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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 10.01.2019

% **W.P.(C) 4573/2012**

CARLOS ALBERTO PEREZ LAFUENTE Petitioner

Through: Mr. Ashutosh Kumar and Mr. Vinod Chauhan, Advocates.

versus

UOI & ORS

..... Respondents

Through: Mr. Jasmeet Singh, CGSC with Mr. Srivats Kaushal and Mr. Aditya Madaan, Advocates for UOI.

Mr. Anil Dutt and Ms. Gunjan Hans, Advocates for intervener.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

CM APPL. 13069/2018 (under Order 1 Rule 10 CPC)

1. By this application, applicant seeks to intervene in the matter. Since we have heard the submissions of learned counsel for the applicant on merits, this application has become infructuous. The same is accordingly disposed of.

W.P.(C) 4573/2012 & CM APPL. 9501/2012 (for stay)

2. The petitioner has preferred the present writ petition to assail the

order dated 30.01.2012 passed by the Deputy Controller of Patents & Designs-Respondent No.4, whereby respondent No.4 refused to take on record the request of the petitioner for examination of his patent application. The petitioner also seeks a Writ of Certiorari to quash the decision of the respondents to treat the petitioner's application (7318/DELNP/2008) as '*Deemed to be Withdrawn*' under Section 11-B (4) of the Patents Act, 1970 (The Act). A further direction is sought to respondent Nos. 2 to 4 to take the petitioner's Form-18 (request for examination), and to process the subject patent application as per the provisions of the Act.

3. The petitioner filed a PCT application (international phase), being application number PCT/EP2007/052939 titled as '*Method and System for monitoring a mobile station presence in a special area*' on 27.03.2007, claiming priority from 28.03.2006, in respect of its European patent application (#06111804.8). The petitioner chose India as one of the designated states and the national phase application (India) was filed by him on 28.8.2008 being application number 7318/DELNP/2008.

4. The petitioner then moved an application in Form-18 i.e. he made a request for examination of his application on 19.11.2010. The Patent Office, Delhi, however, by a non-speaking order dated 25.11.2010 refused to accept the said Form-18 as filed by the petitioner's agent. Being aggrieved by the said action of the respondent, the petitioner approached this Court by preferring W.P.(C) No. 6975/2011. The said writ petition was disposed of on 23.09.2011 with a direction to the Patent Office to examine the petitioner's representation and to pass an order after hearing the petitioner. The petitioner was, accordingly, granted hearing and the impugned order came to

be passed by the Deputy Controller of Patents & Designs-Respondent No.4 on 30.01.2012, rejecting the said representation. The petitioners' application in Form-18 was considered as time barred, since the same was not moved within 48 months of the priority date, which was earlier of the two dates – the priority date and the date of the patent application made under the Act. The delay in moving the Form-18 application was not condoned by the Respondents. In this background, the petitioner has preferred the present writ petition.

5. The writ petition was initially listed before the learned Single Judge of this Court. Since it was urged on behalf of the respondent that the issue raised by the petitioner was covered against the petitioner by the judgment in '*Nippon Steel Corporation v Union of India*', W.P. (C) No. 801/2011, decided on 08.02.2011, and that the said decision was pending consideration in a Letters Patent Appeal, the proceedings in writ petition were adjourned.

6. The petitioner then moved an application to intervene in LPA 379/2011, which was preferred against the decision in *Nippon Steel Corporation* (supra). The same was allowed on 09.12.2014. Consequently, the writ petition came to be listed before the Division Bench. In the meantime, the said LPA No. 379/2011 preferred in the case of *Nippon Steel Corporation* (supra) was withdrawn. However, the issue raised by the petitioner remains to be answered. Thus, the writ petition has been heard.

7. Before we proceed further, to appreciate the controversy and the submissions of learned counsels we consider it appropriate to extract the relevant portions of Section 11B of the Act and Rule 24B of the Patents

Rules, 2003 (The Rules). They read as follows:-

Section 11 B

“11B. Request for examination.—

(1) No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period

(2)

(3) In case of an application in respect of a claim for a patent filed under sub-section (2) of section 5 before the 1st day of January, 2005 a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.

(4) In case the applicant or any other interested person does not make a request for examination of the application for a patent within the period as specified under sub-section (1) or sub-section (3), the application shall be treated as withdrawn by the applicant:

Provided that—

(i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and

(ii) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.”(emphasis supplied)

Rule 24B

“24B. Examination of application.—

(1) (i) A request for examination under section 11B shall be made in Form 18 within forty-eight months from the date of priority of the application or from the date of filing of the application, whichever is earlier;

(ii) The period within which the request for examination under sub-section (3) of section 11B to be made shall be forty-eight months from the date of priority if applicable, or forty-eight months from the date of filing of the application;

(iii) The request for examination under sub-section (4) of section 11B shall be made within forty-eight months from the date of priority or from the date of filing of the application, or within six months from the date of revocation of the secrecy direction, whichever is later;

(iv) The request for examination of application as filed according to the 'Explanation' under sub-section (3) of section 16 shall be made within forty-eight months from the date of filing of the application or from the date of priority of the first mentioned application or within six months from the date of filing of the further application, whichever is later;

(v) The period for making request for examination under section 11B, of the applications filed before the 1st day of January, 2005 shall be the period specified under the section 11B before the commencement of the Patents (Amendment) Act, 2005 or the period specified under these rules, whichever expires later.”(emphasis supplied)

8. The controversy has arisen, since the petitioner moved the application requesting for examination in Form-18 on 19.11.2010 i.e. beyond the period of 48 months from the earlier of the two dates, i.e. the date of priority (28.03.2006) and the date of the application (i.e. 28.08.2008). However, the said request for examination was made within 48 months of the filing of the application for grant of patent by the petitioner before the Patent Office, New Delhi on 28.08.2008. Thus, the issue that arises for consideration,

firstly, is from which date the period of 48 months prescribed in Rule 24-B(1)(i) of the Rules should be computed – from the date of priority, or from the date of filing of the application under the Act. The second issue that arises for consideration is, whether the said limitation of 48 months is directory or mandatory, i.e. whether the delay in filing the request for examination in Form-18 can be condoned, or not.

