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CMA(PT) No. 23 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-06-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CMA(PT) No. 23 of 2025

Nandamuri Sri Lakshmi Bhavani
501, Madhuvanam Homes, Balaji Theatre Road,
HDFC Bank Lane, Nearby Priya, Poranki,
Vijayawada 5201137 Andhra Pradesh Rep. by the
Power of Attorney Ms. Divya Sridharan

..Appellant

Vs

1. Deputy Controller of Patents
Patent Office, Boudhik Sampada Bhawan,
S.M.Road, Antop Hill, Mumbai-400 037.
2. The Assistant Controller of Patents
Patent Office, Intellectual Property Building,
GST Road, Guindy, Chennai-600 032.

..Respondent(s)

Prayer: To allow the Appeal against the order of the 1st Respondent dated 02.02.2023 and set aside the same and direct the 1st Respondent to allow the Indian Patent Application Number 201941026810 and pass such further or other orders as this Honble Court may deem, fit and proper in the circumstances of the case and thus render justice

For Appellant : Mr. Gladys Rosette C Daniel

For Respondents: Mr. C. Samivel, SPSC



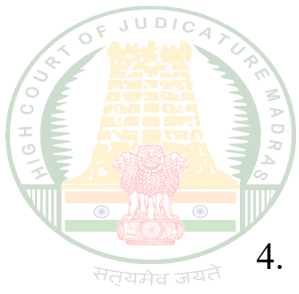
JUDGMENT

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The application filed by the appellant herein in the instant Civil Miscellaneous Appeal had been rejected solely on the ground, that the complete specification had not been filed within a period of 12 months from the date of filing the provisional application.

2. It is to be noted that, originally the provisional application had been filed by the applicant on 04.07.2019 and thereafter, by an order dated 30.06.2020, the application made by the appellant had been post-dated to 04.01.2020 under provisions of the Section 71 of the Indian Patents Act, 1970 (herein after referred to as 'Act').

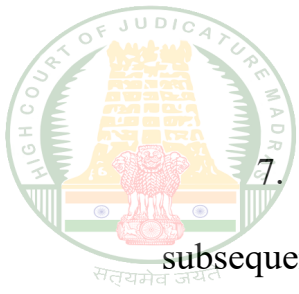
3. The claim of the appellant was that the application had been post-dated to 04.01.2020, hence the period of 12 months for filing of complete specification would have been calculated from the aforesaid date. It is the further claim of the learned counsel appearing on behalf of the appellant is that having post-dated the application only on 30.06.2020, the 12 months period should be calculated from 30.06.2020 and at any rate, according to the learned counsel, the date for counting 12 months period should start from 05.01.2020, excluding 04.01.2020, as the order under Section 17 of the Act came to be passed, much after the date for post-dating the application filed by the appellant.



4. Section 9 of the Patents Act envisages, that when an application is filed provisionally, the complete specification should be made within a period of 12 months from the date of filing the said application. However, Section 17 of the Act, entitles the applicant to seek post-dating the application, for the reasons stated therein. When such an application for post-dating the application had been permitted, the period of 12 months would have to be counted only from the date of post-dating the application, or otherwise, the provisions of Section 17 of the Act would be rendered otiose.

5. In the present case, admittedly the application had been given by the applicant on 04.07.2019 and only on 30.06.2020, an order had been passed, accepting the post-dating of application to 04.01.2020, as mandated under Section 17 of the Act.

6. If the reasoning adopted by the respondents would have to be acknowledged, then the applicant would have only 4 days time to submit the complete specification. An order passed under Section 17, accepting the application to be post-dated would only mean that the application itself is deemed to be made on the said post-dated day. When that to be so, the period of 12 months would start kicking in from the date on which, it stood post-dated.



7. In the present case, as the post-dating itself is made much subsequent to the date, which it was post-dated, as rightly pointed out by the learned counsel appearing for the appellant, the day it was post-dated, namely 04.01.2020 would have to stand excluded and then the complete specification had been filed on or before 05.01.2021.

8. This Court is of the view that the complete specification is within 12 months period, as envisaged under Section 9 of the Act. For the aforesaid reasons, this Court has no hesitation in interfering with the impugned order herein.

9. For the reasons set out in the preceding paragraph, the impugned order is unsustainable and is, hereby, set aside. Consequently, the matter is remanded for re-consideration on the following terms:

(i) In order to preclude the possibility of pre-determination, an officer other than the officer who issued the impugned order shall undertake such re-consideration.

(ii) After providing a reasonable opportunity to the appellant, a reasoned decision shall be issued within a period of three months from the date of receipt of a copy of this order.



K. KUMARESH BABU, J.

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(iii) It is made clear that no opinion is expressed herein on the merits of the application.

10. Therefore, CMA(PT)/06/2024 is disposed of on the above terms without any order as to costs.

30-06-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

stn

To

1. The Deputy Controller of Patents
Patent Office, Boudhik Sampada Bhawan, S.M.Road, Antop Hill,
Mumbai-400 037.
2. The Assistant Controller of Patents
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