



2025:DHC:6055



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: July 11, 2025

Pronounced on: July 25, 2025

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CS(COMM) 82/2023, I.A. 3231/2024

GSP CROP SCIENCE LTD.

.....Plaintiff

Through: Mr. G. Nataraj, Mr. Rahul Bhujbal,
Advs.

Versus

BR AGROTECH LIMITED AND ANR

.....Defendants

Through: Mr. Saurabh Bhargavan, Mr. Nikhil S.
Nair and Ms. Chinju Saurabh, Advs.
for D-2.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

I.A. 24574/2023 (*Judgement on Admission*)

Preface:

1. The plaintiff instituted a suit for permanent injunction restraining the defendants from infringing its Indian Patent No.394568¹ as also other ancillary reliefs against the defendant nos.1 and 2.

2. *Vide* order dated 16.02.2023, this Court granted an *ad interim* injunction in its favour and against the said defendant nos.1 and 2. Thereafter, *vide* order dated 03.03.2023, the suit was decreed *qua* the

¹ Hereinafter referred as 'IN'568'



2025:DHC:6055



defendant no.1 in terms of the settlement arrived at *inter se* it and the plaintiff. Later on, *vide* order dated 04.07.2024, the order dated 16.02.2023 was made absolute *qua* the remaining defendant no.2.

3. It is in this backdrop that the plaintiff has filed the present application under *Order XII rule 6* of the Code of Civil Procedure, 1908² to pass a judgement on admission against the remaining defendant no.2.

Brief Factual Matrix:

4. As per plaint, the plaintiff, GSP Crop Science Pvt. Ltd., is a company registered under the Companies Act, 1956 with its office at Ahmedabad, Gujarat, and is engaged in the business of manufacture and sale of agrochemicals.

5. The plaintiff engages in extensive research and development for creating affordable products for farmers in India, and has made significant investments thereto, as also received several national and international awards. As a result thereof, the plaintiff has over 70 patents and patent applications in India as on date, of which IN'568 is one.

6. IN'568 discloses and claims a synergistic suspo-emulsion formulation of two agrochemical ingredients, Pyriproxyfen and Diafenthiuron, either in their free base forms, or as agrochemically acceptable salts with Poly Aryl Phenol or Octyl Phenol Ethoxylates, and Magnesium Aluminium Silicate and Acrylic polymer respectively. IN'568 also discloses and claims a process for the preparation of the aforesaid suspo-emulsion formulations.

² Hereinafter referred as '*CPC*'



7. The application for IN'568 was filed by the plaintiff in 2014, and the patent was granted in 2022, with *ten claims*. Out of the ten claims, claims 1 and 10 are independent, and claims 2 to 9 are dependent on claim 1. Claims 1 and 10 of IN'568 are produced hereinbelow:

“1. A Synergistic Suspo emulsion formulation comprising of

- a) Pyriproxyfen as its free base or its agrochemically acceptable salts with Poly Aryl Phenol or Octyl Phenol Ethoxylates*
- b) Diafenthionuron as its free base or its agrochemically acceptable salts with Magnesium Aluminium Silicate and Acrylicpolymer*
- c) one or more inactive excipients selected from the group consisting of antifreezing agent, anti-foaming agent, suspending agent, antimicrobial agent, thickener and buffering agent*

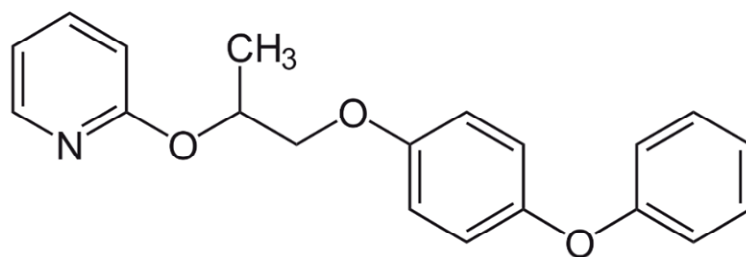
Wherein Pyriproxyfen is in the range of 1 to 15%;and Diafenthionuron is present in the range of 25 to 55

10. The Synergistic suspo emulsion formulation as claimed in claim 1 wherein, method for preparing the Synergistic suspo-emulsion composition comprises:

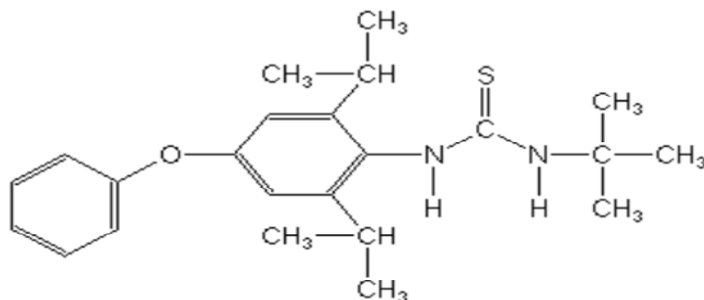
- a) Treating Pyriproxyfen with Poly Aryl Phenol or Octyl Phenol Ethoxylates Octylphenol ethoxylates, Ethoxylates of Poly Aryl Phenol and propylene glycol resulting in a preformed solution;*
- b) Treating Diafenthionuron with Acrylicpolymer of Amine Salt, Magnesium Aluminium Silicate, Silica and Silicon Antifoam Emulsionin aqueous phase;*
- c) Mixing Solution of step a) and step b), water and buffering agent wherein buffering agent is selected from the group comprising of Potassium Dihydrogen Phosphate, Sodium Hydroxide and the like or mixtures thereof.”*



8. Pyriproxyfen is chemically known as 4-phenoxyphenyl (RS)-2- (2-pyridyloxy) propyl ether 2-[1-(4-phenoxyphenoxy) propan-2-yloxy] pyridine and has a chemical structure as depicted below:



9. Diafenthiuron is chemically known as 1-tert-butyl-3-(2,6-diisopropyl-4-phenoxyphenyl) thiourea or N-[2,6-bis(1- methylethyl)-4-phenoxyphenyl]-N'-(1,1-dimethylethyl) thiourea, and has a chemical structure as depicted below:



10. The invention disclosed in IN'568 of combining both the above active ingredients, i.e. Pyriproxyfen (1% to 15%) and Diafenthiuron (25% to 55%) with one or more inactive excipients results in a suspo-emulsion which has improved stability over time, along with better efficacy against pests surpassing the utility of each of the said ingredients when used separately, or in any other combination. Upon testing, it was discovered by the plaintiff to be most effective against Whiteflies on cotton crops, as well as on Tomato Leaf Miners.



11. During the prosecution of IN'568, seven pre-grant oppositions under *Section 25(1)* of the Patents Act, 1970³ filed by seven different opponents were rejected by the Indian Patent Office, and *vide* order dated 08.04.2022, the Indian Patent Office granted IN'568 to the plaintiff. A writ petition being W.P.(C)-IPD 11/2022 was also filed before this Court by one of the opponents, i.e. Best Agrolife Limited, against dismissal of its pre-grant opposition and grant of IN'568, wherein this Court remanded the impugned order therein to the Controller of Patents for consideration afresh. However, *vide* a detailed and reasoned decision dated 18.08.2022, the Controller of Patents rejected the said opposition and upheld grant of IN'568. A second writ petition being W.P.(C)-IPD 24/2022 was also filed by Best Agrolife Limited before this Court, however, the same was withdrawn as settled, as also the validity of IN'568 was recognised by Best Agrolife Limited, as recorded in the order dated 20.12.2022 passed by this Court in the said petition.

12. The plaintiff has commercialised the claims of IN'568 as an insecticide named **SLR 525** with 5% Pyriproxyfen and 25% Diafenthiuron since 2018, and has generated substantial revenue from sales thereof. In fact, in August 2018, the plaintiff was granted approval under *Section 9(3)*⁴ of the

³ Hereinafter referred as '*the Act*'

⁴**'9. Registration of Insecticides.---**(3) *On receipt of any such application for the registration of an insecticide, the Committee may, after such enquiry as it deems fit and after satisfying itself that the insecticide to which the application relates conforms to the claims made by the importer or by the manufacturer, as the case may be, as regards the efficacy of the insecticide and its safety to human beings and animals, register on such conditions as may be specified by it and on payment of such fee as may be prescribed, the*



Insecticides Act, 1968⁵ by the Central Insecticides Board and Registration Committee⁶.