9. The submission of Ld. Counsel for the petitioner is that said period is directory. The petitioner submits that the Controller of Patent was empowered to exercise the discretion to condone the delay, if any, upon examination of the justification offered by the applicant. The petitioner has also drawn the attention of the Court to the facts and circumstances of his case to show that the delay, if any, is entirely *bona fide* and on account of the wrong interpretation of Rule 24-B(1) (i) published in the publication of WIPO wherein, instead of the word “earlier” used in the said Rule, the word “later” was printed. The petitioner also relies upon communication received from WIPO, to claim that it had published its interpretation of the Rule after approval from the Patent Office under the Act. The petitioner has also relied upon e-mail communications received from its Indian agent, even prior to the expiry of the period of 48 months from the date of priority, which also misled the petitioner to believe that the petitioner had time to move his request for examination in Form-18 till the expiry of 48 months from the date of filing of the application for grant of patent under the Act.

10. The submission of learned counsel for the petitioner is that the introduction of the deferred examination system was to reduce the workload of the Patent Office, since prior to introduction of the said system, all

applications necessarily had to be examined. By introducing the deferred examination procedure, only such of the applications need to be examined about which the applicant is serious, and which he wishes to pursue. The submission is that the correspondence undertaken by the petitioner with its Indian counsel/agent would show that the petitioner was throughout diligent and interested in pursuing the application, and it is not a case where the petitioner was casual or sleeping over his rights. Learned counsel submits that the consequence of interpreting the period of limitation of 48 months strictly – from the earlier of the two, i.e. the priority date and the date of the application, would be grave for the petitioner, since his right to claim statutory monopoly over his invention in the Indian jurisdiction would be lost forever.

11. Learned counsel for the petitioner has sought to place reliance on the decision of the Gujarat High Court in ***Amitara Industries Ltd. vs. Union of India***, (2014) 27 GSTR 186 (Guj) rendered by the Division Bench of the said Court, wherein the Division Bench held that *‘if an aggrieved person knocks the door of High Court seeking redressal under writ jurisdiction for valid reasons, to obviate extraordinary hardship and injustice such challenge can be entertained even beyond the period of limitation’*. He also placed reliance on ***Rafiq and Another vs. Munshilal and Another***, (1981) 2 SCC 788, wherein the Supreme Court held that delay on account of mistake of the counsel should not prejudice the rights of the party.

12. Learned counsel for the intervener has sought to urge that the word “earlier” used in Rule 24-B(1)(i) should, in fact, be read as “later”, since, in most cases, the date of priority would invariably be earlier to the date of

filing of the application, and therefore, the use of the word “earlier” would become a surplusage, if literally construed. For it to have a meaningful interpretation, the said word should be read as “later”. In this regard, he refers to Rule 24-B(1)(iii),(iv) and (v). All of them use the word “later”.

13. On the other hand, Mr. Jasmeet Singh submits that the period of limitation prescribed in Rule 24-B(1)(i) is firm, and the same cannot be relaxed. He submits that Rule 138 of the Rules specifically excludes the power of the Controller to extend the time prescribed, *inter alia*, in respect of the time prescribed under sub-Rule (1) (i) of 24-B. Since there is an express bar to extension of time, *inter alia*, in respect of the time prescribed in Rule 24-B(1) (i), irrespective of whatever the justification the petitioner may have for not making the request for examination in Form-18 within 48 months of the earlier of the priority date and the date of filing of the application, the said period of limitation cannot be extended and the petitioner is bound to suffer the consequences of not making the application for examination within the prescribed period. Consequently, in terms of Section 11-B (4) of the Act, the application of the petitioner for grant of patent is bound to be treated as withdrawn. He also places reliance on the decision of ‘*Nippon Steel Corporation vs. Union of India*’, 2011(3) R.A.J. 254(Del). He submits that the word “earlier” cannot be read as “later” in Rule 24B(1)(i) as that would amount to doing violence to the express words of the statute. He submits that the vires of the said Rule is not under challenge. He submits that the plain grammatical meaning should be adopted while reading the said Rule, as it is clear and does not admit of ambiguity, or lead to absurdity – if read literally.

14. We have heard the learned counsel for the petitioner, as well as learned counsel for the intervener on the one hand, and learned Standing Counsel for the respondents on the other hand, and have considered the respective submissions.

15. The deferred examination system was introduced in the Act by the Patents (Amendment) Act, 2002. Prior to that, all patent applications were required to be examined by the Controller of Patents under Section 12. Section 11B (1) provides that an application for grant of patent would not be examined, unless a specific request is made by the applicant in the prescribed manner for examination thereof. Such an application for examination is required to be made within the prescribed period. The consequence of the application/request for examination not being made within the prescribed period is also provided in sub-section (4) – to say that such an application would be treated as withdrawn by the applicant. Even prior to amendment by Act 15 of 2005 (w.e.f. 01.01.2005), Section 11B(4) provided that in case the applicant, or any other interested person, does not make a request for examination of the application for patent within the period prescribed, the application shall be treated as withdrawn by the applicant.

16. Section 11-B(1), as it stood prior to amendment by Act 15 of 2005 w.e.f. 01.01.2005, provided that *“No application for patent shall be required to be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination **within forty-eight months from the date of filing of the application for patent**”*.(emphasis supplied).

