

BEFORE THE PLANT VARIETIES REGISTRY

AT NEW DELHI

In the matter of: Form PV 5 dated 12th February, 2009
filed by Nuziveedu Seeds for extending time for filing
PV 3 (Notice of opposition) against Application No.
N62 GH45/08/271 - Denomination-C 5193

Nuziveedu Seeds Pvt. Ltd.,

...Proposed opponent

-Vs-

Maharastra Hybrid Seeds Co., Ltd.,

...Applicant

*For the Proposed Opponent: Mr. Abhishek Saket,
Advocate, M/s. Lifini Juridique.*

*For the Applicant: Mr. R. Parthasarathy, Advocate,
M/s. Lakshmi Kumar & Sridharan*

ORDER

The matter that has to be disposed of by this order is the Form PV-5 filed by the proposed opponents on 12.02.2009 under Rule 33 of PPV&FR Rules, 2003 praying for extension of time for three months for filing notice of opposition against application N62 GH45/08/271 filed by applicant for registration of their plant variety with denomination C 5193.

On 11.06.2009 an order was passed condoning the delay and extending the time limit for filing notice



of opposition. The Hon'ble Delhi High Court by its order dated 03.11.2009 passed in W.P. (C) Nos.10938 and 10939 of 2009 set aside the order and remanded back the matter. Accordingly, the matter was taken afresh and the applicant filed reply and the proposed opponent filed rejoinder to it. The parties were heard on 16.12.2009 and both the parties have filed their written submission. Accordingly, the instant order is passed in this matter.

Factual matrix of the case: -

The facts of the case are that on 02.04.2008 the applicant filed the Application No.N62 GH/45/08/271 in respect of denomination C 5193 for registration under Protection of Plant Varieties & Farmer's Rights Act, 2001 (hereinafter referred to as 'Act'). The said application was published in Plant Variety Journal of India (Vol. 2 No.9) dated 1.9.2008 under sub-section (1) & (2) of section 21 of the Act for inviting oppositions. On 12.02.2009 the proposed opponent filed the Form PV-5 for extending the time limit by three months for filing notice of opposition. On 26.02.2009, the proposed opponent also filed notice of opposition (Form PV-3) along with the requisite fee of Rs. 1500/-. The case of the proposed opponent in nutshell is that description of C 5193 given in the Plant Variety Journal and the copy of the application for registration of C 5193 give contradictory statements and that the copy of the



Journal was received by them only on 24.10.2008 and that copy of application for registration of C 5193 was provided to them only on 27.01.2009 and then on study of the same it was realized that C 5193 is their line and that they should take necessary steps for filing opposition. The case of the applicant in brief is that the Registrar has no power to extend the time for filing notice of opposition and that the details of the advertisement published at page 16 of the Plant Variety Journal dated 01.09.2008 does not show any discrepancy.

My view is that the notice of opposition could be taken on record only when the PV - 5 filed by the applicant to extend the time for filing notice of opposition is allowed. Hence, Form PV - 5 is taken up for disposal.

To avoid repetition the synopsis of pleadings and arguments of both the parties are extracted hereunder: -

Case of the Proposed opponent: -

The proposed opponent contended that the description of C 5193 given in Plant Varieties Journal of India dated 1st September, 2008 and the copy of the application for registration of C 5193 received by the proposed opponents from applicants on 27.1.2009 give contradictory statements. The proposed opponent contended that only on 27.1.2009 they could recognized that C 5193 was indeed the line of the



