

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE T.RAJANI

ORIGINAL SIDE APPEAL No.4 of 2017

21.02.2017

Between:

M/s.Vibha Agro Tech Limited., Hyderabad

..Appellant

and

M/s.Mahyco Monsanto Biotech (India) Limited, Mumbai

..Respondent

Counsel for the appellant: Mr.T.Surya Satish

Counsel for the respondent: Mr.R.Raghunandan, senior counsel
for Mr.Vikram Pooserla

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Original Side Appeal arises out of order, dated 27.01.2016, in Company Petition No.4 of 2015.

2. We have heard Mr.T.Surya Satish, learned counsel for the appellant and Mr.R.Raghuandan, learned senior counsel representing Mr.Vikram Pooserla, learned counsel for the respondent.

3. The respondent has filed the aforementioned Company Petition under Sections 433(e) and (f) and 439 (1) (b) of the Companies Act, 1956, *inter alia*, for winding up of the appellant for non-payment of the admitted debt.

4. It is not in dispute that in pursuance of an agreement between the appellant and the respondent, the latter has supplied cotton seed of 1st and 2nd Monsanto B.T. gene. In view of the default committed by the appellant in payment of a sum of Rs.51,97,92,722/- allegedly due by it to the respondent, the latter has filed the aforementioned Company Petition.

5. The appellant has mainly pleaded that it has come to know that the respondent misrepresented that it has obtained patent right for both 1st and 2nd Monsanto B.T. gene and on enquiry, they found that it had obtained right only for 2nd Monsanto B.T. gene and further pleaded that the respondent started promoting the cotton seed containing both the gene rigorously from the year 2009 itself, contrary to Article 2.6 of the Sublicense Agreement, dated 01.06.2004, as per which, for the first five years, commercial sale of hybrid cotton planting seed containing only 1st Monsanto B.T. gene must be made. It was, therefore, pleaded that in view of the conduct of the respondent in contravening the specific term of the agreement, the appellant suffered huge losses.

6. The learned Single Judge has repelled the said plea of the appellant, by placing heavy reliance on reply notice, dated 10.04.2014, issued by the appellant to the statutory notice, dated 19.03.2014, issued by the respondent. The learned Single Judge also referred to the subsequent letter, dated 06.06.2014, got issued by the appellant once again assuring that they will pay the dues from June, 2013, clear the kharriff, 2013 dues by September, 2014 and that old dues will also be paid in installments, as were projected in the CDR scheme. Based on the above material, the learned Single Judge has termed the defense raised by the appellant as moonshine. On a re-consideration of the entire material on record, we do not find any reason to differ with the findings of the learned Single Judge as the appellant has failed to raise any ground, legal or otherwise, warranting our interference with the order under appeal.

7. For the aforementioned reasons, the Original Side Appeal fails and the same is, accordingly, dismissed.

8. As a sequel to dismissal of the O.S.A., Application No.131 of 2017 filed by the appellant for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

T.RAJANI, J

21st February, 2017
GHN