

Madan Lal & Ors. Vs. M/s Sharma Ayurved Pvt. Ltd.

COMS No. 8 of 2023

24.06.2025 Present: Mr. Romesh Verma, Senior Advocate, with Ms. Ambika Kotwal, Advocate, for the plaintiffs.

Mr. Ankush Dass Sood, Senior Advocate with Mr. Shriyek Sharda, Advocate, for defendants No. 3 & 4.

Mr. Vikram Thakur, Advocate, for respondents No. 5 & 6.

OMP No. 1007 of 2024

By way of instant application, prayer has been made on behalf of applicants/plaintiffs for conversion of COMS No. 8 of 2023 into Civil Suit on account of the fact that suit was otherwise filed as Civil Suit, but subsequently on the objection raised by the Registry, same was converted to COMS. However, subsequently on the objection raised by the opposite parties, plaintiff as well as Court realized that nature of the suit is not commercial, rather same ought to have been registered as Civil Suit.

By way filing reply, afore prayer made on behalf of applicant/plaintiff has been seriously opposed by non-applicant-defendant. Mr. Ankush Dass Sood, learned Senior Counsel duly assisted by Mr. Shreiyk Sharda, learned counsel representing the respondents No. 3 & 4, vehemently argued that application at hand is an afterthought because prior to filing of the application at hand, non-applicants/defendants had filed an application under Order 7 Rule 11 CPC for rejection of plaint

on the ground that subject matter/nature of the suit is not commercial, but same ought to have been registered/filed as Civil Suit. Learned Senior Counsel further argued that before filing application at hand, applicants/plaintiffs filed reply to the application under Order 7 Rule 11 CPC. Lastly Mr. Sood, submitted that since on account of omission, if any, on the part of applicant/plaintiff inasmuch as they wrongly proceeded to file commercial suit, valuable right has accrued in favour of non-applicants/defendants, which certainly for the reasons and circumstances mentioned in the application, cannot be permitted to be defeated in the garb of alleged human error.

Having heard learned counsel for the parties and perused material available on record, this Court finds that at first instance, applicants/plaintiffs had actually filed Suit for Specific Performance of the Agreement to Sell under Order 7 Rule 1 read with Sections 15, 19 & 20 of Specific Relief Act, 1963 and same was also registered as Civil Suit. However, subsequently after objection being raised by the Scrutiny Section of the Registry, learned counsel for the applicants/plaintiffs changed the nomenclature of the same by writing COMS in place of suit suit.

After registration of civil suit as commercial suit non-applicants/defendants filed an application under Order 7 Rule 11 CPC for rejection of plaint on the ground that suit at

hand could not have been registered as commercial suit and as such, same deserves to be rejected.

However, before afore application could be heard and decided, learned counsel for the applicants/plaintiffs filed application at hand, praying therein for conversion of suit from commercial to Civil Suit. No doubt, on account of filing of the suit at hand as a commercial suit, a right to file application under Order 7 Rule 11 CPC for rejection of plaint can be said to have been accrued to the defendants, but once this Court is satisfied, rather it is apparent from the record that mistake, which is now sought to be rectified was *bona fide* and at first instance, applicant/plaintiff had filed suit as Civil Suit, no prejudice, if any, shall be caused to either of the parties, in case prayer made in the instant application for conversion of suit is accepted and thereafter, same is heard and decided as Civil Suit.

Consequently, in view of the above, present application is allowed and Commercial Suit No. 8 of 2023 is ordered to be converted as Civil Suit. Registry to register the suit, as detailed hereinabove, as a Civil Suit. Needless to say, any observations made hereinabove shall not be construed as a reflection on the merits of the case, which shall be decided on the basis of pleadings and the evidence adduced on record.

OMP No. 1006 of 2024

Application at hand has been rendered infructuous on account of passing of order in OMP No. 1007 of 2024 and as such, same is disposed of as having been rendered infructuous with a liberty to file afresh, if required and desired.

June 24, 2025
(*sunil*)

(Sandeep Sharma),
Judge