
(2023) 03 DEL CK 0168

In the Delhi High Court

Case No : Civil Suit (COMM) No. 119 Of 2023, I.A. No. 4337, 4338, 4339, 4340, 4341, 4342, 5695 Of 2023

Sml Limited

APPELLANT

Vs

Sulphur Crop Care Private Limited & Anr

RESPONDENT

Date of Decision : 23-03-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 23 Rule 3

Citation : (2023) 03 DEL CK 0168

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Pravin Anand, Dhruv Anand, Udit Patro, Sampurnaa Sanyal, Nimrat Singh, J. Sai Deepak, Ashutosh Nagar

Judgement

C.Hari Shankar, J

I.A. 5695/2023 (Under Order XXIII Rule 3 of the CPC)

1. This is one of those providential cases, few and far between, in which, even before summons are issued in the suit, the parties have arrived at an amicable resolution.

2. I.A. 5695/2023 has, therefore, been jointly filed by the parties under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC), setting out the terms of settlement between the parties, which are reproduced thus:

"(i) The Defendants acknowledge the validity of the suit patent, IN 282092 and the Plaintiffs resultant exclusive rights to deal in a fertilizer composition containing:

a. Elemental Sulphur in the range of 30% to 87% of the total composition; Zinc Oxide (ZnO) in the range of 3% to 25% w/w of the total composition and at least one agrochemically acceptable excipient; wherein the composition is in the form of microgranules of the size 0.1 mm to 0.5mm or broadcast granules of the size

range of 0.75mm to 5mm and wherein the composition comprises particles in the size range of 0.1 to 50 microns.

b. Elemental Sulphur in the range of 30% to 85% w/w of the total composition, Zinc Sulphate monohydrate ($\text{ZnSO}_4 \cdot \text{H}_2\text{O}$) in the range from 8% to 60% w/w of the total composition and at least one agrochemically acceptable excipient, wherein the composition is in the form of microgranules of the size 0.1 mm to 0.5mm or broadcast granules of the size range of 0.75mm to 5mm and wherein the composition comprises particles in the size range of 0.2 micron to 50 microns.

(ii) The Defendants further admit that during the validity of the suit patent IN 282092, any act of making, using, offering for sale, selling or importing or otherwise using the composition covered under paragraph (i) will violate the statutory rights of the Plaintiff irrespective of the method of manufacture employed to prepare the composition.

(iii) The above undertakings are being given by the Defendant No. 2. Amitbhai Jayantila Shah, on behalf of himself as well as the Defendant No. 1. The Defendant No. 2 is authorized to give such an undertaking on behalf of the Defendant No. 1 vide Board Resolution of the Defendant dated 7 March 2023. The said undertakings shall be binding henceforth on the Defendants, their associates, representatives, successors, partners, employees, affiliates and assignees-in-business.

(iv) Subject to the above undertakings, the Plaintiff forego its claims as regards the said Defendants, as prayed for in paragraph no. 41 clauses (c) to (f) of the Plaint. However, in the event of a breach of the above undertakings by the said Defendants, the Plaintiff reserves the right to seek any remedies available to them in law and equity. Furthermore, the above-named Defendants shall be liable to indemnify the Plaintiff against all costs and damages incurred by the Plaintiff in light of such breach by the said Defendants."

3. Mr. Pravin Anand, learned Counsel for the plaintiff and Mr. J. Sai Deepak, learned Counsel for the defendants are present on behalf of their respective clients. In view of the resolution of the dispute, Mr. Pravin Anand's client is not pressing for costs or damages or any of the other reliefs sought in the suit, except the reliefs which stand covered by the terms of settlement hereinabove.

4. As such, nothing survives for adjudication in the suit.

5. The suit is decreed in terms of the aforesaid settlement agreement, by which the parties shall remain bound.

6. Let a decree sheet be drawn up accordingly.

7. If any court fees have been deposited, the plaintiff shall be eligible for refund thereof.