

O-158

AID/3/2022
IN THE HIGH COURT AT CALCUTTA
ORIGINAL JURISDICTION
ORIGINAL SIDE

DAHON TECHNOLOGIES LTD.
VS
THE CONTROLLER OF PATENTS AND DESIGNS AND ANR.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 5th September, 2022.

Appearance:
Mr. Ranjan Bachawat, Sr. Adv.
Mr. Paritosh Sinha, Adv.
Mr. K.K. Pandey, Adv.
Mrs. Mitul Dasgupta, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. S.B. Dasgupta, Adv.
Mr. A. Majumder, Adv.
Ms. Enaskshi Saha, Adv.

Ms. Rini Bhattacharyya, Adv.

The Court : This is an appeal under Section 117 of the Patents Act, 1970. The appeal is directed against an order dated 30 November, 2021 (the impugned order).

The appellant is one of the world's largest folding bike makers excelling in friendly products in light transportations. The appellant is also part of the Green Revolution being a pioneer of manufacturing folding bicycles since 1982.

The present invention which forms the subject matter of this proceeding is titled "PUMP" and relates to a manually operated portable pump having a compact structure convenient to use and for supplying air to the bicycle tyres.

There are manifold advantages of such pumps.

Briefly, the present invention is a compact structure, easy to operate permanent fixture within the bicycle that makes it more convenient to use apart and saves time and effort. The invention features of such pump are also enumerated in the impugned order. The respondent authorities have rejected the application filed under Section 2(ja) of the Act. Hence, this appeal.

It is contended on behalf of the appellants that the impugned order is liable to be set aside on the ground of violation of the principles of natural justice. The impugned order is a non-speaking order where the respondent authorities have simply copied the relevant paragraph of the prior arts and arrived at conclusions without assigning any reason whatsoever. Furthermore, the mandatory requirement contemplated under Section 12 and 13 of the Act mandating the matter to be sent for fresh examination has not been followed. It is alleged that there has been no compliance with the mandatory provisions of Section 13(3) of the Act. Additionally, it is contended on behalf of the appellant that the documents relied on by the respondent authorities were not in the First Examination Report and no reliance can be placed on the same.

Accordingly, it is contended that the Controller misdirected himself in appreciating the subject invention and mechanically rejected the application of the appellant without assigning any reasons whatsoever.

It is submitted on behalf of the respondent authorities that the Act provides for a remedy by way of filing a review application and the appellant ought to have exercised its option and file a review petition instead of an appeal. I do not find any merit or substance in this argument.

In my view, the impugned order is bereft of any reason whatsoever. The impugned order, mechanically reproduces the submissions and the Notes of Submissions filed on behalf of the parties without any application of mind.

The impugned order does not provide any reasons for rejecting the application. I also find that the Controller has failed to provide for re-examination in terms of Section 13(3) of the Act. Thus, there has been no compliance with the mandatory requirement of the Act.

In view of the aforesaid, the impugned order is set aside.

The matter is remanded back to the respondent with a direction to dispose of the same after hearing the parties on merits and after assigning reasons. The entire exercise is to be completed within a period of eight weeks from the date of communication of this order.

With the aforesaid directions, AID 3 of 2022 stands disposed of.

(RAVI KRISHAN KAPUR, J.)