

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD***

CIVIL REVISION APPLICATION NO. 205 OF 2018

Maharashtra State Seeds Corporation Ltd. ... Applicant

Versus

Nirmal Seeds Pvt. Limited & others ... Respondents

Mrs. Anjali Dube (Bajpai) , Advocate for the Applicant.

Mr. V.Y. Bhide, Advocate for Respondent no. 1.

Coram : N.M. Jamdar, J.

Date : 4 December 2018.

Per Court :

1. By this revision, the applicant-defendant has challenged the order passed by the learned District Judge, Jalgaon, rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure.

2. Respondent no. 1 has filed the suit bearing Regular Civil Suit No. 2/2017 for declaration and injunction under the Protection of Plant Varieties and Farmers Rights Act, 2001 seeking declaration that defendants no. 1 to 5 have infringed the rights of the plaintiff-

respondent no. 1 as a breeder of the 'Naval (NVL-1), Green Gram Seeds Extant Variety and has sought an order of injunction.

3. This is a second revision application filed by the same defendant challenging an interlocutory order in the suit. The suits which are filed for infringement of rights and for protection of copyrights, in general, have to be disposed of at an earlier date. By this application under Order 7 Rule 11 of the Code of Civil Procedure, which is titled as, 'Application for preliminary objection under Section 80 of Civil Procedure Code, under Order 7 Rule 11 of Civil Procedure Code & on other grounds', the defendant has prayed for dismissal of the suit.

4. According to learned Counsel for the applicant, the application was filed both - under Order 7 Rule 11A and Order 7 Rule 11D of the Code of Civil Procedure. According to learned counsel for the applicant, the learned Civil Judge has decided the application only under Order 7 Rule 11D and not under Order 7 Rule 11A, which states that whether the suit disclose any cause of action. Learned counsel submits that the ground, 'that the suit does not disclose any cause of action' has not been decided at all and, therefore, the learned District Judge be directed to decide the same.

5. As regards notice under Section 80 of the Civil Procedure Code, the learned District Judge has rightly observed that the applicant has no grievance against any State authorities. As regards, the ground of no cause of action is concerned, what is to be seen is the plaint. In the plaint, respondent no.1 has referred to the provisions of Section 64 of the Act and has made an averment that the product of the petitioner is similar to the product of respondents and that amounts to infringement. It is the contention of applicant that under Section 64B of the Act, the product's denomination should be identical or deceptively similar to the denomination of the other product so as to cause confusion and in the present case, the two products, which are described as 'NAVAL' and 'UTKARSHA' are not identical or deceptively similar. In the circumstances, there cannot be any infringement and, therefore, the plaint does not disclose any cause of action.

6. It is the case of respondents that these two words are identical or similar to cause confusion. It is the defence of applicant that these two products are not identical or cannot be said to be deceptively similar. This is exactly the area of dispute. Chances of succeeding is not the same thing as 'no cause of action disclosed from

the plaint.' Therefore, going by the averments in the plaint as it is, it cannot be said that there is no cause of action. The applicant is seeking to quash the impugned order passed by the learned District Judge, but no purpose will be served by sending the matter back to the learned Civil Judge and such course of action will only prolong hearing of the suit.

6. In the circumstances, there is no merit in the revision application, which is accordingly rejected. All contentions on merit are kept open.

N.M. Jamdar, J.