

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

A. No. 5 of 2024

**IN THE MATTER OF: Application under Section 24 (5) in
relation to protection of hybrid Watermelon variety MaxX-
A. No. REG/2020/368 against M/s Prabhakar Hybrid Seeds
watermelon variety Max Plus 84.**

IN THE MATTER OF: -

M/S. NUNHEMS INDIA PVT. LTD.,

..... Applicant

-Versus-

M/S. PRABHAKAR HYBRID SEEDS.,

..... Respondent

**For Applicant: Dr. Neeti Wilson, Attorney for M/s. Anand &
Anand.**

For the Respondent: Sh. Jeevan Kumar, Advocate.

ORDER

By this order I shall dispose of the issue relating to setting
the Respondent *ex parte* in the instant application.

FACTS: -

On 17th August, 2023, the Applicant filed the instant
application A. No.5 of 2024 under Section 24(5) of PPVFR Act,
2001 which was admitted by this Registry vide order dated 21st



March, 2024 and summon was issued to Respondent. Private Notice was also permitted and Proof of delivery was to be filed by the Applicant

As per the order dated 21st March, 2024, this Registry on 3rd April, 2024 issued summons enclosing copy of the application filed by the Applicant to the Respondent directing the Respondent to appear in person or through Attorney on 15th April, 2024 which was the next date of hearing in the instant matter. The said summon was dispatched by speed post Article No. ED500118604IN on 5th April, 2024. The same was delivered to the Respondent on 12th April, 2024 as per the tracking records downloaded from the website of India Post. Due to administrative reasons, the matter fixed for hearing on 15th April, 2024 was adjourned. On 15th April, 2024 the authorized representative of the Respondent Sh. N. Naga Phanesh, Manager, appeared in person and submitted a letter dated 15th April, 2024 requesting for 90 days' time to submit all facts and details. The said Sh. N. Naga Phanesh, Manager was duly authorized by Sh. P. Sivananda Balaji, Managing Director. The said letter was taken on record.

Subsequently, the hearing in the instant matter was fixed on 11th September, 2024. Accordingly, hearing notice was issued to both the Applicant's Counsel and the Respondent vide this Registry Letter F. No. PPV&FRA/Legal/08/2024/2463-64 dated 20th August, 2024. On 21st August, 2024, the said hearing notice was dispatched to the Respondent vide Speed Post Article No. ED500145057IN and the same was delivered to the Respondent on 24th August, 2024 as per the tracking record downloaded from the website of India Post.



During the hearing on 11th September, 2024, the Respondent failed to appear and accordingly this Registry by order 11th September, 2024 in the instant matter directed notice to the Respondent once more and posted the matter for hearing on 18th October, 2024. On 18th October, 2024, the matter came up for hearing and the Respondent again failed to appear and in the interest of justice this Registry ordered fresh notice to the Respondent. The matter was next posted for hearing on 26th November, 2024.

Accordingly, this Registry again issued fresh notice dated 12th November, 2024 to the Respondent enclosing the copy of the application in the instant matter and also directing the Respondent to be present in person or through attorney during the next date of hearing on 26th November, 2024.

The same was dispatched to the Respondent on 12th November, 2024 vide Speed Post Article No. ED696471274IN. The said envelope containing notice along with copy of the application filed in the instant matter was returned in original by the postal authorities with the endorsement "Refused."

Again during the hearing on 26th November, 2024, the Respondent failed to appear and the matter was posted for hearing on 8th January, 2025. However, the Respondent was not set *ex-parte*.

On 12th December, 2024, the Counsel for Applicant filed a detailed representation requesting to set *ex-parte* the Respondent.

The matter came up for hearing on 8th January, 2025. Again the Respondent failed to appear. The counsel for applicant based on the representation dated 12th December, 2024 argued



that the Respondent must be set *ex-parte*. Pronouncement of orders was reserved on this issue on 8th January, 2025.

ANALYSIS: -

The only issue that has to be decided is whether the Respondent in this matter ought to be set *ex parte*. I have meticulously gone through the documents on record and the representation filed by the Counsel for Applicant. There can be no doubt that the Respondent was offered several opportunities to appear in the proceedings.