17. Thus, prior to amendment of Section 11B with effect from 01.01.2005, there was no reference to the date of priority in Section 11B. Pertinently, Section 135 – which falls in Chapter XXII of the Act – and deals with International Arrangements, was also amended by Act 15 of 2005 (w.e.f. 01.01.2005). Section 135 stipulates that in respect of convention applications, the “priority date” of a claim of the complete specification, being a claim based on matter disclosed in the application for patent made in a convention country (called the basic application) is the date of making of the basic application. On the aspect: which date is to be considered as the “priority date”, the amended provision appears to be similar to the one that existed in the Act prior to the introduction of Amendments vide Amendment Act 15 of 2005. Section 135(1) of the Act, as amended, reads as follows:

*“135. Convention applications.—(1) Without prejudice to the provisions contained in section 6, where a person has made an application for a patent in respect of an invention in a convention country (hereinafter referred to as the "basic application"), and that person or the legal representative or assignee of that person makes an application under this Act for a patent within twelve months after the date on which the basic application was made, **the priority date of a claim of the complete specification, being a claim based on matter disclosed in the basic application, is the date of making of the basic application.***

Explanation.—Where applications have been made for similar protection in respect of an invention in two or more convention countries, the period of twelve months referred to in this sub-section shall be reckoned from the date on which the earlier or earliest of the said applications was made.” (emphasis supplied)

18. Section 11B(1) as it now exists – does not, by itself, prescribe

the period within which the request for examination of the patent application has to be made, but leaves the aspect of prescribing the said period of limitation elsewhere. The “prescribed manner” and the “prescribed period” were prescribed under the amended Rules, which too were amended with effect from 5th May, 2006. Rule 24B deals with these aspects, which has been noticed hereinabove.

19. The first Rule of statutory interpretation is to adopt the literal interpretation of the statute and to go by the grammatical meaning of the words used in the statute, unless there is a good reason not to do so, e.g. where it leads to absurdity, or there is some other compelling reason for departing from this rule of construction. In this regard, we may refer to the observation of the Supreme Court in **Jugalkishore Saraf v. M/s Raw Cotton Co. Ltd.**, AIR 1955 SC 376. The Supreme Court in this decision observed:

“.... The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation.... ...”.

20. “*Principles of Statutory Interpretation*” by Justice G.P. Singh 12th Edition 2010 extracts portions of the speeches of the English Law Lords in a few decisions relevant on the subject. We may extract what we consider relevant from the said commentary from pages 85 and 86. The same reads as follows:

“... .. ‘The true way’, according to LORD BROUGHAM is, ‘to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, either by the preamble or by the context of the words in question, controlled or altered’ Crawford V. Spooner, [(1846) 4 MIA 179, p. 181 : 6 Moo PC 1 (PC)], and in the words of VISCOUNT HALDANE, L.C., if the language used ‘has a natural meaning we cannot depart from that meaning unless, reading the statute as a whole, the context directs us to do so.[Attorney General V. Milne, (1914-15) All ER Rep 1061, p. 1063 : 1914 AC 765 (HL)]”

21. The submission of learned counsel for the petitioner, as well as learned counsel for the intervener that the period of 48 months prescribed in rule 24B(1)(i) should be computed from the “later” of the two dates, i.e. the date of priority and the date of filing of the application under the Act cannot be accepted, in view of the clear language used in the said statutory rule. The plain and grammatical meaning of the word “later” is opposite of the word “earlier”. It cannot be said that the word “later” is a synonym for the word “earlier”. In fact, the word “later” is the antonym of the word “earlier”. When we examine the meaning of the word “earlier” in the context in which it has been used, we do not find any justification for not adopting the plain and grammatical meaning of the word “earlier”, and there is no justification brought forth for reading the same as “later”.

22. No doubt, clauses (iii), (iv) and (v) and Rule 24B(1) use the word “later”. However, that by itself is no reason to construe the word “earlier” used in Rule 24B(1)(i) to mean “later”. When one examines clauses (iii), (iv) and (v) Rule 24B(1), one finds that they deal with materially different fact situations which are covered by proviso (ii) to Sub-Section (4) of

Section 11(B); explanation to Section 16(3), and; applications filed before 01.01.2005 (i.e. prior to coming into force of the Amendment Act, 2015 of 2005).

23. Learned counsel for the petitioner and the learned counsel for the intervener have not been able to point out as to how the adoption of the rule of literal interpretation in the matter of interpretation of Rule 24B(1)(i) leads to any absurdity, or to a result which goes contrary to the purpose of the statute. Literal interpretation of Rule 24B(1)(i) does not render it unworkable. The submission that adoption of the literal and grammatical interpretation would lead to prejudice to the petitioner, since the petitioner was acting *bona fide* under a false impression created by an incorrect opinion and advice, cannot be a ground to bend the interpretation of the law. While undertaking the exercise of statutory interpretation, the facts of a particular case – in the context whereof such exercise may be undertaken, cannot have a bearing on the interpretation. The facts of the case only serve as a “situation” to test the efficacy of the interpretation of the statute. If the interpretation of a statute were to be guided by the end result that it would bring about in the facts of a given case, then the exercise of interpretation would have to be undertaken afresh, whenever a fresh fact situation presents itself. That is not how the exercise of interpretation of a statute is undertaken. For example, the interpretation of the law of limitation bars the remedy of a plaintiff, who prefers his suit late by even a single day beyond the period of limitation. That cannot be a reason to say that Section 3 of the Limitation Act should be construed as directory, and that Section 5 of the Limitation Act should be made applicable even to a suit. If a party is faced

with a legal consequence which may be adverse to his/ her interest – on account of his/ her acts and/ or omissions, the legal consequence cannot be avoided by the Court by adopting an interpretation of the law which is not supported by the well recognised principles of Statutory Interpretation. Thus, we reject the submission of Ld. Counsels for the petitioner and the Intervener that the word “earlier” used in Rule 24B(1)(i) should be read as “later”.