13. In the years 2022-23, the plaintiff gained knowledge of the infringing activities of the defendants when it discovered a product named **Roxyfin**⁷ claiming to be a suspo-emulsion of 5% Pyriproxyfen and 25% Diafenthiuron being sold by the defendant no.2. After obtaining samples, the plaintiff discovered that the impugned product was being manufactured by the defendant no.1, which holds a CIBRC license being CIR-172356-2020 under *Section 9(4)*⁸ of the 1968 Act, for the product comprising a suspo-emulsion of 5% Pyriproxyfen and 25% Diafenthiuron. This, as per the plaintiff, is a “*me-too*” registration, and constitutes a proof of infringement of IN’568.

14. The impugned product is also available on the website <https://www.indiamart.com/> and has presence across India, and the same is causing irreparable harm to the plaintiff, as the very purpose of the patent which creates a limited monopoly in favour of the patentee like the plaintiff can realise the fruits of its efforts and expenditures in research and development is being defeated.

insecticide, allot a registration number thereto and issue a certificate of registration in token thereof within a period of twelve months from the date of receipt of the application...’

⁵Hereinafter referred as ‘**the 1968 Act**’

⁶Hereinafter referred as ‘**CIBRC**’

⁷Hereinafter referred as ‘**impugned product**’

⁸**‘9. Registration of Insecticides.---(4)**Notwithstanding anything contained in this section, where an insecticide has been registered on the application of any person, any other person desiring to import or manufacture the insecticide or engaged in the business of, import or manufacture thereof shall on application and on payment of prescribed fee be allotted a registration number and granted a certificate of registration in respect thereof on the same conditions on which the insecticide was originally registered.’



15. Now, since the captioned suit already stands decreed *qua* the manufacturer of the impugned product, i.e. defendant no.1 as noted hereinabove, the plaintiff seeks a judgement and decree under *Order XII rule 6*⁹ of the CPC against the defendant no.2 being the seller based on admissions made by the said defendant.

Submissions of Learned Counsel for Plaintiff:

16. At the very outset, learned counsel for the plaintiff submitted that IN'568 is valid and subsisting, and has survived seven pre-grant oppositions, two writ petitions, and a rigorous examination by the Indian Patent Office. Being the rightful owner thereof, as per *Section 48*¹⁰ of the Act, the plaintiff has the exclusive right to prevent third parties from making, using, offering for sale, selling, or importing products which fall within the scope of the claims of IN'568 without its consent. That being the undisputed position, learned counsel submitted that the act of the defendant no.2 in selling the impugned products which are squarely covered by IN'568, i.e. a suspo-

⁹**6. Judgment on admissions.**---(1) *Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions... ...'*

¹⁰**48. Rights of patentees.** *Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted under this Act shall confer upon the patentee--*

(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India.' *(emphasis supplied)*



emulsion containing 5% Pyriproxyfen and 25% Diafenthiuron, amounts to textbook infringement of patent.

17. Learned counsel further submitted that the approval/ registration obtained by the defendant no.1 under *Section 9(4)* of the 1968 Act for the very same impugned product sold by the defendant no.2 itself is the first evidence of patent infringement, as the legal requirement under the said provision is that such an application should match and be compliant with the product originally approved, which in the present case was the product **SLR 525** of the plaintiff covered by IN'568 already registered under *Section 9(3)*. In fact, the defendant no.1 has acknowledged the exclusive rights of the plaintiff in dealing with the subject matter of IN'568, admitted that the impugned product comprised the exact same chemical composition as the claims of IN'568 as also disclosed sales made to various companies including the defendant no.2 herein, as evident from the order dated 03.03.2023.

18. Further, on merits, the learned counsel submitted that the defendant no.2 has outrightly admitted selling the impugned product on multiple occasions. *Three* such admissions have been pointed out by learned counsel:-

- *First*, the statement made by the defendant no.2 in the affidavit dated 02.05.2023 in compliance with the order dated 17.04.2023 whereby the defendant no.2 has expressly stated as follows:

“5. We say that it is true that Defendant No.1 has sold suspo-emulsion of Pyriproxyfen 5 % and Diafenthiuron 25 % to our Company under the brand name “ROXYFIN”, the details of supply are as follows:-



a) *For the Accounting year 2021-2022 (01-04-2021 to 31-03-2003), the total quantity purchased from B.R Agrotech Ltd comes to 23,000 Ltrs. Out of which, we have rejected the returned 5368 Ltrs to BR Agrotech Ltd. Only the balance quantity of 17,632 Ltrs were sold and marketed by us. The Sales proceeds (excluding GST) on this comes to Rs.2,20,22,368=00.*

b) *Similarly, For the Accounting year 2022-2023 (01-04-2022 to 31-03-2004), the total quantity purchases from B.R Agrotech Ltd comes to 43,000 Ltrs. Out of which, we have not sold 25,000 Ltrs, which we have agreed to return to B.R Agrotech Ltd. Only the balance quantity of 18,000 Ltrs were sold and marketed by us. The Sales proceeds (excluding GST) on this comes to Rs. 2,24,82,000=00.*

