

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Writ Petition No. 9256/2026

CNR: RJHC010388502026 | URN: CW / 17032U / 2026

Ishwar Chand Jangid S/o Late Shri Mangi Lal, Aged About 66
Years, Resident Of Jhalra Talab, Maliyon Ka Mohalla, Makrana,
District Deedwana-Kuchaman (Raj.)

-----Petitioner

Versus

Manoj Kumar Sharma S/o Shri Kishan Sharma, Resident Of
Vasundhara Nagar, Makrana, District Deedwana-Kuchaman (Raj.)

-----Respondent

For Petitioner(s) : Mr. Narendra Thanvi

For Respondent(s) : Mr. D.L.R. Vyas

HON'BLE MR. JUSTICE SANJEET PUROHIT**Order**

- 1. Date of conclusion of arguments : 09.09.2026**
2. Date on which judgment was reserved : 09.09.2026
**3. Whether the full judgment or only the
operative part is pronounced : Full Judgment**
4. Date of pronouncement : 30.09.2026

Reportable

1. Present writ petition has been filed challenging order dated 19.03.2026 passed by learned Additional District Judge, Makrana ("*learned Trial Court*"), whereby learned Trial Court allowed the application preferred by respondent-plaintiff under Order VI Rule 17 read with Section 151 CPC and permitted amendment of the plaint by incorporating a prayer for recovery of earnest money / advance amount in the suit for specific performance.

2. While elucidating the facts of present case, learned counsel for petitioner stated that a suit was instituted seeking specific



performance of agreement dated 17.04.2019, whereby the parties had agreed that respondent-plaintiff would supply mineral stone to petitioner-defendant at the rate mutually settled between them. It was pleaded in the plaint that despite execution of the agreement and receipt of the advance amount, the agreed quantity of mineral stone was not supplied. Consequently, the suit for specific performance was instituted along with a prayer for permanent injunction for restraining petitioner-defendant from supplying said mineral stone to any other person.

2.1 The written statement had already been filed, issues had been framed, and the matter had reached the stage of plaintiff's evidence when the application under Order VI Rule 17 CPC was filed seeking amendment of the plaint in relation to the advance amount allegedly paid by respondent-plaintiff. By way of proposed amendment, an alternative relief for recovery of said amount from petitioner-defendant was also sought to be incorporated.

2.2 Said application was opposed on behalf of petitioner on the ground that the proposed amendment was barred by the proviso to Order VI Rule 17 CPC. However, vide impugned order dated 19.03.2026, learned Trial Court allowed the application and permitted incorporation of proposed amendment in the plaint.

3. Assailing said order dated 19.03.2026, learned counsel for petitioner submitted that learned Trial Court failed to appreciate that the amendment sought was neither *bona fide* nor liable to be permitted at such a belated stage, when the matter had already reached the stage of plaintiff's evidence. It was contended that, in view of the proviso to Order VI Rule 17 CPC, once the trial has



commenced, amendment of pleadings cannot be permitted unless the Court is satisfied that, despite due diligence, the party could not have raised the matter before commencement of the trial.

3.1 It was further submitted that the application for amendment was bereft of any averment explaining due diligence or disclosing any sufficient cause for seeking the amendment at such a stage. According to learned counsel for the petitioner, the application, therefore, deserved to be rejected by learned Trial Court.

3.2 It was also submitted that, at the time of institution of the suit, respondent-plaintiff had sought only a decree for specific performance and permanent injunction. However, by way of proposed amendment, a prayer for recovery of money was also sought to be incorporated, which, according to petitioner, would materially alter the nature and character of the suit. It was, therefore, contended that learned Trial Court erred in permitting such an amendment.

3.3 Learned counsel for the petitioner placed reliance on various authoritative pronouncements of the Hon'ble Supreme Court as well as this Court to contend that, in the absence of due diligence, an amendment of pleadings at a belated stage, particularly after commencement of trial, cannot ordinarily be permitted. It was further argued that learned Trial Court erred in its interpretation of Section 22 of the Specific Relief Act, 1963 ("*the Act of 1963*") and that impugned order suffers from a patent error apparent on the face of the record, warranting interference by this Court in exercise of its supervisory jurisdiction. Reliance was placed on the following judgments:



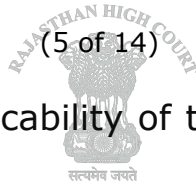


- (i) ***Lutaram v. Smt. Champadevi, 2016 (3) DNJ 1368;***
- (ii) ***M.S. Indian Oil Corporation Limited & Anr. v. Rent Tribunal, Udaipur & Ors., 2016 (2) DNJ 552;*** and
- (iii) ***Champalal v. Amritlal, 2015 AIR CC 1568.***

4. *Per contra*, learned counsel for the respondent submitted that, in view of Section 22 of the Act of 1963, a prayer for refund / recovery of the advance amount may be incorporated by way of amendment at any stage of the proceedings. It was, therefore, contended that learned Trial Court rightly allowed the application under Order VI Rule 17 CPC and permitted the proposed amendment.

