

21.11.2022
KC(5)

F.M.A.T. 448 of 2022
Ramnagar Seed Farm Private Limited
-versus-
Pan Seeds Private Limited and Ors.
With
CAN 1 of 2022

Mr. Jishnu Saha, Sr. Adv.,
Mr. Ratnanko Banerjee, Sr. Adv.,
Ms. Archana Shankar,
Mr. Shuvasish Sengupta,
Ms. Gitika Suri,
Mr. Sushovit Dutt Majumder,
Ms. Pubali Sinha Chowdhury,
Mr. Bhavesh Garodia,
Ms. Ratnadipa Sarkar.....For the appellant.

Mr. Ranjan Bachwat, Sr. Adv.,
Mr. Debnath Ghosh,
Mr. Tinkari Jana,
Mr. Gautam Roy,
Mr. Gopal Das,
Mr. Sourav Jana,
Mr. Biswaroop Mukherjee.....For the respondents.

Protection of Plant Varieties and Farmers' Rights
Act, 2001 is a relatively new act. It protects those who
are involved in the evolution and development of seeds
and the plants that germinate from them.

The appellant/petitioner is aggrieved by a
judgment and order dated 21st September, 2022 passed
by the learned court below granting an order of
injunction to the following effect.

“So, I direct that the rule of ad interim
injunction be issued at once directing the
defendants restraining them from infringing the

plaintiff's right, title and interest in relation to the plant variety i.e. "PAN 804", a new plant variety registered under the Protection of Plant "Varieties and Farmers' Right Act, 2001, and from manufacturing, selling and marketing, exporting, importing and/or other dealing with seeds, having similar specifications or under any other variety which is identical or deceptively similar to the registration obtained by the plaintiff/petitioner in relating to the aforesaid variety or any identical or deceptively similar variety, in any manner whatsoever, till next date i.e. 11.11.2022.

The plaintiff is directed to put in requisites in this regard at once for this purpose and to comply the provisions under Order 39 rule 3(a) & (b) of C.P.C.

Be it mentioned that, in the event of filing of adjournment petition by the plaintiff or for non-submission of requisites in due time, this order of injunction will be vacated automatically."

It was passed ex-parte.

The bone of contention between the parties very shortly is this.

The seeds and plants of the respondent (plaintiff) no. 1 are grown, marketed and distributed under the name "PAN 804".

Apart from obtaining a registration certificate under the Trade Marks Act, 1999, the said respondent claims to have applied for registration of their product and name under the said 2001 Act on 23rd August, 2010 and obtained a certificate of registration on 28th March, 2018. The said respondent has also applied for and obtained registration for the name "JAMUNA" under the said Act of 2001.

The appellant also grow and market seeds and seedlings, agricultural and horticultural products under the name of “JAMUN” and “DURONTO”.

The Seed Association of Bengal has filed an application for revocation and cancellation of the said respondent’s registration under the said Act of 2001.

The question to be prima facie determined by the court at the time of granting injunction was whether the appellant’s product was similar to that of the said respondent.

Mr. Jishnu Saha, learned senior advocate appearing for the appellant argued that the said respondent had slept over its rights. It had alleged in the plaint before the learned court below that it had come to its knowledge that the appellant was allegedly infringing their rights, in May, 2020. A notice was issued by them only on 9th December, 2020.

According to the averments in the plaint, as recorded by the learned court below, it was only in May, 2022 that the said respondent found that the appellant was trying to sell products identical to theirs.

In July, 2022 the suit was filed.

On the ground of this inordinate delay, the order of injunction and that too ex-parte ought not to have been made.

Furthermore, learned counsel submitted that the respective cases of the parties have been enumerated in

the impugned judgment and order but there are no reasons in support of the order of injunction. Not even a prima facie finding has been recorded to that effect. Mr. Saha submitted that according to the report of GUBBA Biotech Lab, mentioned in the order but not discussed in it, the appellant's product did not infringe any right of the said respondent.

Mr. Ranjan Bachwat, learned senior advocate appearing for the said respondent was prepared to deal with each and every point taken by Mr. Saha for the appellant. He said that each and every contention was denied by him.

At this stage, we did not call upon him to make submissions on merits because of the following reasons.

The ex-parte ad interim order was made on 21st September, 2022. The last portion of the order fixed the returnable date on 11th November, 2022 "awaiting returns of the notice of show cause and the Writ of ad interim injunction."

It appears that the said respondent made an application before the learned court below before the returnable date. It was taken up on 1st November, 2022 when it was recorded that the defendant no. 1 company(appellant) had received the cause papers without certain documents, annexures etc. The plaintiff (respondent no. 1) was directed to make service of

complete papers on the defendant no. 1 company/ appellant before the returnable date.

Again on 11th November, 2022 when the application appeared before the learned court below it was noticed by it that the “cause papers had been delivered to the defendant nos. 1 and 3 but not to the defendant no. 2”. The court extended the returnable date till 14th December, 2022 with a direction to serve the defendant no. 2.

It is quite plain from these two orders that the appellant had knowledge of the ex-parte interim order soon after it was made on 21st September, 2022. Our records show that this appeal was filed on or about 9th November, 2022. Therefore, the ad interim order has been operative for a period of nearly two months.

In those circumstances, we are of the view that the returnable date of the injunction application before the learned court below should be advanced and the court be directed to hear it out afresh at the ‘Motion’ stage in the presence of the parties and pass a reasoned order.

We order accordingly.

We make it absolutely clear that the learned court below shall not proceed on the principles for extension of an existing interim order but substantively consider grant or refusal of grant of an interim order at the threshold as if there was no interim order, despite

pendency of any demurer application. All questions, including the maintainability of the suit, are kept open.

Considering the time period during which the interim order has been operative we only extend the same till 6th December, 2022.

On an appropriate application being made before the learned court below by any party it shall immediately prepone the hearing date of the interim application to a date not later than 25th November, 2022.

Dispensing with all formalities the appeal (F.M.A.T. 448 of 2022) and the connected stay application (CAN 1 of 2022) were heard out and disposed of by the judgment and order.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)