



A.Nos.4916, 4920 & 4923 of 2019
in C.S.No.410 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.01.2020

Pronounced on: 21.01.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

Application Nos.4916, 4920 & 4923 of 2019
in C.S.No.410 of 2019

M/s. Dayal Fertilizers Pvt. Ltd.
Delhi Road, Partapur,
Meerut – 250 103.

... Applicant
in A.No.4916 of 2019

M/s.Him Bio Agro,
No.807, Plot No.3B1,
8th Floor, Jaksons Crown Height,
Twin Distt Centre,
Sector – 10, Rohini,
New Delhi – 110 085.
Also at
Bathu Bathri Industrial Area,
Tehsil Haroli,
District Una,
Himachal Pradesh – 174 301

... Applicant
in A.No.4920 of 2019

M/s.Mitul Industries,
No.101, Kasturi Park,
Near Maneklal Estate,
LBS Marg, Ghatokpar,
Mumbai – 400 0086.

... Applicant
in A.No.4923 of 2019

/versus/



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in C.S.No.410 of 2019

SULPHUR MILLS LIMITED,
No.604, 605, 6th Floor,
No.349, Business Point,
Western Express Highway,
Andheri (E), Mumbai – 400 069,
Maharashtra, India,
Represented by its Power Agent,
Mr.Dipak Mundra.

... Respondent
in all cases

Prayer in A.No.4916 of 2019:-

Judge's summon under Order XIV Rule 8 of Original Side Rules read with clause 14 of Letters Patent and order III Rule 1 of Original Side Rules:-

To revoke the leave granted to sue the defendant No.1 made in Application No.4512 of 2017, in order dated 03.07.2019.

Prayer in A.No.4920 of 2019:-

Judge's summon under Order XIV Rule 8 of Original Side Rules read with clause 13 of Letters Patent and order III Rule 1 of Original Side Rules:-

To revoke the leave granted to sue the defendant No.2 made in Application No.4512 of 2017, in order dated 03.07.2019.



Prayer in A.No.4923 of 2019:-

Judge's summon under Order XIV Rule 8 of Original Side Rules read with clause 13 of Letters Patent and order III Rule 1 of Original Side Rules:-

To revoke the leave granted to sue the defendant No.3 made in Application No.4512 of 2017, in order dated 03.07.2019.

For Applicant : Mr.Shravan Bansel
in A.No.4916 of 2019

For Applicant : Mr.Madhan Babu
in A.No.4920 of 2019

For Applicant : Mr.Avi
in A.No.4923 of 2019

For Respondent : Mr.P.S.Raman, Senior Counsel
in all cases for Mr.Arun C.Mohan

O R D E R

These three applications are filed by the defendants No.1 to 3, to revoke the leave granted to sue them vide order dated 03.07.2019 in A.No.4512 of 2019.

2. The plaintiff having its registered Office at Mumbai,

has laid the suit against the defendants for permanent injunction

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and damages to a tune of Rs.2,00,00,000/- alleging infringement of its Indian Patent No.282429 and for rendition of accounts.

3. The 1st defendant is a fertilizer company having its place of business at Meerut, UP. The 2nd defendant is carrying on business at Rohini, New Delhi and in Bathu Bathri Industrial Area, District Una, Himachal Pradesh. 3rd defendant is having place of business at Mumbai and the 4th defendant is having its place of business at Chennai.

4. As per the plaint averment, the plaintiff is the assignee in respect of Indian Patent No.282429 and also been recorded as subsequent proprietor of the suit patent. The Bibliography of its Indian Patent No.282429 is as below:-

Bibliography of Indian Patent No.282429 (filed as Indian Patent Application No.40/MUM/2007)	
Filing Date	08.01.2007
Date of Publication (U/s 11A)	02.02.2007
Date of issuance of First Examination Report (FER)	17.05.2007
Date of filing of response to First Examination Report (Reply to FER)	06.05.2008
Date of Grant	11.04.2017
Date of Publication of grant of patent U/s 43(2)	14.04.2017

5. The plaintiff states that, the above patent relates to an agricultural composition comprising an effective amount of <https://hcservices.cipl.com/gov.in/hcservices/> ingredient and atleast one dispersing agent. It is



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a novel composition of sulphur, which aids to rapidly convert sulphur to its sulphate form, which in turn demonstrates a significantly enhanced yield and improved physiological plant parameters on soil application and which has never ever been observed with any of the sulphur formulations known so far. This patent comprises nine (9) claims, wherein, claim No.1 - the independent claim and claim Nos.2 to 9 are dependent on claim No.1. The plaintiff claims that, it has been granted patent by various other countries for the corresponding suit patent which proves its inventiveness and novelty. The product of the plaintiff is marketed in the trade name "FERTIS-WG".

