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MAT/919/2022
IA NO: CAN/1/2022

KANISHK SINHA
VS
THE UNION OF INDIA AND ANR.

Mr. Kanishk Sinha
..Appellant (In person).

Mr. R. Bhattacharyya,
Mr. Avinash Kankani
..for Respondents.

Being aggrieved by the order of the learned Single Judge dated 17th June, 2022 passed in WPA 1963 of 2022, the appellant has filed this intra court appeal.

The appellant had approached the writ court by way of a petition with the plea that he had filed the application in the prescribed form for Patent on 02.05.2005 and on 28.12.2012 the Patent was issued. It was pleaded that the authorities had caused a delay of seven years in granting the Patent and in that background appellant had filed representation before the respondent authorities inter alia seeking extension of patent for 15 years as a penalty for harassing the appellant. Thereafter he had filed the writ petition praying for a direction to the respondents to decide the representation for extension of validity/tenure of the

Patent. Appellant (writ petitioner) had also challenged the constitutional validity of Section 53 of the Patents Act, 1970.

Learned Single Judge has reached to the conclusion that the prayer made by the appellant (writ petitioner) is de hors the law as it stands today and that the prayer for the decision of representation does not find mention in any of the provisions of the existing law. It has further been noted that no sanction has been provided in either the Patent Law or Rules for automatic grant of extension of the Patent term as a penalty for delaying the grant of Patent.

Submission of the appellant appearing in person is that the appellant has right of consideration of representation and that the issue of constitutional validity of Section 53 has not been decided.

Learned counsel for the respondent has opposed the submission of the appellant and has submitted that the argument advanced by the appellant had duly been considered by the learned Single Judge and for challenging the Vires of a Central Act the appellant was required to give a notice to the Attorney General and that the plea of constitutional validity was not argued before the learned Single Judge.

Having heard the appellant and the learned counsel for the respondents and on perusal of the

record, we notice that in terms of Section 53(1) of the Patents Act, 1970 the term of every Patent, which is granted, is 20 years from the date of filing of the application for the Patent. Hence, the term, which has been fixed in the Patent, is in accordance with Section 53 of the Act. No provision of the Act or Rules and no provision conferring power upon the authorities to extend the Patent validity/tenure in such a manner as penalty, has been pointed out.

Hence, learned Single Judge has not committed any error in rejecting the prayer in this regard.

So far as the issue of constitutional validity is concerned, from the order of the learned Single Judge, we do not find that any argument was advanced by the appellant questioning the validity of Section 53 of the Act nor in the memo of appeal it has been pleaded that the issue of constitutional validity was argued and not considered by the learned Single Judge.

Learned counsel for the respondent has also submitted that no such issue was argued.

Hence, in the circumstances of the case, we do not find any reason to interfere with the order of the learned Single Judge.

However, we leave it open to the appellant to approach the learned Single Judge with an application for review if he feels that the issue of constitutional

validity was argued and not considered.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Sugato Majumdar, J.)

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