

OD-12

ORDER SHEET
AID 1 OF 2020
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction
Original Side

SHRISTHI ELECTROMECH PRIVATE LIMITED
VERSUS
CONTROLLER OF PATENTS AND DESIGNS AND ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date : 8TH March, 2021.

Appearance:
Mr. Rajeev Kumar Jain, Adv.
Mr. Ayush Jain, Adv.
...For the Petitioner

Mr. Rabi Prosad Mookerjee, Adv.
...For the Respondent

The Court : An order passed by the Deputy Controller of Patents and Designs dismissing an application for cancellation of registration of a design is under challenge in the present appeal. The impugned order is dated September 30, 2019.

Learned Advocate appearing for the appellant submits that, the designs registered in favour of the private respondents is in respect of the back cover of an electric motors. According to him, the private respondent did not make any innovation in the design. There is no novelty in the designs of the private respondent warranting the authorities to register the design of the back cover of an electric fans of the private respondent. He submits that, the Deputy Controller of Patents and Designs ought to have cancelled such designs on the application

of the petitioner. He relies upon **2017 SCC OnLine Cal 2920 (Anuradha Doval Versus The Controller of Patents and Designs & Ors.)** and **AIR 1991 Delhi 95 (M/s. B. Chawla & Sons Versus M/s. Bright Auto Industries)** in support of his contention that when the impugned design is found to be in substantial identity to the prior published design, it is liable to be cancelled.

Learned Advocate appearing for the Controller and Deputy Controller of Patents and Designs submits that, on the analysis of the evidence produced before the authorities, it could not be said that, there was identity in the designs as the petitioner failed to establish that a previous design was existing in the market.

None appears for the private respondent despite notice.

The private respondent obtained a registration of a design in respect of the back cover of an electric motors. The petitioner applied for cancellation of such design. The application for cancellation was considered and rejected by the impugned order dated September 30, 2019.

In M/s. B. Chawla & Sons (Supra), the Division Bench of the Delhi High Court held that, a slight curve on the upper side or a rectangular shape on the rear view mirror do not warrant registration of a design. Essentially a rear view mirror was existing and that there was no novelty in the rear view mirror having a slight curve to have it registered as a design.

In Anuradha Doval (Supra), the High Court held that, in the event, it is found that, the impugned design has substantial identity with the prior published design, it is liable to be cancelled. There has to be novelty or uniqueness in design for it to be registered. On an application for cancellation,

the authorities should evaluate the pre-existing design with the one registered and should arrive at the finding that the registered design is novel or unique and therefore should have registration.

In the facts of the present case, the Deputy Controller of Patents and Designs ought to have answered the issue as to whether, an electric fan required a back cover prior to the date of registration of the design of the private respondent or not. If the answer to the previous issue is in the affirmative then what was the design of such back cover. Thereafter, the Deputy Controller of Patents and Designs ought to have decided whether, the design put forth by the private respondent was novel or was dissimilar to the existing design or not warranting grant of registration of the design. If the answer to the previous issue was in the negative, the Deputy Controller of Patents and Designs ought to have allowed the application for cancellation of the registered design.

On a plain reading of the impugned order dated September 30, 2019 passed by the Deputy Controller of Patents and Designs, I find that the Deputy Controller of Patents and Designs did not enter into arena of an existing design in respect of an electric fan at all. He proceeded on the basis that, the petitioner failed to establish that there was an existing cover for an electric motor.

With respect an electric motor or at least a substantial portion of an electric motor require a back cover. The Deputy Controller of Patents and Designs ought to have found out the existing design for such back cover and proceeded to decide the application for cancellation of the registered design on such basis.

In the facts of the present case, it would be appropriate to set aside the impugned order dated September 30, 2019 passed by the Deputy Controller of

Patents and Designs. The application for cancellation of registration is remanded to the appropriate authority for a fresh decision in accordance with law.

Needless to mention to say, the authorities will afford a reasonable opportunity of hearing to the petitioner and the private respondent.

AID No.1 of 2020 is disposed of accordingly without any order as to costs.

(DEBANGSU BASAK, J.)

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