
(2026) 02 DEL CK 1740

In the Delhi High Court

Case No : CS(COMM) No. 672 Of 2022, CC(COMM) No. 16 Of 2023 & I.A. No. 13948 Of 2023

Pawan Kumar Goel

APPELLANT

Vs

Dr. Dhan Singh & Anr

RESPONDENT

Date of Decision : 17-02-2026

Acts Referred:

Code of Civil Procedure, 1908 — Order 23 Rule (1)(3)(b), Order 23 Rule 1(4)(b)

Citation : (2026) 02 DEL CK 1740

Hon'ble Judges : Tushar Rao Gedela, J

Bench : Single Bench

Advocate : Nalin Kohli, Vivek Ranjan, Anshul Malik, Sarath J. Bakash, Vaibhav Vutts, Aamna Hasan, Anupriya Shayam, Aarya Deshmukh, Vaibavi S.G.,

Final Decision : Disposed Of

Judgement

Tushar Rao Gedela, J

1. The present suit has been filed on behalf of the plaintiff seeking permanent injunction for infringement of Indian Patent 369150 (hereafter referred to as "suit patent") for the process of extraction of Alpha Yohimbine with purity greater than 90% from Rauwolfia canescens/tetraphylla. The plaintiff also seeks for the delivery up of all stocks, rendition of account, damages, and costs for infringement of the plaintiff's right in the suit patent.

2. Mr. Nalin Kohli, learned Senior Counsel appearing on behalf of the plaintiff, at the outset on instructions, gave a statement that the plaintiff is willing to withdraw the present suit in terms of the affidavit dated 21.07.2025 filed in compliance of the order dated 15.07.2025. For the purpose of clarification and impact of the averment, the affidavit dated 21.07.2025 has been reproduced hereunder:

" AFFIDAVIT

I, Pawan Kumar Goel, owner of Patent Number Indian patent 369150 and the Plaintiff in the present suit, do hereby state that:

1. I filed the present suit seeking permanent injunction for infringement of Indian Patent 369150 (suit patent) titled Novel Process for Extracting Alpha Yohimbine (Rauwolfscine) From Rauwolfia canescens along with rendition of account, damages, delivery up etc.

2. The documents submitted by the Defendants in defence to my suit and along with their written statement (ref. page nos.227, 229, 231, 241, 243, 245, 262, 264, 266, 270, 272, 274, 286, 288, 290, 503, 535 & 543 of Volume 2, Index-IV and page nos.142, 143, 148 & 150 of Volume 1, Index-IV of Defendants' documents) confirm that the Defendants are manufacturing Alpha Yohimbine 90% from Rauwolfia vomitoria. The relevant pages of the documents mentioned hereinabove are annexed herein as Document – 1 (Colly.) and may be exhibited as Exhibit A.

3. Considering the Defendants' documents filed before this Hon'ble Court demonstrating their Alpha Yohimbine 90% production is from Rauwolfia vomitoria, I request this Hon'ble Court to take on record my affidavit and consider disposing off this suit in light of this affidavit.

DEPONENT

VERIFICATION

I, Pawan Kumar Goel, verify that the contents of the present affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified on this_19th _day of July 2025 at ___Panchkula_____.

DEPONENT

[notary attested]"

Simultaneously, he also submitted that the suit may be treated as withdrawn on the aforesaid statement under Order XXIII Rule (1)(3) (b) of the Code of Civil Procedure, 1908 ("CPC") granting liberty to institute a fresh suit for the same cause of action.

3. This conditional withdrawal of the suit was objected to by Mr. Vaibhav Vutts, learned counsel for the defendant, who contended that in case the plaintiff seeks withdrawal simpliciter, the defendant would have no objection. However, if it is contingent or with a condition that such withdrawal be treated as one under Order XXIII Rule (1)(3)(b) of the CPC, granting permission to institute a suit afresh on the same cause of action, he may be heard before any such order is passed.

4. Thus, this Court heard the arguments of the learned counsel for the parties.

5. Mr. Kohli, learned senior counsel, submitted that the cause of action for instituting the present suit was based on the allegation that the defendant is using *Rauwolfia canescens/tetraphylla* and, as a result, is infringing the patent of the plaintiff. He further submitted that upon examining the export documents of the defendants available on the suit plaint, it transpired that the defendant is using *Rauwolfia Vomitoria* to extract Alpha Yohimbine with purity greater than 90% for the purposes of exporting the finished goods, which would not infringe the patent of the plaintiff, and thus, there being no cause of action remaining on such admission, the suit is being sought to be withdrawn.