proposed opponent which has been claimed by the applicant. Further it was stated that the photographs provided in the Plant Varieties Journal is liable for misinterpretation. It was also pointed out that several of distinguishing characteristics mentioned in the application are found across several lines of cotton. The reason for delay was that the copy of the journal was received by them on 24.10.2008. The proposed opponent also stated that proper information regarding the application for C 5193 was provided to them only on 27.1.2009 that is the date on which the applicant provided the copy of the application form for registration of C 5193 to the proposed opponent and on study of the same it was realized by the proposed opponents that C 5193 is their line. The proposed opponent in their rejoinder has stated that the applicant has actually claimed a right of parental line of proposed opponent i.e. NC 99 by initially giving a false denomination as C 312 YA and then as C 5193. The proposed opponent has also stated that the applicant was well aware that the code C 312 YA has been changed to C 5193 with the deceitful motive to mislead the public to avoid opposition. The proposed opponent has also stated that in December, 2008 for the first time that the applicant was claiming a right on proposed opponent's variety NC 99. It has further been stated that the proposed opponent was waiting for said variety with denomination C 312 YA



to be published in the Plant Varieties Journal to oppose the same. On 27.1.2009 the applicant served a set of applications it was then that the proposed opponent realized the nomenclature has been changed to C 5193. It was further alleged that the applicant refused to give the name of the hybrid in one of the letters issued by the Registry to the applicant. Further when the proposed opponent while comparing the variety when they received the journal on 28.10.2008 believed that it was its own variety but for the "petal spot" which was advertised as present but when the opponent received a set of documents from the applicant it was confirmed from the application that the details of petal spot as absent. It was further submitted that petal spot is an important factor in comparison of the variety and that the applicant should have pointed this flaw to the Registrar for re-publishing a corrigendum in the subsequent Plant Varieties journal. It was pointed out that Petal Spot is an essential and important characteristic and had it not been so then why the same was given in the application and advertised in the Journal. It was also argued that place where the specimen of the variety C 5193 may be inspected was not mentioned in the advertisement published in the Plant Varieties Journal of India in accordance with Rule 30(2) of PPV&FR Rules, 2003. It was further stated that the incorrect publication in the journal



means denial of opposition. It was further stated that the Authority must not register any variety merely on DUS criteria given by the applicant. It was also stated that DUS testing must be conducting before publishing. It was submitted that Plant Varieties Journal is not an official gazette since Rule 2 (f) defines gazette and Rule 2 (g) defines journal separately. It was also submitted that publication of journal in electronic form will not change the status of the electronic journal as official gazette. Further that there is a disclaimer page in the web site of the Authority which makes it clear that the publication made in the website cannot be used for any purpose. Citing Collector of Central Excise -Vs- New Tobacco Co. (1998) 8 SCC 250 it was submitted that publish means to right to know. Reliance was also placed on Nalli Sambasivam and Anr., -Vs- Deputy Registrar of Trade Marks 2007 (34) PTC 553 (MAD.) (D.B.) wherein it was held that the time for filing opposition shall be the date when the journal is received and not the date of publication. Reliance was also placed on Siyaram -Vs- Asst. Registrar of Trade Marks (1996 (2) DLT 179) wherein it was held that the words "from the date of advertisement" in Rule 51 (3) of Trade Marks must mean that the date when the journal is issued and not the date borne on the journal. It was also argued that publication in website of PPV&FR Authority cannot be a publication within the meaning



of the Act. It was also submitted that applicant's variety C 5193 cannot be termed as new as it has been otherwise disposed of and exploited by way of hybrid production. It was also submitted that new variety should not have been published as the fee for the same was notified only on 13.5.2009 where as the application was accepted and published in September, 2008. It was also submitted that new variety cannot be registered under the provisions of the Act as common knowledge and extant variety database is yet to be prepared by the PPV&FR Authority. It was also submitted that Rs. 200/- collected by PPV&FR Authority is illegal. It was also stated that heading of Rule 33 and Form PV 5 clearly gives a right to seek time extension for notice of opposition. It was submitted that C 5193 is an EDV of NC 99.

