

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :16.05.2019

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The Honourable Mr.Justice KRISHNAN RAMASAMY

**C.S.(Comm) No.306 of 2019
& O.A.No.484 of 2019
& A.No.3425 of 2019**

Sulphur Mills Limited,
No.604, 605, 6th Floor,
349 Business Point,
Western Express Highway,
Andheri (E), Mumbai-400 069,
Maharashtra, India
Represented by its Director,
Mr.Binoy Shah

...Plaintiff

Versus

1. Crop Life Science Limited,
No.209, "Primate",
Near Judges Bungalow cross road,
Bodakdev, Ahmedabad,
Gujarat 380 015, India,
Also at:
Plot No.5165, 5166,
G.I.D.C. Estate, Ankleshwar,
Gujarat-393 002, India.

... Defendant No.1

2. Pest and Green Care Agro Services,
No.35/7, East Coast Road,
Thiruvanmiyur, Chennai,
Tamil Nadu-600 041.

... Defendant No.2

Prayer: Complaint filed under Order IV Rule I Original Side Rules read with order VII Rule 1 Civil Procedure Code, Section 104 of the

Patents Act, 1970 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, No.4 of 2016, seeking for permanent injunction restraining the Defendants, by itself or through its directors, group company, associates, divisions, assigns in business, licenses, franchises, agents, officers, servants, distributors and dealers from manufacturing, selling, offering for sale, using, exporting, importing directly or indirectly dealing in Plaintiff's patented agricultural composition itself which is the subject matter of patent no.282429 or any other agricultural composition as may amount to infringement of Indian Patent No.282429.

b) The defendants be ordered to pay a sum of Rs.2,00,00,000/- for damages in favour of the plaintiff, its Group companies or Associated Companies, directors, associates, divisions, assigns in business, licensees, franchisees, agents, officers, servants, distributors and dealers apart from below:

i) damages based on profits earned by the defendants through their unlawful and infringing activities, specifically by infringing Indian Patent No.282429; सत्यमेव जयते

ii) damages based on loss and injury suffered by the plaintiff, due to infringement of its Indian Patent No.282429 by the defendants, to either the Plaintiffs' business, sales or reputation and

iii) punitive, additional, exemplary or flagrancy damages, in addition to compensatory damages.

c) an order for rendition of accounts of profits earned by the defendants by manufacture and sale of the patented product of the plaintiff and a decree of the amount so found out or in the alternative a decree for damages as may be ascertained by this

Court may be passed in favour of the plaintiff and against the defendants.

d) The defendants be ordered to surrender and for delivery up of all the stock of infringing agricultural composition available with the defendants to an authorized representative of the plaintiffs

For Plaintiff : Mr.Arun C.Mohan

J U D G M E N T

Today(16.05.2019), when the matter is taken up for hearing, the learned counsel appearing for plaintiff submitted that the parties have resolved their disputes and he has also filed a Memo of Compromise dated 04.05.2019, before this Court.

2. The said Memo of Compromise reads as follows:

" 1. The plaintiff has filed the present suit for the reliefs of permanent injunction restraining the defendants from committing infringement of plaintiff's patented agricultural composition itself which is the subject matter of patent No.282429 and for other reliefs.

2. The 1st defendant upon learning the proprietary right vested with the plaintiff over the plaintiff's patented agricultural composition which is the subject matter of patent No.282429 herein agree and acknowledge the rights of the plaintiff in patent being IN 282429 (the "Patent") and acknowledge the validity thereof;

3. The 1st defendant undertakes that they will not directly or indirectly challenge or assist any third party to challenge the validity of the patent during its term;

4. The 1st defendant either by themselves or through their directors, group companies, associates, divisions, assigns in business, licensees, franchisees, agents, officers, servants, distributors and dealers, undertake not to manufacture, sell, advertise, offer to sell, import, export, directly or indirectly deal in plaintiff's patented agricultural composition itself which is the subject matter of patent No.282429 or any other agricultural composition as may amount to infringement of Indian Patent No.282429;

5. The 1st defendant has agreed to pay the plaintiff a lump sum amount of Rs.6,00,000/- (Rupees Six lakhs only) towards past sales of "Suforty 90" or any other product sold under a different brand covered by IN 282429 patent.

6. The 1st defendant has agreed to enter into a non-exclusive license agreement with the plaintiff in respect of plaintiff's IN 282429 patent. Subject to the terms of such license agreement, the 1st defendant agree to pay royalty as under:

(a) at the rate of Rs.8/kg for all the sales of their product "Suforty 90" or any other product sold under different brand covered by IN 282429 patent upto 800 MT for the financial year starting from the date of the signing of this compromise and shall continue until expiry of IN 282429 patent i.e. 8th January, 2027 and a rate of Rs.7/kg will be payable for all additional sales beyond 800 MT.

