

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 16.07.2019****Coram****The Honourable Mr.Justice KRISHNAN RAMASAMY****C.S.No.396 of 2019
and O.A.No.629 of 2019
& A.No.4470 of 2019**

SULPHUR MILLS LIMITED,
604, 605, 6th Floor,
349, Business Point
Western Express Highway
Andheri (E), Mumbai – 400 069
Maharashtra, India
represented by its Power Agent,
Mr.Dipak Mundra

...Plaintiff

Versus

1.Ms.Seema Rathi
Proprietor of M/s.Bharat Chemicals Industries
Khasra No.625 & 645,
Bahadurpur Road,
Acchonda,
Partapur,
Meerut,
Uttar Pradesh – 250 103.

2.Balaji Agro
#8, Badrian Street,
Chennai,
Tamilnadu – 600 001.

...Defendants

This Civil Suit is filed under Order IV Rule 1 of O.S.Rules r/w. Order VII Rule 1 C.P.C, 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 for the following reliefs:

(a) To grant a permanent injunction restraining the defendants, by itself or through its directors, group company, associates, divisions, assigns in business, licensees, franchisees, 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 compensation 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;

(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;

(e) an order for costs of the proceedings.

For Plaintiff : Mr.Arun C. Mohan

J U D G M E N T

The present suit has been filed by the plaintiff for the reliefs stated in the prayer portion of this Judgement.

2. Mr.Arun C.Mohan, learned counsel for plaintiff submitted that the matter has been settled between the parties and he has also filed a Memo of Compromise dated 12.07.2019, entered into between the plaintiff and the first defendant, before this Court.

He therefore prayed that the suit may be decreed in terms of the said Memo of Compromise and the same may be recorded.

3. The said Memorandum of Compromise reads as follows:

"The terms plaintiff and 1st defendant shall mean and include their heirs, executors, administrators, successors and assigns of each party.

The term "PRODUCT" shall mean "Sulfa Fert" manufactured and sold by the 1st defendant or "Sulfo Max" manufactured by the 1st defendant and sold by Shriram Fertilizers & Chemicals and "Gromor Nanisol" manufactured by the 1st defendant and sold by Coromandel International Limited.

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 Hon'ble Court has granted an interim injunction restraining the defendant from manufacturing, selling, offering for sale, using, exporting, importing directly or indirectly dealing in plaintiff's patented agricultural composition.

3. The 1st defendant has approached the plaintiff

to amicably settle the matter.

4. The plaintiff and the 1st defendant have arrived at a settlement on the terms and conditions set out hereinafter:-

(i) The 1st defendant consents and confirms the proprietary right vested with the plaintiff over the plaintiff's patented agricultural composition which is the subject matter of Patent no.282429 and herein agree and accept the rights of the plaintiff in patent being IN 282429 (the "Patent") and acknowledge the validity thereof.

(ii) The 1st defendant undertakes that it will not directly or indirectly challenge or assist any third party to challenge the validity of the Patent during its term;

(iii) 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;

(iv) The 1st defendant has agreed to pay the plaintiff a lump sum amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) towards past sales of the "PRODUCT". The said amount shall be paid within a period of 90 days from the date of signing of the compromise.

(v) 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 agrees to pay royalty as under:

(a) at the rate of Rs.8/kg for the sales of the "PRODUCT" 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. 08th January, 2027. In case the sale of the product is more than 800 MT in each financial year, the royalty will be calculated at the rate of Rs.7/kg will be payable for all additional sales beyond 800 MT.

(b) the entire royalty amount will be payable within 30 days at the end of each financial quarter (DUE DATE).

(c) subject to the limits imposed by any applicable law, interest shall accrue on

payments made after the Due Date at the rate of Eighteen percent (18%) per annum, compounded daily, from the due date until paid.

(d) For clarification, the first defendant agrees not to manufacture or sell any other product (excepting "Sulfa Fert", "Sulfo Max" and "Gromor Nanisol" collectively termed as "PRODUCT" herein) which either directly or indirectly infringes Patent no.282429 for the purpose of this agreement.

(vi) The 1st defendant further agrees not to sell, advertise, offer to sell, import, export, directly or indirectly deal with any bulk selling or non-branded selling of the plaintiff's patented agricultural composition. For explanation, the 1st defendant is permitted to only manufacture, sell, use, offer to sell, advertise, distribution, import or export the licensed "PRODUCT" and not deal in any manner whatsoever with the bulk or non-branded selling of the product.

(vii) The 1st defendant further agrees to disclose and share with the plaintiff on a sworn affidavit the actual sale of the "PRODUCT" covered by IN 282429 patent, since 2014 and till

the date of signing of the compromise for the purpose of calculation of applicable royalty rates;

(viii) The 1st defendant further agrees to disclose and share with the plaintiff the actual sale of the "PRODUCT" 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., 08th January, 2027;

(ix) 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.

(x) The 1st defendant further agree that it will endeavor to increase the sales of the "PRODUCT" 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".

(xi) The 1st defendant further acknowledges that the commercial terms namely royalty rates, payment or amount of past sales etc. agreed by the parties under this agreement is confidential and proprietary information relating to this Agreement. However, the plaintiff may at its discretion choose to selectively disclose the terms

of this agreement, if it deems necessary, during the course of any future settlement or negotiation with any third party. The 1st defendant agrees that it shall keep all such information confidential and shall not disclose it, or permit it to be disclosed to any third party (other than to agents or representatives who need to know such information.)

(xii) 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.

(xiii) The 1st defendant further undertakes that it shall not directly or indirectly infringe or assist any third party to infringe any other patent of the plaintiff or any other patent to be issued in future to the plaintiff during its term in India.

(xiv) The parties hereby affirm and acknowledge that they have read all the above mentioned terms. The parties further affirm that they understand the meaning of the terms and their effect. The parties represent that they entered into this settlement freely and voluntarily without any coercion or undue pressure.

(xv) This present Agreement has been

executed by Mr.Dipak Mundra, the constituted attorney of the plaintiff and Mr.Deepak Rathi, Authorized Signatory of the defendant No.1 and the terms thereof will be binding henceforth on all the parties to the settlement, their legal heirs, representatives, successors, and assigns in business.

(xvi) In view of the aforesaid, it is humbly prayed as under:

(a) that the suit may be decreed as per the prayer clause 65(i) of the plaint.

(b) that the terms of settlement may form part of the decree;

(c) Any other relief which the Hon'ble Court thinks fit and proper in the circumstances.

(d) The parties shall bear their own costs."

4. The above Memo of Compromise is recorded and the same shall form part of the decree.

5. Considering the submission made by the plaintiff's counsel, this Court is inclined to decree the suit in terms of the said Memo of Compromise. Accordingly, this Civil Suit is decreed in terms of the Memo of Compromise filed by plaintiff's counsel. No costs. Consequently, connected Applications are closed.

mrr

Index : Yes/No

16.07.2019



WEB COPY

KRISHNAN RAMASAMY, J.,

mrr



C.S.No.396 of 2019

16.07.2019

WEB COPY