

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 03RD DAY OF JULY 2019

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

A. No.4512 of 2019

SULPHUR MILLS LTD
604, 605,
6TH FLOOR, 349 BUSINESS POINT,
WESTERN EXPRESS HIGHWAY,
ANDHERI (E) MUMBAI-400 069.
Maharashtra, India Rep.by its Power Agent
Mr.Dipak Mundra: ..Applicant/Plaintiff

Vs.

1. M/s.Dayal Fertilizers Private Limited,
Delhi Road, Partapur,
Meerut-250 103 .

2. M/s.Him Bio Agro,
807, Plot No.3B1,
8th Floor, Jaksons Crown Height,
Twin Distt Centre,
Sector-10, Rohini,
New Delhi-110085

also at:
Bathu Bathri Industrial Area,
Tehsil Haroli,
District Una,
Himachal Pradesh-174 301.

3. M/s.Mitval Industries,
101, Kasturi Park,
Near Maneklal Estate,
LBS Marg, Ghatkopar,
Mumbai-400 086

4. Balaji Agro
#8, Badrian Street,
Chennai,
Tamilnadu-600 001

:Respondent/Defendant

Application praying that this Hon'ble Court be pleased

<https://hcservices.ecourts.gov.in/hcservices/>

leave to sue the Respondent NO.1 Respondent No.2
and Respondent No.3 before this Hon'ble Court.

This Application coming on this day before this court for hearing the court made the following order:

This Application has been filed by the applicant/plaintiff seeking to grant leave to sue the first, second and third respondents before this Court.

2. The case of the Applicant/Plaintiff is that the applicant company incorporated under the Companies Act, 1956 and having its registered office at 604, 605, 349, Business point, Western Express Highway, Andheri (E), Mumbai-400069. Further, the applicant is the assignee in respect of Indian Patent No.282429 and has also been recorded as subsequent proprietor of the suit patent. During the month of April 2018, the Applicant came to know through its field force that the Respondent Nos.1 and 3 are seeking to infringe the Applicant's patent through agricultural composition similar to the composition described and claimed under Indian Patent No.282429. Pursuant thereto, the Applicant issued a legal notice dated 26.04.2018 to the Respondent No.1 and Respondent No.3 thereby putting the Respondent Nos.1 and 3 to notice that the Applicant is the owner of the suit patent and that the Respondent Nos. 1 and 3 are involved in the infringement of the suit patent of the Applicant. The first respondent in his reply dated 12.05.2019 stated that the first respondent is procuring processed 90% sulphur under FCO from the second

marketed by the first respondent. The third respondent vide reply dated 18.05.2018 has denied the infringement of the suit patent stating that the impugned product's composition is different from that of the suit patent.

3. It is further stated that the Applicant conducted test reports on samples of the respondent's product and test report was shared by the Applicant with formulation expert- Dr.P.K.Pathanjali, who has worked as Head Formulation Scientist at the Institute of Pesticide Formulation Technology (IPFT), for his analysis and opinion as to whether the first respondent's report product falls within the scope of claim 1 or any of the claim of the suit patent.

4. It is further alleged that the Respondents are marketing, distributing and selling their products in the city of Chennai which is within the jurisdiction of this Court. Also, the fourth respondent is the dealer and distributor based in the city of Chennai selling the product of the first, second and third respondent on a commercial sale. Thus, the cause of action for institution of the present suit has arisen within the jurisdiction of this Court. Furthermore, the Applicant submits that a part of cause of action has arisen in Chennai as the respondents 1, 2 and 3 are carrying their commercial operations in the city of Chennai within the jurisdiction of this Court and hence this Court has jurisdiction to try and entertain the suit as the Respondents are commercially selling the impugned product under the mark Nano Sulph W.G. at Chennai.

However, since the respondents 1, 2 and 3 are residing and carrying on business outside the jurisdiction of this Court, the present application has been filed seeking leave to sue the respondents out of abundant caution. It is further stated that substantial part of cause of action has arisen at Chennai within jurisdiction of this Court as the Respondent's product is freely available in the city of Chennai, within the jurisdiction of this Court.

5. Heard both sides. Perused the affidavit and petition.

6. Having been satisfied with the reasons sated in the affidavit filed in support of this application and also considering the submissions made by the learned counsel for the Applicant, this application is allowed and the leave to sue the Respondent No.1 , Respondent No.2 and Respondent No.3 before this Court is granted.

Sd/.K.R.J.

03.07.2019

//Certified to be a true copy//

Dated this the day of 2020.

SU/31.01.2020

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.