

THE HON'BLE SRI JUSTICE UJJAL BHUYAN
CIVIL REVISION PETITION No.2095 OF 2021

ORDER:

Heard Mr. Abhishek Saketh, learned counsel appearing on behalf of Mr. V.M.M.Chary, learned counsel for the revision petitioner and Dr. Venkat Reddy Donthi Reddy, learned counsel for the respondent.

2. This petition has been filed under article 227 of the Constitution of India assailing the legality and validity of the order dated 17.11.2021 passed by the III Additional Chief Judge, City Civil Court at Hyderabad in I.A.No.1052 of 2019 in O.S.No.589 of 2012.

3. It may be mentioned that respondent herein as the plaintiff has filed a suit under Sections 65 and 66 of the Protection of Plant Varieties and Farmers Rights Act, 2001 read with Section 26 of the Code of Civil Procedure, 1908 (C.P.C) seeking the following reliefs :-

“In the light of the above facts and circumstances, it is therefore humbly prayed that this Hon’ble Court may be pleased to pass a decree:

- i. granting permanent injunction restraining the Defendants, their directors, employees, officers, servants, agents and all others acting for and on*

their behalf from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in the maize variety bearing denomination KMH-25K55 which infringes the subject matter of the Plaintiff's registered 30B07 (X-1280M) of Maize (Zea mays L) variety, from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in the variety KMH-25K55 thereby amounting to passing off of the Plaintiff's registered plant variety 30B07;

- ii. *Consequently restrain the Defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from stealing the proprietary germplasm of the Plaintiff's registered plant variety 30B07 (X-1280M) of Maize (Zea mays L) and from misappropriating the proprietary germplasm of the Plaintiff's 30B07 (X-1280M) of Maize (Zea mays L) variety and deriving unjust enrichment by dealing in the variety KMH-25K55;*
- iii. *Consequently direct the Defendant to surrender for destruction all the infringing products being sold under the variety denomination KMH-25K55;*
- iv. *Award damages of Rs.50,00,000/- in favour of the Plaintiff and against the Defendant on account of the unauthorized use and misappropriation of Plaintiff's registered plant variety 30B07 (X-1280M) of Maize (Zea mays L);*
- v. *Any order for rendition of accounts;*
- vi. *Any other relief as stipulated under Section 66 of the Protection of Plant Variety and Farmers Rights Act, 2001 severally, jointly or as a whole;*
- vii. *Cost of the suit;"*

3.1. The said suit was registered as O.S.No.589 of 2012 and is pending on the file of III Additional Chief Judge, City Civil Court at Hyderabad.

4. Respondent has also filed an injunction petition under Order 39 Rules 1 and 2 C.P.C for injuncting the defendant from making, selling, distributing, advertising, exporting, offering for sale and dealing in the Maize variety KMH-25K55, directly or indirectly which infringes respondent's registered 30B07 variety till disposal of the suit. The same was registered as I.A.No.2225 of 2012.

5. Petitioner who is the defendant in the suit has filed objection to I.A.No.2225 of 2012 to which respondent has filed reply affidavit.

6. Be that as it may, petitioner as the defendant has filed written statement in O.S.No.589 of 2012.

7. It is stated that as on date no order has been passed on the injunction petition.

8. During pendency of the suit, defendant (petitioner) filed a petition under Order VII Rule 11 C.P.C for rejection of

plaint. It was contended that there was no cause of action to file the suit for infringement against the registered variety, as the defendant (petitioner) has a registered variety enjoying statutory protection under the Protection of Plant Varieties and Farmers Rights Act, 2001 (briefly 'the 2001 Act' hereinafter). It was also contended that under Section 89 of the 2001 Act there is a clear statutory bar on civil courts initiating action on alleged infringement of registered variety. The said petition was registered as I.A.No.1052 of 2019. Respondent (plaintiff) filed counter affidavit to I.A.No.1052 of 2019 contending that the suit was maintainable. Petitioner filed reply to such petition. By the impugned order dated 17.11.2021 learned Court below declined to accept the contention of the petitioner and dismissed the petition filed for rejection of plaint. While disposing the petition filed for rejection of plaint, learned court below noted that while the plaintiff's variety was registered on 07.03.2011, defendant's variety was registered on 16.08.2012 i.e., 9 days after filing of the suit. Therefore, on the date of filing of the suit defendant had no registration with respect to its variety.

