

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

Oppn. No.2 of 2024

IN THE MATTER OF: PV-5 in Notice of Opposition filed by M/s. Nuziveedu Seeds Limited against registration of Okhra variety denominated as V130014(Raadhika) with Application No.N2-AE2-18-164 filed by M/s. Advanta Enterprises Ltd.,

IN THE MATTER OF: -

M/s. Nuziveedu Seeds Limited

..... Opponent

-Versus-

M/s. Advanta Enterprises Ltd.,

..... Applicant

For the Opponent: Sh. K.V. Girish Chowdary, Sh. D. Satya Sai Sumanth, Advocates.

For Applicant : Sh. Adarsh Ramanujan, Sh. Lzafeer Ahmad B F Advocates

ORDER

(Matter heard through hybrid mode)

By this Order I shall dispose of the Form PV-5 (Request for Extension of Time by One month for filing of Evidence) dated 5th August, 2024 filed by the Opponent.

For the sake of convenience parties are referred to in the nomenclature as in the opposition proceedings.

FACTS OF THE CASE: -

On 5th April, 2018, the Applicant filed Application No. N2-AE2-18-164 seeking registration of their Okra variety denominated as V130014(Raadhika). The same variety was advertised in PVJ Vol-17



No.12 published on 1st January, 2024 inviting oppositions. The Opponent filed the instant opposition on 28th March, 2024. The Notice of Opposition was received by the Applicant on 11th April, 2024 and the Counter statement was filed by Applicant on 7th June, 2024. Both the opposition and the counter-statement were filed within the prescribed time limit. On 3rd July, 2024, the Opponent also filed PV-33 requesting for certain documents in the application which is the subject matter of Opposition. The requested documents were furnished to the Opponent on 26th July, 2024 and the PV-33 (Form for request of documents) was consequently disposed of. The Opponent is bound to file final opposition within a period of 30 days from the date of receipt of counter statement as per Rule 31(6) and evidence within a period of one month as per Rule 33(1) of PPVFR Rules, 2003. The counter-statement in the instant matter was received by the Opponent on 5th July, 2024 and hence evidence should have been filed by 5th August, 2024 but instead the Opponent has filed PV-5 petition seeking one month extension for filing the evidence.

Applicant has filed reply and Opponent has filed rejoinder to the PV-5 filed by the Opponent. Both the parties have filed their written submissions on 23rd August, 2024.

Parties were heard online on 23rd August, 2024.

CASE OF THE OPPONENT: -

The Opponent received the counter statement by speed post on 5th July, 2024 and in accordance with Rule 33(1) the Opponent has to file evidence by 5th August, 2024. Upon reviewing the counter statement of the Applicant the Opponent noticed that certain new grounds have been introduced based on the amendments made in the application. The Opponent had applied for certified copies and were furnished to them on 26th July, 2024 and hence need time to review and collate all documents. Therefore, the deadline of 30 days is not sufficient. The request is made in good faith and necessary fees have been paid in this



regard. The Opponent further contends that the Applicant cannot file counter-statement in PV-5 as there is no provision to this effect in the Rules and this is a self-contained rules and hence no counter statement could be filed to PV-5. The Opponent denied that they are protracting the litigation by filing unnecessary and frivolous pleadings. The reasons stated in PV-5 are bonafide and hence must be allowed. The Opponent also cited the cases of Salem Advocate Bar Association, T.N., -Vs- Union of India (2005) 6 SCC 344; Para no (s) 20 & 21, Goan Real Estate and Construction Limited & Anr -Vs- UOI 2010 (5) SCC 388, Para no.31 and P.S. Sathappan -Vs- Andhra bank Ltd., (2004) 11 SCC 672, Para no (s) 144-147.

CASE OF THE APPLICANT: -

The Opposition itself is frivolous and counter-blast to the proceedings initiated by the Applicant under Section 24(5). The Applicant denies that new grounds regarding registrability of RAADHIKA has been introduced. The amendment done is amended Form-1 for rectification of error and the same wouldn't have been prejudicial to the opponent. The amendment referred to include indication of new applicant. If the Opposition's grounds were well-founded and prepared it would be expected that sufficient evidence should have already been collected or readily available. The necessity to gather voluminous evidence at this stage suggests that the Opposition's initial submission was lacking in specificity and thoroughness and was merely a delay tactic. Accordingly, the PV-5 be dismissed. The Applicant also cited the cases of Union of India -Vs- A.K.Pandey, (2009) 10 SCC 552, Eicher Tractors -Vs- Commissioner of Customs, (2001) 1 SCC 315 and UOI -Vs- Vipinchandra, (1996) 6 SCC 721

ANALYSIS: -

The only issue that survives for consideration in the instant matter is whether the PV-5 application filed by the Opponent has to be



allowed. The provision relating to allowing/rejecting of PV-5 is contained in Rule 32 which is extracted hereunder: -

“32. Compliance with time schedule- The time schedule provided under these rules for notice of opposition, final opposition, evidence, intervention, written statement and reply shall not ordinarily be extended except by special order of the Authority or 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”

Rule 32 clearly shows that PV-5 has to be allowed by the special order. Though it is not expressly mentioned in Rule 32 it is well settled that special order extending the time limit can be passed only when sufficient cause is shown by the person seeking extension of time. This has been reiterated by this Registry in orders passed in several matters. Now it has to be examined whether the Opponent has shown sufficient cause to extend the time.

There can be no denial that the Opponent had filed PV-33 requesting for documents on 3rd July, 2024 which was disposed of only on 26th July, 2024. The request for documents was also mandated due to amendment in application. The said period from filing of PV-33 (request for documents) till the date of receipt of documents has to be discounted from the time for filing of evidence and accordingly the request of the Opponent seems to be reasonable. The wait for certified copy of the documents is definitely a sufficient cause which warrants extension of time. A special order has to be passed within the perimeter and parameter of Rule 32 in cases of time taken in obtaining certified copy of documents. I am of the view the delay caused to the Applicant can be compensated by costs. No prejudice would be cost by extending the time limit.

Accordingly, the PV-5 filed by the Opponent is allowed and time for filing is extended from 5th August, 2024 to 5th September, 2024



subject to the condition of payment of costs of Rs.10,000/- (Rupees Ten Thousand Only) to be paid to National Gene Fund of PPVFR Authority on or before 5th September, 2024. The details of bank account where the costs can be deposited will be furnished to the Opponent along with the order.

The next date of hearing in the instant matter will be informed to the parties separately.

Given under my hand and seal on this 23rd day of August, 2024.




(D.K. AGARWAL)
REGISTRAR-GENERAL