

**BEFORE THE PLANT VARIETIES REGISTRY
AT NEW DELHI**

**In the matter of: Opposition filed by M/s Nuziveedu
Seeds against**

- 1. Application No. E198/ GH4/ 08/ 229 - MRC 7301 BG-II - filed by MAHYCO.**
- 2. Application No. E196/ GH1/ 08/ 226 - MRC 7351 BG-II - filed by MAHYCO.**
- 3. Application No. E145/ GH176/ 08/ 535 - MRC 7383 BG-II - filed by MAHYCO.**
- 4. Application No. E205/ GH33/ 08/ 259 - MRC 6918 Bt - filed by MAHYCO.**

**For the Opponent: Mr. Abhishek Saket, Advocate for
M/s. Infini Juridique.**

**For the Applicant: Mr. Anil Dutt, Advocate for M/s.
Lakshmikumaran & Sridharan**

ORDER

The issue involved in all these opposition proceedings are common and accordingly they are disposed of by this common order. Parties are referred to in the nomenclature as in the opposition proceedings and not as in the application for amendment of oppositions.

The main issue involved in these matters are that whether an amendment in opposition could be allowed. The parties have been heard and they have filed their pleadings also. In all these oppositions evidence has not been filed.

CASE OF THE OPPONENT:

The case of the opponent is that they have filed the notice of opposition based on the publication in Plant Variety Journal. Upon receipt of the journal the opponent had applied for disclosure of document by filing a form PV-33 which was eventually furnished to them only around December 2012-January 2013 and accordingly they have to amend grounds of opposition to make it effective. The Hon'ble Delhi High Court in WP No.8431/2011 has held that the Authority is bound to make complete disclosure for an effective opposition. The opposition cannot be dealt with effectively if the amendment is not allowed. There is no delay in filing the present amendment on the part of the opponent and delay on the part of the Authority cannot be weighed against the Opponent in any manner. It is a matter of record that the documents have been furnished to the Opponent after much follow up and after considerable delay and the Ld. Registrar has the power under Section 21(9) of PPV&FR Act, 2001 to allow the amendment of the notice of opposition and hence the application for amendment is maintainable in law.

CASE OF THE APPLICANT:

The said application filed for amending notice of opposition under section 21 (9) by the opponent is totally misconceived and has been filed after inordinate delay with mala-fide intention. The issue in hand is whether opponent has made a case for amending notice of opposition and the reply is limited to maintainability of the present application cannot be allowed in law or in equity. The provision for amendment is akin to law of

amendment of pleadings as laid down in the code of civil procedure. The amendment is not a matter of right but matter of discretion of the court and being a discretionary relief the opponent must have come with clean hands and with complete disclosure of relevant facts. In this regard the conduct of the parties are highly relevant. The opponent has not approached to the Authority with clean hands and extension has been granted upto 12 months of time to file final opposition and evidence and opponent is now shying away from filing the same. This is just to delay proceedings. The amendment application cannot be moved at stage of evidence. This grounds itself shows that the amendment application has been filed maliciously and contumaciously. If there is any delay in the part of the opponent or by the Authority in not complying the orders of the Registrars. The sufferer is only the applicant. Many grounds raised by the opponent in the amendment application are formal and hyper technical in nature and the averments are mere conjectures and prima facie frivolous. The objections as to the character of candidate variety obtained in DUS trial report are for the Registrar to decide which he would have taken note of during the normal course of examination as well. These points are open even if not raised in the opposition. In any case the opponent had an extremely lengthy period of time to examine these characters by itself and provide evidence on its own allegation. In any case the final time limit for filing evidence on the existing pleadings as per the last order has expired thus the objections raised by the opponent in the amendment application could have been addressed without needing to amend the opposition and restart the whole process.

The opponent is doing nothing but trying to get more time so that it can continue to freely plunder the Intellectual Property of the applicant.

ISSUE INVOLVED:

The only issue involved in these matters are that whether amendment in opposition ought to be allowed on the ground that the opponent was not possessing requisite documents at the time of filing of application.

This Registry by order dated 8.1.2013 passed the following order in these matters:-

“Since, the opponent has received the entire documents in pursuance of the PV-33 filed by them only on 14.12.2012, I am of the view that a final and last chance must be granted to the Opponent to file their final opposition and evidence and if the same is not filed within the time-limit then no further time-extension could be granted as the Opponent has received on 14.12.2012 the entire documents sought by them.

Accordingly as a final and last chance the time limit for filing final opposition is extended for a period of six months from 2.10.2012 to 2.4.2013 and time limit for filing evidence is hereby extended for a period of six months from 29.9.2012 to 29.3.2013. It is hereby made clear that no further time extension for filing final opposition and evidence would be granted. If the opponent fails to file the final opposition and evidence within the stipulated time the matter will proceed further in accordance with law.”

Accordingly the Opponent received the documents on 14.12.2012 and they were granted time till 29.03.2013 to file their evidence but instead on 26.03.2013 the Opponent filed the application to amend their opposition.

The law relating to amendment in opposition is contained in section 21 (9) of PPV&FR Act, 2001 which is extracted here under.

“The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such term as he think fit.”

Order 16 rule 7 of Civil Procedure Code has to be referred to adjudicate whether an amendment application ought to be allowed or not. The same is extracted here-under: -

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

*Provided that **no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*** Emphasis supplied.

