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

+ CS(COMM) 318/2018

UNITED PHOSPHORUS LIMITED Plaintiff

Through: Mr. Darpan Wadhwa, Senior
Advocate with Ms. Rajeshwari H. and
Mr. Tahir A.J., Advocates.

versus

AJAY GARG AND ANOTHER Defendants

Through: Ms. Anuradha Mukkherjee, Advocate
with Mr. Ashwin Sapra and Ms.
Pallavi Rao, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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20.02.2018

I.A.No.2440/2018

Present application filed by the plaintiff under Order XI Rule 10 CPC for placing on record additional document was directed to be listed before the Joint Registrar.

However, at the insistence of both the parties, present application is taken up for hearing.

Learned senior counsel for plaintiff prays that the plaintiff be allowed to place on record document mentioned in paragraph 3a of the present application.

Per contra, learned counsel for defendants states that the Gazette Notification with regard to the same patent application has already been



placed on record.

In the opinion of this court, since the plaintiff would have to prove the document by leading independent evidence, no prejudice would be caused if the present application is allowed to the extent prayed for.

Consequently, without prejudice to the rights and contentions of the defendants, the document mentioned in paragraph 3a (annexed as Annexure-A to the present application) is taken on record.

However, as the document has been denied by the learned counsel for defendants, plaintiff is given liberty to prove the same in its evidence.

With the aforesaid observation, present application stands disposed of.

CS(COMM) 318/2018 & I.As. 16025/2015, 25717/2015, 2786/2016, CRL.M.A. 6098/2016 & CC 45/2017

With consent of the parties, following issues are framed:-

1. Whether this Court has no jurisdiction to entertain and try the present suit? **(OPD)**
2. Whether the defendant no.1 is not a proper and necessary part to the present suit? **(OPD)**
3. Whether the plaintiff's patent IN 190476 is liable to be revoked as invalid on the grounds of:
 - a) Lack of Novelty in view of:
 - (i) US 5100667
 - (ii) US 5474971
 - (iii) AU 1989041936
 - b) Lack of Inventive Step in view of:
 - (i) Dupont Technology document (Annexure F of counterclaim at page 64)
 - (ii) US 5100667



c) Obviousness in view of:

- (i) FAO Specifications for Plant Protections Products
- (ii) US 5100667
- (iii) Article by J Bozzay et al 1980
- (iv) EP 0519937
- (v) WO 1990002486
- (vi) US 5441923
- (vii) US 6387388
- (viii) US 5883047
- (ix) WO 20011009276
- (x) US 5037929

d) Claims being indefinite

e) Claims lacking proper disclosure

f) Claims not being workable **(OPD)**

4. Whether the plaintiff's patent IN 202013 is liable to be revoked as invalid on the grounds of:

a) Lack of Novelty in view of:

- (i) US 5100667
- (ii) AU 1989041936
- (iii) US 5474971

b) Lack of Inventive Step in view of:

- (i) Dupont Technology document (Annexure F of counterclaim at page 64)
- (ii) US 5100667

c) Obviousness in view of:

- (i) FAO Specifications for Plant Protections Products
- (ii) US 5100667
- (iii) Article by J Bozzay et al 1980
- (iv) EP 0519937



- (v) WO 1990002486
- (vi) US 5441923
- (vii) US 6387388
- (viii) US 5883047
- (ix) WO 20011009276
- (x) US 5037929 **(OPD)**

- d) Claims being indefinite
- e) Claims lacking proper disclosure
- f) Claims not being workable
- g) Anticipation by process patent IN 190476 as the process patent IN 190476 was published prior to the product patent IN 202013 and discloses the product as claimed in product patent IN 202013.

OPD

- 5. Whether the product derived from the process patent IN 190476 is a new product and/or is identical to the defendants' product? **(OPP)**
- 6. If Question No.5 is proved in the affirmative, then whether the process followed by the defendants is different from the plaintiff's process which is subject matter of IN 190476? **(OPD)**
- 7. Whether the defendants are infringing IN 202013? **(OPP)**
- 8. Whether the plaintiff has indulged in suppression of material facts? **(OPD)**
- 9. Whether the parties are entitled to the reliefs as claimed? **(OPP/OPD)**

With consent of the parties, Mr.S.M.Chopra, Retired ADJ, Mobile No.9818314336 is appointed as the Local Commissioner to record the evidence. The fee of the Local Commissioner is fixed at Rs.1 lakh for first six hearings to be equally shared by the parties and for rest of hearings



Rs.15,000/- each by the parties.

The parties are directed to appear before the Local Commissioner on 02nd April, 2018.

Both the parties are directed to file their list of witnesses within a period of two weeks.

The plaintiff and the defendants are directed to file their evidence by way of affidavits within a further period of four weeks.

The cross-examinations of the witnesses are directed to be concluded within a period of four months thereafter.

The parties are directed to file their written synopsis not exceeding five pages each within four weeks thereafter.

List the matter for monitoring of evidence on 29th August, 2018.

MANMOHAN, J

FEBRUARY 20, 2018
js/KA