Restoring Patent Rights, Bt Cotton II

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Why in news?

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Recently, the Supreme Court has restored US-based Monsanto Technology's patent on technology used in Bt Cotton seeds.

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Why is the matter in court?

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- The case relates to a dispute between Monsanto and Nuziveedu Seeds Ltd over the technology.
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- A 10-year sub-licence agreement was made between the two companies in 2004.
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- Under that, Nuziveedu could develop "Genetically Modified Hybrid Cotton Planting Seeds" with the help of Monsanto technology and commercially exploit it.
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- In return, Nuziveedu had to pay licence fee/trait value.
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- Monsanto terminated the agreement in 2015, with disputes having arisen over these payments amid a price control regime introduced by the government.
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- Monsanto filed a civil suit in Delhi High Court, claiming that Nuziveedu Seeds was infringing on its patent by using its technology.
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- It also filed an application for injunction to restrain Nuziveedu from using the Monsanto trademark during the pendency of the civil suit.
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- Nuziveedu filed a counter-claim against Monsanto’s patent claim in the High court.
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What has Monsanto’s argument been in this case?

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- In the present suit, there are two sets of patent claims — claims 1-24 relating to processes, and claims 25-27 relating to the chemical product NAS (Nucleic Acid Sequence).
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- Monsanto has claimed that NAS is a man-made DNA construct and not part of a plant existing in nature.
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- The DNA construct is inserted into a plant “which confers the trait of insect tolerance”.
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- When it is inserted into the cell of the plant at a particular location, it results in the production of a fusion protein.
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- Monsanto’s argument is that the production of the fusion protein is critical for the technology to be effected and it is only its technology that allows a cotton plant to produce it.
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- Thus, the product is protected by claims 25-27 of the patented inventions.
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What has Nuvizeedu’s argument been in this case?

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- Nuziveedu focused on Section 3 (j) of the Patent Act, 1970, which served as the main ground for the revocation of the mentioned Patent.
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- It contended that, under Section 3(j) - Plants and animals, other than microorganisms, including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals are not inventions.
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- Thus, claim 25 of the Patent relates to ‘nucleic acid sequence’, is equated in

terms of “a plant cell, a seed, a transgenic plant or a plant variety”.
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- Hence it is not considered as inventions and cannot be granted a patent in India.
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- Further, Nuziveedu contended that Bt. Trait in Cotton Hybrid varietal plants is an essential biological process.
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- Cross-bred plants and animals are not patentable because they are better regarded as discoveries which happens naturally and therefore, it’s just a discovery which has taken place in a laboratory.
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- It has also argued that its rights are protected under the Protection of Plant Varieties and Farmers’ Rights Act, 2001.
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What happens now?

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- The Delhi High had passed two separate orders in this case.
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- The First order ruled that during the pendency of the case, both parties would have to abide by obligations under their agreement.
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- Also, Nuziveedu Seeds should pay licence fees in accordance with the regulatory requirement.
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- In the second order, the high court ruled that Monsanto’s patent claim was invalidated under Section 3(j) of the Patents Act.
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- However, the Supreme Court recently overturned this judgement saying that Monsanto can claim patents on its genetically modified (GM) cotton seeds.
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- Thus, the SC ruling restores the first order of the High court and hence the same bench of the HC will now hear the matter of patentability on this case.
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Source: The Indian Express

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