Case of the Applicant:-

The applicant stated that the candidate variety C 5193 was filed for registration on 2.4.2008 and on 28.7.2008 the application was accepted by the Registrar for advertisement in the Journal. The advertisement was published on 1.9.2008. The proposed opponent filed the present application seeking extension of time for filing of the notice of opposition on 12.2.2009 invoking Rule 33(6). The bone of contention of the applicant is that time limit for filing opposition cannot



be extended beyond a period of three months as provided under section 21(2) of the Act. In support of it the applicant cited Rule 32 which provides that the time schedule provided for advertisement, opposition, defense, hearing and amendment of specification under these Rules shall not be extended and failure in compliance with these time schedules shall forfeit the opportunity granted. The applicant also cited Rule 33 and stated that Rule 33 (1) to 33 (5) refers only to matters connected with the submission of evidence and Rule 33 (6) deals with extension of time limit for filing evidence. Accordingly the title to Rule 33 which refers to notice of opposition cannot expand the scope of Rule 33 (1) to Rule 33 (6). It was also cited that Form PV 5 cannot be used as an aid to interpret to Rule 33. It was pointed out that the head note of Rule 33 and that of Form PV 5 cannot override the express provision of section 21 read with rule 32. The schedule being a delegated legislation cannot override the parental legislation. A marginal note cannot be used to control the meaning of provision when the language employed there in is clear. It was also contended that in view of the section 96(xviii) and 96 (xx) of the Act, the legislature has not delegated the power to make rule with respect to the time limit for filing notice of opposition. It was also pointed that application for extension of time was made after the expiry of the time limit and



accordingly delay cannot be condoned. It was also stated that there is no material difference between the advertisement published in the journal and application for registration of C 5193. It was also stated that the applicant has conformed to the guidelines prescribed by the Authority regarding the photograph to be submitted with the application. It was also submitted that the journal was available in the website from 1.9.2008 and there was no obligation to provide the same to any person. The publication itself constitutes notice to all interested persons. Accordingly the allegation that opponent got it only on 24.10.2010 is irrelevant. Accordingly it was submitted that under Rule 33 (6) no extension of time can be granted. It was also argued that the words 'time within which such evidence may be submitted' under section 21 (6) means that the power to make rules by the central government prescribing the time period would apply only to evidence and not to opposition. The applicant cited the decision of the Hon'ble Supreme in STO Vs. K.I. Abram (1967 3 SCR 518) to the proposition that the manner of doing something would denote only the mode in which an act was to be done and not the time limit for the same. The decision of the Hon'ble Apex Court in Raichurmatham Vs. Rawat Mal Dugar (2004) 4 SCC 766 was referred for the proposition that the marginal note may be referred for the purposes of construing



the meaning of proposition, in case of any inconsistency, the same shall not control the meaning of the section and in case a conflict between language of the section and that of the head note the plain language of the provision shall prevail over the head note. The Hon'ble Supreme Court in Nalinakhya Vs. Shyam Sundar (1953) SCR 533 was referred for the proposition that the marginal note may be referred for the purposes of construing the meaning of the provision in case of any inconsistency, the same cannot control the meaning of the section. Thus, the language of head note of Rule 33 as reproduced in Form PV 5 would not grant a substantive right to the proposed opponent. It was submitted that the comparison of the details of the advertisement as published at page 16 of Plant Varieties Journal dated 1.9.2008 with the application of the candidate variety does not show any discrepancy. The statute does not make it mandatory for the applicant to submit photograph. Presence or absence of petal spot is not a distinguishing character and is only one of the many DUS characters that are mentioned in the application. In any case there is no default on the part of the applicant since the applicant has provided all correct information to the Authority. Further the applicant has not mentioned the petal spot below the photograph that was furnished to the Registrar. It was also stated that section 21(2) of the Act provides