6. It is alleged in the plaint that during the month of April 2018, the plaintiff came to know that the defendants 1 to 3 are seeking to infringe the plaintiff's patent through agricultural composition similar to the composition described and claimed under Indian Patent No.282429. Pursuant thereto, issued legal notice dated 26.04.2018 putting the defendant Nos.1 and 3 under notice that the plaintiff is the owner of the suit patent and the defendant Nos.1 & 3 are involved in infringement of the suit patent of the plaintiff. The defendants in reply denied infringement of the suit patent. The 3rd defendant has replied that the suit patent is completely based on the known prior arts of the same field of technology and therefore, it is neither novel nor innovative. After receipt of this reply, the plaintiff did not immediately file suit, since the product of the defendants



were not available in the market particularly in the Northern and Western parts of the Country, they assumed that the defendants have abandoned the efforts of launching the infringed product.

7. While so, in and around the month of January 2019, the plaintiff came to know that defendants products bearing a similar composition as that of the plaintiff's Patent No.282429 have resurfaced in the market. The Nano Sulf-W.G product manufactured by the defendant Nos.2 and 3, marketed by defendant No.1 found selling in the city of Chennai and same was purchased by plaintiff's representatives from Defendant No.4 in Chennai, who is selling the same in commercial scale.

8. Narrating in detail, how the plaintiff's patent is infringed, the present suit is filed at Madras High Court on its original jurisdiction under Order IV Rule (1) of Original Side Rules read with Order VII Rule 1 of CPC, Section 104 of the Patents Act, 1970 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act. Being prima facie satisfied about the jurisdiction, this Court granted leave to sue the defendants 1 to 3 by order dated 03.07.2019.

9. Aggrieved by the same, the defendants 1 to 3 have filed applications to revoke the leave granted to sue them. In the common affidavit filed in support of rejection of the plaint



and to revoke the leave, it is stated that, the plaintiff has wrongly invoked jurisdiction of this Court. This Court does not have jurisdiction to entertain and try the suit under Section 20 of C.P.C. It is contented that, no cause of action has arisen within the territory of this Court.

10. According to the 2nd and 3rd defendants, they manufacture and market the subject product, which is an agricultural composition used as fertilizer for crops. The 1st defendant claims that, he procure the subject matter agricultural composition from the 2nd and 3rd defendants, who are at Unna, Himachal Pradesh and Mumbai. He do packing and marketing of the product in the name 'Nano Sulf.'

11. It is asserted by the defendants 1 to 3, that they are not marketing, distributing and selling the subject products within the territorial jurisdiction of this Court. The subject product being a fertilizer, permission to sell the product within the state is necessary. Defendants 1 to 3 have not even applied for permission to sell the product in Chennai, within the territory of this Court. They have no connection or nexus with the 4th defendant who alleged to have sold the impugned product to the representative of the plaintiff in the trap purchase.

12. All the contesting parties including the plaintiff, are carrying on business out side the territorial jurisdiction of



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this Court. The plaintiff is having its registered Office at Mumbai. The 1st Defendant having its office at Meerut, the 2nd defendant is having its Office at Delhi and Himachal Pradesh; and the 3rd defendant is at Mumbai. The plaintiff failed to get ad-interim injunction in respect of the subject patent before the Delhi High Court. Suppressing that fact, this suit is filed in Chennai. Therefore, they seek revocation of leave alleging that the plaintiff has approached the High Court of Madras with unclean hands, only by way of forum shopping to wrongly obtain ex-parte ad interim order.

