Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9187 OF 2025

M/s. Swagat Caterers & Ors. …Petitioners

Versus

Industrial Leather Co. Pvt Ltd. & Anr. …Respondents

Mr. Surel Shah, Senior Advocate a/w Aneesa Cheema, Smita Durve & Yukta P. i/b Arshil Shah, for the Petitioners.

Mr. G. S. Godbole, Senior Advocate a/w Pooja Thakkar, Gaurav Sawant, Roshan Kaniganda & Afreen K. K., for the Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATED: 09 FEBRUARY 2026

JUDGMENT:

1. Heard Mr. Shah, learned Senior Counsel appearing for the Petitioners and Mr. Godbole, learned Senior Counsel appearing for the Respondents.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Order dated 11th October 2024 passed by the learned Judge of the Small Causes Court at Mumbai below Exhibit-65 in RAE Suit No.1077/1744 of 2012 as confirmed by the Order dated 5th April 2025 passed by the learned Appellate Bench of the Small Causes Court at Mumbai in Revision Application No.90 of 2025 in Exhibit-65 in RAE Suit No.1744 of 2012. The said Application bearing Exhibit-65 was filed seeking amendment in the Plaint as per the Schedule. The said Application was rejected on the ground that trial has commenced and the Petitioners i.e. Plaintiffs failed to establish the due diligence test. The Revisional Court also dismissed the Revision on the same grounds.

3. It is the contention of Mr. Shah, learned Senior Counsel for the Petitioners i.e. Plaintiffs-Landlords that Respondent No.1 i.e. Defendant No.1 - Industrial Leather Co. Pvt. Ltd.-the Original Tenants had sublet the suit premises to Respondent No.2-Magic Eye Pvt. Ltd. He submitted that as per the law laid down by the Supreme Court in the decision of ***Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar*** [1] as far as the ground of subletting is concerned, initial burden on the landlord would stand discharged by adducing *prima facie* proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted. He submitted that in the evidence of the Petitioners/Plaintiffs, it is well established that Defendant No.2 i.e. Respondent No.2 is in possession of the suit premises. He submits that although Amendment Application has been filed when the evidence was over and the matter was at the stage of arguments, however, the documents which have been sought to be produced by proposed amendment i.e. the Income Tax Returns of Respondent No.2/Defendant No.2, show that the rent has been paid to Respondent No.1/Defendant

1 (2010) 1 SCC 217

No.1. He submits that therefore the documents sought to be produced are very important for the purpose of proving the ground of subletting and, therefore, after getting knowledge about the said documents, an Application was filed on 10th November 2023 under Order VI Rule 17 of the *Code of Civil Procedure, 1908* ("**CPC**") (Pages 112-119). He submits that in the common written statement which has been filed by Defendant Nos.1 and 2, it is specifically denied that Defendant No.1 unlawfully sublet or parted with possession or inducted or assigned its interest to Defendant No.2. He pointed out the Reply to the Amendment Application bearing Exhibit-65. In the said Reply, it is specifically admitted that Defendant No.2 has been occupying the suit premises. He pointed out Paragraph Nos.5 to 10 of the Application seeking Amendment of the Plaint and submitted that in the facts and circumstances, due diligence has been shown. He relied on the decisions of the Supreme Court in ***Chander Kanta Bansal v. Rajinder Singh Anand*** [2] and ***Abdul Rehman v. Mohd. Ruldu*** [3]. He, therefore, submitted that interference in the impugned Orders is warranted.

4. On the other hand, Mr. Godbole, learned Senior Counsel for the Respondents pointed out the observations in the impugned Order dated 11th October 2024 and the Appellate Courts' Order dated 5th April 2025 and submitted that both the Courts have held that the

2 (2008) 5 SCC 117
3 (2012) 11 SCC 341

Petitioners/Plaintiffs have failed to prove due diligence and, therefore, interference in the impugned Orders is not warranted under Article 227 of the Constitution of India. He relied on the decision of the Supreme Court in ***J. Samuel v. Gattu Mahesh*** [4], more particularly on Paragraph Nos.19 and 20 of the same. He submitted that due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. He submitted that diligent efforts to get information is required to be proved. He submitted that even perusal of Exhibit-65 Application clearly shows that no such efforts were made earlier. He submitted that due diligence as contemplated under the proviso to Order VI Rule 17 of CPC has not been pleaded and no material in support of the same has been produced. He, therefore, submitted that no interference in the impugned Orders is warranted.

