

CS- 895/17

M/s Affay Parenterals vs. M/s Medley Pharmaceuticals Ltd.

06.07.2019

Present: Sh. Sumit Rajput, Counsel for plaintiff alongwith
AR.

Sh. P.K. Sharma, Counsel for defendant.

Matter was fixed for payment of cost, replication, DAD, framing of issues alongwith arguments on application under Order 7 Rule 11 CPC.

Arguments heard on behalf of both the parties on the pending application under Order 7 Rule 11 CPC.

Ld. counsel for defendant submits that the plaint was not supported by the documents with regard to registration of partnership firm in this suit which is a mandatory requirement under Section 69 (2) of the Indian Partnership Act. Therefore, the plaint is liable to be rejected.

Per contra, ld. counsel for plaintiff submits that it is the settled law that at the stage of Order 7 Rule 11 CPC, only the plaint has to be seen and the same is to be assumed as correct on its face value. It is further submitted on behalf of plaintiff that the requisite documents qua the registration of the partnership firm were furnished alongwith the reply to the application under Order 7 Rule 11 CPC.

It is a settled law that only the averment has to be seen for deciding the application under Order 7 Rule 11 CPC. Moreover, the question as to whether the firm is registered or not is a mixed question of law and fact which requires trial.

Therefore, considering the above discussion, the plaint cannot be rejected at the stage and the application under Order 7 Rule 11 CPC moved by the defendant is hereby dismissed.

Put up for payment of previous cost on behalf of both the parties, for replication, if any, DAD and framing of issues for 21.08.2019. Parties to appear in person in case there is a possibility of settlement.

(Vineet Kumar)
Additional District Judge-01
Karkardooma, Delhi/06.07.2019