

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

A No. 1 of 2009

**IN THE MATTER OF: - Petition under Section 24(5) of
PPV&FR Act, 2001 filed by Nuziveedu Seeds Pvt. against
MAHYCO.**

IN THE MATTER OF: -

Nuziveedu Seeds Pvt. Ltd.,

.....APPLICANT

-Versus-

MAHYCO

....RESPONDENT

**For the Applicant: Mr. Abhishek Saket, M/s. Infini
Juridique**

**For the Respondent: - Mr. Prashant Pakhiddey, Ms. Shivi
Sethi, M/s. Luthra & Luthra**

ORDER

By the previous order in this matter the applicant was to file their reply on maintainability of the application and further by order dated 07.05.2019 of this Registry the application filed by the Respondent in A. No.1 of 2008 (stating that A. No.1 of 2008 is not stayed by the order of the Hon'ble Supreme Court) was posted today for disposal along with the instant application.

In the instant matter the Applicant has filed the instant application claiming that their NC-99 is Respondent's C-5193.

The counsel for Applicant states that the entire proceedings relating to C-5193 have been stayed. Per contra the counsel for Respondent argues that the proceedings are not stayed.

At the outset it is hereby put on record that this forum is bound by the orders of Hon'ble Supreme Court of India and consequently has to oblige and cannot interpret the orders of Hon'ble Supreme Court of India.

The facts needed for appreciation of the issue in hand are as follows:-

The Respondent who is the applicant in A. No.1 of 2008 filed an application for registration of their cotton variety C 5193 on 2.4.2008. The same was advertised in PVJ on 1.9.2008 inviting oppositions and the applicant filed their opposition on 12.02.2009 belatedly with a delay condonation application (PV-5). The said PV-5 application to condone the delay in filing notice of opposition was condoned by this Registry by order dated 09.03.2010 which was assailed before the Hon'ble Delhi High Court in WP 4527/2010. The Hon'ble Delhi High Court upheld the order of the Registrar and against which the Respondent filed Civil Appeal No.8314-8315/2016 before the Hon'ble Supreme Court of

India. The Hon'ble Apex Court by order dated 26.07.2013 stayed the operation of the judgement and order of Hon'ble Delhi High Court passed on 22.03.2013 in WP (C) No.4527/2010 upholding the order of Registrar in condoning the delay in filing the notice of opposition.

Consequently there is a stay in taking on record the notice of opposition against registration of C-5193 and hearing the same. In other words the delay in filing notice of opposition against registration of C-5193 is condoned or not (whether PV-5 is allowed or not) is dependent on the outcome of judgement of Hon'ble Apex Court of India. A delay condonation proceeding in an opposition stops the registration until its disposal either by rejection or in case if it is allowed then the opposition has to be rejected before the variety proceeds for registration. In the instant case there is no dispute that a delay condonation proceeding in taking on record the notice of opposition against registration of C5193 has been stayed by the Hon'ble Supreme Court and the same will be based on the outcome of the judgement of Hon'ble Supreme Court. Consequently the registration of C-5193, delay condonation proceeding in opposition against registration of C-5193 and provisional protection application (Section 24(5) Application) based on and against C-5193 also remains stayed in light of the interim orders dated 26.07.2013 and 22.08.2016 of Hon'ble Supreme Court in Civil Appeal No.8314-8315/2016. Accordingly, the instant application involving C-5193 also remains stayed. For

further posting of this matter, Registry will await the order of the Hon'ble Supreme Court in the said civil appeals.

Given under my hand and seal on 24th day of July 2019.

Sd/-
(R.C.AGRAWAL)
REGISTRAR-GENERAL