13. The Learned Counsels appearing for the applicants/defendant Nos.1 to 3 submitted that, the 4th defendant is a sham and nominal party. The alleged trap purchase with the 4th respondent is a devise just to bring this suit within the jurisdiction of this Court. This fact will not bring the *lis* within the territorial jurisdiction of this Court since, the 4th defendant is not even a licensed trader in Fertilizer. He does not have valid license to deal fertilisers which is mandatory under the Fertilizer Control Order [FCO]. The alleged trap purchases are make believe story which could be easily seen on perusal of the trap purchase invoices relied by the plaintiff. Few sales alleged to have taken place in Chennai will not confer jurisdiction to the Court at Chennai, when the plaintiff and the contesting defendants are carrying on business at Mumbai, Delhi, Meerut and Himachal Pradesh and not within the territorial



jurisdiction of this Court.

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14. The applications to revoke leave is primarily based on the ground that, no cause of action arose within the jurisdiction of this Court. The plaintiff has indulged in forum shopping by impleading 4th defendant, who is neither proper nor necessary party to the suit. Admittedly, even the 4th defendant is not dealing with the impugned product at large scale. The 4th defendant claims in his affidavit that, he is only a retailer. He purchased the product from the wholesale distributor M/s.Guhan and Company (address not furnished) who possess necessary license. The said M/s.Guhan and Company is not the authorised dealer of the defendants 1 to 3. the 4th defendant has not purchased the product of the defendants 1 to 3, from the authorised dealer or agent of the defendants 1 to 3. He has purchased the goods from one M/s.Guhan and Company, who informed the 4th defendant that they purchased the product from the authorised dealer of defendant stockist at Meerut.

15. The Learned Counsel appearing for the applicants/defendants 1 to 3 would submit that, the affidavit of the 4th respondent is sufficient enough to hold that, no cause of action has arisen within the jurisdiction of this Court, hence the leave has to be revoked.



16. This commercial dispute, with specified value is filed in the Original Civil jurisdiction of the High Court, invoking Order IV Rule 1 of Original Side Rules of the High Court of Madras. As per the plaint averment, the cause of action for institution of the suit before this Court is stated in paragraphs Nos.60 and 61 of the plaint and same is extracted below:-

"The cause of action for institution of the present case arose when the plaintiff through its field force came across the infringing product of the defendant No.1 and issued notice to the defendant No.1 on 26.04.2018 and further on 15.05.2018 when reply to the said notice was received from the defendant No.1 herein; on 26.04.2018, when the plaintiff issued a legal notice to the defendant No.3 on 18.05.2018, when the defendant No.3 sent their reply to the legal notice issued by the plaintiff; on 01.02.2019, when the plaintiff issued a legal notice to the defendant No.1 to refrain from infringing the plaintiff's patent No.282429; on 27.04.2019, when the defendant No.1 sent their reply to the legal notice issued by the plaintiff. The said cause of action further arose in the month of June 2019 when the plaintiff came across defendants' infringing product in the market of Chennai being sold under the brand Nano Sulf-W.G. The said cause

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dated 14.06.2019 from JPCL analyzing the defendants' product revealed that the product manufactured, used and sold by the defendants is covered by the claim(s) of the suit patent. The said cause of action further arose on 15.06.2019 when Dr.P.K.Patanjali-the expert in the filed of agrochemical formulations, by way of an affidavit, confirmed that the defendants are using the same product as is the subject matter of the Indian Patent No.282429. The said cause of action is a continuous one and continues to subsist till the defendants are restrained from infringing the plaintiff's Indian Patent No.282429."

"This Hon'ble Court has the jurisdiction to entertain and try the present suit under Section 20 of the Code of Civil Procedure, 1908 since the defendants are distributing and selling its products in the city of Chennai within the jurisdiction of this Hon'ble Court. Also, the defendant No.4 is the dealer and distributor based in the city of Chennai selling the defendant No.1, Defendant No.2 & Defendant No.3's products on a commercial scale. Thus, the cause of action for institution of the present suit has arisen within the jurisdiction of this Hon'ble Court. Furthermore, the plaintiff submits that a part of cause of action has arisen in Chennai as the Defendant No.1, Defendant No.2 & Defendant No.3 have their commercial operations in the city of Chennai within the jurisdiction of



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this Hon'ble Court. This Hon'ble Court therefore has jurisdiction to try and entertain the suit as the defendants are selling the impugned product under the mark Nano Sulf-W.G at Chennai. In the circumstances, this Hon'ble Court has jurisdiction to entertain and try the suit. However, as a matter of abundant caution, the plaintiff has applied for leave to sue the defendants." (Emphasis added)

17. The plaintiff claims that, this Court has jurisdiction to entertain and try the suit under Section 20 of C.P.C., is unsustainable in the light of Section 120 of C.P.C., which specifically excludes the applications of Sections 16, 17 and 20 of C.P.C., to High Court in Original Civil Jurisdiction. The letters Patent, is a special charter conferring jurisdiction on the Chartered High Courts. When there is a special enactment which expressly lays down the criteria on the jurisdiction of the Chartered High Court, it is futile to refer Section 20 of C.P.C., to determine the jurisdiction.

