

OIP- 41

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Intellectual Property Rights Division

IPDAID/3/2024

KOHLER CO
VS
CONTROLLER OF PATENTS AND DESIGNS AND
ANR

Before:

The Hon'ble Justice RAVI KRISHAN KAPUR

Date: 15th July, 2025

Appearance:

Mr. Rahul Beruar, Adv.

Ms. Rituparna De Ghose, Adv.

Mr. Arnab Sardar, Adv.

....for appellant.

Mr. Sunil Singhania, Adv.

Mr. Madhu Jana, Adv.

... for the respondents.

The Court: This is an appeal directed against an order dated 15 March, 2024 whereby design application no. 387170-001 dated 27 May, 2023 under Class-14-02 in the name of the appellant stood rejected as abandoned.

It is submitted on behalf of the appellant that despite the response to the First Examination Report having been forwarded on 27 November, 2023 at around 10:51 pm by way of an e-mail since the e-filing portal was not functioning.

The respondent authorities have addend passing the impugned order and keeping the subject application as having been abandoned.

Significantly, the subject application had been filed on 27 May, 2023 and the response though filed within the statutory period of six months was not uploaded for reasons beyond the control of the appellant.

It is contended that due to non-functionality of the design portal that the appellant was not unable to file the response to the first examination report. This

fact has neither been considered, not been taken into account passing the impugned order.

On behalf of the respondent controller, it is submitted that the ground as urged by the appellant without any basis and is no ground for which any kind of leniency should be afforded to the appellant.

Indisputably by a communication dated 27 November, 2023 and 29 November, 2023, the appellant has requested the controller to take into consideration the e-mail which had been served on 27 November, 2023 as well as the ground of non-filing because of non-functionality of the design portal. There is no mention of this impugned order. The impugned order has been mechanically passed without taking any of the above facts and circumstances into account.

The simple remark “abandoned” passed by the respondent authorities is in violation of the principle of natural justice and without any reasons.

In view of the above, there shall be an order in terms of the prayers and notice of motion. It is made clear that the above order has been passed on the procedural aspect of the matter and all points are left open for the controller in accordance with law in so far as the merits are concerned.

The petitioner is directed to comply with the necessary formalities and cure any defects for effective hearing of the subject application.

With this above direction, IPDAID/3/2024 stands disposed of.

(RAVI KRISHAN KAPUR, J.)