4.1 Learned counsel for the respondent further submitted that the amendment sought in the prayer clause would not alter the nature and character of the suit, as the relief of recovery/refund of the amount already paid was sought only as an alternative relief in the event that, notwithstanding proof of the agreement, a decree for specific performance was ultimately declined. It was argued that the original plaint already contained specific averments regarding the advance amount paid by respondent-plaintiff and petitioner's failure to refund the same. Proposed amendment, therefore, did not introduce a new cause of action or set up an altogether new case, but merely sought incorporation of a consequential relief arising from the facts already pleaded in the plaint.

4.2 Distinguishing the judgments relied upon by petitioner, learned counsel for the respondent submitted that said decisions



pertain to the general applicability of the proviso to Order VI Rule 17 CPC, whereas present case is governed by the specific provision contained in Section 22 of the Act of 1963, which expressly permits incorporation of such relief by way of amendment at any stage of the proceedings. In support of his submissions, learned counsel has placed reliance upon judgments of the Hon'ble Supreme Court in **LIC v. Sanjeev Builders Private Limited & Anr., AIR 2022 SC 4256** and **Sushil Kumar Jain v. Manoj Kumar & Anr., AIR (SC) 2544**, as well as the judgment of the Hon'ble Karnataka High Court in **Shri Mohammadrafi & Ors. v. Bandenawz & Ors.**, being Writ Petition No. 108512/2025, decided on 16.12.2025, and judgment of this Court in **Bhawani Singh Shekhawat v. Fanishwar Sharma, 2026 (2) CJ (Civ.)(Raj.) 1222**.

5. Heard learned counsel for the parties and perused the material available on record.

6. A perusal of the plaint reveals that, in paragraph 5 thereof, it was specifically averred that an advance amount of ₹1,19,74,254/- had been paid by respondent-plaintiff, which was duly recorded in the relevant diary, and that the rate of the mineral stone had been mutually settled between the parties in relation to said transaction. Similarly, in paragraph 7 of the plaint, it was averred that aforesaid advance amount remained due as on the date of institution of the suit.

Thus, from the specific averments contained in paragraphs 5 and 7 of the plaint, it is evident that the foundational facts regarding payment of the advance amount and its remaining due





from petitioner-defendant were already part of the original pleadings.

6.1 The principal objection raised on behalf of petitioner is that, once the trial has commenced, no amendment of pleadings can be permitted unless the party seeking such amendment satisfies the requirement of due diligence contemplated by the proviso to Order VI Rule 17 CPC. In this regard, this Court takes note of the fact that the amendment sought by respondent-plaintiff pertains to recovery/refund of the advance amount paid under the agreement in question, a relief specifically envisaged under Section 22 of Act of 1963. The interplay between aforesaid provision and Order VI Rule 17 CPC assumes significance in the present case. For ready reference, the relevant provisions of Section 22 of the Act of 1963 and Order VI Rule 17 CPC are reproduced herein below:

Section 22 of the Specific Relief Act, 1963:

"22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the





proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21."

Order VI Rule 17 CPC:

"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."

6.2 A perusal of Section 22 of the Act of 1963 shows that the provision contains a non-obstante clause and specifically enables the plaintiff to claim such reliefs as are stipulated therein and to which she may be entitled to, by way of amendment at any stage of the proceedings. Said provision operates notwithstanding anything contained in the Code of Civil Procedure and, therefore, has an overriding effect over the general provisions governing amendment of pleadings, including the proviso to Order VI Rule 17 CPC.

6.3 It is also pertinent to note that Specific Relief Act is a special enactment, whereas the Code of Civil Procedure is a general procedural law governing civil proceedings. It is a settled principle of statutory interpretation that, in the event of any inconsistency, a special provision contained in a special statute prevails over a general provision contained in a general law. Therefore, in view of the specific statutory mandate contained in Section 22 permitting





incorporation of the requisite relief by way of amendment at any stage of the proceedings, the objection that such amendment could not have been allowed after commencement of the trial cannot be accepted.

Consequently, having regard to the non obstante clause contained in Section 22 of the Act of 1963, the requirement of establishing due diligence under the proviso to Order VI Rule 17 CPC would not, by itself, operate as a bar to an amendment seeking incorporation of a relief falling within the ambit of Section 22.

