

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11792 OF 2017

Maharashtra State Seeds Corporation
Limited

...Petitioner

versus

Nirmal Seeds Pvt. Limited and another

...Respondents

.....
Mrs. Anjali Dube (Baijpai), advocate for the petitioner
Mr. V.Y. Bhide, advocate for respondent No.1
Mr. K.N. Shermale, advocate for respondent No.2.
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 23.01.2018**

**Date of pronouncing
the Order: 30.01.2018**

PER COURT :-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the order dated 7.8.2017 passed below Exh.36 and order dated 01.09.2017, passed below Exh.50 both in R.C.S. No. 2 of 2017, by the learned District Judge, Jalgaon the original defendants have preferred this writ petition.
3. Brief facts giving rise to the present petition are as follows:-

a) The respondent No.1-plaintiff is a registered company, instituted suit for relief of declaration of infringement of the plaintiff's rights recognized and established under the provisions of The Protection of Plant Varieties and Farmer's Rights Act 2001 (hereinafter for short referred to as "the Act of 2001") by the petitioners-defendants jointly and severally and also for consequential reliefs like injunction and damages. It is further specific contention of respondent No.1-plaintiff that by virtue of certificate of registration bearing No. 170 of 2015 dated 23.06.2015 issued under the provisions of the Act of 2001, the respondent No.1-plaintiff is the breeder of Green Gram Seeds Variety developed by it and it is registered with denomination 'Naval (NVL-1)' as an extent variety under the provisions of Section 24 of the Act of 2001. The said registration is in force and thereby respondent No.1- plaintiff has acquired and perfected certain rights as a registered breeder of such variety. It is further case of respondent No.1-plaintiff that the petitioners-defendants have jointly and severally infringed the plaintiff's valuable personal and statutory rights in aforesaid reference and as such respondent No.1-plaintiff constrained to institute the suit for relief, as detailed above.

b. The respondent No.1-plaintiff had filed an application Exh.6

for grant of temporary injunction and application Exh.8 for appointment of District Agricultural Officer, Zilla Parishad, Jalgaon and the Seed Inspector under the provisions of Seeds Act 1966 as a Court Commissioner with directions to issue sample packet of Utkarsha Green Gram/Mung seeds produced by defendant No.1 company and send the said sample to the Office of the Registrar General, Protection of Plant Varieties Farmers Rights Authorities, New Delhi to carry out the DUS test on the said samples. The petitioner-defendant has strongly resisted the said application. The petitioners defendant No. 1 states that they have filed an application Exh.26 for framing of preliminary issue with regard to territorial jurisdiction of the Court and the court has framed the preliminary issue at Exh.34 on 7.8.2017. According to the petitioners-defendants, it would be proper to decide application Exh.8 after deciding the preliminary issue already framed. The petitioners defendants therefore, filed application Exh.50 requesting therein to decide the preliminary issue before passing order on an application Exh. 6 and 8.

c. The learned Additional District Judge Jalgaon has partly allowed the application Exh.50 and directed that application Exh.6 filed for grant of temporary injunction would be decided after the decision of application filed for deciding territorial jurisdiction,

however, rejected the prayer of defendant Nos. 1 to 4 for deciding the application Exh.8 after deciding the preliminary issue. Hence, this writ petition.

4. Learned counsel for the petitioners-defendant Nos. 1 to 4 submits that the trial court by allowing application Exh.26 framed preliminary issue and as such, the trial court should have deferred to decide the application Exh.8 after deciding the preliminary issue of jurisdiction.

5. Learned counsel for the respondent-plaintiff submits that it is well settled that though it is imperative on the Court to decide the objection to the jurisdiction of the court in terms of provisions of Section 9-A of C.P.C., pending decision on the question of jurisdiction does not mean that the court has no jurisdiction to pass interim order as may be called for in the facts and circumstances of the case. Learned counsel submits that considering the peculiar facts involved in the suit, the trial court has rightly passed the impugned order with regard to application Exh.8. No interference is required

Learned counsel for the respondent-plaintiff in order to substantiate his submissions, placed reliance on the judgment in the case of ***Tayabbhai M. Bagasarwalla vs. Hind Rubber Industries***

Pvt. Ltd., reported in AIR 1997 SC 1240.

6. In the case of **Tayabbhai M. Bagasarwalla (supra)** relied upon by learned counsel for the respondent-plaintiff in para 29, the Supreme court has made the following observations:-

“29. The correct principle, therefore, is the one recognised and reiterated in Section 9-A - to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situation, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the court should, while holding that it has no jurisdiction to entertain the suit, must put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the

violation is committed before the decision of the court on the question of Jurisdiction.”

7. In the facts and circumstances of the present case, the scientific seed test/analysis by conducting DUS test by the authority expert appears to be necessary to decide the controversy of infringement. This Court has also passed interim order directing the parties to preserve the samples of a particular lot only for the reason to protect the infringing material as available in the market and to prevent its replacement or withdrawal.

8. In view of the above discussion and the ratio laid down by the Supreme Court in the above cited case, relied upon by learned counsel for the respondents-plaintiff, I do not find any fault in the impugned order passed by the trial court. There is no substance in the writ petition. Writ petition is liable to be dismissed. Hence, the following order:-

O R D E R

Writ petition is hereby dismissed. No costs.

9. In terms of order passed by this Court on 11th October, 2017 particularly para 4, the plaintiff is at liberty to bring this order to the

notice of the trial court and the trial court may pass appropriate orders with regard to the sample as directed by this Court to be preserved.

(V. K. JADHAV, J.)

rlj/