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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 371/2016**
HINDUSTAN INSECTICIDES LTD Plaintiff
Through: Ms. Kanika Singh, Adv.
versus
JABALPUR AGRI PRODUCER COMPANY
LTD & ORS Defendants
Through: Mr. Sachin Aggarwal, Adv. for D-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **13.11.2018**

1. The plaintiff has instituted this suit for recovery of Rs.2,72,92,361/-, though against as many as four defendants namely (i) Jabalpur Agri Producer Company Ltd.; (ii) Jawaharlal Nehru Krishi Vishwa Vidyalaya; (iii) Ravinder Pastor; and, (iv) Lemonseeds Agro Farms Pvt. Ltd. but seeking recovery only from the defendant no.1 Jabalpur Agri Producer Company Ltd.
 2. The suit was entertained and summons thereof ordered to be issued. The defendant no.4 Lemonseeds Agro Farms Pvt. Ltd. applied for deletion from the array of defendants. The said application was disposed of vide order dated 6th February, 2017 holding the said defendant no.4 Lemonseeds Agro Farms Pvt. Ltd. to be a proper party to the suit. The defendant no.3 i.e. Ravinder Pastor also applied for deletion from the array of defendants and vide order dated 18th September, 2018 the said application was allowed and the defendant no.3 Ravinder Pastor deleted from the array of defendants.
 3. The defendant no.1 Company could not be served by ordinary process and was ordered to be served by publication and failed to appear or file
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written statement inspite of publication and vide order dated 16th January, 2018 the right of the defendant no.1 Company to file written statement was closed.

4. Similarly, the defendant no.2 Jawaharlal Nehru Krishi Vishwa Vidayala also failed to appear despite service and was vide order dated 6th February, 2017 proceeded against *ex parte*.

5. Today, only Ms. Kanika Singh, Advocate for the plaintiff and the counsel for the defendant no.4 Lemonseeds Agro Farms Pvt. Ltd. appear.

6. Ms. Kanika Singh, Advocate for the plaintiff states that a date may be fixed for filing affidavit by way of examination-in-chief. However, since the defendant no.4 Lemonseeds Agro Farms Pvt. Ltd. is present it was enquired whether issues have been framed and if not, how without framing of issues, the suit can be proceeded for leading evidence.

7. Ms. Kanika Singh, Advocate states that she does not know anything else about the case and the main counsels Ms. Mahima Sinha and Mr. Arunav Patnaik Advocates are busy in an anticipatory bail matter.

8. The counsel for the defendant no.4 Lemonseeds Agro Farms Pvt. Ltd. states that the defendant no.4 Lemonseeds Agro Farms Pvt. Ltd. had instituted a suit for recovery of monies due to it from the plaintiff herein but which suit has been dismissed owing to the plaintiff having claimed the same monies in this suit from the defendant no.1 Company. However, the counsel for the defendant no.4 Lemonseeds Agro Farms Pvt. Ltd. states that neither has the judgment in the suit filed by him been filed in this suit nor is he carrying the same with him.

9. A perusal of the plaint shows the claim of the plaintiff for recovery of

money to be on account of an arrangement arrived at by the plaintiff with the defendant no.1 Company at the behest of the defendant no.2 Jawaharlal Nehru Krishi Vishwa Vidayala and the erstwhile defendant no.3 Ravinder Pastor. Part of the monies claimed by the plaintiff from the defendant no.1 Company are towards the price of the goods supplied by the defendant no.4 Lemonseeds Agro Farms Pvt. Ltd. to the defendant No.1 at the behest of the plaintiff.

10. On the basis of the averments contained in the plaint and the documents filed therewith and considering the fact that the defendant no.1 Company has chosen to be *ex parte* and has not contested the suit and for the reasons stated in ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC OnLine Del 508, the need to relegated the plaintiff to *ex parte* evidence is not felt. The counsel for the defendant no.4 Lemonseeds Agro Farms Pvt. Ltd. also, on enquiry states that though the defendant no.1 Company has not been wound up but is not carrying on any operations and the premises from which the defendant no.1 Company was earlier functioning are no longer operational and are lying locked.

11. The plaintiff, though claims to have contracted with the defendant no.1 Company at the behest of the defendant no.2 Jawaharlal Nehru Krishi Vishwa Vidayala but has not made any claim against the defendant no.2 Jawaharlal Nehru Krishi Vishwa Vidayala and rightly so inasmuch as on the documents filed, no claim of the plaintiff against the defendant no.2 Jawaharlal Nehru Krishi Vishwa Vidayala is made out.

12. The plaintiff has claimed principal amount of Rs.1,99,04,864/- and pre-suit interest @ 18% per annum of Rs.73,87,497/-, making the suit for

recovery of Rs.2,72,92,361/-.

13. The plaintiff, in the facts of the case, is not found entitled to interest at 18% per annum and is found entitled to interest only at 7% per annum.

14. A decree is thus passed, in favour of the plaintiff and against the defendant no.1 Company for recovery of Rs.1,99,04,864/- with interest at 7% per annum w.e.f. 1st July, 2015, being the last of the dates from which interest is claimed on the various components of the principal amount of Rs.1,99,04,864/-, *pendente lite* and future till the recovery of the amounts.

15. However, the defendant no.1 having not contested the suit, no costs except proportionate to court fees paid on the plaint.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

NOVEMBER 13, 2018

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