9. Hence, the civil revision petition.

10. Learned counsel for the petitioner while assailing the impugned order dated 17.11.2021 has extensively referred to various provisions of the 2001 Act, and submits that in terms of Section 24 thereof petitioner's variety was deemed to have been registered on 03.08.2010 i.e., two years prior to filing of the suit. Petitioner's variety was published on 03.05.2010 and was not opposed within the time stipulated under Section 21 of the 2001 Act. Thus, on expiry of the stipulated time variety of the petitioner would be deemed to have been registered. It is the contention of learned counsel for the petitioner that issuance of registration certificate is only a formality being a ministerial act. Thus, learned Court below had committed a manifest error in taking into consideration the date of registration as 16.08.2012 after institution of the suit.

11. Submission of learned counsel for the petitioner is that petitioner's variety was registered, and it enjoys all the statutory rights provided under the 2001 Act. Civil Court cannot curtail such right of the petitioner unless registration is revoked or cancelled which can only be done by the Registrar.

12. Learned counsel has referred to relevant portions of the order dated 17.11.2021 and submits that on most aspects learned Court below had concurred with the contention of the petitioner. Despite the same an abrupt view was taken that the variety of the petitioner was registered after institution of the suit and as such, the suit would be maintainable. He submits that the suit in its present form is not maintainable until such time a decision is rendered by the Registrar under Sections 34 and 36 of the 2001 Act. In any view of the matter, the suit in its present form is not maintainable in view of bar of jurisdiction under Section 89 of the 2001 Act. In this connection, he submits that respondent's application for cancellation of registration of petitioner's variety is pending before the Registrar; Registrar is competent to take a decision one way or the other under Section 36 of the 2001 Act. On the same issue there can be no adjudication by the civil Court. All these aspects were overlooked by the learned court below while rejecting the petition filed by the petitioner for rejection of plaint.

13. On the other hand, learned counsel for the respondent has referred to various portions of the plaint and submits

therefrom that the plaint must be read as a whole and so read the plaint clearly shows that there is cause of action for institution of the suit and that there is no statutory bar for such institution. He submits that the suit has been filed seeking permanent injunction restraining the defendant from making, selling, offering for sale, distributing the hybrid variety of Maize KMH25K55 which infringes the plaintiff's hybrid variety of Maize 30B07. The suit is also instituted against such action of passing off besides other reliefs. He has also referred to paragraph No.30 of the plaint where submissions/averments relating to cause of action are made. He submits that defendant had filed the petition under Order VII Rule 11 C.P.C very belatedly i.e., 7 years after institution of the suit. Therefore, the same was rightly dismissed by the Court below.

14. Learned counsel for the respondent (plaintiff) submits that as on the date of institution of the suit, plant variety of the defendant KMH-25K55 was not registered. Therefore, the suit for infringement of plaintiff's plant variety by the defendant is clearly maintainable. Cancellation or revocation of certificate of registration of the defendant by the Registrar

is one aspect and infringement of mark of the plaintiff by way of passing off by the defendant is another aspect. Plaintiff has not sought for cancellation or revocation of the registration certificate of the defendant which is within the purview of the Registrar. Therefore, the bar of Section 89 would not be applicable to the present case. There is no provision for deemed registration under the 2001 Act. Such contention of the petitioner (defendant) is wholly untenable. Registration of the defendant's plant variety was made after filing of the suit. As on the date of filing of the suit, defendant's plant variety was un-registered.

15. Adverting to the provisions of Order VII Rule 11 C.P.C, learned counsel for the respondent submits that no case was made out for rejection of plaint. Therefore, learned court below was justified in rejecting such petition filed under Order VII Rule 11 C.P.C.