18. To determine the jurisdiction of this suit, Clause 12 of the Letters Patent alone is relevant.

Clause 12 of the Letters Patent reads as under:-

12. Original jurisdiction as to suits:- "And We do further ordain that the said High Court of



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Judicature at Madras, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Madras, in which the debt or damage, or value of property the sued for does not excited hundred rupees."

19. Clause 12 of the Letters Patent of the Madras High Court provides for two categories of Suits, namely suits pertaining to immovable properties and all other suits. The three situations for maintaining a suit under the latter categories are:-

a). Where cause of action has wholly arisen within the territorial jurisdiction of this Court;



b). Where cause of action has arisen in part, leave of this court should have been first obtained and;

c). Where defendant at the time of commencement of the suit dwells/carries on business or personally works for gain within the territorial jurisdiction of this Court.

20. In the plaint, it is stated that, 4th respondent is the dealer and distributor based in Chennai selling the products of the defendants 1 to 3 on a commercial scale. Further more, part of cause of action has arisen in Chennai as the Defendants 1 to 3 have their commercial operations in the City of Chennai within the jurisdiction of this Court.

21. Whereas, the said averments is categorically denied by the defendants 1 to 3. It is asserted by them that they have no license to sell their product in Chennai and 4th defendant is not their agent.

22. This assertion is strengthened by the affidavit filed by the 4th respondent before this Court which reads as below:-

"I state that the impugned product is manufactured by the 2nd & 3rd respondents and the same is marketed by the 1st respondent. The respondent herein is only a retailer who purchased the impugned product from a wholesale distributor in Chennai viz.



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M/s.Guhan & Company, who possesses the requisite necessary licenses and compliances as per law to sell the impugned products. I state that on receiving the copy of the injunction order from the Hon'ble Madras High Court, I went to Guhan & Company to ascertain further particulars. I was told that they purchased the impugned product from the defendant stockist in Meerut. It is submitted that subsequent to the receipt of the order dated 5th July 2019 passed by this Hon'ble Court in O.A.No.647 of 2019, the respondent has stopped selling the impugned product viz., Nano-Sulph."

23. It is imperative at this juncture to point out that, the 4th defendant by his silence admits that, he does not have license to sell fertilizer. The affidavit does not disclose the address of his supplier M/s.Guhan and Company. Whether the said M/s.Guhan and Company carrying on its business within the jurisdiction of this Court is not stated. Further, the 4th defendant admits that, he is only a retailer and not the dealer or agent of the defendant's 1 to 3. He has no contractual relationship with any of the other defendants. Hence, it is obvious that the defendants 1 to 3 are not selling the impugned product in Chennai, through 4th defendant/Balaji Agro.

24. The present suit is for infringement of patent and

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not for passing off. In the plaint, it is pleaded that, the cause



of action for institution of the present suit has arisen within the jurisdiction of this Court since defendants 1 to 3 have commercial operations in the city of Chennai and they are selling the impugned product under the mark Nano Sulf-WG at Chennai. In short, the plaintiff alleges that its registered patent for manufacturing fertilizer of particular composition is infringed by the defendants 1 to 3 and sold in the market through its agents and dealers including the 4th defendant, who is carrying on business within the jurisdiction of this Court. The said allegation is denied by the defendants 1 to 3. According to the defendants, there is nothing innovative or inventive in the composition of the plaintiff's product. Relying upon the pre-grant objections and post-grant objections; and the Writ Petition No.2939 of 2017 filed by M/s.Safex Chemicals Limited, pending before the Mumbai High Court, the defendants content that, the impugned patent of the plaintiff is not valid and hence, the question of infringement does not arise. Further, they say, they don't have license to sell their product in Chennai and the 4th defendant is not their agent or dealer to confer this Court territorial jurisdiction to hear this suit.

