

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

A. No. 3 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. Denmark Agrisciences
watermelon variety Kiranmai.**

IN THE MATTER OF: -

M/S. NUNHEMS INDIA PVT. LTD.,

..... Applicant

-Versus-

M/S. DENMARK AGRISCIENCES.,

..... Respondent

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

For Respondent: None

ORDER

(Heard the Applicant through Hybrid mode.)

By this Order, I shall dispose of the issue raised by the Applicant
to set the Respondent *ex parte*.



The Applicant was heard on 25th March, 2025 and the judgement was reserved in the instant matter.

FACTS OF THE CASE:

The Applicant developed plant variety 'MaxX' and on 9th December 2020 applied for registration REG/2020/368. Subsequently, on 17th August, 2023, the Applicant filed an application under Section 24(5) of the Act against the Respondent stating that they have been abusing the interest of the Applicant by selling Kiranmai watermelon variety which is identical to that of Applicant's Plant Variety MaxX. On 21st March, 2024, the instant Application under Section 24(5) of the Act filed by the Applicant was listed before this Registry for hearing on admission as Appln. No.3 of 2024. On the said day this Registry admitted the instant application and issued Summons to the Respondent returnable by 10.04.2024. Private Notice was also permitted. The matter was posted for appearance of the Respondent on 15th April, 2024. Consequently, Registry issued Notice dated 3rd April, 2024 vide Speed Post Article No.ED500118683IN dated 5th April, 2024 and the same was returned with the endorsement "Insufficient Address". The matter which was scheduled for hearing on 15th April, 2024 was adjourned due to administrative reasons and the matter was listed for hearing on 11th September, 2024. During the hearing on 11th September, 2024, the Applicant sought time to identify the exact address of the Respondent and the matter was posted for hearing on 18th October, 2024. Again during the hearing on 18th October, 2024, the Applicant was directed to furnish the exact address but the Applicant on the other hand insisted that the Respondent be set ex



parte but in the interest of justice this Registry directed issue of fresh notice to the Respondent and posted this matter for hearing on 26th November, 2024. In pursuance of the said order, the notice issued by the Registry vide Speed post Article No. ED696471393IN dated 12.11.2024 was returned with the endorsement “insufficient address”. On 26th November, 2024 when the matter was listed for hearing the Applicant sought to set the Respondent *ex parte*. This Registry held that service is yet to be completed and accordingly the Respondent cannot be set *ex parte* and posted the matter for hearing on 8th January, 2025. During the hearing on 8th January, 2025, the Applicant undertook to file an affidavit relating to typographical error and undertook to file an application to set the Respondent *ex parte* and posted the matter for hearing on 13th February, 2025. On 13th February, 2025, Registry issued notice to the Respondent and the Applicant filed an affidavit correcting typographical errors relating to invoice details which was taken on record. Applicant also filed a Miscellaneous Petition to set the Respondent *ex parte* which was held that it cannot be considered at this stage as fresh notice has been ordered to the Respondent and the matter was posted for hearing on 12th March, 2025. In pursuance of the said order the Registry issued notice to the Respondent vide Speed Post Article No.ED797031427IN dated 3rd March, 2025 and the same was returned with the endorsement dated 10th March, 2025 as “unclaimed”. The hearing on 12th March, 2025 was adjourned to 25th March, 2025 on the request of Counsel for Applicant. On 25th March, 2025, it was suggested to the Counsel for Applicant to complete the service on Respondent by adopting substituted service.



The Counsel for Applicant argued that they do not want to take steps for substituted service instead their application to set ex parte the Respondent be considered. The Applicant was heard on the said day and order was reserved.

In the meanwhile, the Applicant's Variety 'MaxX' was advertised for inviting Oppositions under Section 21 of the Act in Plant Variety Journal of India Vol.19 No.3 (March, 2025), published on 1st April, 2025. No Opposition was filed and consequently, the Certificate of Registration of Applicant's Variety 'MaxX' was issued to the Applicant on 7th July, 2025.

CASE OF THE APPLICANT:

The case of the Applicant is that Section 24(5) of the Act empowers the Registrar to protect the interests of the breeder against abusive acts committed by third parties during the pendency of registration. Further in the matter of UPL Limited –Vs- Registrar and Ors., [CA (Comm.IPD-PV) No.3/2022 and I.A. No.16633/2022] before the High Court of Delhi, the Court directed the Registrar to proceed to decide the matter on its own merits, in accordance with the law, with respect to the reliefs sought including prayers for damages, costs, and the *ex parte* nature of the relief (MANU/DE/1804/2024). The PPVFRA and the Applicant has made multiple attempts to serve the summons to the Respondents. The Respondent by selling the impugned variety under a wrong address and operating in a dubious manner, is engaging in unfair practices. Such actions obstruct the Applicant's access to justice. Unauthorised sale of the Applicant's variety misleads farmers and



disrupts fair market practices. The Applicant filed an application for registration of the hybrid watermelon variety and while the same is pending for registration the Respondent is selling seeds under different name without authorization. Such acts are akin to violation of breeders' interest under Section 24(5) of the Act. The Applicant has complied with all procedural requirements. Further delay would be prejudicial to the Applicant's rights and interests. Accordingly, the Applicant prays to initiate *ex parte* proceedings against the Respondent, to proceed jointly in the four cases in view of similar reasoning against the same variety and expedite the registration of their watermelon variety MaxX (REG/2020/368).

ANALYSIS: -

The only issue that has to be decided in the instant matter is whether the Respondent could be set and proceeded with *ex parte* and if set *ex parte* what relief could be granted to the Applicant.

ISSUE: Whether the Respondent could be set *ex parte*?

In the instant matter, the Registry issued notice to the Respondent vide Speed Post Article No.ED797031427IN dated 3rd March, 2025 and the same was returned with the endorsement dated 10th March, 2025 as "unclaimed". The law is well settled on this point if summons/ notice is issued to the Respondent through postal department and the same is returned with the endorsement 'returned unclaimed' it is deemed to have been served on the Respondent

The Hon'ble Supreme Court of India in **Priyanka Kumari V. Shailendra Kumar [2023 LiveLaw (SC) 904]** following the



decision of Hon'ble Supreme Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, (1999) 7 SCC 510 and Ajeet Seeds Limited Vs. K. Gopala Krishnaiah (2014)12 SCC 685 (2014) held as follows: -

“...The word ‘refusal’ can be interpreted in synonymous to the word “unclaimed”. As held by the Hon’ble Supreme Court in the above decisions, when a notice is served to the proper address of the addressee, it shall be deemed to be served unless contrary is proved. Thus, when the notice is returned as unclaimed, it shall be deemed to be served and it is proper service. Therefore, service of notice to the sole respondent which has returned as unclaimed is considered as deemed to be served but none has entered appearance”

Accordingly, based on the said decisions of the Hon'ble Supreme Court I have to hold that the service in the matter is complete on 10.03.2025, when the service was returned as 'unclaimed' and consequent non-appearance of the Respondent on 12.03.2025 though the said hearing was post-poned to 25th March, 2025 by order dated 5th March, 2025 and again during the subsequent hearing on 25th March, 2025 also. Since, the service is complete on the sole Respondent and the said sole Respondent has not appeared I have to set the Respondent *ex parte*. Accordingly, this issue is decided in favour of the Applicant and the Respondent is set *ex parte*.



Post this matter for further hearing on 10th day of November, 2025 at 15:00 Hrs.

There shall be no order as to costs.

Given under my hand and seal on this 22nd day of September, 2025.




(D.K. AGARWAL)
REGISTRAR GENERAL