16. Submissions made by learned counsel for the parties have received the due consideration of the court.

17. At the outset we may advert to relevant provisions of the 2001 Act which has been enacted to provide for the

establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage development of new varieties of plants. Objective of the 2001 Act is to recognize and to protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties. Moreover, to accelerate agricultural development it is necessary to protect plant breeders rights to stimulate investment for research and development for the development of new plant varieties. Such protection is likely to facilitate the growth of the seed industry which will ensure the availability of high quality seeds and planting material to the farmers. India, having ratified the agreement of trade related aspects of Intellectual Property Rights, had to make provision for giving effect to such agreement. To give effect to the aforesaid objectives, the 2001 Act has been enacted.

18. Chapter III of the 2001 Act comprising of Sections 14 to 23 provides for registration of plant varieties and essentially derived variety. As per Section 21 (1) once an application for registration is made, the Registrar, shall, on its acceptance

cause such application to be advertised in the prescribed manner calling for objections from interested persons. Under Sub-Section (2) of Section 21 of the 2001 Act such objection may be made within three months from the date of advertisement. The grounds on which objection may be made are mentioned in Sub-Section (3). As per Sub-Section (4), the objection received by the Registrar shall be forwarded to the applicant, who shall, within two months on receipt of such objection, send to the Registrar a counter statement on which he relies. If he fails to do so, he shall be deemed to have abandoned his application. On the other hand, if the applicant sends counter statement, the Registrar shall take a decision one way or the other after complying with the principles of natural justice.

19. Chapter IV deals with duration and effect of registration and benefit sharing. As per Sub-Section (1) of Section 24 of the 2001 Act, when an application for registration of a variety has been accepted and either the application was not opposed or the time of notice of opposition has expired, or the application was opposed but the opposition was rejected, the Registrar shall register the variety. Upon such

registration, the Registrar shall issue to the applicant a certificate of registration in the prescribed form under Sub-Section (2).

20. Sub-Section (1) of Section 28 of the 2001 Act says that subject to the other provisions of the 2001 Act, a certificate of registration for a variety issued under the 2001 Act shall confer exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety.

21. Chapter V deals with surrender and revocation of certificate and rectification and correction of register. Section 34 which forms part of Chapter-V deals with revocation of registration on certain grounds. It says that subject to the provisions contained in the 2001 Act, the protection granted to a breeder in respect of a variety may on an application in the prescribed manner of any person interested be revoked by the Authority, on the grounds mentioned there under. 'Authority' has been defined under Section 2 (a) to mean the *Protection of Plant Varieties and Farmers Rights Authority* established under Sub-Section (1) of Section 3 of the 2001 Act.

22. The power to cancel or change registration and to rectify the register is provided in Section 36. As per Sub-Section (1), on an application made by any person aggrieved, the Registrar may make such order as he thinks fit for cancellation or changing any certificate of registration issued under the 2001 Act on the ground of contravention of the 2001 Act or failure to observe the conditions of registration. Such a power can be exercised by the Registrar *suo-moto* as well.

23. An order or decision of the Authority or Registrar relating to registration is appealable to the High Court under Section 56 of 2001 Act, which forms part of Chapter VIII.

24. Chapter-X deals with infringement, offences, penalties and procedure. Under Section 64 a right established under the 2001 Act is infringed by a person who is not a breeder of a variety registered under the 2001 Act, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered licence or registered agency without permission of the registered licensee or registered agent as the case may be; and who uses, sells, exports, imports or produces any other variety

giving such variety the denomination identical with or deceptively similar to the denomination of a variety registered under the 2001 Act; thereby causing confusion in the minds of the general public in identifying such variety so registered.

25. In case of infringement, Section 65 comes into play. Sub-Section (1) says that no suit for the infringement of a variety registered under the 2001 Act or relating to any right in a variety registered under the 2001 Act shall be instituted in any Court inferior to a District Court having jurisdiction. What relief can be granted in such a suit is provided for in Section 66 of the 2001 Act. The relief which may be granted includes injunction and at the option of the plaintiff, either damages or a share of the profits. The Court is also empowered to grant ex parte injunction or pass any interlocutory order regarding the matter mentioned therein. In the course of the suit if the Court has to form an opinion upon any question of fact or a scientific issue, under Section 67 it may appoint an independent scientific advisor to suggest or to enquire into and to report upon the matter so as to enable the District Court to form the desired opinion.