24. The argument of learned counsel for the intervener that the word “earlier”, if read literally, would render the later part of Rule 24B(1)(i), which reads “*or from the date of filing of the application, whichever is earlier*” redundant, appears weighty on first blush. This is for the reason that it is difficult to fathom a situation where the date of priority would be later than the date of filing of the application. Thus, invariably, the date of priority would be earlier to the date of filing of the application. If the period of limitation of 48 months for making a request for examination is construed as “earlier” of the two dates, namely the date of priority and the date of filing of the application, invariably, the period of limitation would be 48 months from the date of priority.

25. However, there is counter argument, which is equally – if not more weightily. If the date of priority would invariably be earlier than the date of application – as pointed out by the petitioner and intervener, and if the intention of the rule making authority was to grant 48 months from the latter of the two, the rule making authority need not have disturbed the position as it existed in Section 11B(1) prior to amendment by Act 15 of 2005 with effect from 01.01.2005. As noticed above, Section 11B(1) prior to

amendment provided that the request for examination should be made within 48 months of the making of the application for grant of patent. The argument of the petitioner and the intervener, therefore, cuts both ways. Since the priority date would invariably be earlier to the date of the application, it would serve no purpose to use the expression “*whichever is later*” – since the date of the application would invariably be later, and it would have sufficed to simply say that the request for examination should be made within 48 months of the date of the application of the patent. The use of the expression “*whichever is earlier*”, therefore, cannot be passed off as an obvious typographical or printing error. There is a presumption of due consideration and application of mind by the Rule framing authority, and that presumption is not dislodged in the present case.

26. At this stage, we may notice the decision of the Supreme Court in ***Afcons Infrastructure Limited & Another Vs. Cherian Varkey Construction Company Private Limited & Others***, (2010) 8 SCC 24. In this case, the Supreme Court considered the scope of Section 89 of the Code of Civil Procedure (CPC) and the question: whether the said section empowers the Court to refer the parties to a suit to arbitration, without the consent of both parties. In respect of Section 89 CPC, the Supreme Court observed:

“9. If Section 89 is to be read and required to be implemented in its literal sense, it will be a trial Judge's nightmare. It puts the cart before the horse and lays down an impractical, if not impossible, procedure in sub-section (1). It has mixed up the definitions in sub-section (2). In spite of these defects, the object behind Section 89 is laudable and sound. Resort to alternative disputes resolution (for short “ADR”) processes is

necessary to give speedy and effective relief to the litigants and to reduce the pendency in and burden upon the courts. As ADR processes were not being resorted to with the desired frequency, Parliament thought it fit to introduce Section 89 and Rules 1-A to 1-C in Order 10 in the Code, to ensure that ADR process was resorted to before the commencement of trial in suits.

10. In view of its laudable object, the validity of Section 89, with all its imperfections, was upheld in Salem Advocate Bar Assn. (I) v. Union of India [(2003) 1 SCC 49] [for short Salem Bar (I)] but referred to a committee, as it was hoped that Section 89 could be implemented by ironing the creases. In Salem Advocate Bar Assn. (II) v. Union of India [(2005) 6 SCC 344] [for short Salem Bar (II)], this Court applied the principle of purposive construction in an attempt to make it workable.”

27. After setting out the anomalies that lay in the language of Section 89 CPC, the Supreme Court proceeded to examine, as to how the said Section should be interpreted. It observed:

“20. The principles of statutory interpretation are well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the legislature intended or desired. Legislative wisdom cannot be replaced by the Judge's views. As observed by this Court in a somewhat different context:

“6. ... When a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its notion of justice. When the legislature has spoken, the judges cannot afford to be wiser.”

(See *Shri Mandir Sita Ramji v. Lt. Governor of Delhi* [(1975) 4 SCC 298] , SCC p. 301, para 6.)

21. There is however an exception to this general rule. **Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute.** When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. **Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision.** We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.

21.1. Maxwell on Interpretation of Statutes (12th Edn., p. 228), under the caption “modification of the language to meet the intention” in the chapter dealing with “Exceptional Construction” states the position succinctly:

“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words,

or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

This Court in Tirath Singh v. Bachittar Singh [AIR 1955 SC 830] approved and adopted the said approach.

21.2. In Shamrao V. Parulekar v. District Magistrate, Thana [AIR 1952 SC 324 : 1952 Cri LJ 1503] this Court reiterated the principle from Maxwell: (AIR p. 327, para 12)

*"12. ... if one construction will lead to an **absurdity** while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."*

21.3. In Molar Mal v. Kay Iron Works (P) Ltd. [(2000) 4 SCC 285] this Court while reiterating that courts will have to follow the rule of literal construction, which enjoins the court to take the words as used by the legislature and to give it the meaning which naturally implies, held that there is an exception to that rule. This Court observed: (SCC p. 295, para 12)

*"12. ... That exception comes into play when **application of literal construction of the words in the statute leads to absurdity, inconsistency or***

when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning.”

21.4. In *Mangin v. IRC* [1971 AC 739 : (1971) 2 WLR 39 : (1971) 1 All ER 179 (PC)] the Privy Council held: (AC p. 746 E)

“... the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.”

