

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

IN ITS COMMERCIAL DIVISION

**NOTICE OF MOTION (LODG.) NO. 363 OF 2017
WITH
LEAVE PETITION NO. 210 OF 2017
IN
COMMERCIAL SUIT (LODG.) NO. 335 OF 2017**

Maharashtra Hybrid Seeds Company
Pvt. Ltd.

.. Applicant

In the matter between :

Maharashtra Hybrid Seeds Company
Pvt. Ltd.

.. Plaintiff/Petitioner

Vs.

Kirtiman Agro Genetics Limited

.. Defendant/Defendant

Mr.Bimal Rajasekhar a/w. Ms.Akanksha Singh for plaintiff/applicant.

Ms.A.V.Avsare, 2nd Assistant to Court Receiver present.

CORAM : K.R.SHRIRAM, J.

DATE : 27TH JULY 2017

P.C.

LEAVE PETITION NO. 210 OF 2017

1 Petitioner has taken out this leave petition under Clause 14 of Letters Patent for joining two causes of action, one for trade mark infringement and the other for passing off. No reply opposing the leave petition also has been filed.

2 Clause 14 of the Letters Patent reads as under :

14. And we do further ordain that where plaintiff has several causes of action against a defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit."

Section 124 of Trade Marks Act, 1999 reads as under :

Section 124. Stay of proceedings where the validity of registration of the trade mark is questioned, etc.—

(1) Where in any suit for infringement of a trade mark ---

(a) The defendant pleads that registration of the plaintiff's trade mark is invalid; or

(b) The defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff pleads the invalidity of registration of the defendant's trade mark, the court trying the suit (hereinafter referred to as the Court), shall, –

(i) if any proceedings for rectification of the register in relation to the plaintiff's or defendant's trade mark are pending before the Registrar of the Appellate Board, stay the suit pending the final disposal of such proceedings;

(ii) if no such proceedings are pending and the Court is satisfied that the plea regarding the invalidity of the registration of the plaintiff's or defendant's trade mark is prima facie tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(2) If the party concerned proves to the Court that he has made any such application as is referred to in clause (b)(ii) of sub-section (1) within the time specified therein or within such extended time as the Court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) *If no such application as aforesaid has been made within the time so specified or within such extended time as the Court may allow, the issue as to the validity of the registration of the trade mark concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.*

(4) *The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the Court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the trade mark.*

(5) *The stay of a suit for the infringement of a trade mark under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.*

Section 62 of the Copyright Act, 1957 reads as under :

62 *Jurisdiction of court over matters arising under this Chapter: –*

(1) *Every suit or other civil proceedings arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.*

(2) *For the purpose of sub-section (1), a “district court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.*

3 Petitioner’s registered office is in Mumbai. Therefore, this Court will have jurisdiction for the cause of action of infringement of trade mark. So far as passing off is concerned, the same has happened outside the

jurisdiction of this Court and that is why the petitioner/plaintiff has approached this Court for leave to join causes of action and prosecute the suit here.

3 In my view, it would be in the interest of both the parties, if the leave as sought for, is granted because this Court is already seized of the matter for cause of action for infringement of trade mark and secondly, respondent/defendant also will not have to defend two suits in two different forums.

4 In the circumstances, Leave Petition is allowed and accordingly disposed.

NOTICE OF MOTION (LODG.) NO. 363 OF 2017

5 Mr.Rajasekhar for plaintiff/applicant states that the plaint, notice of motion and order dated 19th January 2016 has been served upon defendant. Mr.Rajasekhar tenders affidavit of service of one Aakanksha Singh affirmed on 19th July 2017. Mr.Rajasekhar also tenders an affidavit of one Ranganathan Sivanandan affirmed on 24th July 2017 stating the events that transpired after the order of 19th June 2017 was passed. The affidavits are taken on record.

6 Nobody has entered appearance nor filed any affidavit in reply. Mr.Rajasekhar also submits that in view of the email annexed at Exh.'A' to the affidavit dated 24th July 2017, order passed on 19th June 2017 be confirmed as order in notice of motion and notice of motion be disposed.

7 Accordingly order dated 19th June 2017 is confirmed as order in notice of motion and notice of motion disposed.

Notwithstanding disposal of notice of motion, notice of motion be numbered within one week from today.

8 All objections in the suit be removed and the suit also to be numbered within two weeks.

(K.R. SHRIRAM, J.)