

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2016

CORAM

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

C.S.No.247 of 2016

and

A.Nos.330 to 332 of 2016

Devi Cropscience Pvt Ltd.,
Devi House, 281-4,
Sivagangai Main Road,
Gomathipuram,
Madurai-625 020
rep.by M.Ramaswamy
General Manager(Operations) Plaintiff

Vs

SDS Ramcides Cropscience Private Limited,
7th Floor, VBC Solitaire,
No.47 and 49, Bazullah Road,
T.Nagar,
Chennai-600 017,Tamil Nadu Defendant

Plaint filed under Order VII Rule 1 CPC read with
Order IV Rule 1 O.S.Rules and Secs.48(2), 104 and 108 of
the Patents Act, 1970.

For Plaintiff : M/s.T.K.Ramkumar and
Sumitha Vibhu

For Defendant : M/s.R.Prem Raja Kumari

JUDGMENT

By consent, the suit itself is taken up for final
disposal.

2. The plaintiff is a holder of patent under Nos.211822 and 218947 and they are manufacturing, selling, offering for sale, exporting a flowering stimulant product, containing 'Nitrobenzene'. This chemical cannot be used as such, meaning thereby, it has to be used along with other materials, which will in turn help enhance the flowering. The present suit has been filed by the plaintiff *inter alia* contending that the defendant is manufacturing and exporting flowering stimulant product containing Nitrobenzene, thus infringing their process patents right. Accordingly, the following reliefs are sought:

"a) to grant permanent injunction restraining the defendant, their men, servants or agents or anyone claiming through them in any manner infringing the plaintiff's process patent under No.198947, by manufacturing, selling, offering for sale, exporting a flowering stimulant formulation comprising an optimum of 20% W/w Nitrobenzene or 20% V/v Nitrobenzene, identical to the flowering stimulant claimed by the plaintiff or deceptively mislabelled comprising the identical/similar formulation.

b) to grant a permanent injunction restraining the defendant, their men,

servants or agents or anyone claiming through them in any manner infringing the plaintiff's product patent under No.211822 by manufacturing, selling, offering for sale, exporting a flowering stimulant product comprising of an optimum of 20% W/w Nitrobenzene or 20% V/v Nitrobenzene, identical to or similar to the flowering stimulant claimed by the plaintiff;

c) to direct the defendant to surrender all stock of the infringing product comprising of 20% Nitrobenzene or 20% V/v Nitrobenzene;

d) to direct the defendant to render true account of the profits earned by the Defendant through the sale of the offending product and directing payment of such profits to the plaintiff for the infringement committed by the defendant;

e) to direct the defendant to pay the plaintiff the cost of the suit."

सत्यमेव जयते

3. When the matter is taken up for hearing, a detailed counter affidavit has been filed by the defendant, in which in paragraph No.17, it has been stated as follows:

"17. The respondent/defendant submits that Nitrobenzene, a chemical compound is highly toxic and is characterized by the International Agency

for Research on Cancer (IARC) as possibly carcinogenic while also causing several other health hazards including gastric irritation, methaemoglobinaemia, respiratory distress, neurological problems and haemolytic anaemia, to name a few. As the hazards are more dominant than the product itself, the respondent/defendant felt it just and necessary to stop the manufacture of its product "Dynamic Super" containing nitrobenzene in adequate properties without prejudice. The respondent/defendant submits that the last manufacture was done in November 2015 and there has been no manufacturing of "Dynamic Super" since then."

4. In view of the stand taken by the defendant in the counter affidavit, nothing survives for adjudication in the suit. Therefore, as of now, the cause of action is not available for the plaintiff.

5. Accordingly, the suit stands decreed by recording the statement that the defendant is not manufacturing the product 'Dynamic Super' from November 2015 onwards and accordingly, suit prayers (a) and (b) are granted. As far

as the other prayers are concerned, the learned counsel for the plaintiff is not insisting the same and thus the suit is dismissed in so far as the other prayers are concerned. Connected applications are closed.

6. However, this decreeing of the suit as mentioned above will not stand in the way of the defendant manufacturing the above said product in future, in which case, it would create a fresh cause of action to the plaintiff.

sd/.M.M.S.J

06.07.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/10.01.2017

COURT OFFICER

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