6.4 As regards the judgments relied upon by learned counsel for the petitioner, the same pertain to the general applicability of the proviso to Order VI Rule 17 CPC in the context of amendments sought in civil suits. Present case, however, concerns the scope and overriding effect of Section 22 of the Act of 1963, which specifically governs the relief sought to be incorporated by way of amendment.

6.5 The Hon'ble Supreme Court, in **Sanjeev Builders** (supra), has elucidated the principles governing the exercise of discretion by Courts while dealing with applications seeking amendment of pleadings, after taking into consideration the various authoritative pronouncements on the subject. The Hon'ble Supreme Court also considered the proviso to sub-section (5) of Section 21 and the proviso to sub-section (2) of Section 22 of the Act of 1963. The statutory scheme, as emerges from aforesaid provisions, is that where the amendment sought is for inclusion of a relief falling within the ambit of the respective substantive provisions, the



Court is required, in terms of the corresponding proviso, to allow such amendment at any stage of the proceedings.

6.6 The leading pronouncement on the issue involved in the matter at hand is the decision of the Hon'ble Supreme Court in

K.R. Suresh v. R. Poornima & Ors., 2025 SCC Online SC

1014, wherein, while interpreting the non-obstante clause contained in sub-section (1) of Section 22, the Hon'ble Supreme Court has categorically held that said provision has an overriding effect over the provisions of the Code of Civil Procedure, 1908. It has further been held that the use of the expression "shall" in the proviso to sub-section (2) of Section 22 makes it mandatory for the Court to allow an amendment for inclusion of the reliefs contemplated under said provision at any stage of the proceedings. Relevant observations are reproduced hereinbelow: -

"56. The expression "at any stage of the proceeding" has been judicially interpreted to include the appellate stage as well, as affirmed by a catena of High Court decisions. This interpretation entails that that an amendment of the plaint to incorporate a prayer for the alternative relief of refund of earnest money may be sought even during the first appeal from the original decree passed in a suit for specific performance. The non-obstante clause attached to Section 22(1) of the 1963 Act grants it an overriding effect, thereby excluding the operation of the Civil Procedure Code, 1908. Further, the use of the word "shall" in the proviso to Section 22(2) imposes a mandate upon the court to allow the amendment of plaint, as sought by the party, at any stage. [See : Sahida Bibi v. Sk. Golam Muhammad, 1982 SCC OnLine Cal 59; Tarit Bhowmik v. Mukul Day, 2014 SCC OnLine Cal 5361]

...

58. It is thus a settled position of law that the plaint may be amended at any stage of the proceedings to enable the plaintiff to seek an alternative relief, including that of refund of earnest money, and the courts have been vested with wide judicial discretion to permit such amendments..."





6.7 This Court also takes note of the decision of the Hon'ble Karnataka High Court in **Shri Mohammadrafi** (supra), relied upon by learned counsel for the respondent, wherein the Court has illustratively delineated certain categories of cases in which a liberal approach ought to be adopted while considering applications for amendment of pleadings, even where the requirement of due diligence contemplated under the proviso to Order VI Rule 17 CPC has not been satisfied. Upon a harmonious interpretation of the main provision of Order VI Rule 17 CPC and the proviso appended thereto, the Court held that the principles and guidelines governing the exercise of discretion under the main provision do not cease to be relevant merely because the application is made after commencement of trial. Relevant observations in this respect are reproduced hereinbelow: -

"22. Since the original text of Order VI Rule 17 of the Code is retained in the 2002 amendment to the Code, it is apparent that Parliament did not do away with the primary purpose of the rule providing amendment, i.e., to:

- (a) decide the real questions in controversy;*
- (b) avoid multiplicity of litigation.*

23. The principles of liberal construction still apply in those situations where the application seeking amendment of pleading is filed to avoid multiplicity of litigations and to resolve all controversy between the parties, notwithstanding the proviso. However, the proviso cannot be made nugatory; it has a purpose to serve in appropriate cases.

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25. The Court is of the considered view that in the following instances (illustratively and not exhaustively), applications seeking amendment of pleadings can be allowed without the "due diligence test," even if such applications are filed "post-commencement of trial." Applications to:

- (a) – (f)...*





(g) seek relief in the alternative, which is in the nature of a lesser relief than the one already claimed. Example:

In a suit for declaration of exclusive title and injunction, an application seeking the alternative relief of partition.

(h) Seek additional relief or relief ancillary to the main relief when the relief sought by way of amendment is available based on the pleadings already made.