that the date from which the period for filing notice of opposition is to be calculated is the date of advertisement. It was also submitted that the New Tobacco company case [1998 (8) SCC 250] cited by the proposed opponent is not applicable to the present case as the period for filing notice of opposition has to be computed from the date of advertisement contrary to the date of publication. It was also submitted that the Nalli case [2007 (34) PTC 553 (Madras)] and Birla Heart Center Vs. Shree Rajmoti Industry [2007 (34) PTC 288] does not apply to the present case as section 21 and Rule 47 of Trade Marks Act are not in *pari materia* with section 21 and Rule 32 of the statute. It was submitted that section 8 of the Information Technology Act has no application to the present matter. The content disclaimer and hyperlink disclaimer are incorporated in all web sites and the same is not a reason to change the date of advertisement of the journal. It was further argued that the issue whether the processing charges as imposed by the Registry is valid or not is not a issue in the present case. Even if the same is held not to be valid the application and the date of the same is still be valid since no fee was prescribed on that day. It was submitted that the R&D Code of the candidate variety is C 312 YA and not the commercial name. The technical questioner of C 5193 discloses its R&D Code. The question as to whether the candidate



variety is NC 99 is substantive issue to be raised in the opposition if found maintainable. It was submitted that seed of harvested material of C 5193 has not been sold or otherwise disposed of.

Issue involved:-

After meticulously perusing the pleadings and after hearing the arguments of the parties in this regard I have to frame the issues for arriving at the decision.

Advertisement published in Plant Variety Journal whether valid or not: -

The first issue that has to be decided is whether the advertisement was valid in accordance with law. This is because the counsel for proposed opponent has argued that the advertisement itself is not valid and must be re-published. In this regard the counsel for proposed opponent has stated that place where specimen of the applicant's variety C 5193 may be inspected was not mentioned in the advertisement published in Plant Variety Journal (Vol.2 No.9). The learned counsel for proposed opponent has also stated that one of the distinguishing characteristic for C 5193 was wrongly advertised in the Journal as the application filed by the applicant for registration contained the details of "Petal spot" as "absent" while the publication was done in Plant Varieties Journal of India as "Petal Spot-Present". Per contra the learned counsel for applicant argued that presence or absence



of petal spots is not a distinguishing characteristic of the candidate variety and is only one of the DUS characteristics that are mentioned in the application. Further there is no default on the part of the Applicant and that Applicant had not even mentioned the petal spot below the photograph that was furnished to the Registry. I do not agree with the contention of the learned counsel for proposed opponent in this regard. I have to point out that in the Plant Varieties Journal dated 1st September, 2008 it has been specified that the place or places where the specimen of the variety may be inspected can be obtained in writing from the Registrar of the PPV&FR Authority. The proposed opponent has not written any letter in this regard till the last date for filing notice of opposition. Being so, the proposed opponent cannot argue that the advertisement has been published against Rule 30(2) of PPV&FR Rules, 2003. Further it is true that the applicant in his application has claimed that the "petal spot - absent" though in the advertisement published in Plant Varieties Journal (Vol.2 No.9) it was inadvertently published as "petal spot-present". This does not affect the legal validity of the advertisement for the simple reason that the petal spot is not the distinct characteristic claimed by the applicant. Accordingly, I have to hold that the advertisement published in Plant Varieties Journal of India (Vol.2 No.9) dated



1.9.2008 for applicant's variety C 5193 inviting opposition is valid in accordance with law.

'Date of advertisement' - whether date borne on journal or date of dispatch to the subscribers or the date of knowledge:-

The next issue that has to be decided is that the period of three months for filing notice of opposition should be computed either from the date borne on the Journal or from the date of issue of Journal or from the date of knowledge. The interpretation of the words "date of advertisement" occurring in section 21(2) holds the key to answer this issue.