There is no harm in relying on Order 16 Rule 7 of Civil Procedure Code in deciding the issue of amendment under 21 (9) of PPV&FR Act, 2001. At the outset it has to be decided whether the case in hand falls within Order 16 rule 7 or its proviso. The first thing that has to be seen is whether trials have commenced in the instant matter. In the instant matter the evidence not been filed in none of the cases. Accordingly,

amendment application for opposition in their case has to be considered in accordance with Order 16 Rule 17 of Civil Procedure Code and not under its proviso and accordingly since trial has not commenced and in the interest of justice the amendment application have to be allowed in these cases.

The main ground cited by the opponent is that he has received certified copies of the application only during December 2012 and January, 2013 and thereafter he has filed the amendment application. In this regard the opponent has cited the judgment of Hon'ble Delhi High Court in W.P. (C). 8431 of 2011

“The complete disclosure has to be made by the registration seeker/applicant along with the application, and any person wishing to raise an objection is entitled to receive complete information, so that he may raise one or more of the available objections to the registration of the claimed plant variety.

The disclosure is made to the Registrar, who then publishes the same and invites objections. The objections are made to the claims of development/invention made in the application, and not merely to the information which may be published. The advertisement, in most cases, possibly cannot be with respect to the entire application and all the information furnished along with it, for it may run into hundreds of pages. Therefore, Rule 30 provides the salient features that need be published. However, any person from the public is entitled to scrutinize the application and all the information furnished by the applicant, and to challenge the claim made by the applicant on the grounds available in law to oppose the grant of registration. For this purpose, and to empower the interested person to effectively raise any objection, it is obvious that the complete information is required to be provided by the Registrar. There is no scope for any secrecy or confidentiality in the entire process, and it has to be transparent so as to defeat any false claim of invention or new development of a plant variety. As aforesaid, a complete disclosure is mandated also for the reason that, at the expiry of the statutory protection period, any person should be able to exploit the invention/plant variety developed by the registration applicant, without having to turn to the said applicant for any other information.”

The above said judgment of Hon'ble Delhi High Court makes it clear that furnishing of all information relating to application is very essential for filing the opposition.

The DUS test report of the varieties which are the subject matter of the instant case were received by the opponent only on 14.12.2012. Thus it is clear when the Opposition was filed by the Opponent the DUS test report was not available to him inspite of due diligence. The DUS testing report is a very important and crucial piece of document in the opposition proceeding. The opponent must have the same if he wishes to contest the opposition effectively. Without the DUS testing report the opponent would be severely handicapped and his defense would be prejudiced. As per the above judgment of Delhi High Court the opponent cannot contest the Opposition proceeding without DUS test report. Accordingly no prejudice will be caused to the applicant by allowing the amendment application whereas the opponent would be severely prejudiced if the application is not allowed.

It is needless to say that the merits of the proposed amendment should never be considered in an application filed for allowing amendment. If the proposed amendment would be necessary for determining the real controversy between the parties then the same must be allowed. In the instant case all the amendment have been proposed based on information furnished by this office in pursuance to PV-33 and they would be very essential for determining the real controversy between the parties.

Costs cures all pain in the litigation. It is a panacea for allowing amendment applications. In the instant case the applicant could adequately be compensated by costs. Section 21(9) of PPV&FR Act, 2001 provides that Registrar on request may permit amendment in notice of opposition on such terms as he may think fit. The words 'as he may think fit' makes it clear that costs could be imposed. Section 11(b) of PPV&FR Act, 2001 provides that the Registrar may subject to the rules made in this behalf impose costs as considered reasonable. The fifth schedule of PPV&FR Rules, 2003 which provides for scale of costs does not provide for costs relating to amendment of pleadings. Consequently, under section 11(b) of PPV&FR Act, 2001 the Registrar is entitled to impose costs on amendment of pleadings. Accordingly in respect of these oppositions the opponent is directed to pay the costs to an amount of Rs. 2000/- for each of the said opposition. Out of which Rs. 1000/- will be paid to the National Gene Fund and the remaining Rs. 1000/- will be paid to the counsel for Applicant. The said costs must be paid within 10 days from the date of receipt of this order.

Based on the above said reasoning I hereby allow the amend application with costs and accordingly, the amended notice of opposition (if filed already) is taken on record and parties are to file their pleading and evidence in accordance with the schedule hereunder. If any party fails to file the pleading and evidence on the said date no further opportunity will be granted and action will be taken as per law. The time limit for filing pleading and evidence would be as follows:-

- a. Amended Notice of Opposition within one month from the date of receipt of this order and in case of MRC 7301 BG II the amended notice of opposition is filed and taken on record and will be issued to the applicant within ten days from the date of issue of this order.
- b. Counter statement by two months from the date of receipt of notice of amended apposition.
- c. Final apposition by 30 days from the date of receipt of counter statement.
- d. Evidence of Opponent by one month from the date of receipt of final apposition.
- e. Evidence of applicant by one month from the date of receipt of evidence of Opponent.

Parties are to adhere to the time limit strictly and no further time extension would be granted. If pleadings or evidence is not filed by within the time granted the matter will proceed further in accordance with law. The entire proceeding would be conducted in the time bound manner and expedited in fast track manner. Once the matter is fixed in the final hearing the proceeding would be conducted on day to day basis and all the witness would be examined accordingly.

Given under my hand and seal on this the 22nd day of November, 2016.

Sd/-
(R.C. AGRAWAL)
REGISTRAR-GENERAL