5. Before considering the rival contentions, it is necessary to set out certain factual aspects:

i. The Plaintiffs i.e. M/s. Swagat Caterers, a partnership firm registered under the *Indian Partnership Act, 1932*, and the partners of said partnership firm filed RAE Suit No.1077/1744 of 2012 on the ground of subletting and change of user. The relevant portion of the Plaint is in Paragraph Nos.3 and 4, which reads as under :-

> "*3. The Plaintiffs state that the Defendants are sought to be ejected from the suit premises on the grounds that*

4 (2012) 2 SCC 300

> ***Defendants No.1 have unlawfully sublet and/or parted with possession and/or inducted and/or assigned its interest in favour of Defendant No.2 without the consent and knowledge of the Plaintiffs and in breach of the provisions of Maharashtra Rent Control Act, 1999****.*
>
> *4.* ***The Plaintiffs state that at present the Defendant No.2 is in exclusive use, occupation, possession and enjoyment of the suit premises and carrying on its business.*** *The Plaintiffs do not have the present address of Defendant No.1 and therefore filing the present suit against the Defendant No.1 at the address of the suit premises being the last known address of Defendant No.1.*"
>
> (Emphasis added)

ii. Thus, the Plaintiffs have specifically set out the case that Defendant No.2 is in exclusive use, occupation, possession and enjoyment of the suit premises and carrying on its business and that the Defendant No.1 have unlawfully sublet and/or parted with possession and/or inducted and/or assigned its interest in favour of Defendant No.2 without the consent and knowledge of the Plaintiffs and in breach of the provisions of the *Maharashtra Rent Control Act, 1999* ("**Rent Act**").

iii. It is relevant to note the common written statement which has been filed by Defendant Nos.1 and 2. The relevant Paragraphs are Paragraph Nos.8 and 9, which read as under:

> "*8. With reference to para 3 of the plaint* ***the defendant deny that the defendant No.1 have unlawfully sublet or parted with possession or inducted or assigned its interest to defendant No.1 doing so without the consent or knowledge of***

> ***Plaintiff or in breach of Maharashtra Rent Control Act does not arise****. The defendants say that the defendant No.1 is in possession of suit premises and false allegation is made of defendant No.1 having sublet, parted with possession, inducted or assigned suit premises to defendant No.2 without making any inquiry.*
>
> *9. With reference to para 4 of the Plaintiff,* ***the defendants deny that at present the defendant No.2 is in exclusive use, occupation, possession or enjoyment of the suit premises as falsely alleged. The defendants say that the business of defendant No.1 is carried so from the suit premises, by its Director who is also Director of defendant No.2****.*"

6. Thus, it is specifically denied by the Defendants that Defendant No.1 has unlawfully sublet or parted with possession or inducted or assigned its interest to Defendant No.2, without the consent or knowledge of Plaintiff or in breach of the Rent Act and Defendant No.1 is in possession of the suit premises and the allegation that Defendant No.2 is in possession, is a false allegation.

7. The Defendants have come up with a specific case that Defendant No.1 is in exclusive possession of the suit premises and Defendant No.2 is not in possession of the suit premises. The evidence of both the parties are in consonance with the pleadings.