26. Section 89 says that no civil Court shall have jurisdiction in respect of any matter which the Authority or the Registrar is empowered by or under the 2001 Act to determine.

27. Having surveyed the relevant legal provisions of the 2001 Act, the plaint or the relevant portions thereof may be adverted to because to decide rejection of plaint under Order VII Rule 11 C.P.C, it is the averments made in the plaint alone which would have to be taken note of. In paragraph No.11 of the plaint, the plaintiff has stated that it has developed hybrid Maize varieties after substantial research and development in order to suit Indian conditions. One such variety is under the denomination of 30B07. Plaintiff had carried out research and development of the 30B07 variety from the year 1998.

28. In paragraph No.14 it is stated that the said variety has been commercially produced and marketed by the plaintiff since 09.09.2004 achieving great commercial success. It was notified in the Gazette of India on 06.02.2007 under Section 5 of the Seeds Act, 1966.

29. Plaintiff has stated in paragraph No.16 that the said variety is characterised as “extant variety” as defined under Section 2 (j) of the 2001 Act, having been commercialised and sold in the market since the year 2004. In paragraph No.17 it is stated that in order to protect its rights and interest as the breeder of the extant variety, plaintiff applied for registration under Section 14 of the 2001 Act on 01.04.2008. After following the laid down procedure the variety was registered under the 2001 Act on 07.03.2011 which was published vide a public notice through the Registrar on 01.07.2011. The 30B07 variety of the plaintiff now holds registration No.11 of 2011.

30. Plaintiff has stated in paragraph No.20 that in the course of a random market survey it came across defendant’s produce in September, 2011 and learnt that defendant had applied for registration for an extant variety of Maize bearing denomination KMH-25K55. It is stated that on receipt of such information, plaintiff had conducted investigation. Its investigation revealed similarity of defendant’s variety to that of the plaintiff. Therefore, it has been alleged that defendant’s variety has infringed plaintiff’s rights in respect

of the registered Maize variety 30B07. Defendant's act of production, marketing, selling and advertising its variety of Maize KMH-25K55 amounts to infringement of plaintiff's rights under Section 64 of the 2001 Act.

31. Paragraph No.30 of the plaint deals with cause of action and the same reads as under:-

“The cause of action first arose on September 2011 when the Plaintiff discovered that Defendant had applied for registration of the impugned variety KMH-25K55 before the Registrar of Plant Varieties. Subsequently, the cause of action also arose when the Plaintiff purchased the impugned product of the Defendant on February 27, 2012. The cause of action further arose in July, 2012, when the Plaintiff conducted a fresh investigation in the next crop season to ascertain the alleged infringement. As such the cause of action is a continuous one and continues to subsist until the Defendants are restrained by the orders of the Hon'ble Court from infringing the registered plant variety 30B07 of the Plaintiff”.

31.1. It is on that basis that plaintiff has sought for the relief of permanent injunction against the defendant, destruction of infringing products and damages.

32. Learned court below framed the point which arose for consideration, as to whether the suit was liable for rejection under Order VII Rule 11 C.P.C as claimed by the petitioner. After referring to various decisions and provisions of the

2001 Act, learned court below came to following conclusions which are extracted as under:

“14. The sum and substance of above discussion, show that the present suit is filed under Section 64 to 66 of PPV and FR Act on the ground of infringement of registered variety of the plaintiff. Whereas on the other hand, admittedly the defendant is also holder of the registered variety.

15. As can be seen from the plaint averments, the plaintiff variety was registered on 07.03.2011, whereas as per the admission made in the written statement the variety of the defendant was registered on 16.08.2012 i.e., 9 days after filing of the suit. So by the date of filing the suit, the defendant have no registration certificate with respect to its variety. The present suit is filed basing on the cause of action arose in July, 2012. When the plaintiff came to know about infringement of its variety by the defendant by that time the defendants have no registered variety and so by the date of filing the suit Section 64 of the PPV and FR act applies. At this stage it cannot be decided whether subsequent giving of certificate to the defendant gives the immunity to the defendant from the earlier cause of action. Even though the court is concurring with the defendant that it is also holder of the registered variety just like plaintiff by the date of filing this petition, as the defendant has no certificate for registered variety by the date of filing the suit, the suit have to be decided basing on the cause of action arose in July, 2012 as mentioned in the suit. In those circumstances, it cannot be said that there is no cause of action for the suit. Hence the very ground pleaded by the defendant that the suit is not maintainable due to lack of cause of action is not accepted and accordingly this petition is dismissed without costs.