6. He emphasized that the insistence of the plaintiff of withdrawal and disposal of the suit under Order XXIII Rule (1)(3)(b) of the CPC is pressed into service for the reason that, in case the defendant utilizes *Rauwolfia canescens/tetraphylla*, then the registered patent of the plaintiff would be infringed bestowing the cause of action in favour of the plaintiff to institute a suit. He forcefully contended that in case such indulgence is not granted by this Court, the plaintiff would lose the remedy and opportunity to institute a fresh suit in case of such infringement. He apprehends that in case any such subsequent suit is instituted upon the cause of action, mentioned above, the defendant would surely object that no such leave was granted, leaving the plaintiff remediless, which cannot be countenanced. It is for this reason that the plaintiff, though seeks simple withdrawal in terms of the affidavit of the plaintiff dated 21.07.2025, however, such withdrawal ought to be allowed under Order XXIII Rule (1)(3)(b) of the CPC with the liberty envisaged therein.

7. He further submitted that the plaintiff cannot be non-suited for a cause of action which may arise in the future with respect to the same cause of action, i.e., infringement of the suit patent on the ground that the defendant is infringing the suit patent on account of the use of *Rauwolfia canescens/tetraphylla*. Since the defendant has typically stated that, for the export of the goods manufactured by the defendant through its process, it uses *Rauwolfia Vomitoria*, the premised cause of action on the basis that the defendant actually uses *Rauwolfia canescens/tetraphylla* is non-existent, thus, suit need not be proceeded with, and may be permitted to be withdrawn. However, the primary cause of action may still survive if the defendant uses *Rauwolfia canescens/tetraphylla* in the future, which cannot be foreclosed, and that is the reason for this conditional withdrawal. He stated that surely the defendant cannot have any objection to this.

8. Moreover, learned senior counsel also submitted that the plaintiff is the dominus litus and, hence, being the master of the suit, it is upto the plaintiff to continue or withdraw the suit for the reasons best suited to it. The defendant has no locus to question or object to the same. He thus prays that the plaintiff be permitted to withdraw the suit under the provisions of Order XXIII Rule (1)(3)(b) of the CPC, with the liberty to institute a fresh suit as and when the same cause of action arises in future.

9. Per contra, Mr. Vaibhav Vutts, learned counsel for the defendant vehemently opposed the prayer made by the plaintiff. He stated that for a withdrawal simpliciter, the defendant would have no objection, yet if it is conditional, the defendant would oppose the same.

10. To support the contention as to why the defendant would oppose the withdrawal in the manner sought by the plaintiff, learned counsel invited attention to certain documents furnished by the defendant. He would first invite attention to the Batch Manufacturing Records (BMR) maintained by the defendant, which clearly disclosed the raw material, i.e., Rauwolfia tetraphylla, was used by the defendants patented process for the manufacture of final goods, which are to be finally exported, therefore, there is no question of any inference that the defendant is only using Rauwolfia Vomitoria in its process to manufacture the final goods. In fact, he asserted that the defendant is utilizing Rauwolfia tetraphylla as its raw material to produce/manufacture commercial quantities of the products, which have been exported at least since 2013-14. The defendant submits that he has been granted license from 08.04.2014 by the Drug Controller under the Drugs and Cosmetics Act, 1945 for extraction and sale of Alpha Yohimbine Hydrochloride (Rauwolscline Hydrochloride 98%). He also contended that the defendant is using Rauwolfia tetraphylla, apart from Rauwolfia Vomitoria, in its licensed process to manufacture commercial quantities of products which are exported. Thus, the plaintiff seeking withdrawal on the basis that the defendant has admitted using only Rauwolfia Vomitoria, and not Rauwolfia tetraphylla, is a bogey and far from the truth.

11. He vehemently contended that as a fact, there is no cause of action to institute and maintain the present suit, which deserves to be dismissed for lack of cause of action. He would submit that the original cause of action on which the suit was instituted by the plaintiff was that the defendant is infringing plaintiffs' suit patent. He contended that the suit patent of the plaintiff and the one licensed to the defendant are of the process involved and not on a particular product. Coupled with that, the expert employed by the plaintiff himself, in his report, candidly observed, after due analysis of the BMRs, and other disclosures, that the process of the defendant is not same or similar to that of the plaintiff, thus dissipating the actual cause of action on which the suit was instituted, though falsely. Thus, the false bogey of patent infringement, as if based on the patent on the raw material or the product itself, being non-existent, the substratum of the suit itself falls.