8. However, at this stage, it is required to note the decision of the Supreme Court in ***Celina Coelho*** (supra), wherein, in Paragraph No.25, the Supreme Court has summarized the legal position concerning the burden of proof regarding subletting. The said Paragraph No.25 reads as under:

"***25.*** *The legal position that emerges from the aforesaid decisions can be summarised thus:*

(i) ***In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.***

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(iii) The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

(iv) If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

(v) ***Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.***

(vi) ***In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in***

> ***exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted.***"

(Emphasis added)

9. Clause Nos.(v) and (vi) of Paragraph No.25 are very relevant. Thus, what the Supreme Court has held that initial burden of proving subletting is on the landlord but once he is able to establish that a third party is in exclusive possession of the suit premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that the tenant continues to hold legal possession in tenancy premises. It is specifically observed by the Supreme Court that initial burden lying on the landlord would stand discharged by adducing *prima facie* proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of subletting may then be raised and would amount to proof unless rebutted.

10. It is the submission of Mr. Shah, learned Senior Counsel for the Petitioners/Plaintiffs that in the evidence initial burden is adequately discharged, as they adduced evidence to the effect that Defendant No.2 is in exclusive possession of the suit premises. However, Mr. Godbole, learned Senior Counsel denies the said contention.

11. In any case, the above settled legal possession regarding burden of proof when the ground of eviction is subletting, is also one of the factor to be taken into consideration while considering the Amendment Application of the nature of which the Plaintiff has filed.

12. By the Amendment Application, what is sought to be produced on record is the Order dated 15th April 2011 passed by the Income Tax Appellate Tribunal, Mumbai Benches "SMC", Mumbai. Paragraph Nos.2 and 9 of the said Order are relevant, which read as under :-

> "*2. Facts of the case, in brief, are that the AO during the course of assessment proceedings noted that the* ***assessee company has earned compensation and business service charges, totalling to ₹.3 lacs in consideration of allowing usage of premises and rendering business services to M/s. Magic Eye Pvt. Ltd.*** *From the profit and loss account for the year ending 31st March, 2007, the AO noted that the only receipt credited therein is service charges and compensation received of ₹.3 lacs against which the assessee company has claimed various expenses and claimed loss of ₹.66,154/-.* ***On being, questioned by the AO to explain as to why the compensation of ₹.1,20,000/- and business charges of ₹.1,80,000/- should not be taxed as "Income from house property", the assessee submitted that he is not the owner of the premises and is only a tenant paying monthly rent of ₹.451/- to the owner Swagat Caterers.*** *With regard to business charges of ₹.1,80,000/-, it was submitted that this was received for rendering various facilities and amenities to the client.*"

> "*9. In my opinion, the alternate contention of the assessee appears to be acceptable. Therefore,* ***I direct the AO to treat compensation of ₹.1,20,000/- as "Rental Income" and the balance amount of ₹.1,80,000/- to be treated as "Business Income****." The AO is directed to allow only the expenses attributable to the business service charges. I hold and direct accordingly. The ground raised by the assessee is accordingly, partly allowed.*"

(Emphasis added)

13. Thus, what the Income Tax Appellate Tribunal has observed that the assessee i.e. Respondent No.1/Defendant No.1 submitted that he is not the owner of the premises and is only a tenant paying monthly rent of Rs.451/- to the owner—Swagat Caterers and with regard to business charges of Rs.1,80,000/-, it was submitted that this was received for rendering various facilities and amenities to the client. In view of this, the Income Tax Appellate Tribunal has directed the Assessing Officer to treat compensation of Rs.1,20,000/- as rental income and the balance amount of Rs.1,80,000/- to be treated as business income.

14. In view of the Order dated 15th April 2011 passed by the Income Tax Appellate Tribunal, Mumbai, it is relevant to note the Schedule of the Amendment which reads as under :-

"***SCHEDULE***

1. Add the following Paragraphs after Paragraph No. 12 of the Plaint:

12(a). The Plaintiffs state that ***Defendant No. 1 i.e. Industrial Leather Co. Pvt. Limited has sub-letted the Suit Premises to Defendant No. 2 without the prior permission of the Plaintiffs. The Plaintiffs state the in or around October 2023, the Plaintiff No. 2(a) while searching more about the present matter have come across online an Order dated 15th April, 2011 in ITA No. 967/MUM/2011 passed by Learned Officer Shri. R. K. Panda (A.M.), Income Tax Appellate Tribunal, Mumbai Benches "SMC", Mumbai, which clearly records the sub-letting of Suit Premises by Defendant No. 1 to Defendant No. 2****.*

