

The law on “due diligence” developed till this date is summarized as under :

- (a) “Due diligence” means careful and persistent application and effort. It means the diligence as a prudent man would exercise in the conduct of his own affairs. Unless the party takes prompt steps, mere action cannot be accepted after the commencement of the trial. The due diligence determines the scope of party’s constructive knowledge of the claim. It is a kind of reasonable investigation, which is necessary before claiming the relief.
- (b) The due diligence is distinct from ignorance. In spite of knowledge, ignorance by a party or an Advocate cannot be a matter of due diligence. The neglect to perform an action, which one has an obligation to do, cannot be called as a mistake.
- (c) The degree of prejudice to the other side by an amendment after the commencement of the trial is greater than one at pre-trial stage.
- (d) Without recording finding on the question of due diligence, the Court shall not get jurisdiction either to allow or disallow an amendment in the pleadings after the commencement of the trial.
- (e) The Court while allowing an amendment must record a finding that in spite of due diligence, the party could not have raised the matter before the commencement of the trial or that the events sought to be brought on record by way of an amendment have occurred subsequent to the commencement of trial.
- (f) The facts and grounds in the application for amendment must be clearly stated to bring out a case that the delay caused was beyond the control and diligence of the party proposing amendment.
- (g) Where a party had acted with due diligence or not, would depend upon the facts and circumstances of the case and no hard and fast rule or strait-jacket formula can be laid down.

Walchandnagar Industries Limited vrs. Indraprashta Developers and others, on 25th September, 2013 (Bom.)