26. In the aforementioned situations (broadly or generally speaking, excluding exceptional cases), in case the application seeking amendment of pleading is rejected on the premise that the applicant has not passed the "due diligence" test, it would cause injustice and would defeat the object of the first (main) part of Order VI Rule 17 of the Code, which aims at minimizing or avoiding multiplicity of litigation and provides for determining real questions in controversy between the parties.

...

29. There is one more angle to hold that every application under Order VI Rule 17 of the Code "post commencement of the trial" need not undergo the due diligence test as contemplated in the proviso. Order VI Rule 17 of the Code was omitted in 1999. It was re-introduced in 2002, albeit with a restrictive proviso. However, re-introduced part still contains the expression "at any stage of the proceedings". Said expression is not replaced by the expression "before commencement of the trial" or any other suitable expression of giving similar meaning.

30. If the parliament really intended to create two different categories of applications seeking amendment of pleadings, one before commencement of trial, and one after commencement of trial, with two different yardsticks for deciding such applications, and rigid test in all applications post commencement of trial, then the Parliament probably would not have retained the expression "at any stage of the proceedings" in main part of Order VI Rule 17 of the Code. However, it is not so done. The expression which enables the Court to permit the amendment of the pleadings "at any stage of the proceedings" is still retained in 2002 amendment. This is one of the reasons to hold that proviso to Order VI Rule 17 of the Code cannot be applied with same rigour to sail through "due diligence" test in every application seeking amendment, post commencement of trial.

31. Thus, the Court is of the view that a plain, grammatical interpretation and strict application of the proviso defeats the very object of the main provision which aims at





avoiding multiplicity of litigation. Such an interpretation cannot be adhered to in interpreting the proviso when the proviso has a limited role to play considering the object behind the proviso and the purpose of the main provision.

32. Moreover, Order VI Rule 17 of the Code is procedural law. It is a settled principle that procedural law has to be applied to serve the cause of justice, and that applies more rigorously to Order VI Rule 17 given the intent behind the first part of Order VI Rule 17, which still retains the expression "at any stage of the proceedings."

33. It is again a settled position of law, that amendment is permissible (in deserving cases) even in appellate stage. This again supports the view that the proviso has a limited role to play, when the amendment is sought post commencement of trial really to avoid multiplicity of litigation and resolve all the controversy between the parties connected to the lis."

7. In view of the authoritative position of law enunciated by the Hon'ble Supreme Court in **K.R. Suresh** (supra) and upon an examination of the statutory scheme of Section 22 of the Act of 1963, in the facts of the present case, it was mandatory for the Court to allow the amendment sought for incorporation of the alternative relief for refund of the advance amount / earnest money. Furthermore, even when tested against the principles laid down by the Hon'ble Karnataka High Court in **Shri Mohammadrafi** (supra), the proposed amendment falls squarely within the illustrative categories where a liberal approach is warranted. The foundational averments regarding the payment of the advance amount and its non-refund were already forming part of the original plaint, and the amendment was sought merely to introduce the alternative relief arising out of the very same transaction. In such circumstances, a hyper-technical application of the due diligence requirement under the proviso cannot be permitted to defeat the overriding objective of Order VI Rule 17



CPC, namely, to determine the real questions in controversy between the parties and prevent multiplicity of proceedings. Learned Trial Court, therefore, committed no error or illegality in exercising its judicial discretion to allow the amendment.

8. It is a trite law that the power of superintendence vested in High Courts under Article 227 of the Constitution of India must be exercised most sparingly and only in appropriate cases to keep subordinate courts and tribunals within the bounds of their authority. The High Court does not assume the role of an appellate forum, re-appreciating evidence or substituting its view for that of the inferior court, but confines interference to instances of patent perversity, grave dereliction of duty, and flagrant abuse of fundamental principles of law or justice, or jurisdictional overreach occasioning manifest injustice. Burdening this judgment with copious quotes from a catena of authoritative precedents such as **Waryam Singh v. Amarnath (1954) 1 SCC 51, Shalini Shyamsunder Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329, Garment Craft v. Prakash Chand Goel, (2022) 4 SCC 181** would be futile, as the settled jurisprudential position is beyond cavil.

9. In the present case, learned counsel for the petitioner has failed to demonstrate any perversity, manifest illegality, jurisdictional infirmity, or error apparent on the face of the record in impugned order passed by learned Trial Court. This Court also does not find any manifest injustice warranting interference in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.





[2026:RJ-JD:45424]



[CW-9256/2026]

10. Accordingly, the writ petition, being devoid of merit, is hereby **dismissed**.

11. Stay application and all other pending applications, if any, also stand disposed of.

(SANJEET PUROHIT),J



20/Shashi kant