The learned counsel for proposed opponent cited Nalli Sambasivam case [2007 (34) PTC 553 (Mad) (DB)] and Birla Heart Research centre case [2007 (34) PTC 288 (Reg)] in support of his contention that time limit for filing notice of opposition could be extended. The learned counsel for applicant argued that the date of filing of the notice of opposition has to be computed from the date of advertisement contrary to the "date of publication". Further the learned counsel for applicant argued that the Law of Trade marks and Section 21 of the PPV&FR Act, 2001 and Rule 32 of the PPV&FR Rules, 2003 are not in *pari materia*. I do not agree with the contentions of the learned counsel for applicant in this regard. Section 21 of the PPV&FR Act, 2001 is as follows: -

"Any person may within three months from the date of the advertisement of an application for registration on payment



of the prescribed fee give notice in writing in the prescribed manner to the Registrar of his opposition to the registration"

Section 21 (1) of the Trade Marks Act, 1999 is as

follows: -

"Any person may within three months from the date of advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate, as the Registrar, on application made to him in the prescribed manner and on payment of the prescribed fee, allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration."

A perusal of these two provisions in two analogous enactments make it clear that section 21 of the PPV&FR Act, 2001 and section 21(1) of the Trade Marks Act, 1999 are substantially same. Consequently, the judgements interpreting the word "date of advertisement" in section 21(1) of Trade Marks Act, 1999 would squarely apply to the instant case. The issue has already been settled in Pavunny Ouseph -Vs- Registrar of Trade Marks AIR 1952 Travancore-Cochin 77 wherein it was held that the period of three months referred to in section 21(1) of the Trade Marks Act should be counted from the date of dispatch of the Journal containing the advertisement to the subscribers and not the date printed on the journal. The relevant portion of the said High Court Judgement is extracted hereunder: -



"4. The object of advertising that an application for the registration of a trade mark has been received by the Registrar is obviously to let the public know about it and to invite opposition to it, if any. That object will be served only when the journal is distributed among the subscribers or otherwise made available to the public and not when it is got printed or few copies or cuttings distributed among sub-ordinate offices of the Trade Marks Registry or among the applicants for registration."

In *Siyaram Kumar Engineering Works Private Limited -Vs- The Assistant Registrar of Trade marks and another* [1996 (2) DLT 179] the Hon'ble Delhi High Court followed *Pavunny Ouseph case* (AIR 1952 Travancore-Cochin 77) and held in para 3 as follows:-

"So far as the first contention of the appellant company is concerned, I am in agreement with their contention that the words "from the date of advertisement" in Rule 51(3) of the said Act must mean the date when the journal is issued and not the date borne on the journal"

The decision in *Pavunny Ouseph case* (AIR 1952 Travancore-Cochin 77) was agreed with respect by the Hon'ble August Bench of Madras High Court in *Nalli Sambasivam case* [2007 (34) PTC 553 (Mad) (DB)] cited by the learned counsel for proposed opponent. The relevant portion of the decision is extracted hereunder:-

"But as contended by the learned senior counsel, the issue is already covered by the judgement of the Division Bench of Travancore-Cochin in Pavunny Ouseph -Vs- Registrar of Trade Marks (supra) and we respectfully agree with the ratio laid down therein. If the words "date of the advertisement" are given any other meaning, it would virtually amount to curtailing the period of limitation. Even for determining the period of limitation either under the Limitation Act, 1963 or under the Code of Civil Procedure, 1908, it is always the date on which the certified copies of the Judgements and decrees are made available, that is taken into account for the purposes of calculating limitation."



All the decisions cited above supports my view that the time limit for filing notice of opposition should be computed from the date of dispatch of journal to the subscribers.

Having held that date of dispatch of Plant Varieties Journal to the subscribers must be taken for computing the period of three months for filing notice of opposition. The date on which the Plant Varieties Journal (Vol. 2 No.9) dated 01.09.2008 was dispatched to the subscribers must be ascertained. I called for the records and found that the Plant Varieties Journal (Vol.2 No.9) dated 01.09.2008 was dispatched to the subscribers on 13.10.2008. The three months period for filing notice of opposition computed from 13.10.2008 falls on 13.1.2009. In the instant case even after computing the period of three months for filing notice of opposition from the date of dispatch of Journal there is a delay of 44 days [from 13.10.2008 (Date of dispatch of Journal to subscribers) to 26.02.2009 (Date of filing of Form-PV-3)]. The period of filing notice of opposition ended on 13.1.2009 and the Form PV-5 to extend the period for filing notice of opposition was filed on 12.02.2009 and notice of opposition was filed on 26.02.2009.

