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WP(IPD)/25/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

MR.JUSTICE N.SESHASAYEE

WP(IPD)/25/2023

Regenesance B.V.

Represented by its Power Agent Mr.T.Srinivasan

Sweelincklaan 2, 3723

JE Bilthoven, Netherlands

(Previously known as Academisch Ziekenhuis

Bij De Universiteit Van Amsterdam)

... Petitioner

Vs.

1.Union of India

Representation by its Secretary

Ministry of Finance

Department of Revenue

New Delhi 110 001

2.Office of Controller General of

Patents, Designs & Trademarks

Boudhik Sampada Bhawan, S.M.Road

Antop Hill, Mumbai 400 037

3.Office of the Deputy Controller of Patents

& Designs, Patent Office

Intellectual Property Office Building

G.S.T. Road, Guindy, Chennai 600 032

... Respondents



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PRAYER: The writ petition filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus, directing the 3rd respondent to retract the deeming abandonment order dated October 6, 2017, issued in the Indian Patent Application No.751/CHENP/2011 and issue directions to 3rd respondent to revive the application.

For Petitioner : Ms.Vidhya S.Mani
For Respondents : Mr.S.Janarthanam
Senior Panel Counsel

ORDER

The petitioner herein challenges an order of the 3rd respondent dated. 06.10.2017, holding that the petitioner had abandoned its claim for patent owing to its failure to respond to the First Examination Report (FER) dated, 29.03.2017.

2. The learned counsel for the petitioner submitted that the petitioner had not been informed about the FER by its agent, and hence the response could not be submitted. Relying on an order of a learned single Judge of this Court in



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W.P.Nos.12620 and 12621 of 2017, the learned counsel submitted that the time as stipulated in the Act for responding to the FER cannot be treated as mandatory and inflexible.

3. Heard the learned counsel for the respondents. The learned counsel submitted that patent itself has a shelf value of only 20 years, and it is hence the time-lines are specifically stipulated in the Act, and if it is allowed to be breached, then it would defeat the very object of the enactment.

4. Even as this Court takes notice of the dictum laid down in W.P.Nos. 12620 and 12621 of 2017, this Court wishes to add that no right can be killed by interpreting period of limitation stringently unless it is likely to affect the vested right of another. Here is a case where the petitioner is the applicant, and as on date, no one is going to be affected if the petitioner's application is revived. The statute must be understood and administered in a manner that it promotes and preserves the scientific temper on which the jurisprudence of patent law rests, and hence, any interpretation that may leave an invention unprotected should be avoided. Even if a third party's



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right is affected, there may arise situations where one has to take a reasonable view of the matter.

5. What should not be ignored is that, even if there is a strict abidance of the procedure within the time as stipulated, still the patent office is not able to dispose of the application for the grant of patent within reasonable time. Things have improved of late, but the old backlog still haunts the patent office. This Court witnesses, almost on a daily basis, that the application for patent remains pending anywhere between 10 to 15 years on an average for the disposing of an application for grant of patent by the patent office. Even assuming if an applicant has complied with all procedural requirements and within time, still if the patent office itself is going to take few years on its part to decide on an application, does it not then make the insistence on conforming to the time-line irrelevant? Insisting on strict compliance of the time prescribed, therefore, may have to be understood contextually, depending on the nature of compliance required to be made.

6. In the result, this petition stands allowed. The petitioner is now directed to



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file a response to the FER dated 29.03.2017 within a period of one (1) month from today. Since the application is filed in 2009, the patent office is required to dispose of the entire matter at the very earliest and preferably not later than six (6) months from the date on which the response to the FER is filed. There shall be no order as to costs.

24.01.2024

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Index : Yes / No

Neutral Citation: Yes / No

Note: Issue order copy on 05.02.2024



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