It is clear that the summon dated 3rd April, 2024 for hearing on 15th April, 2024 was delivered on 12th April, 2024. The Respondent came and submitted a representation on 15th April, 2024 requesting for 90 days' time to file reply. Accordingly, the hearing notice dated 20th August, 2024 for next date of hearing on 11th September, 2024 was issued to the Respondent which was served on him on 24th August, 2024. The Respondent failed to appear during hearing on 11th September, 2024 and the matter was posted for hearing on 18th October, 2024. During the hearing on 18th October, 2024 again the Respondent failed to appear and in the interest of justice fresh notice was ordered to the Respondent and the matter was posted for hearing on 26th November, 2024. Accordingly, this Registry issued fresh notice dated 12th November, 2024 for hearing on 26th November, 2024 which was returned with the endorsement "Refused".

Totally, two notices dated 3rd April, 2024 and 20th August, 2024 were delivered to the Respondent on 12th April, 2024 and 24th August, 2024 respectively. Further the third notice dated 12th November, 2024 was returned with the endorsement



“Refused”. Based on the above facts, it is very clear that the Respondent has knowledge of the proceedings and on refusing the notice dated 12th November, 2024 issued by this Registry, adverse inference has to be drawn against the Respondent and the contents of the notice have to be imputed on the Respondent.

Rule 6(9)(a) of PPVFR Rules, 2003 provides that the postal receipt shall constitute the proof of sending and acknowledgement receipt shall constitute the proof of delivery.

Rule 6(9)(a) of PPVFR Rules, 2003 is extracted hereunder: -

“Rule 6 (9)(a) The acknowledgement receipt issued by the office concerned or the postal certificate receipt shall be the sufficient proof as to the delivery or sending of any document under the Act or these rules.”

The Speed post Article Nos. ED500118604IN, ED500145057IN and ED696471274IN dated 5th April, 2024, 21st August, 2024 and 12th November, 2024 respectively, all constitute proof of sending and the tracking records showing delivery on the Respondent also proves delivery.

The principles enshrined in Civil Procedure Code are applicable to the proceedings before this Registry also. Order V Rule 9 of CPC provides that if the postal article containing summons is received back with the endorsement by the postal employee endorsed as “Refused” then in such case the Court can declare that the summons has been duly served on the defendant.

The said Rule is extracted hereunder:

“Order V Rule 9 (5) of CPC - When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorized by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or



had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant :

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons."

Based on Rule 6(9)(a) of PPVFR Rules, 2003 and Order V Rule 9(5) of CPC, I declare that the notice dated 12th November, 2024 issued by the Registry has been duly served on the Respondent and service has been completed on the Respondent. Inspite of service of the notices dated 5th April, 2024, 20th August, 2024 and 12th November, 2024 vide Speed Post Article Numbers ED500118604IN, ED500145057IN and ED696471274IN, the Respondent is not appearing before this Registry.

Hence, I have no other option but to set them *ex parte* relying on Order IX Rule 6 of CPC which provides that when it is proved that summons is duly served on the defendant and the defendant does not appear then the Court may make an order that the suit be heard *ex parte*. The said Order IX Rule 6 of CPC is extracted hereunder:

"Order IX Rule 6 of CPC. Procedure when only plaintiff appears. - (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then-

When summons duly served. -[(a) if it is proved that the summons was duly served, the Court may make an order that the suit be heard ex parte;]

When summons not duly served. -(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;



When summons served, but not in due time. - (c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement."

Based on the aforesaid reasonings, and relying on Rule 6(9)(a) of PPVFR Rules, 2003, Order V Rule 9 (5) and Order IX Rule 6 of CPC, I hereby order that the matter will be proceeded further and heard *ex parte* without the presence of Respondent. There shall be no order as to costs.

At the time of pronouncement of judgement, Sh. Jeevan Kumar, Advocate appeared on behalf of the Respondent without PV-1 (Authorization) from the Respondent. Accordingly, the appearance of the Respondent cannot be taken on record at this stage due to lack of authorization. However, the copy of the order will be sent to the Respondent in the interest of justice.

Post this matter for further hearing on 21st April, 2025 at 15:00 Hrs.

Give under my hand and seal on this the 1st day of April, 2025.




(D.K. AGARWAL)
REGISTRAR GENERAL