Whether Registrar has power to extend the time limit for filing notice of opposition



The next important issue that has to be examined is whether the Registrar has power to extend the time limit for filing notice of opposition.

The learned counsel for proposed opponent argued that the heading of Rule 33 and Form PV-5 clearly gives a right to seek extension of notice of opposition as well as evidence and further when there is ambiguity in the provisions then the headnote and the schedule must be referred to in order to arrive at the correct conclusion and the intent of the legislature. The learned counsel for applicant argued that section 96 empowers the central government to frame rules only with regard to time within which evidence may be submitted and not the time limit for filing notice of opposition which have already been specified in section 21 of the PPV&FR Act, 2001. It was further argued by the learned counsel for applicant that Rule 33 applies only to evidence and not to notice of opposition. The learned counsel for applicant also cited the decision of Hon'ble Supreme Court in STO - Vs- K.I. Abraham (1967) 3 SCR 518 that the manner of doing something would denote only the mode in which an act was to be done and not the time limit for the same. It was further argued by the learned counsel for applicant that citing the decision of Hon'ble Apex Court in Raichurmatham Prabhakar & Anr -Vs- Rawatmal Dugar (2004) 4 SCC 766 and Nalinakhya Bysack -Vs- Shyam Sunder Haldar & Ors



[1953] SCR 533 to the propositions that marginal note may be referred for the purposes of construing the meaning of the provision, in case of any inconsistency, the same shall not control the meaning of the section. The learned counsel for applicant also cited Allied Blenders -Vs- IPAB and Ors decided by the Hon'ble Division Bench of Madras High Court in W.P. No.1571 of 2009 to the proposition that if the special Act provides for specific time it has to be so done in compliance and the requirements cannot be relaxed.

I do not agree with the contention of the learned counsel for applicant that section 96 restricts the rule making power of the central government since 96(2)(viii) deals with manner of giving notice of opposition and section 96(2)(xx) provides the time within which the evidence may be submitted and accordingly the central government has no power to prescribe the provisions for extending the period for filing notice of opposition prescribed in section 21. My view is that the Central Government has power to prescribe the provisions for extending the period for filing notice of opposition prescribed under section 21. Section 96(1) of the Act provides that the central government may by notification in the official gazette make rules to carry out the provisions of the Act and section 96(2) provides that in particular and without prejudice to the generality of the foregoing powers



mentioned in section 96 (1) such rules may provide for all or any of the matters mentioned in section 96(2)(i) to 96(2)(lxviii). In Raja Rajasimha Rao Vs. State of A.P. AIR 1973 A.P. 236 it was held that when general provisions are followed by certain particular provision and when it is stated that the particular provision are without prejudice to the general provision, the particular provision do not cut down the generality of the meaning of the preceding general provision. This decision makes it clear that the rule making power of the Central Government is not restricted by clauses to section 96 (2) of the Act in as much as they are without prejudice to the general rule making power of the central government to carry out the provisions of the Act laid down in section 96(1) of the Act. Section 96(2)(lxviii) also gives inherent rule making powers to central government. Further I have to state that this is not the forum to examine the validity of rule making power of the Central Govt.