(emphasis supplied)

- *Second, the statement made by the defendant no.2 in the affidavit-in-reply to I.A.3106/2023 dated 13.04.2023, specifically para 5 thereof as follows:*

“5. I further say that this Defendant has not infringed the Patent right in respect of Indian Patent No. 394568 (IN 568) comprising, inter alia, manufacture and sale of a suspo-emulsion of Pyriproxyfen 5 % and Diafenthiuron 25 % as alleged by the Plaintiff. If at all any infringement has been done by Defendant No.1, it is a matter between Plaintiff and Defendant No. 1 and we are not concerned with the same.”

- *Third, para 10 of the purported written statement of the defendant no.2 as follows:*

“10) As regards Para No. 11 of the Complaint is concerned, it is true that BR Agro (Defendant No. 1 herein) claims to be the Owner holding approval Under Section 9 (4) approval vide Regn No. CIR172356/2020 in respect of items SE i.e. Suspo-emulsion of Pyriproxyfen and Diafenthiuron. By virtue of the said approval, this Defendant was acting as marketing entity of the said products which is manufactured by BR Agro (Defendant No. 1 herein). However, that was an honest marketing arrangement entered into between the Defendant No. 1 and this Defendant. But at the same



time, this Defendant deny that it was an arrangement purposefully entered into between the Defendant No. 1 and this Defendant acting in collusion for infringement of the Patent right of the Plaintiff, as alleged. Hence, this Defendant emphatically deny the said allegation in toto.”

(emphasis supplied)

19. In light of the clear admissions made hereinabove, learned counsel submitted that the plaintiff is entitled to a judgement and decree in its favour and against the defendant no.2 under *Order XII rule 6* of the CPC. In furtherance of the said averment, learned counsel relied upon ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India***¹¹, ***Karam Kapahi v. Lal Chand Public Charitable Trust***¹² and ***Rajiv Ghosh v. Satya Naryan Jaiswal***¹³ to submit that the provisions of *Order XII rule 6* CPC are wide and untrammelled, can be exercised even *suo motu*, and are there to enable the Courts to meet the ends of justice. He further relied upon ***Delhi Jal Board v. Surendra P. Malik***¹⁴ to elucidate on the test for passing a judgement and decree under *Order XII rule 6* CPC and submit that if the admissions of fact *qua* the averments made in the suit are plain, unambiguous and unequivocal, and the objections raised by the defendant do not require any evidence, and in fact are so inconsequential that it is impossible for the defendant to succeed even if entertained, a judgement and decree in favour of the plaintiff must follow.

¹¹[(2000) 7 SCC 120]

¹²[(2010) 4 SCC 753]

¹³[2025 SCC OnLine SC 751]

¹⁴[2003 SCC OnLine Del 292]



20. In fact, learned counsel relied upon *National Textile Corpn. Ltd. v. Ashval Vadera*¹⁵ to submit that when a fit case is made out, a judgement and decree under *Order XII rule 6* of the CPC must follow to prevent misuse of the legal process against the aggrieved party. Finally, he relied upon *I.T.D.C. Ltd. v. Chander Pal Sood & Son*¹⁶ to submit that a judgement and decree on admission may be passed by the Court at any stage without determination of other questions between the parties, and upon *Bhupinder Jit Singh v. Sonu Kumar*¹⁷ to submit that the plaintiff, if otherwise entitled to a decree on admission, cannot be deprived thereof by the defendant taking pleadings which have no legs to stand on.

21. Based on all the above, learned counsel submitted that no further evidence is required for determination and adjudication of the captioned suit against the defendant no.2 as the said defendant has admitted selling the impugned product, and has in fact, even provided relevant sales figures thereto, and other defences taken by the defendant no.2 do not have any legs to stand on, as sale of the impugned goods *simpliciter* amounts to infringement of patent under *Section 48* of the Act. Hence, he prayed to allow the present application and a judgment and decree be passed in favour of the plaintiff and against the defendant no.2.