21.5. A classic example of correcting an error committed by the draftsman in legislative drafting is the substitution of the words “defendant's witnesses” by this Court for the words “plaintiff's witnesses” occurring in Order 7 Rule 14(4) of the Code, in *Salem Bar (II)* [(2005) 6 SCC 344] . We extract below the relevant portion of the said decision: (SCC pp. 368-69, para 35)

“35. Order 7 relates to the production of documents by the plaintiff whereas Order 8 relates to production of documents by the defendant. Under Order 8 Rule 1-A(4) a document not produced by the defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination. By mistake, instead of ‘defendant's witnesses’, the words ‘plaintiff's witnesses’ have been mentioned in Order 7 Rule 14(4). To avoid any confusion, we direct that till the legislature corrects the mistake, the words ‘plaintiff's witnesses’, would be read as ‘defendant's witnesses’ in Order 7 Rule 14(4). We, however, hope that the mistake would be expeditiously corrected by the legislature.”

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the statute, in his treatise *Principles of Statutory Interpretation* (12th Edn., 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in *Stock v. Frank Jones (Tipton) Ltd.* [(1978) 1 WLR 231 : (1978) 1 All ER 948 (HL)] : (WLR p. 237 F-G)

“... a court would only be justified in departing from the plain words of the statute when it is satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly.” (emphasis supplied)

28. Thus, the general rule of plain and grammatical interpretation – when the words of a Statute are clear and unambiguous, may be given a go-bye when the words used in the statutory provision are vague and ambiguous, and where the plain and normal meaning of the words or grammatical construction thereof leads to confusion, absurdity or repugnancy with other provisions. In such a situation, the Court may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation by adding, or omitting, or substituting the words in the Statute. However, departure from the literal rule of plain and grammatical reading can be made only in exceptional cases where the anomalies make the literal compliance with a provision impossible, or absurd, or so impractical so as to defeat the very object of the provision.

29. When viewed in the aforesaid light, we are of the opinion that it cannot be said, that the intention of the legislature, while framing Rule 24B(1)(i), was to grant time to make a request for examination of the patent application, up to the expiry of 48 months from the date of priority, or the date of the application for patent, whichever is later. The presumption is that a conscious decision was taken by the rule making authority to provide 4 years from the earlier of the two dates, i.e. the date of priority, and the date of the patent application.

30. On our examination of the aforesaid rule, we cannot reach to the conclusion that there is a clear and gross anomaly; or that the Parliament/ Rule making Authority, or draftsmen could not have envisaged the fixing of the period of 4 years limitation for making the application for examination from the earlier of the two dates, i.e. the priority date, and the date of the application for patent. Moreover, the language of the Statute is clearly not susceptible of the modification that the petitioner and the intervener would like us to make therein, i.e. to read “*whichever is earlier*” as “*whichever is later*”.

31. Since the language used in the Rule is absolutely clear and does not admit of any ambiguity, and adoption of the literal rule of interpretation does not render the Rule unworkable, we must accept the plain meaning of the words used, i.e. “*whichever is earlier*”. Pertinently, there is no challenge to the validity of Rule 24B(1)(i) in the present petition.

32. However, in view of the above submission of the petitioner and the Intervener, we are inclined to direct the Ministry of Law & Justice to

examine the aforesaid aspect and, if it finds that the words “*whichever is earlier*” should read “*whichever is later*”, necessary amendment in the said Rule should be made without any delay.

33. We now proceed to consider the issue whether the period of limitation— for making the application for examination, prescribed by Rule 24B(1)(i), is mandatory or directory. The purpose of prescribing the limitation period for the exercise of any right, or performance of any obligation is, inter alia, to safeguard the rights of others, who may be interested in, or affected by the launching and initiation of a legal remedy or other step, and to bring about a quietus and settle matters once and for all. If no period of limitation were to be prescribed for the exercise of any right, or performance of any obligation, it would lead to a great amount of uncertainty and settled positions could be unsettled at any point of time to the detriment of others. In *N. Balakrishnan Vs. M. Krishnamurthy*, (1998) 7 SCC 123, the Supreme Court, inter alia, has observed:

*“11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. **Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that***

a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.” (emphasis supplied)

34. In *Kailash Vs. Nanhku*, (2005) 4 SCC 480, the Supreme Court was concerned with interpretation of Order 8 Rule 1 CPC as amended by the Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002) (w.e.f 01.07.2002). The said provision reads as follows:

“1. Written statement.—The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

35. One of the issues that arose for consideration before the Supreme Court was whether the time limit of 90 days prescribed in the proviso appended to Rule 1 of Order 8 CPC is mandatory, or directory in nature. The Supreme Court held that the time prescribed for filing of written statement was not mandatory, and could be extended by the Court in the facts and circumstances of the case. The reasons given by the Supreme Court for the said interpretation were that: no consequence of such failure was prescribed by the law; there was no provision taking away the power of

the Court to take the written statement on record though filed beyond the time provided for, and; the object of the provision was to expedite the hearing, and not to scuttle the remedy. The Supreme Court observed:

*“27. Three things are clear. Firstly, a careful reading of the language in which Order 8 Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. **The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for.** Secondly, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. Thirdly, **the object behind substituting Order 8 Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same.** The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.*

28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice... ..

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30. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words “shall not be later than ninety days” **but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication.** Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

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33. As stated earlier, Order 8 Rule 1 is a provision contained in CPC and hence belongs to the domain of procedural law. Another feature noticeable in the language of Order 8 Rule 1 is that although it appoints a time within which the written statement has to be presented and also restricts the power of the court by employing language couched in a negative way that the extension of time appointed for filing the written statement was not to be later than 90 days from the date of service of summons **yet it does not in itself provide for penal consequences to follow if the time schedule, as laid down, is not observed.** From these two features certain consequences follow.