25. The following cases are referred by the Learned Counsels to buttress their respective plea.

a). *Kusum Ingots and Alloys Ltd -vs- Union of India*
reported in MANU/SC/0430/2004.

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b). *Dhodha House & Patel Field marshal Industries -vs-*



S.K.Maingi & P.M.Diesel Ltd reported in 2006 (32) PTC 1 (SC).

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c). St.Iven Laboratories Inc Vs. Arif Perfumers and Another reported in 2009 (40) PTC 104 (Del.).

d). Alberto Company -vs- R.K.Vijay & Ors reported in 2010 (42) PTC 300 (Del.).

e). Archie Comic Publications Inc. -vs- Purple Creations Pvt Ltd & Ors reported in 2010 (44) PTC 520 (Del.).

f). Aloys Wobben and another -vs- Yogesh Mehra and others reported in (2014) 15 SCC 360.

g). Micro Labs Limited -vs- Eris Life Sciences Pvt Ltd. Reported in 2015 (64) PTC 9 [Mad] [DB]

h). Foundry Visionmongers Ltd -vs- Satyanarayana Reddy S & Another reported in 2015 (64) PTC 108 (Del.).

i). Isha Distribution House Private Limited Vs. Aditya Birla Nuvo Limited and Ors reported in AIR 2016 Cal 332.

j). Indovax Pvt. Ltd -vs- Merck Animal Health & others reported in 2017 (71) PTC 647 (Del.).

k). F.L.Smith Private Limited and another -vs- S.Balaj Das & others reported in 2019 (79) PTC 142 [Mad] DB.

l). Pharmacosmos Holding A/s Vs. La Renon Healthcare Private Limited order dated 10.04.2019.

m). Parle Products Private Limited -vs- Surya Food and Agro Limited reported in MANU/TN/2109/2008.

n). Captain Tractors Pvt. Ltd -vs- Ashok Leyland Ltd reported in MANU/TN/6774/2018.



o). *M/s. Taranga Technologies -vs- M/s.Neels Enterprises*

Pvt Ltd., Madras High Court order dated 16.12.2019.

26. The dictum laid in Judgements of Hon'ble Supreme Court and the High Courts referred above lead to the following conclusion :-

a). While considering the application to grant leave to sue against defendants dwelling/residing outside the territorial jurisdiction of the High Court, Original Side, and part of cause of action arisen within the forum Court, the only material placed before the Court will be the plaint and the documents relied. From the plaint, the Court gathers the cause of action on which the suit is founded. The question of bonafides or malafides of the plaintiff in seeking to file the suit in this Court will not usually be apparent from the plaint. At that stage, the Court exercise its discretion, considering the occupation and places of residence of the respective parties and the extent of part of cause of action which is alleged to have arisen within its jurisdiction. Later, when application to revoke leave to sue is filed, Court should apply an unfettered mind to all the facts and circumstances and submissions presented before it, as if, it were considering the question for the first time and not proceed with the presumption in favour of the plaintiff for maintaining the leave. The Court shall take into consideration the balance of convenience. In an application for revocation of leave the doctrine of 'Forum Conveniens' is applicable.



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b). The cause of action means, the circumstances forming infraction of the right or immediate occasion for action. It is left to be determined in each individual case as to where the cause of action arises. It must include some act done by the defendant since in the absence of an Act no cause of action can possibly accrue. Facts, which have no bearing with the *lis* or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction. Likewise, if a small fraction of cause of action accrued had arisen with the territorial jurisdiction of a particular High Court, it was not bound to entertain the petition.

27. In the present case, the registered Office of the plaintiff's company is at Mumbai. The assigned patent of the plaintiff (patent No.282429) granted by the Assistant Controller of Patents and Designs, at Mumbai. To the cease and desist notices dated 29.04.2018 sent from Mumbai to the 1st defendant at Meerut, the 1st defendant has replied vide letter dated 12.05.2018 informing the plaintiff that, they are procuring processed 90% sulphur under FCO from the 2nd and 3rd defendants. When similar cease and desist notice was issued to the 3rd defendant carrying on its business at Mumbai, the 3rd defendant has questioned the claim of the plaintiff relating to novelty and inventive steps alleged and claimed in the patent. Anticipating suit by the plaintiff, the 2nd defendant has filed caveat petition before the Mumbai High



Court and Delhi High Court, where plaintiff and the 2nd defendant, respectively carrying on their business. As far as the 4th defendant is concerned, he admits that, he is not the dealer or agent of the defendants 1 to 3. He trace the product through one M/s.Guhan and Company. The said Guhan and Company also not a dealer or agent of the defendants 1 to 3.