Submissions of Learned Counsel for Defendant No.2:

22. *Per contra*, learned counsel for the defendant no.2 submitted that since it is the defendant no.1 who is the erstwhile manufacturer holding the CIBRC

¹⁵[2010 SCC OnLine Del]

¹⁶[2000 SCC OnLine Del 114]

¹⁷[2017 SCC OnLine Del 11061]



license no.CIR-172356-2020in respect of the impugned products under *Section 9(4)* of the 1968 Act, and the defendant no.2 was only the honest marketing entity thereof without any collusion in order to infringe IN'568, the captioned suit is not maintainable against the said defendant no.2. He further submitted that since the said suit already stands decreed against defendant no.1, and the terms of settlement between the plaintiff and the defendant no.1 include full and final reimbursement of all sale proceeds including on behalf of the defendant no.2, no cause of action survives against the defendant no.2 and the plaintiff cannot claim any compensation from the defendant no.2.

23. Learned counsel then submitted that though all the aforesaid statements quoted by the plaintiff have been made by the defendant no.2, the same do not amount to clear, unambiguous and unconditional admissions as required under *Order XII rule 6* of the CPC. The sales admitted by the defendant no.2 in the aforesaid admissions are *qua* historical sales and purchases while categorically stating that the defendant no.2 has no intention to engage in future infringing activity, and hence do not amount to admissions as per the statutory requirement. He submitted that the aforesaid statements are in fact contextual, conditional and not equivocal, and must be seen with the other denials, justifications and questions of fact raised by the defendant no.2 in its written statement.

24. Lastly, as per learned counsel continuance of the present suit against the defendant no.2 is only a *mala fide* attempt on the part of the plaintiff to pressurize it to withdraw its separate post-grant opposition proceedings



against IN'568 which are ongoing against the plaintiff. Hence, he prays that the present application, being without merit, is liable to be dismissed.

Analysis and Findings:

25. This Court has heard the learned counsels for the parties as also gone through the pleadings and documents on record.

26. The short issue for consideration is, whether in view of the provisions of *Section 48* of the Act, the defendant no.2, *admittedly*, being the marketer/seller for the impugned products manufactured by the defendant no.1, was in fact engaged in "... .. *making, using, offering for sale, selling or importing for those purposes that product in India*" without the "*consent*" of the plaintiff, being the registered proprietor of IN'568, has "... ..*the exclusive right to prevent third parties... ..*" like the defendant no.2 herein; and whether in light of the said "*admissions of fact*" made by the defendant no.2 herein "*through pleadings or otherwisein writing*", the plaintiff is entitled to a judgment on admission under *Order XII rule 6* of the CPC.

27. Keeping the above in mind, it is relevant to note that the defendant no.2 has never disputed that the invention claimed by the plaintiff under IN'568 is with respect to a synergistic suspo-emulsion formulation containing two active ingredients, which are Pyriproxyfen (1% to 15%) and Diafenthiuron (25% to 55%), which has been commercialised by the plaintiff and is sold as an insecticide named **SLR 525** with 5% Pyriproxyfen and 25% Diafenthiuron. It is also undisputed that the impugned product also has an identical composition as the aforesaid **SLR 525**, i.e. a suspo-emulsion formulation containing 5% Pyriproxyfen and 25% Diafenthiuron. Most



importantly, it has also been categorically stated by the defendant no.2 in its affidavits dated 02.05.2023 and 13.04.2023 that it was engaged in marketing/selling the said impugned products. In view thereof, this Court need not look into the alleged admissions made by the defendant no.2 in its written statement since till date, the same is yet to be taken on record.

28. For the sake of clarity with regards to the impugned product involving IN'568 of the plaintiff, reproduced hereinbelow is the infringement analysis of the same against claims of IN'568 as per *para 65* of the plaint:-