34. Justice G.P. Singh notes in his celebrated work *Principles of Statutory Interpretation* (9th Edn., 2004) while dealing with mandatory and directory provisions:

“The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage

Lord Campbell said: 'No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered.'
” (p. 338)

“ ‘For ascertaining the real intention of the legislature’, points out Subbarao, J. ‘the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered’. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory.’” (emphasis supplied)

36. We may now take note of a decision of a learned Single Judge of this Court in **OKU Tech Private Limited Vs. Sangeet Agarwal & Ors.**, in CS(OS) No.3390/2015 decided on 11.08.2016: MANU/DE/2036/2016. In this case, the learned Single Judge was concerned with Section 16 read with Schedule to the Commercial Courts, Commercial Division and Commercial

Appellate Division of High Courts Act, 2015 (Commercial Courts Act), in terms whereof the second proviso to Order V Rule 1, as well as the proviso to order VIII Rule 1 were substituted by the following proviso:

*“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, **the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.**”* (emphasis supplied)

37. The Court also noticed the proviso inserted in Order VIII Rule 10 by the said amendment to the CPC in terms of Section 16 of the Commercial Courts Act. The said proviso inserted to Order VIII Rule 10 reads as follows:

“Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

38. The plaintiff contended that in the light of the aforesaid provisions introduced in the CPC by the Commercial Courts Act, the time for filing of the written-statement under Order VIII Rule 1 could not be extended and that the decision in **Kailash** (supra) was not attracted. The learned Single Judge accepted this submission of the plaintiff and observed as follows:

*“7. The above submissions have been considered. The Supreme Court had in **Kailash v. Nankhu** MANU/SC/0264/2005 : JT 2005 (4) SC 204 interpreted the*

proviso to Order VIII Rule 1 CPC as still giving discretion to the Court to extend the time for filing a written statement. The proviso to Order VIII Rule 1 CPC in its original form was held by the Supreme Court as not specifying any consequences for non-compliance with the time line envisaged thereunder. Therefore the time line under Order VIII Rule 1 CPC was held to be directory. It is observed that the power of the Court to extend beyond the time schedule provided by Order VIII Rule 1 CPC "is not completely taken away."

8. The amendments to the CPC brought out by the Schedule to the Act seek to fill the above gap, as it were, in the CPC. The substituted second proviso to Order V Rule 1 and the substituted proviso to Order VIII Rule 1 place an outer limit of 120 days from the date of service of summons up to which the Court can grant time to file written statement. It categorically states that "on expiry of 120 days from the date of service of summons, the Defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record." This is re-emphasised by inserting a proviso to Order VIII Rule 10 CPC, which after such insertion, reads as under:

"10. Procedure when party falls to present written statement called for by Court.--Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order as relating to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."

9. Therefore, it is plain that the above amendment reflects the legislative intent to take away the discretion of the Court in extending the time for filing the written statement.” (emphasis supplied)

39. The aforesaid reasoning appeals to us and is attracted in the present case as well.

40. We may also take note of another decision of the Supreme Court in ***Rao Mahmood Ahmad Khan Through Their L.R. Vs. Ranbir Singh & Others***, 1995 Supp (4) SCC 275. The Supreme Court was concerned, inter alia, with the issue whether the provisions of Order 21 Rules 84, 85 & 86 are mandatory or not. These provisions prescribe the procedure with regard to deposit of the purchase amount by the purchaser of a property sold in execution of a decree; the time within which the full payment of the purchase money is required to be made; and the procedure to be adopted if there is default of payment. The Supreme Court placed reliance on an earlier decision rendered in ***Manilal Mohanlal Shah Vs. Sayed Ahmed***, AIR 1954 SC 349 : (1955) 1 SCR 108, wherein almost similar provisions contained in Rule 285D and 285E of the Land Reforms Rules had been considered. The Supreme Court observed:

“10. The controversy whether the provisions of Order 21, Rules 84, 85 and 86 are mandatory or not has been set at rest by this Court. The provisions of Order 21, Rules 84, 85 and 86 of the Code of Civil Procedure, as said earlier, are almost similar in terms to the provisions contained in Rule 285-D and Rule 285-E of the Land Reforms Rules. This Court in the case of Manilal Mohanlal Shah v. Sayed Ahmed [AIR 1954 SC 349 : (1955) 1 SCR 108] ruled as under:

*“Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately, on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. **The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all.**”*

11. Thus, it is settled law that the provisions of Order 21, Rules 84, 85 and 86 of the Code of Civil Procedure are mandatory and the provisions of Rules 285-D and 285-E being similar in terms of the aforementioned corresponding provisions of the Code of Civil Procedure and in view of the aforesaid discussion there is no escape from declaring the sale a nullity if Rule 285-D is not complied with.” (emphasis supplied)

41. Thus, what emerges from the aforesaid decisions is that while undertaking the determination of the issue whether the statutory provision is mandatory or directory, the Court must examine, inter alia, whether the law

lays down the consequence of failure to comply with the provision under examination; whether the power of the authority concerned to condone the non-compliance of the provision under examination exists, or is barred/curtailed; and whether the object of the statutory provision is to bar or scuttle the remedy.

42. When we examine the provisions of Section 11B and Rule 24B(1)(i) in the light of the principles laid down in the aforesaid decisions, we are left with no doubt in our mind that the time prescribed in Rule 24B(1)(i) for making an application in Form-18 is mandatory, and not directory.

43. Section 11B (1) stipulates that no application for a patent shall be examined unless the applicant makes a request in the prescribed manner for such examination within the prescribed time. Sub Section (4) Section 11B stipulates the consequence of such an application not being made within the prescribed period i.e. that “*the application shall be treated as withdrawn by the applicant*”.

44. The law, thus, provides the consequence – of the application being treated as withdrawn, if such an application is not made within the prescribed period. On the expiry of the prescribed period, by force of the legal fiction, the application for grant of patent stands withdrawn. Thus, a subsequent request for examination of the application for grant of patent would not lie, since there would be no such pending application which could be examined – it having been deemed or treated to have been withdrawn.

