Order VI Rule 17 CPC must be applied with full rigour, and amendments sought thereafter, particularly when facts were within the knowledge of the party and evidence has already been recorded, are impermissible as they amount to reopening the trial and filling lacunae. The present case squarely falls within the said prohibition.

22) Adverting to the facts of the present case the application under Order VI Rule 17 CPC has been moved at a highly belated stage i.e. after the commencement of the trial, when most of the plaintiff's witnesses have already been examined. The Appellant has miserably failed to satisfy this Court as to why the proposed amendments were not sought earlier, particularly when the said facts were already in the knowledge of Appellant. The reliance placed on *Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon*⁴ by the Appellant will not assist him as the facts of that case were different from the present one. In that case the Plaintiff was carrying on the business as a commission agent and was competent to sue either in his own name as the manager of the Hindu Undivided Family or in the name of the family business. The suit filed was based on misdescription and bonafide mistake and on that ground the Plaintiff

4. (1969) 1 SCC 869

was being non-suited by the Courts. The Apex Court therefore held that there is no rule that unless in the application for amendment of the plaint it is expressly averred that the error, omission or misdescription is due to a bonafide mistake, the Court has no power to grant leave to amend the plaint. The Apex Court held that undoubtedly, the power to grant an amendment of pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. The facts of the present case (as narrated above) are entirely different.

23) Considering the principles set out in *Abdul Rehman & Anr. Vs. Mohammad Ruldu & Ors.*⁵ and *Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors.*⁶ I am of the view in that this is not a case where the Appellant can say that despite due diligence the material now sought to be brought on record, could not have been brought earlier. It also cannot be said that, if these amendments brought in at this stage would not cause injustice and prejudice to the other side as bringing in fresh material would necessitate leading further evidence and cross examination and thereby permit filling the lacunae in the evidence already recorded. Thus, allowing any amendment at this stage would be highly prejudicial to the

5. (2012) 11 SCC 341

6. (2009) 10 SCC 84.

Respondents.

24) I am therefore of the view that the Bombay City Civil Court has committed no error in dismissing Chamber Summons 700 of 2024 by its order dated 05th August 2024.

25) Having perused the impugned order, I find it to be well reasoned, clear and not perverse. No case for interference in the order passed by the City Civil Court is made out.

: ORDER :

26) This Appeal from Order accordingly stands dismissed.

(KAMAL KHATA, J.)

Cases Referred:

1. *M. Revanna vs Anjanamma (Dead) by Legal Representatives & Others 2019:SCC 4 332.*
2. *Vidyabai & Ors. vs Padmalatha & Anr (2009) SCC 2 409.*
3. *Salem Advocate Bar Association, T.N. v. Union of India (2005) SCC 6 344.*
4. *Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon (1969) 1 SCC 869.*
5. *Abdul Rehman & Anr. Vs. Mohammad Ruldu & Ors. (2012) 11 SCC 341.*
6. *Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors. (2009) 10 SCC 84.*