(b) the entire royalty amount will be payable within 4 months from the end of that financial year.

7. The 1st defendant further agrees to disclose and share with the plaintiff on a sworn affidavit the actual sale of their product "Suforty 90" or any other product (Sulphur 90% formulation) sold under different brand covered by IN 282429 patent, since 2012 and till the date of signing of the compromise for the purpose of calculation of applicable royalty rates;

8. The 1st defendant further agrees to disclose and share with the plaintiff the actual future sale of their product "Suforty 90" or any other product (Sulphur 90% formulation) sold under different brand covered by IN 282429 patent, from the date of entering into the present settlement and execution thereof and thereafter on a quarterly basis certified by a chartered accountant until the expiry of IN 282429 patent i.e. 8th January, 2027;

9. The 1st defendant further agrees that the above mentioned royalty rates shall be applicable as on the date of entering into the present settlement and execution thereof;

10. The 1st defendant further agree that they will endeavor to increase the sales of their product "Suforty 90" or any other product (Sulphur 90% formulation) sold under different brand covered by IN 282429 patent and not undertake any activity either directly or indirectly which may cause dilution of the brand equity of the product or reduction of sales of the product.

11. The 1st defendant further agrees to withdraw the post grant opposition filed by them against the plaintiff's patent No.282429 before the Controller of Patents, Mumbai within 15 days from the date of entering into the present settlement and execution thereof.

12. The plaintiff agrees to give up the reliefs as claimed by them in the plaint as against the 2nd defendant who is the distributor of the 1st defendant subject to the conditions as aforesaid.

13. The parties pray that this Hon'ble Court may be pleased to pass a judgment and decree in accordance with the terms set out above.

14. The parties shall bear their own costs."

3. The aforesaid Memo of Compromise is taken on file and the same shall form part of the judgment.

4. This Civil Suit itself is decreed in terms of the Memo of Compromise filed by the plaintiff's counsel. However, there shall be no order as to costs. Consequently, connected Applications are closed.

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Index : Yes/No

To

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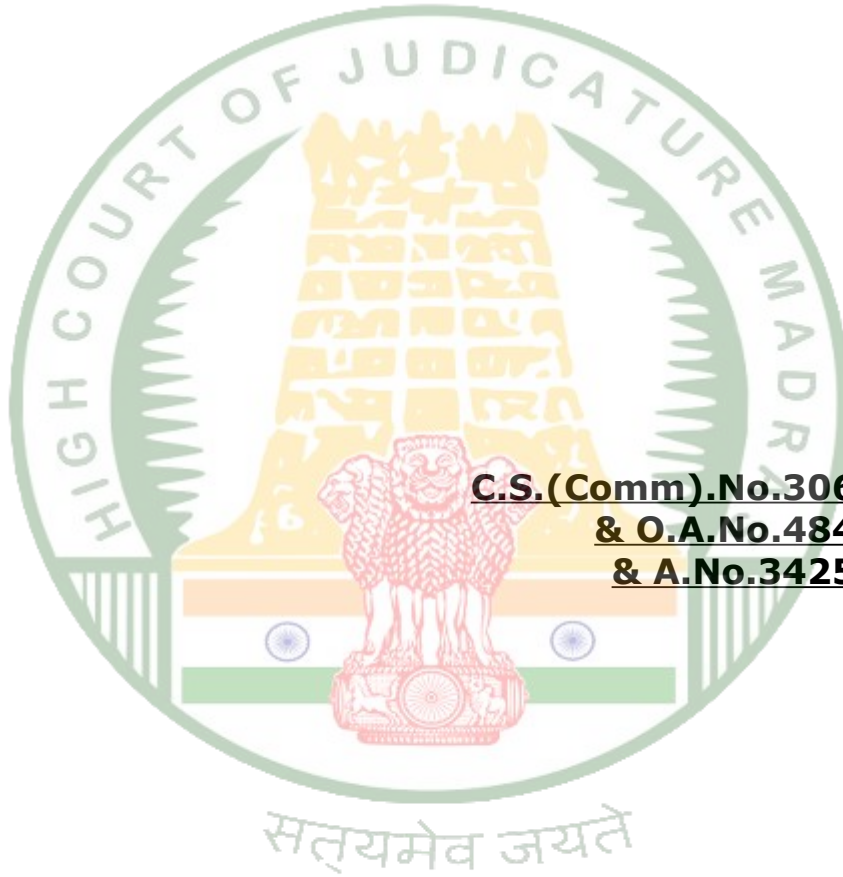
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