Claim No.	Claim Text and Claim Scope	Impugned Product as per label
1.	A Synergistic Suspo-emulsion formulation comprising of a) Pyriproxyfen as its free base or its agrochemically acceptable salts with Poly Aryl Phenol or Octyl Phenol Ethoxylates; b) Diafenthiuron as its free base or its agrochemically acceptable salts with Magnesium Aluminium Silicate and Acrylic polymer; c) one or more inactive excipients selected from the group consisting of anti-freezing agent, anti-foaming agent, suspending agent, antimicrobial agent, thickener and buffering agent; wherein Pyriproxyfen is in the range of 1 to 15%; and Diafenthiuron is present in the range of 25 to 55 %.	SE is suspoemulsion Pyriproxyfen (5%)+ Diafenthiuron (25%) Other agents mentioned in label fall in these classes as can be seen from the example and description in IN'568
2.	The Synergistic suspo emulsion formulation as claimed in according to claim 1 wherein dispersant is ethoxylates of Octyl Phenol & Poly Aryl Phenol , is present in the range of 15 to 25 %	Ethoxylate of Octyl Phenol – 10% Tristyrylphenol Ethoxylate (Poly Aryl Phenol) – 2.5 % Ethoxylate Tristyrylphenol - 2%
3.	The Synergistic suspo emulsion formulation as claimed in claim 1 wherein antifreezing agent is selected from the group comprising of polyethylene glycols , methoxypolyethylene glycols, polypropylene glycols, polybutylene glycols, glycerin, ethylene glycol and the like or mixtures thereof and the said	Glycol – 4%



	anti-freezing agent is present in the range from 2 to 6 %.	
4.	The Synergistic suspo emulsion formulation as claimed in claim 1 wherein antifoaming agent is selected from the group comprising of silicone emulsion, perfluoroalkylphosphonic acids and perfluoroaliphatic polymeric esters and the like or mixtures thereof and the said anti-foaming agent is present in the range of 0.05 to 0.25 %.	Polydimethyl siloxane – 0.5%
5.	The Synergistic suspo emulsion formulation as claimed in claim 1 wherein suspending agent is selected from the group comprising of Magnesium Aluminium Silicate, fumed silica, magnesium montmorillonite and the like or mixtures thereof and the said suspending agent is in the range of 1 to 3 %.	Silica – 0.8%
6.	The Synergistic suspo emulsion formulation as claimed in claim 1 wherein antimicrobial agent is selected from the group comprising of 2-bromo-2-nitropropane-1,3-diol, 1,2-benzisothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, 5-chloro-2-methyl-4-isothiazolin-3-one and the like.	1,2-benzisothiazol-3-one – 0.2%
7.	The Synergistic suspo emulsion formulation as claimed in claim 1 wherein thickener is selected from the group comprising of xanthan gum, cellulose, carboxymethyl cellulose, hydroxyethyl cellulose, dextrine, gum Arabic, polyvinyl alcohol and the like or mixtures thereof and the said thickener is in the range of 0.05 to 0.25%	Poly Saccharides (Xanthan Gum) - 0.2%
10.	The Synergistic suspo emulsion formulation as claimed in claim 1 wherein, method for preparing the Synergistic suspo-emulsion composition comprises: a) Treating Pyriproxyfen with Poly Aryl Phenol or Octyl Phenol Ethoxylates Octyl phenol ethoxylates, Ethoxylates of Poly Aryl Phenol and propylene glycol resulting in a pre- formed solution; b) Treating Diafenthuron with Acrylic polymer of Amine Salt, Magnesium Aluminium Silicate, Silica and Silicon Antifoam Emulsion in aqueous phase; c) mixing Solution of step a) and step b), water and buffering agent wherein buffering agent is selected from the group comprising of Potassium Dihydrogen Phosphate, Sodium Hydroxide and the like or mixtures thereof.	There is no process described on label of infringing product. However, given the novelty of IN'568 which stands acknowledged, and the fact that Defendant 1 has a Sec. 9(4) "me-too" registration which requires the ingredients and amounts to match, the presumption is that the burden on a patentee under Section 104A is met, and the onus of showing that a different process is used is now on Defendants

29. A perusal of the above reveals that the impugned products manufactured by the defendant no.1 and sold by the defendant no.2 fall within the scope of the invention disclosed and claimed in IN'568 by the plaintiff, especially since it comprises 5% Pyriproxyfen which is within the



range of 1% to 15%, and 25% Diafenthiuron which is within the range of 25% to 55%, exactly as claimed in IN'568. The CIBRC license no. CIR-172356-2020 obtained by the defendant no.1, as also the explicit terms of the settlement arrived at between the plaintiff and the defendant no.1 admitting the exclusive rights of the plaintiff *qua* the very same impugned products sold by the defendant no.2 need no assurance/ reinforcement of the same.

30. *Qua* the aspect of infringement of patent, the provisions of *Section 48* of the Act are very clear and unambiguous insofar as it gives to a patentee '... *the exclusive right to prevent third parties ... from the act of making, using, offering for sale, selling or importing ...* ', i.e. anyone dealing with any of the aforesaid is also liable for infringing the patent. The legislature, in all its wisdom, has chosen to use the word '*or*', and not '*and*', which *simpliciter* means that *any* of the acts like '*making*', '*using*', '*offering for sale*', '*selling*', '*importing*' in *Section 48* of the Act.