16. In the result, the petition is dismissed without costs.”

33. From the above, it is seen that according to the learned court below, at the time of institution of the suit the plant

variety of the defendant was not registered. It was registered subsequently on 16.08.2012. As noticed above according to the plaintiff the cause of action first arose in September, 2011 when the plaintiff had discovered that defendant had applied for registration. The cause of action further arose in July, 2012 when according to the plaintiff its investigation revealed the alleged infringement. On that basis, learned court below has taken the view that at the stage of considering rejection of plaint under Order VII Rule 11 C.P.C no conclusion can be reached that there was no cause of action for institution of the suit or that the suit is barred by any law.

34. Learned Court below has carefully considered provisions of Sections 21, 24 and 28 of the 2001 Act. It is not discernible therefrom that once an application filed by an applicant is not opposed or if opposed such objection has been rejected then there would be deemed registration before issuance of registration certificate. *Prima facie*, Court could not trace out any such provision. On the contrary, under sub-section (4) of Section 21 if the applicant fails to respond to the objection filed within the prescribed period, it is he

who would be deemed to have abandoned his application. That apart, in the case of infringement of a right established under the 2001 Act, a suit is maintainable under Section 65 of the 2001 Act which has to be instituted in a Court not inferior to a District Court.

35. Cancellation of registration or revocation of registration is one aspect but, infringement of a right under the 2001 Act is another aspect. This is illustrated by Section 89 of the 2001 Act which clarifies that in respect of any matter which the Authority or the Registrar is competent to determine under the 2001 Act, jurisdiction of the civil Court would be barred. The Registrar may cancel or revoke a certificate of registration under Sections 34 and 36 of the 2001 Act on the grounds mentioned therein, such as, certificate of registration being obtained on incorrect information, or granted to a person not eligible etc. The issue as to whether a right under the 2001 Act has been infringed or not is a different aspect covered by Section 64 of the 2001 Act, the remedy for which is a suit under Section 65.

36. The law relating to rejection of plaint under Order VII Rule 11 C.P.C has by now been well settled by the Supreme

Court and requires no restatement. Nonetheless to put the matter in perspective we may quote from the relevant portion of the decision of Supreme Court in **PV GURU RAJ REDDY Vs. P. NEERADHA REDDY**¹, which dealt with the provision of Order VII Rule 11 C.P.C, observing that rejection of plant under Order VII Rule 11 C.P.C is a drastic power conferred on the Court to terminate a civil action at the threshold. It was stressed upon that the conditions precedent to the exercise of power under Order VII Rule 11 C.P.C are stringent. Only the averments in the plant have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11 C.P.C stand of the defendants in the written statement or in the application for rejection of plant is wholly immaterial. It is only if the averments in the plant *ex facie* do not disclose a cause of action or of a reading thereof the suit appears to be barred under any law, the plaint can be rejected. In all other circumstances the claims will have to be adjudicated in the course of the trial.

¹ (2015) 8 SCC 331

37. For the aforesaid reasons, this Court is of the considered opinion that learned Court below has not committed any error or infirmity in rejecting the petition filed by the petitioner under Order VII Rule 11 C.P.C.

38. However, all contentions raised are kept open to be decided in the course of the trial.

39. In view of the above, this civil revision petition fails and is accordingly dismissed. No costs.

40. Miscellaneous petitions if any, pending in this civil revision petition shall stand closed.

UJJAL BHUYAN, J

Date: 18.04.2022

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THE HON'BLE SRI JUSTICE UJJAL BHUYAN

CIVIL REVISION PETITION No.2095 OF 2021

Date: 18.04.2022

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