

Haryana Pesticides Manufactures ... vs Willowood Chemicals Private Limited on 6 April, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9422/2020

HARYANA PESTICIDES MANUFACTURES
ASSOCIATION

..... Petitioner

Through: Mr. Akhil Sibal, Senior Advocate
with Mr. S.K. Bansal and Mr.
Pankaj Kumar, Advocates.

versus

WILLOWOOD CHEMICALS
PRIVATE LIMITED

..... Respondent

Through: Mr. Hemant Singh, Ms. Mamta
Jha, Mr. Ankit Arvind and Ms.
Mamta Bhadu, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 06.04.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual mode].

CM APPL. 9848/2021 (for amendment of the writ petition)

1. The petitioner has filed this application for amendment of the writ petition, which is at a pre notice stage.
2. The application is therefore allowed, subject to the objections taken by the respondents as to the maintainability of the writ petition and their response on the contents of the amended writ petition.
3. The amended writ petition filed alongwith the application is taken on record.

W.P.(C) 9422/2020 & CM APPL. 30340/2020 (for stay)

1. The present writ petition is directed against an order dated 20.07.2020 by which the Controller has rejected the pre-grant opposition of the petitioner filed under Section 25(1) of the Patents Act, 1970, and proceeded to grant the patent in favour of respondent No.1. On the first date of hearing, an objection was taken by respondent No.1 as to the maintainability of the writ petition in view of the fact that the petitioner would be at liberty to file a post-grant opposition under Section 25(2) and 64 of the Patents Act, 1970. It was also recorded in the said order that a member of the petitioner-association has already filed a post-grant opposition, and taken the ground of invalidity of the patent in defence of the infringement suit filed by respondent No. 1.

2. Mr. Hemant Singh, learned counsel for respondent No.1, states that the only infringement suit filed by respondent No.1, at this stage, is against the aforementioned member of the petitioner-association viz., Safex Limited and two of its subsidiaries.

3. Mr. Akhil Sibal, learned Senior Counsel for the petitioner- association submits that the remedy of post-grant opposition is not efficacious inter alia because the post-grant opposition takes a considerable period to decide, during which time the patent remains enforceable at the instance of the patentee. He further submits that the post-grant opposition is not in the nature of an appeal, and the grounds of natural justice etc., which are urged in the present petition, would not be available to the petitioner in the post-grant opposition.

4. Mr Sibal relies upon the judgment of the Division Bench of the Bombay High Court in Neon Laboratories Pvt. Ltd. vs. Troikaa Pharma Limited & Ors. 2011 (45) PTC 357 [W.P.(C) 211/2010, decided on 26.11.2010]. On the other hand, Mr. Singh relies upon the judgments of this Court in UCB Farchim SA vs. Cipla Ltd. & Ors. 2010 (167) DLT4 59 and Mylan Laboratories Limited vs. Union of India & Ors. (2019) 80 PTC 374 [W.P.(C)5571/2019, decided on 30.09.2019] to submit that a writ petition against a pre-grant opposition does not lie.

5. Leaving the issue of maintainability open, the parties are directed to complete their pleadings. Counter affidavit to the amended writ petition be filed within three weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

6. Mr. Sibal does not press for ad-interim relief at this stage.

7. List on 27.05.2021.

PRATEEK JALAN, J APRIL 6, 2021 'vp'/s