*Hereto annexed and marked as **"Exhibit - B1"** is the copy of the Order dated 15th April, 2011 by the Income Tax Appellate Tribunal.*

12(b). The Paragraph Nos. 2 and 9 of the said Order records as follows:

The Paragraph 2 of the said Order reads as under:

> *"...... the assessee submitted that he is not the owner of the premises and is only a tenant paying monthly rent of Rs. 451/- to the owner Swagat Caterers. With regard to business charges of Rs. 1,80,000/-, it was submitted that this was received for rendering various facilities and amenities to the client...."*

The Paragraph 9 of the said Order reads as under:

> *"...... Therefore, I direct the AO to treat compensation of Rs. 1,20,000/- as "Rental Income" and the Balance Amount of Rs. 1,80,000/- to be treated as "Business Income"........*

*12(c). The Plaintiffs further state that while doing further inquiries regarding the same, **the Plaintiffs came across the Financial Statements of F.Y. 2013-2014, 2014-2015 and 2015-2016 of Defendant No. 1 and Defendant No. 2 and on perusal of the same it has come to the knowledge of the Plaintiffs that Defendant No. 2 is regularly paying rent/compensation to the Defendant No. 1 for the usage and the occupation of the Suit Premises**. In furtherance, the Plaintiffs since the Plaintiffs are the Owners and Landlords of the Suit Premises and the Defendant No. 1 is a mere tenant in respect of the Suit Premises and therefore have no right or power to sub-let the premises to any third party without the prior permission of the Plaintiffs. Hereto annexed and marked as "**Exhibit-B2(Colly)**" are the copies of the Financial Statements for the Financial Year 2013-2014; 2014-2015 and 2015-2016 of Defendant No. 1 and Defendant No. 2. The Plaintiffs crave leave to rely and refer upon the financial* *statements of the other relevant years as and when required before this Hon'ble Court.*

12(d). ***As per the aforesaid documents, Defendant No. 2 has paid Rs. 1,20,000 as Rental Income subsequently increased to Rs. 1,80,000 as service charge to Defendant No. 1 and further a sum of Rs. 1,80,000 as Rental Income and subsequently Rs. 4,20,000 as Service Charge to Defendant No. 1 and which further records that he was charging the same for usage as a business center and facilitating usage of machinery and other amenities by sub-letting the Suit Premises.***

2. In the List of Documents produced by the Plaintiffs, add the following documents:

No.	***Description of document***	***Date, if any which the document bears***	***Page Nos.***
1.	*Rent Receipt*		
2.	*Exhibit-A* *Copy of the letter by Defendant*	*7/2/2012*	
2(a)	*Exhibit-A-1* *Copy of the Reconstituted Deed of Partnership*	*10th July, 2020*	
3.	*Exhibit-B* *Copy of letter by Plaintiff*	*22nd July, 2012*	
3(a)	*Exhibit B-1* *Copy of the Order passed by the Income Tax Appellate Tribunal*	*15th April, 2011*	
3(b)	*Exhibit-B-2(Colly)* *Copies of the Financial Statements for F.Y. 2013-14; 2014-15 and 2015-16 of Defendants*		
4.	*Exhibit-C* *Copy of letter by Defendant*	*3/8/2012*	
5.	*Partnership Deed*	*1st December 2007 and 10th July 2020"*	

15. In view of the above, it is the submission of Mr. Shah, learned Senior Counsel for the Petitioners that these documents which are concerning the Order passed by the Income Tax Appellate Tribunal in the matter of concerning Income Tax Returns of Respondent No.1/Defendant No.1, show that Respondent No.1 is receiving rental income from Respondent No.2 - Magic Eye Pvt. Ltd. and, therefore, it is the submission of Mr. Shah, learned Senior Counsel that the amendment is necessary.