It is true that provisions from Rules 33(1) to 33(6) of PPV&FR Rules, 2003 does not speak about extending the time limit for filing notice of opposition. Rule 33 (6) provides for extending the time limit for filing evidence and not time limit for filing notice of opposition. There is no provision in the PPV&FR Act, 2001 also which provides for extension of time limit for filing notice of opposition. If the legislative intent was to bar the extension of

time limit for filing notice of opposition then a specific provision would have been made in the Act or Rules to the effect. Further I do not agree with the contention of the learned counsel for applicant that Rule 32 of PPV&FR Rules, 2003 forfeits the opportunity granted when the time schedule is not complied. Rule 32 must be read with Rule 33. Rule 32 lays down the general rule and Rule 33 provides for exception to it. The opportunity forfeited by Rule 32 on ground of non-compliance to time schedule can be extended in accordance with Rule 33.

The head note of Rule 33 and Form PV-5 makes it clear that the time limit for filing notice of opposition could be extended though provisions to Rule 33(1) to 33(6) are silent in this regard. The headnote of Rule 33 is as follows: -

“Rule 33. Manner of submitting evidence and time limit for filing notice of opposition, counter-statement or producing evidences under section 21.-“

The provisions of Rule 33(6) are as follows: -

“Rule 33(6)- The time-limit for filing the evidence shall not ordinarily be extended except by a special order of the Registrar given on an application filed by the person seeking extension of time and on payment of the fee specified in the Second Schedule and such an application for extension shall be in Form PV-5 of the First Schedule.”.

The relevant portion of Form PV-5 of the first schedule is extracted hereunder: -



"Form PV-5

[See Rule 33(6)]

THE PROTECTION OF PLANT VARIETIES AND
FARMERS' RIGHTS ACT, 2001

REQUEST FOR EXTENSION OF TIME

I/We.....hereby request for extension of
time for.....months under rule 33 for
filing notice of opposition/evidence/counter-statement."

The cases cited by the learned counsel for applicant namely STO -Vs- K.I. Abraham (1967) 3 SCR 518, Raichurmatham Prabhakar & Anr -Vs- Rawatmal Dugar (2004) 4 SCC 766, and Nalinakhya Bysack -Vs- Shyam Sunder Haldar & Ors [1953] SCR 533 to the proposition that that marginal note may be referred for the purposes of construing the meaning of the provision and in case of any inconsistency the same shall not control the meaning of the section are not applicable to the instant case, as I do not find any inconsistency between headnote of Rule 33 and provisions of Rule 33 or between provisions of rule 33 *inter se*. There is a mere ambiguity in provisions of Rule 33 whether it applies to notice of opposition or not. That ambiguity is resolved by referring to headnote of Rule 33 and Form PV-5 which makes it clear that Rule 33(6) applies to filing notice of opposition also. My view is supported by the



following passage from Maxwell on the interpretation of statutes (12th Edition, 1969) which is as follows:-

"The headings prefixed to sections or sets of sections in some modern statutes are regarded as preamble to those sections. They cannot control the plain words of the statute, but they may explain ambiguous words....."

In Uttam Das -Vs- SGPC [1996 5 SCC 71] and Bhinka -Vs- Charan Singh [AIR 1959 SC 960] wherein it was held by the Hon'ble Supreme Court that section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent. In Aphali pharma Ltd., -Vs- State of Maharashtra (1989) 4 SCC 378] wherein it was held that the schedule to the Act forms an integral part of the Statute and therefore in case of any doubt or ambiguity the wordings of the schedule can be relied upon. These decisions makes it clear that headnote of Rule 33 and Form PV-5 which mentions about extending time limit for filing notice of opposition can be relied upon to clear the ambiguity in Rule 33(6). The contention of the learned counsel for applicant that Rule 33(6) applies only for delay in filing evidence and not to delay in filing notice of opposition cannot be accepted. I find that when provision of Rule 33 (6) provides for extending the time limit for filing the evidence and why cannot the same be applied for pleadings more particularly notice of opposition. It is a golden maxim in law that



pleading should be supported by evidence and evidence should be supported by pleadings. There is also no reason why the legislature or rule making authority should be so harsh only on delay in filing notice of opposition. Further the maxim delay defeats equity cannot apply in a case where there is a want of fair dealing.