28. Cause of action is bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. Each and every fact pleaded in the plaint does not *ipso facto* lead to conclusion that those facts give rise to cause of action within the territorial jurisdiction of this Court. In ***Kusum Ingots and Alloys Ltd -vs- Union of India and others, (AIR 2004 SC 2321)***, the Hon'ble Supreme Court explains part cause of action as, "the material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgement, would be part cause of action."

29. It may not be out of contest extracting the view



expressed by the Hon'ble Supreme Court in the *Kusum Ingots* case cited supra regarding forum conveniens:

"We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decided the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens"

30. The assertion in the plaint paragraph No.18 and elsewhere is that the suit patent relates to a plant nutrient or a fertilizer composition. When it is applied on the field (i.e., soil application), the sulphur is converted into sulphate and thereafter, assimilated by the plants. The water dispersible granules (WDG or WG) have different characteristics based on the physical and chemical properties of the active ingredient and the type of process used for manufacture of the formulation the intended use, the agents or excipients used for such formulation. Therefore, the physical and chemical properties of the active ingredient, process, the process parameters, and the formulation agents play a vital role in the feasibility, quality and characteristics of the Water Dispersible Granule Formulation.

(emphasis added)



31. Section 104 A, a provision in the Patents Act unique speaks about the burden of proof in case of suits concerning infringement of a patent where the subject matter of patent is a process for obtaining a product. This provision explicitly and specifically empowers the Court to direct the defendant to prove that the process used by him to obtain the product is different from the patented process. Proviso to this section cast the initial burden on the patentee or a person deriving title or interest in the patent from him, to first prove that the impugned product is identical to the product directly obtained by the patented process. For convenient sake, the said provision is extracted below:-

Section 104 A of Patents Act:-

(1) In any suit for infringement of a patent, where the subject matter of patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process if,-

(a) the subject matter of the patent is a process for obtaining a new product; or

(b) there is a substantial likelihood that the identical product is made by the process, and the patentee or a person



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deriving title or interest in the patent from him, has been unable through reasonable efforts to determine the process actually used:

Provided that the patentee or a person deriving title or interest in the patent from him first proves that the product is identical to the product directly obtained by the patented process.

(2) In considering whether a party has discharged the burden imposed upon him by sub-section (1), the court shall not require him to disclose any manufacturing or commercial secrets, if it appears to the court that it would be unreasonable to do so.

32. This Court, after reading the explanation to part of cause of action given by Hon'ble Supreme Court in **Kusum Ingots case** supra and Section 104-A of the Act holds that, the parties, who are cast with the burden of proof as mentioned in Section 104-A of the Act, are not within the territorial jurisdiction of this Court. They are all carrying on business outside the territorial jurisdiction of this Court. The expert, whose opinion relied by the plaintiff to prove infringement of the patent also resides outside the jurisdiction of this Court. The infinitesimally small part of cause of action namely the impugned product being sold in Chennai by the 4th defendant, even assumed to be true, is not the



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pivotal issue which will determine the dispute. Further, the plaintiff has not placed any *prima facie* material to show that the 4th defendant is the authorised dealer/Agent or stockist of the manufacturer of the impugned product, to link the defendants 1 to 3 and the 4th defendant.

33. Perusing the pleadings and documents with the aid of the cases cited, this Court is of the opinion that, the leave to sue granted has to be revoked for lack of jurisdiction. The part of cause of action stated in the plaint to bring the suit within the territorial jurisdiction is insignificant. The proof required to decide the *lis* does not depend on those facts relating to 4th defendant, who is carrying on business at Chennai which only constitute an infinitesimally small part of cause of action. As a result, the Application Nos.4916, 4920 & 4923 of 2019, to revoke leave are allowed. The plaintiff is at liberty to present the suit before the appropriate Court having jurisdiction.

Sd./-G.J.J
21/01/2020

//Certified to be true copy//
Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

jj 22/01/2020

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