31. The above view is fortified by a co-ordinate bench of this Court in ***Merck Sharp & Dohme Corp. & Anr. v. Sanjeev Gupta & Others***¹⁸ wherein the issue was *qua* manufacture of infringing products in India for the purpose of exporting them abroad. Rejecting the interpretation advanced by the defendants therein to read the individual acts mentioned in *Section 48* of the Act conjointly and interdependently, it has been held as under:-

"13. Mr. Selvin Raja's argument that manufacture for the purposes of export is not covered by this provision is contrary to a plain textual reading of the provision. On a reasonable reading, "making", "using", "offering for sale", and "selling" of the patented product in India are

¹⁸ [2019 SCC OnLine Del 11167]



each covered by Section 48(a) of the Act. The phrase “importing for those purposes” refers to import of the patented product for the enumerated purposes, e.g. using, offering for sale, or selling in India. The construction advanced by Mr. Selvin Raja requires the words “for those purposes” to qualify the words “making”, “using”, “offering for sale”, “selling”, or “importing”. I am prima facie of the view that this construction is untenable. In the written submissions, Mr. Selvin Raja has also submitted that the enumerated activities must all occur within the territory of India to attract Section 48(a). This is ex facie contrary to the use of the disjunctive “or” in the provision. I am therefore prima facie of the view that the protection enjoyed as a result of grant of a patent cannot be reduced to cover only domestic manufacture and sale.”

(emphasis supplied)

32. In view of the aforesaid analysis, coupled with the statements made by the defendant no.2 in its affidavits dated 02.05.2023 and 13.04.2023, it is plain, clear, unequivocal and unambiguous that the said defendant no.2, was indeed ‘*offering for sale, selling*’ the impugned product covered by the claims of IN’568 of the plaintiff during the subsistence of IN’568, without the ‘*consent*’ of the plaintiff. Therefore, the said defendant no.2 is guilty of having engaged in infringement of the patent of the plaintiff. Further, since these findings are based on ‘*admissions of fact*’ made by the defendant no.2 in pleadings as noted hereinabove, this Court is inclined to proceed with passing a judgment in favour of the plaintiff and against the defendant no.2 under *Order XII rule 6* of the CPC.

33. *Qua Order XII rule 6* of the CPC, it is trite law that the same is an enabling provision with the aim of securing speedy justice, enabling this Court to adjudicate matters where sufficient materials are already on record, which particularly include clear, unequivocal and unambiguous admissions



made by a party, to proceed with decreeing the suit without proceeding for trial and recording evidence therein. Notably, the Hon'ble Supreme Court in ***Uttam Singh Duggal & Co. Ltd. (supra)*** has held that when in light of the admission so made, it is impossible for a party to succeed, as also when despite sufficient opportunity, the said party has not been able to satisfy the Court with any explanations, the provisions of *Order XII rule 6* of the CPC is applicable. Similar is the view taken by this Court in ***Delhi Jal Board (supra)***.

34. In fact, in order to protect the aggrieved party from prolonged litigation, a co-ordinate bench of this Court in ***National Textile Corpn. (supra)*** has held as under:-

“17 It is settled law that admissions need not be made expressly in the pleadings. Even on the constructive admissions Court can proceed to pass a decree in plaintiff's favour. In order to invoke the provisions of Order XII Rule 6 CPC, admissions de hors pleadings may also be considered as is evident from the use of the word “otherwise” in the said provision. [See Shikharchand vs. Mst. Bari Bai, AIR 1974 MP 75; K. Kishore vs. Allahabad Bank, 1997 (41) DRJ 698; Uttam Singh Dugal vs. UBI, (2000) 7 SCC 120; Rajiv Srivastava vs. Sanjiv Tuli, 119 (2005) DLT 202; Rama Ghei vs. U.P. State Handloom Corpn., 91 (2001) DLT 386 and R.N. Sachdeva vs. R.L. Mahajan Charitable Trust, 1997 (41) DRJ 698]. Such admissions may be contained in documents written or executed between the parties before the action is brought or even from the statements of parties recorded in the Court, including statements recorded under Order X Rule 1 CPC. Admissions may also be gleaned from vague and unspecific denials made in the pleadings and documents, which on the face of it appear to have been deliberately made in order to mislead the Court, or gathered from the non-traversal of specific averments made in the pleadings and documents.