12. He also vehemently opposed the withdrawal and insisted that adequate and exemplary costs be imposed upon the plaintiff for dragging the defendant into an unsustainable and avoidable litigation. He stated that the plaintiff continued with the suit proceedings despite the fact that its own expert had clearly and categorically cleared the air that the processes of the defendant and the plaintiff are dissimilar. Having regard to the fact that the plaintiff was aware of this distinction since 12.04.2023, when the expert's report was filed on record, the

plaintiff ought to have withdrawn at that stage itself. Since the defendant has unnecessarily and unwittingly been dragged into a false and frivolous litigation, exemplary costs need to be imposed upon the plaintiff to compensate the defendant. In support of the said contention, learned counsel invited attention to Order XXIII Rule (4)(b) of the CPC to submit that the provision itself contemplates costs to be awarded to the defendant in case no such permission, as contemplated under rule (1)(3)(b) of Order XXIII of the CPC, is granted to the plaintiff. He contended that the clause (b) of Rule (3) of Order XXIII itself envisages only two conditions for withdrawal, viz., one where a formal defect is found and; two for "sufficient grounds". He would contend that the suit is not being withdrawn on account of any defect, thus, it could only be for sufficient grounds. He would contend that, in the light of his argument, it is clear that no reasons, muchless "sufficient grounds" have been furnished by the plaintiff for withdrawal under Order XXIII Rule (1)(3)(b), failure whereof entitles the defendant to costs.

13. This court has heard the arguments of Mr. Nalin Kohli, learned senior counsel and Mr. Vutts learned counsel for the defendant, and perused the documents on record of the suit.

14. This court is unable to appreciate the arguments of Mr. Kohli, learned senior counsel for the plaintiff for seeking permission to withdraw the present suit on the anvil of Order XXIII Rule (1)(3)(b) of the CPC.

15. It has not been denied that the suit patent of the plaintiff and the process used by the defendant are in the "process of" extracting Alpha Yohimbine with purity greater than 90% using Rauwolfia Species. Clearly, the patents of the Plaintiff under claim 8 specify the Alpha Yohimbine (rauwolscine) of purity greater than 90% obtained by the claimed process in claim 1. If that is so, this Court is unable to appreciate as to how the use of Rauwolfia Vomitoria would cease to be the cause of action, while use of Rauwolfia canescens/tetraphylla in the manufacture/extraction of Alpha Yohimbine with purity greater than 90% would be a cause of action which tantamount to infringement of the suit patent. It is neither the case of the plaintiff, nor has it been projected, that the plaintiff has any patent on the raw material, i.e., Rauwolfia tetraphylla, nor could such a case be envisaged in any case. If that is so, how the cause of action would arise in favour of the plaintiff in case the defendant uses Rauwolfia tetraphylla, and not exist in case Rauwolfia Vomitoria is used, is unfathomable.

16. Alternatively, even if the aforesaid situation were to be believed, there is no reason why the plaintiff seeks to withdraw the suit, as the defendant has clearly asserted and demonstrated from the documents like BMRs that it is, in fact, using Rauwolfia tetraphylla in its process to manufacture the commercial quantities. Moreover, the prayer clause of the suit itself seeks permanent injunction on the use of Rauwolfia canescens/tetraphylla by the defendant, predicated on the basis that such use by itself would constitute infringement. Thus, the plaintiff cannot be permitted to approbate and reprobate.

17. That apart, though the expert evidence of the examiner from IIT dated 12.04.2023, filed by the plaintiff, has not been tested for its probative value, yet, for the sake of appreciating the arguments in respect of the controversy at hand, a reference to it is imperative. The plaintiff has not denied the report, which clearly indicates that the defendant is, in fact, using *Rauwolfia tetraphylla* in its process and simultaneously also declares that the suit patent process and that of the defendant are absolutely dissimilar. Thus, even on that count, the stand and the reasons for withdrawal of the present suit does not seem to fall within the parameters of Order XXIII Rule (1)(3)(b) of the CPC.

18. Yet another argument addressed by the plaintiff was that it may be permitted to withdraw the suit in terms of the affidavit of the plaintiff dated 21.07.2025. At first blush, the said submission appeared to be innocuous and amenable, however, when examined in the light of the above analysis based on facts as also considering the statement enumerated in para 3 of the affidavit, the same cannot be acceded to. This is for the reason that para 3 of the said affidavit also seeks withdrawal on the identical basis as argued at length by learned senior counsel. Thus, what cannot be achieved directly, cannot be permitted to be achieved indirectly too.

19. Thus, the permission to withdraw the suit as per the provisions of Order XXIII Rule (1)(3)(b) of the CPC cannot be accorded to the plaintiff. Such a request is denied.

20. Having refused the permission in the nature as sought, this Court is of the considered opinion that the defendant is entitled to costs of Rs.50,000/- for the unnecessary litigation into which it was dragged, when the expert opinion of the plaintiff itself clearly disclosed that the processes adopted by the plaintiff, on one hand, and the defendant, on the other, are not similar.

21. Accordingly, the costs of Rs.50,000/- imposed upon the plaintiff shall be payable to the defendant within four (4) weeks from date against a written acknowledgement.

22. List the suit on 08.07.2026.