45. On the reading of Section 11B with Rule 24B(1)(i), it cannot be said that the object of the said law is to expedite the consideration of the

application preferred by the applicant for grant of a Patent. Under the scheme of the Act and the Rules, it is left entirely to the applicant to decide, if at all and, if so, as to when he wishes to move the application for examination in Form-18, provided that the same is moved within the prescribed period. The whole process of making a claim, and securing a patent under the Act is extremely time sensitive. Pertinently, once the application is made by the applicant, the applicant may request the Controller to publish his application at any time before the expiry of the period prescribed under sub-Section (1) of Section 11A (see Section 11A(2) of the Act). Rule 24 stipulates that the period for which an application for patent shall not ordinarily be open to public under sub-section (1) of Section 11A shall be 18 months from the date of filing of the application or the date of priority of the application, whichever is earlier. Section 11A(3) stipulates that every application for a patent shall, on the expiry of the period prescribed under sub-Section (1) be published, except in cases of the kind mentioned therein. Importantly, Section 11A(7) vests in the applicant, on and from the date of publication of the application for patent, and until the date of grant of a patent in respect of such application, like privileges and rights as if a patent for the invention has been granted on the date of publication of the application. The only limitation is that the applicant is not entitled to institute any proceedings for infringement until the patent has been granted.

46. By virtue of Section 139 of the Act, all the provisions of the Act apply in relation to a convention application, save as otherwise provided in Chapter XXII of the Act. In the said Chapter, we do not find any provision

dealing with the aspect of publication of the application. Consequently, Section 11A would be attracted in respect of a convention application. Thus, even prior to grant of a patent, and upon publication of the application, several statutory rights inhere in the applicant. The object of the law incorporated in Section 11B and Rule 24B(1)(i), therefore, appears to be to strictly limit the period within which the applicant should proceed to apply for examination of his application since, post-publication of his application, the applicant begins to enjoy the rights conferred by Section 48 of the Act, even when his application is pending consideration and even though he has not been granted a patent for his claimed invention. The only right that the applicant is not entitled to enforce is the right “*to institute any proceedings for infringement until the patent has been granted*”. Pertinently, sub-Section (7) in Section 11A was inserted by Act 15 of 2005 with effect from 01.01.2005, i.e. by the same Amendment Act by which sub-Section (1) of Section 11B was amended. To read the period of limitation prescribed in Rule 24B(1)(i) as directory would mean that the applicant would be able to seek extension of the period of his enjoyment of right conferred by Section 11A(7), without actually having his application examined and patent granted. To check such mischief, the strict and mandatory period of limitation is prescribed by Rule 24B(1)(i). The proceedings for examination of the application are not adversarial, and the object of Section 11B read with Rule 24B(1)(i) is to limit the period within which the applicant may pursue his application. This is done by extinguishing the claim founded upon the application in respect whereof the request for examination is not made within the prescribed period.

47. Rule 138 of the Rules may now be noticed. This Rule reads as follows:

“138. Power to extend time prescribed.— (1) Except for the time prescribed in clause (i) of sub-rule (4) of rule 20, sub-rule (6) of rule 20, rule 21, sub-rules (1), (5) and (6) of rule 24B, sub-rules (10) and (11) of rule 24C, sub-rule (4) of rule 55, sub-rule (1A) of rule 80 and sub-rules (1) and (2) of rule 130, the time prescribed by these rules for doing of any act or the taking of any proceeding thereunder may be extended by the Controller for a period of one month, if he thinks it fit to do so and upon such terms as he may direct.

(2) Any request for extension of time prescribed by these rules for the doing of any act or the taking of any proceeding thereunder shall be made before the expiry of such time prescribed in these rules.”(emphasis supplied)

48. Rule 138 of the Rules, expressly excludes the power of the Controller to extend the time prescribed for making a request for examination of an application under, inter alia, Sub Rule (1) of Rule 24B. Even in cases where such time may be extended by the Controller, the jurisdiction to extend time is only for a period of one month, provided the request for extension of time is made before the expiry of such time prescribed in the Rules. Thus, the submission of the petitioner and the intervener that the Controller has the power to extend the time prescribed for making the request for examination of the application under Rule 24B cannot be accepted, in view of the plain and categorical language used in Rule 138 of the Rules.

49. Learned counsels for the petitioner/ intervener have also referred to Rule 137 of the Rules which, in our view, is wholly irrelevant. Rule 137 only give the power to the Controller to allow amendment of a document,

for which no special provision is made in the Act, and to correct an irregularity in procedure, provided the same is not to the detriment of the interest of any person. Rule 137 cannot be pressed into service, when the power to extend the time prescribed is specifically dealt with in Rule 138 and, therefore, one need not look elsewhere to determine the scope of the said power, but the said provision itself.

50. It is not in dispute that the petitioner, who is a Spanish national, made his prior application for a patent in a convention country and, therefore, Section 135 of the Act is attracted. As noticed above, the petitioner made his first application to seek patent as the European Patent Application on 28.03.2006 bearing No.06111804.8. Since, in respect of a Convention Application, the date of making the “basic application” is treated as the “priority date”, on a plain reading of Rule 24-B(1)(i), the request for examination under Section 11-B of the Act in Form-18 was required to be made within 48 months from the date of priority, i.e. 28.03.2006 since that is the earlier of the two dates i.e. the “date of priority”, and the date of filing of the application under the Act, which was 28.08.2008. The period of 48 months, computed from 28.03.2006, expired on 27.03.2010. However, the request for examination was made on 19.11.2010.