18. It is the bane of the judicial system that with a view to protract and drag on the case, a litigant who is a wrong-doer often takes all sorts of



false and legally untenable pleas. Such litigants should not be allowed to hijack the judicial process and to subvert the cause of justice. Where it is palpably clear to the Court that the defence is with the sole purpose of protracting the proceedings to the advantage of the wrongdoer and the disadvantage of the aggrieved party, it becomes the bounden duty of the Court to save the latter from going through the rigmarole of a futile and expensive trial. For this, the Court has been invested with sweeping powers by a number of provisions in various statutes, the most potent of which are the provisions of Order XII Rule 6 read with Order VIII Rules 3 and 4 CPC. Regrettably, the said provisions, though exploited by the Courts to the advantage of the judicial process, have yet to reach the optimum level of exploitation. It thus becomes imperative on this Court to use the powers reposed in it to prevent misuse of the judicial process, to cut short laws' delays and to save the aggrieved party from the travails of a long drawn out litigation, often outliving his life span itself and falling into the lap of his survivors."

(emphasis supplied)

35. In its defence, the defendant no.2 has submitted that since the defendant no.2 was only the marketer/ seller of the impugned products under the *bona fide* belief of the CIBRC license held by the defendant no.1, no claims can be made against defendant no.2, which, in the considered opinion of this Court fails on two counts, *firstly*, since the same is very much against the purport and intent of *Section 48* of the Act, more so, since there are no exceptions therein; and *secondly*, as allowing anyone like the defendant no.2 to take the benefit of a license granted to an entity under the 1968 Act for a product which infringes the rights of a patentee would be against the letter and spirit of both the Patents Act, 1970 as also the Insecticides Act, 1968.

36. As such, this Court need not dwell upon other alleged defences urged by the defendant no.2, particularly since they cannot absolve the defendant no.2 from infringement of IN'568 of the plaintiff.



37. Therefore, in light of the admissions made by the defendant no.2, alongwith the inescapable liability under *Section 48* of the Act, there can be no semblance for the defendant no.2 to lead any plausible defence at the stage of trial or succeeding in the present suit. Hence, the present is a fit case for passing a judgement and decree on admission under *Order XII rule 6* of the CPC.

Conclusion:

38. Accordingly, in view of the aforesaid discussion and analysis, the present application is allowed and disposed of.

CS(COMM) 82/2023

39. In view thereof, the present suit is decreed in favour of the plaintiff and against the defendant no.2 in the following terms:-

- a) The defendant no.2, its directors, employees, officers, servants, agents, subsidiaries, affiliates and all others acting for and on its behalf are permanently restrained from making, using, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in any product or process that infringes the claimed subject matter of the plaintiff's Indian Patent No.394568 or any of the claims thereof, including any suspo-emulsion formulation of Pyriproxyfen and Diafenthiuron wherein the Pyriproxyfen is in the range of 1-15% and Diafenthiuron is in the range of 5-25%.
- b) Although the defendant no.2, as per its own books of accounts filed herein, has had total sale proceeds of Rs.4,45,04,368/- for the years 2021-22 and 2022-23 and the plaintiff has also incurred some



2025:DHC:6055



money on the Court Fees, fees of local commissioner and other legal fees, taking a lenient view the defendant no.2 is directed to pay a cumulative sum of Rs.50,00,000/- (*Rupees Fifty Lacs Only*) as damages within a period of *six weeks* from today to the plaintiff. If the aforesaid sum is not paid within the stipulated period, then the plaintiff shall also be entitled for claiming interest @ 6% per annum on the sum of Rs.50,00,000/- (*Rupees Fifty Lacs Only*) till realisation.

c) However, considering the factual matrix involved, the defendant no.2 is burdened with costs and special costs of Rs.2,00,000/- (*Rupees Two Lacs Only*) payable to Delhi High Court Bar Association Lawyers Social Security and Welfare Fund [A/C 155530100009730; IFSC UCBA0001553] within *six weeks*.

40. Accordingly, the present suit stands decreed in favour of the plaintiff and against the defendant no.2 in the aforesaid terms. All pending application(s) stand disposed of.

41. Decree sheet be drawn up accordingly.

SAURABH BANERJEE, J

JULY 25, 2025/AB