16. In the above background of the matter, it is required to note the stage when the Amendment Application was filed. It is an admitted position that the amendment application was filed at the stage when the evidence of PW-1 has completed and Plaintiff has closed their evidence. Thereafter, Defendant No.1 filed evidence closing *Pursis* at Exhibit-56 and Defendant No.2 filed *Pursis* at Exhibit-57 closing its evidence and the suit was posted for final arguments. At that stage, the Application seeking amendment in the Plaint to bring on record certain pleadings and the above documents was filed. The provisions of Order VI Rule 17 of CPC regarding amendment of pleadings reads as under :-

> "*ORDER VI*
> ***PLEADINGS GENERALLY***
>
> *…*
> *…*
> *…*
> ***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.***"

17. It is specifically provided in the proviso of Order VI Rule 17 of CPC 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.

18. It is an admitted position that, in this particular case, the trial has commenced and almost in fact has reached at the stage of arguments. Therefore, it is necessary that the Petitioners i.e. Plaintiffs have to prove due diligence. The Supreme Court in the decision of ***Chander Kanta Bansal*** (supra) has discussed the parameters of due diligence. The relevant discussion is in Paragraph Nos.15 to 17, which reads as under :-

> "***15.*** *As discussed above, though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that* ***after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application****.*
>
> ***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.***
>
> *17.* ***It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial.*** *As mentioned earlier, in the case on hand, the application itself came to be filed only after 18 years and till the death of her first son Sunit Gupta, Chartered Accountant, had not taken any step about the so-called agreement. Even after his death in the year 1998, the petition was filed only in 2004. The explanation offered by the defendant cannot be accepted since she did not mention anything when she was examined as witness.*"
>
> (Emphasis added)

19. Thus, what the Supreme Court has held that "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.

20. The Supreme Court in the decision of ***Abdul Rehman*** (supra), has again discussed the scope of proviso. The relevant discussion is in Paragraph Nos.10 and 11, which reads as under :-

> "***10.*** *Before considering the factual details and the materials placed by the appellants praying for amendment of their plaint, it is useful to refer Order 6 Rule 17 which is as under:*

> *"**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."*

It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. *The courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial.* ***If such application is made after the commencement of the trial, in that event, the court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.***

11. *The original provision was deleted by Amendment Act 46 of 1999, however, 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 above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that 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. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice****. The main purpose of allowing the amendment is to minimise the litigation and the*

> *plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in J. Samuel v. Gattu Mahesh [(2012) 2 SCC 300 : (2012) 1 SCC (Civ) 801] and Rameshkumar Agarwal v. Rajmala Exports (P) Ltd. [(2012) 5 SCC 337 : (2012) 3 SCC (Civ) 92] Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.*"

Thus, what the Supreme Court has held that the object of rule is that 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. It has been held that power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimise the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case.

21. Mr. Godbole, learned Senior Counsel has relied on the decision of the Supreme Court in ***J. Samuel*** (supra). The relevant discussion is in Paragraph Nos.19 and 20, which reads as under :-

> "***19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief.*** *An advocate representing someone must engage in due diligence*

> *to determine that the representations made are factually accurate and sufficient.* ***The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.***
>
> ***20. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.***"
>
> (Emphasis added)

Thus, what the Supreme Court has held that due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial. The requirement of due diligence cannot be dispensed with the term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.

22. On analysis of the decisions in ***Chander Kanta Bansal*** (supra), ***Abdul Rehman*** (supra) and ***J. Samuel*** (supra), the following principles can be culled out from the same :-

i. It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them.

ii. The object of the rule is that 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. It is settled legal position that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice.

iii. However, application seeking amendment is made after the commencement of the trial, in that event, the court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

iv. Application for amendment preferred after the commencement of the trial can be allowed, 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 as provided in proviso to Order VI Rule 17 of CPC. The said proviso, to some extent, curtails absolute discretion to allow amendment at any stage. If application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier.

v. The word “diligence” means careful and persistent application or effort. “Diligent” means careful and steady 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.

vi. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with.