51. No doubt, it appears that the petitioner, who is a foreign national, may have, *bona fide*, believed that the time for making request for examination of the patent application had not expired and was available when he did make the said request under Section 11B read with Rule 24B. It does appear that he was mislead into believing that time was available for him to make such a request till the date when he actually made the request, in view of the

communications received by him from his Indian agent, as well as on account of the interpretation of Rule 24B published in the publication of WIPO. His common sense would have led him to think that the examination of his application could be sought within forty eight months of the date of his application – which was later in point of time than his date of priority. However, when the language used in the Rule is as clear as it could be, the petitioner could not have ignored the same and gone by his own logic. Howsoever *bona fide* he may have been in his conduct, he cannot seek to evade the rigor of the law, which is so clear and explicit in its enunciation.

52. The WIPO publication relied upon by the petitioner is not an official publication of the Government of India. Since Rule 24B was duly notified, all that was required to be done by the Government of India for publicizing in the said Rule, had been done. It was for all concerned to read the Rule correctly and interpret the same correctly. Rule 24B, by itself, does not admit of any ambiguity since its language is plain and clear. Thus, a wrong interpretation of the law, or ignorance of the law cannot be a reason to interpret the law differently from what it plainly and clearly means.

53. We may here take note of the decision of the Supreme Court in *State of Maharashtra Vs. Mayer Hans George*, AIR 1965 SC 722. The respondent was a foreigner who travelled to India with gold. He was prosecuted under the Foreign Exchange Regulation Act (FERA) with the allegation of clandestinely transporting gold into India. One of his defences was that being a foreigner, he was unaware of the law of India. The Magistrate rejected his defence and convicted and sentenced him to one year's imprisonment. His appeal was allowed by the High Court and the

State of Maharashtra appealed to the Supreme Court. One of the issues considered by the Supreme Court was whether *mens rea* was an essential ingredient of the offences concerned. The Supreme Court held that the very object and purpose of the FERA, and its effectiveness as an instrument for the prevention of smuggling would be entirely frustrated, if a condition were to be read into the said provision qualifying the plain words of the enactment, to the effect that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the law. The submission of the respondent that he had no knowledge of the law and was, therefore, not guilty, was rejected by the Supreme Court in the following words:

“44. In a sense the knowledge of the existence or content of a law by an individual would not always be relevant, save on the question of the sentence to be imposed for its violation. It is obvious that for an Indian law to operate and be effective in the territory where it operates viz. the territory of India it is not necessary that it should either be published or be made known outside the country. Even if, therefore, the view enunciated by Bailhache, J. is taken to be correct, it would be apparent that the test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of everyone who intends to pass through India. It was “published” and made known in India by publication in the Gazette on the 24th November and the ignorance of it by the respondent who is a foreigner is, in our opinion, wholly irrelevant. It is, no doubt, admitted on behalf of the prosecution in the present case that the respondent did not have actual notice of the notification of the Reserve Bank dated November 8, 1962 but, for the reasons stated, it makes, in our opinion, no difference to his liability to be proceeded against for the contravention of

Section 8(1) of the Act.” (emphasis supplied)

54. Thus, even in the context of a penal law, the Supreme Court did not accept the argument that a foreigner-accused, who claimed that he was unaware of the law, could evade the rigor of the law. This submission, therefore, cannot be accepted by us.

55. Reliance placed on *Amitara Industries* (supra), is not apposite in the facts of the present case. It is a well settled principle of law that the Court would not issue a writ contrary to the law. In *State of Kerala & Ors. Vs. Kandath Distilleries*, (2013) 6 SCC 573, the Supreme Court while dealing with the power of a High Court to issue mandamus to a State, inter alia, observed that while exercising its power to issue writs, the High Court cannot “*bend or break the law*”. Grant of relief sought by the petitioner would be in the teeth of Rule 138 of the Rules. If the Controller has no statutory authority to condone the delay, and the mandate of the law is that the delay cannot be condoned, we cannot grant the said relief while exercising writ jurisdiction.

56. When the law prescribes a definite period of limitation, the Court should not entertain a claim, which under the law of limitation is time barred. (see *State of MP Vs. Bhailal*, AIR 1964 SC 1006, and *Tilokchand Motichand Vs. H.B. Munshi*, (1969) 1 SCC 110). Thus, reliance placed on *Rafiq* (supra) is also not apposite in the facts of the present case.

57. For all the aforesaid reasons, we are of the considered view that there is no merit in the present petition and the same is liable to be dismissed. It is, accordingly, dismissed leaving the parties to bear their respective costs.

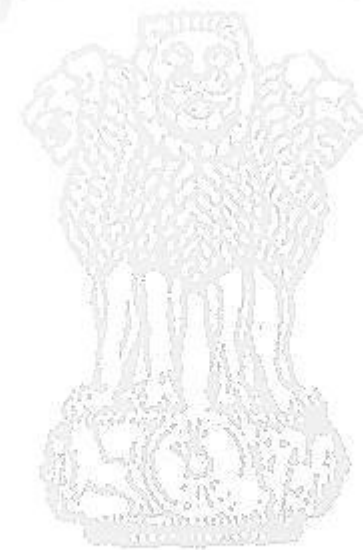
58. However, in view of the observations made by us in paragraphs 24 and 32 above, we direct that a copy of this judgment be sent to the Secretary, Ministry of Law & Justice, Government of India, who should examine the aspect whether there is an unintended and inadvertent error in the use of the words “*whichever is earlier*” in place of “*whichever is later*” in Rule 24B(1)(i) of the Patents Rules, 2003. In case, the Ministry of Law & Justice finds that there is such unintended and inadvertent error in the framing of the said Rule, remedial steps to amend the said Rule should be undertaken without any delay.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 10, 2019

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