

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

A. No. 4 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. De Nova Seeds Pvt Ltd
watermelon variety Super Max.**

IN THE MATTER OF: -

M/S. NUNHEMS INDIA PVT. LTD.,

..... Applicant

-Versus-

M/S. DE NOVA SEEDS PVT LTD.,

..... 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 Applicant has filed a detailed application to set the Respondent *ex parte*. Though, the applicant has filed the said application common to the four cases filed against same/ different Respondents in respect of their variety. The examination of the issue and consequent judgement is restricted to the instant matter only. 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.

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 Super Max 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.4 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.ED500118578IN dated 5th April, 2024 and the same was



returned with the endorsement “Addressee left without instructions”. 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 Respondent was not present and it was recorded that service by Registry has returned and proof of service not filed and the matter was posted for hearing on 18th October, 2024. Again during the hearing on 18th October, 2024, the Applicant sought to expedite the registration of their variety ‘MaxX’ and it was decided that the instant application is under Section 24(5) and within its parameters the relief to expedite the registration cannot arise and on the other hand the Applicant insisted that the Respondent be set *ex parte* but in the interest of justice, the Registry directed to issue a 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. ED696471518IN dated 12.11.2024 was returned with the endorsement “Addressee left without instructions”. 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.ED797031435IN dated 3rd March, 2025 and the same was returned with the endorsement dated 6th March, 2025 as “No such company in this address”. 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.

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 Respondents 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 Respondents, 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 *ex parte*?

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

In the instant matter, the Registry issued notice to the Respondent on the following three occasions:

(1) vide Speed Post Article No. ED500118578IN dated 5th April, 2024 and the same was returned with the endorsement "Addressee left without instructions"



(2) vide Speed Post Article No. ED797031435IN dated 3rd March, 2025 and the same was returned with the endorsement dated 6th March, 2025 as “No such company in this address”

The service was not completed on the Respondent inspite of three attempts. Further, Order V Rule 20(1) of Civil Procedure Code, 1908 is very clear that where the Court is satisfied that there is reason to believe that the Defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy in some conspicuous place in Court house and also upon some conspicuous part of the house in which the Defendant is known to have last resided or carried on business or personally worked for gain or in such other manner as the Court thinks fit. Further Order V Rule 20(1A) of CPC, 1908 provides that where the Court orders service by an advertisement in a newspaper shall be a daily newspaper circulating in the locality in which the Defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain. Order V Rule 20(2) of CPC, 1908, provides that Substituted Service by order of the Court shall be effectual as if it had been made on the Defendant.

In the instant matter, there is no doubt that service has not been completed and notice to the Respondent has returned thrice with the endorsement “No such company in the address” or “Addressee left without instructions”. Accordingly, service cannot be done in ordinary way and substituted service can be the best mode to complete the service on the Respondent.



Substituted service can be ordered *sua sponte/ suo motu* if there are reasons to believe the Respondent is avoiding summons and it cannot be delivered in ordinary way [Order V Rule 20(1) of CPC]. In the instant case also the notice to the Respondent have returned thrice and hence there is every possibility that the Respondent is avoiding service and the notice cannot be served in ordinary way and hence substituted service must be resorted to. The order of Substituted Service is at the discretion of the Court and it cannot be by-passed at the request of the Applicant. Applicant is bound to take substituted service on the Respondent. The Applicant cannot refuse to take substituted service to complete the service on the Respondent. This Registry is ordering substituted service as there are reasons to believe the Respondent is avoiding notice and it cannot be delivered in ordinary way.

Accordingly, the Applicant is directed to take substituted service by issuing the summons of the Registry directing the Respondent to appear during the next hearing as advertisement in any prominent vernacular and English newspaper circulated in the city of Hyderabad and also in prominent vernacular and English newspaper circulated in the area where the registered office of the Respondent is located, if the registered office of the Respondent is not in Hyderabad. The Applicant is also directed to issue the said advertisement in any prominent English and Hindi National newspaper. The summons in this regard be obtained by the Applicant from the Registry and after effecting advertisement an affidavit of service enclosing the said advertisements be filed in the Registry well before the next date of hearing. The Registry is also directed to issue a fresh notice to



the Respondent through speed post returnable before the next date of hearing. Post this matter for further hearing on 10th day of November, 2025 at 15:00 Hrs.

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



(D.K. AGARWAL)
REGISTRAR GENERAL

