

Gone to seed

THE CASE:

Monsanto Technology & Ors v Nuziveedu Seeds & Ors
Supreme Court of India
8 January 2019

Swarup Kumar discusses the Supreme Court judgment overturning a division bench ruling in the closely watched *Monsanto* case

In a much-awaited order on an appeal filed by Monsanto against the April 2018 verdict of the Division Bench of the Delhi High Court in *Monsanto Technology and Ors v Nuziveedu Seeds & Ors*, the Supreme Court of India on 8 January 2019 held that the bench had erred in passing a summary judgment on complex technical issues.

It also held that the bench erred in invalidating Monsanto's patent without examining expert evidence.

The order of the division bench has been set aside and the suit has been remanded to the single judge for disposal in accordance with the law.

Background

On 11 April 2018, the division bench had held that Monsanto's patent over its *Bacillus thuringiensis* (Bt) gene technology for bollworm-resistant cotton seeds in India was invalid, the reason being that per the bench, the patent in question fell within the exclusions spelt out by Section 3(j) of the Indian Patents Act. Exclusions to patentability listed under this provision include – 'plants', 'seeds', and 'essentially biological processes' for production or propagation of plants and animals.

The division bench verdict also issued a stay on a March 2017 order of the single judge – Monsanto and Indian agribusiness Nuziveedu had cross-appealed against this order, which is how the matter came before the Division Bench in the first place.

The single judge had ruled that during the pendency of the suit, the seed companies – bound by licencing agreements signed with Monsanto for its Bt technology – must continue to pay it royalties; however, to Monsanto's dissatisfaction, the royalty amounts were not contractual but determined by price controls set by the government.

Invalidity

The division bench's ruling on the validity of Monsanto's patent (apparently under consent from both the parties), based simply on the material on record and without any trial, was unusual. Typically, courts proceed in such instances after hearing expert evidence which can be quite crucial in adjudicating on the merits of such claims.

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The bench did, however, provide Monsanto with an opportunity to claim registration under the Protection of Plant Varieties and Farmers' Rights (PPVFR) Act, 2001, as the two statutes – the Patents Act and PPVFR Act – were considered not complementary to, but exclusive of, each other in the case of all processes and products falling under Section 3(j) of the Patents Act.

Not satisfied with this verdict, Monsanto filed an appeal before the Supreme Court.

Supreme Court judgment

In its decision, the Supreme Court has held that the division bench ought to have confined itself to the examination of the validity of the order of the single judge. It added that the

division bench ought not to have examined the counter claim (of invalidity of the Monsanto's patent), thus usurping the jurisdiction of the single judge in a summary manner.

The issues raised in the patent revocation petition were complicated, requiring technical analysis involving expert evidence with regard to issues of chemical, biochemical, biotechnical and microbiological processes, as well as the issue of whether Monsanto's patented 'nucleic acid sequence' trait once inserted in a plant could be removed from that variety or not, and whether the patented DNA sequence was a plant or, in fact, a part of a plant.

Notably, the Supreme Court left open all questions of fact and law to be urged for consideration in appropriate proceedings and the suit has been remanded to the single judge for disposal in accordance with the law.

Summary

Acknowledging the importance of the questions of law and technology involved, the Supreme Court has expressed hope that the parties involved will cooperate and facilitate early disposal of the suit. The bottom line is that the decision of the division bench invalidating Monsanto's patent in a summary manner has been set aside. No doubt the battle is still on (before the single judge) but as they say, tomorrow is another day!

Author



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