I am also guided by the maxim "*Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest. To whom jurisdiction is given, those things also are considered to be granted without which the jurisdiction cannot be exercised.*" The maxim implies the grant of all powers necessary for its exercise. When there is a jurisdiction to extend the time limit for filing evidence the same applies to extending time limit for filing notice of opposition also as it is incidental and ancillary to extending the time limit for filing evidence.

It was held by the Hon'ble Delhi High Court in Liberty Footwear Company Vs. Force Footwear Company & Others [2009 (41) PTC 474 (Del.)] as follows: -

" Rules of procedure, it is well settled, are handmaid of justice and are normally treated as directory and not mandatory unless legislative intent is opposite. Most of the procedural rules are enacted with the object to ensure expeditious trial and do not normally impose a prohibition and bar on the power of the court/tribunal to extend time. A prohibition or bar requires a penal consequence which should flow from non-compliance of a procedural provision. In Kailash v. Nankhu, AIR2005 SC2441 and Salem Advocate Bar Association, Tamilnadu v. Union of India,



AIR 2005 SC 3353 it has been held that there may be many cases where non-grant of extension would amount to failure of justice. The object of procedural rules is not to promote failure of justice. Procedural rules deserve to be read down to mean that where sufficient cause exists or events are beyond the control of a party, the Court would have inherent power to extend the time."

In *Grindlays Bank Ltd. Vs. Central Govt. Industrial Tribunal & other 1980 (SUPP.) SCC 420* it was held as follows: -

"The Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed there under giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or a body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary."

It was held by this Registry in a matter between the same parties by order dated 15.9.2009 in Form PV 5 filed by the proposed opponent in application for registration of Denomination C 5195 filed by the applicant in the instant matter that Rule 33 (6) of PPV&FR Rules, 2003 is applicable to final opposition also. Accordingly I have to hold that rule 33 (6) applies to extending the time limit for filing notice of opposition also.

The other argument of the learned counsel for proposed opponent regarding the acceptance of the application while fee was yet to be notified has already been settled between the same parties by order of this Registry dated 12.11.2009 in Appl. No. 2



of 2008. Similarly other arguments concerning the novelty of the variety, C 5193 is an EDV of NC 99 and R&D code of C 5193 are related to the merits of the opposition and are accordingly out of scope to the current case. The allied Blender's case (decided by Hon'ble Madras High Court in W.P. No.1571 of 2009) cited by the learned counsel for applicant is not applicable to the instant case for that case was concerned with whether review was maintainable before the Deputy Registrar of Trade Marks.

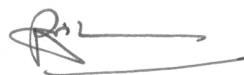
Now the final issue that has to be examined is that whether the proposed opponent has shown sufficient cause to extend the time limit by 44 days for filing notice of opposition. Though the legal validity of the advertisement published in Plant Varieties Journal Vol.2 No.9 dated 01.09.08 inviting oppositions for C 5193 is not affected for the reason that petal spot is not the distinct character claimed by the applicant but at the same time the petal spot is an essential character and the proposed opponent might have been misled because of it and further the proposed opponent has stated that he was aware of it only on 27.01.2009 when the copy of the application for registration of C 5193 was served on the proposed opponent by the applicant. Consequently to prepare and file the notice of opposition a month should have been taken that is from 27.01.2009 to 26.02.2009. Further PV-5 in the instant matter has been filed on



12.02.2009. My view is that the proposed opponent has shown sufficient cause to extend the time limit by 44 days (from 13.1.2009 to 26.2.2009) for filing notice of opposition. Accordingly I hereby direct the Registry that the notice of opposition filed by the proposed opponent in the instant matter be taken on record and the registry is hereby directed to examine and proceed further with it in accordance with law.

There shall be no order as to costs.

Given under my hand and seal on this the 9th day of March, 2010.


(R.K. Trivedi)
REGISTRAR