23. Thus, on the touchstone of above parameters, it is required to consider whether the Petitioner/Plaintiff has shown due diligence. In the Amendment Application bearing Exhibit-65 what the Plaintiff No.2- Priyam Manjunath Pai has said that he was newly inducted as a Partner in Plaintiff No.1 i.e. M/s. Swagat Caterers and was keen to know more about the functioning of the Partnership Firm i.e. M/s. Swagat Caterers. He came to know about the pendency of the suit against the Defendants/Respondents. He researched about the Defendants and their relevant details and while doing so he came across online an Order dated 15th April 2011 passed by the Income Tax Appellate Tribunal, Mumbai passed against Defendant No.1. He stated that said Order specifically directs the Assessing Officer to treat compensation of Rs.1,20,000/- as rental income and the same was regularly paid by Defendant No.2 to Defendant No.1 for the usage and occupation of the suit premises and, therefore, the same is very relevant to show the illegal sub-letting. He has also stated that on perusal of the Financial Statements for the years 2013-2014, 2014-2015 and 2015-2016 of Defendant No.1 and Defendant No.2, it is clear that Defendant No.1 is in regular receipt of the rent from Defendant No.2 for the usage and the occupation of the suit premises.

24. It is clear that "Due Diligence" is a flexible concept and depends on facts and circumstances of each particular case. There cannot be any straitjacket formula prescribed for determination of "Due Diligence".

25. As held by the Supreme Court in the case of ***Chander Kanta Bansal*** (supra), 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.

26. In the present case, the documents which are being brought on record by the Amendment of the Plaint are admittedly the documents of Defendant No.1 and Defendant No.2. Those documents, as per the contention of the Petitioners, show that Defendant No.1 received regular rental income from Defendant No.2 for use and occupation of the suit premises.

27. Thus, while considering whether the Petitioners have made case of due diligence, the most important factor required to be taken into consideration is that the documents sought to be produced are not of the Plaintiffs and that the documents are of Defendant No.1 and Defendant No.2.

28. In fact, the Supreme Court in the decision of ***Celina Coelho Pereira*** (supra), has specifically held that, as far as the ground of subletting is concerned, initial burden lying on the landlord would stand discharged by adducing *prima facie* proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted.

29. Thus, the case of the Petitioners is that the burden is on Defendant No.1 to prove that there is no subletting, as according to the Petitioners the initial burden has been discharged by showing that the Defendant No.2 is in exclusive possession of the premises in question.

30. Thus, due diligence has to be examined in view of the facts and circumstances of each particular case. There cannot be a straitjacket formula to prove due diligence. Admittedly, the documents to be brought on record are belonging to the Defendant No.1 and the Defendant No.2. In fact, it is the duty of every litigant to place all the documents before the Court which are relevant. In this particular case, in fact the burden is on the Respondents/Defendants to disprove the sub-letting. Thus, in fact it was the duty of the Respondents to bring on record those documents. Thus, in the facts and circumstances, it has to be held that the Petitioners/Plaintiffs have established due diligence as required by proviso under Order VI Rule 17 of CPC.

31. Thus, for the above reasons, the impugned Order dated 11th October 2024 passed by the learned Judge of the Small Causes Court at

Mumbai, below Exhibit-65 in RAE Suit No.1077/1744 of 2012 as confirmed by the Revisional Court's Order dated 5th April 2025 passed by the learned Appellate Bench of the Small Causes Court at Mumbai, are quashed and set aside.

32. The said amendment Application bearing Exhibit-65 filed in RAE Suit No.1077/1744 of 2012 is allowed in terms of prayer clause (a).

33. Amendment to be carried out and copy of amended Plaint to be served on the Respondents within a period of 8 weeks from today.

34. The Respondents are at liberty to file Additional Written Statement to the amended Plaint within a period of 8 weeks thereafter.

35. The learned Trial Court to proceed with the trial thereafter in accordance with law.

36. At this stage, Mr. Godbole, learned Senior Counsel, seeks stay of this Order. However, as the documents which are sought to be brought on record by proposed amendment are of the Respondents, the said request is rejected.

[MADHAV J. JAMDAR, J.]