

Spl.C.S. No.73/2014
Prfull Agency-Vs-Medley Pharma

Order below Exh-48

1- This is an application for rejection of plaint under Order VII Rule 11(d) of Code of Civil Procedure (hereinafter referred to as C.P.C.) filed by defendant.

As per the contention of defendant in para nos.1 to 3 in written statement, objection has been taken for conducting the suit and accordingly issue no.3 is framed in respect of maintainability of suit. Issue no.3 covers the issue regarding Order VII Rule 11(d) of C.P.C. which goes to the root of the case and no evidence is required to be recorded for deciding the maintainability of the suit under Order 30 of C.P.C. The plaintiff has filed the suit for damages and has claimed interest @18% p.a. from the date of suit till the decision of suit. No interest is award-able on the amount of damages and interest can be claimed only if damages are settled. Therefore, this point also goes to the root of the matter. Accordingly, it is prayed that the application may kindly be allowed.

3- To this application, the plaintiff filed say at Exh-50. It is submitted that the application is devoid of merit and it is filed only

with the intention to delay the matter. The suit has been posted for cross-examination of plaintiff. The application has been filed after the span of three years of the appearance of defendant. The allegation made in the application are incorrect. Therefore, it is prayed that application may kindly be rejected.

4- I heard the submission advanced by both the Learned Counsels. Learned counsel for defendant submitted that, registration number of the firm is not shown in the document. Another partner of the firm has not signed the plaint. As per section 69(2) of Indian Partnership Act and Order XXX Rule-1 the suit is not maintainable and plaint is liable to be rejected.

On the other hand, Learned Counsel for plaintiff submitted that, para 3 and 4 of the application is in respect of maintainability of the suit. The application is filed after span of three years of filing the suit. Application itself is barred by limitation. It is filed only with the intention of delay and therefore it is prayed that application be rejected with heavy cost.

5- It is the contention of defendant that, the suit is filed by one partner and the same is not signed by another partner. Therefore, as per Section 69(2) of Partnership Act and Order VII Rule 11(d) of

C.P.C. the plaint is liable to be rejected. The issue of maintainability of the suit can be decided without going into the merit of the case.

The scope and ambit of provision of Rule 1 and 2 of Order XXX of C.P.C. is different from the provisions of Section 69(2) of the Partnership Act. As per Section 69(2) in order that the suit is validly instituted by or on behalf of the firm against any third party two conditions must be fulfilled (i) The firm is registered and (ii) The persons suing are or have been shown in the Register of Firms, as partners in the firm. In the case in hand, the partnership firm is registered as per the documents filed on behalf of plaintiff. At the time of filing of the suit plaintiff Deepesh was partner in the firm as appears from the partnership deed filed by plaintiff on record. It means that he is shown as a partner in the Register of Firms on the date when the suit was instituted. Therefore, admittedly plaintiff was partner on the date of institution of the suit and therefore bar u/sec. 69(2) cannot be applied.

6- Order XXX deals with suits by or against firms and persons carrying on business in names other than their own. Sub-rule(1) of Rule 1 of Order XXX enables any two or more persons claiming or being liable as partners and carrying on business in India

may sue or be sued in the name of the firm of which such persons are partners at the time of the accruing of the cause of action. It is also provided in the said sub-rule that a party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished by the other party. Sub-rule (2) of Rule 1 provides that where persons sue or are sued as partners in the name of their firm under sub-rule(1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

7- Learned Counsel of defendant has relied on the case of **Gandhi & Co. -Vs- Krishna Glass Pvt.Ltd 1988 BCI 43 (Bombay High Court)** it has been held that;

“it is established that the name of the partner, Rasiklal N.Gandhi had not been shown in the Register of the firms on the date of the filing of the suit. The suit filed by the partnership firm must, therefore, fail.”

In that case, Rasiklal Gandhi was partner on the date of accrual of the cause of action but he was not shown as a partner in the Register of Firm on the date when the suit was instituted. Therefore,

it was held that, bar u/sec. 69(2) is applied and the suit filed by partnership firm was not maintainable. However, in the case in hand, plaintiff Deepesh has been shown as partner of the firm and it is not the contention of defendant that, partnership firm is unregistered. Therefore, bar u/sec. 69(2) is not applicable. It is also observed in the said case that, the provisions contained in Rule 1 and 2 of Order XXX of C.P.C. are procedural whereas provisions of section 69(2) are substantive and create a bar at the threshold of filing of the suit by or on behalf of firm, if the condition mentioned therein are not fulfilled. Therefore, in the case in hand, the procedural aspect under Order XXX of C.P.C. can be complied by plaintiff if directions in that behalf are issued.

Dina Nath -Vs- Firm Metro Hotel 1962 DGLS (J&K)

33. it has been held that,

“A suit by or against a firm is essentially a suit by or against the partners constituting the firm. A reference to Rules 2 and 6 of Order 30 will serve to clarify this position. Furthermore, Rule 1 of Order 30 enables only two or more partners to bring a suit in the name of the firm. A suit by just one partner is not therefore a suit, by the firm contemplated by Order 30. there is no other procedural provision under which a firm can lay a suit. If Order 30 is put aside, the partners will have to bring the action in their individual names.”

Prag Oil Mills Depot -Vs- Transport Corporation of

India and Anr. 1978 DGLS (Ori.) 29. it has been held that;

“In this case the plaint has been signed and verified by Tarachand Agrawal who was the manager and power of attorney holder of the plaintiff at the relevant time. That being so, the non-signing of the plaint by one of the partners of the firm is not such a defect as to entail the dismissal of the suit on that ground. Neither in the trial court nor in the appellate court the above question was raised. The trial court could have returned the plaint to the plaintiff for proper presentation if the above objection would have been raised in that court. Moreover, nothing was or even now is suggested to show that on account of the presentation of the plaint by the manager of the firm the defendants have any way been prejudiced in this case, or it has resulted in failure of justice.”

The present suit is signed, verified or certified by one of the partner of plaintiff firm. Therefore, it cannot be said that the suit would fail in view of provisions u/sec. 69(2) of Partnership Act.

8- **Order VII Rule 11(d) of the CPC-** The plaint shall be rejected- (a) (b) (c).....

11. d) where the suit appears from the statement in the plaint to be barred by any law;

It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped

and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and if the plaintiff fail to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. Therefore, I do not find any substance in the submission of Learned Counsel of plaintiff that, delay of three years has been caused on behalf of defendant for filing the present application. In view of foregoing discussion I am of the opinion that, the suit is not barred by any provisions of law more particularly u/sec. 69(2) of Partnership Act and Order XXX Rule 1 and 2 of C.P.C. Therefore, the application being devoid of merit, I pass following order.

Order

- i- The application is rejected with cost.
- ii- The plaintiff is directed to add the other partner of firm in the plaint within one month from the date of order.

Date: 07-12-2017

Sd/-
(Jayshri R.Pulate)
2nd Jt. Civil Judge (S.D.)
Jalna.

CERTIFICATE

I affirm that the contents of this PDF file are correct as per order

Name of Steno : Bobde S.V.
Name of court : 2nd Jt. Civil Judge (S.D.), Jalna.
Date of PDF : 20-12-2017
Sd/-
Stenographer