



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 884 OF 2025
IN
COMMERCIAL MISCELLANEOUS PETITION (L) NO. 3853 OF 2025

Neon Laboratories Limited

...Applicant/Petitioner

Versus

Controller of Patents

...Defendant

Mr. Rashmin Khandekar, Annu Alexander and Monal Trivedi i/b Jehangir Gulabbhai and Bilimoria and Daruwalla for Petitioner.

Mr. Ashish Mehta, Jeel Shah i/b Ashish Mehta for Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 30th June, 2025.

P. C. :

1. Interim Application is filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 2137 days caused in preferring the present Appeal.
2. The undisputed facts are that by an order of 18th December, 2018, the Applicant's Application for grant of Patent came to be refused under Section 15 of the Patents Act, 1970 and Application for review was filed under Section 77(1)(f) of the Patents Act, 1970. The Applicant addressed a communication on 14th September, 2020 to the

Respondent seeking fixing of date for hearing the Review Petition as there was no date scheduled for hearing the Review Petition. The Respondent listed the Review Petition for hearing on 10th December, 2021. The order rejecting the Review Petition was passed on 7th August, 2024. The present Application has been filed on 22nd January, 2025 seeking condonation of delay in filing the present Appeal against the original order dated 18th December, 2018 refusing the application for registration of patent.

3. Learned counsel appearing for Applicant would submit that under the Patents Act, 1970, the Applicant is entitled to prefer review as well as substantial appeal under Section 117-A of the Patents Act, 1970. He submits that acting upon legal advice, the Applicant filed a Review Petition on 15th February, 2019 which was kept pending till the date of hearing was fixed on 10th December, 2021 and that too pursuant to communication addressed by the Applicant. He would further submit that the hearing was conducted on 10th December, 2021 and order was passed only on 7th August, 2024 rejecting the Review Petition which left the Applicant with no remedy, but to challenge the original order by way of Appeal, which right was available to Applicant under Patents Act, 1970. He submits that as the Respondent had contributed to delay by not passing the order from 15th February, 2019 till 6th August, 2024. He submits that defense raised by the Respondent

as regards the waiver of right or abandonment of right of Appeal has no merits. He submits that even the contention that review order has not been challenged does not merit acceptance. In support, he relies upon the following decisions :

***Cydmex (India) Pharma Pvt. Ltd. v. M/s. Gilead Sciences Inc.*¹**

***Manohar s/o Shankar Nale v. Jaipalsing s/o Shivralsing Rajput*²**

***Concord of India Insurance Co. Ltd. vs. Nirmala Devi (smt)*³**

***Lala Mata Din v. A. Narayanan*⁴**

4. *Per contra*, learned counsel appearing for Respondent would submit that though the Review Petition was dismissed by the Respondent, the Applicant has not challenged the Review order but has confined his Appeal only to the original order dated 18th December, 2018. He would submit that Respondent has therefore, raised preliminary objection as regards the maintainability of Appeal itself in absence of any challenge to Review Order.

5. I have considered the submissions and perused the record.

6. What is for consideration before this Court is an Application seeking condonation of delay in preferring the Appeal, which has to be

1 2012 SCC OnLine Del 3918.

2 (2008) 1 SCC 520.

3 (1979) 4 SCC 365.

4 (1969) 2 SCC 770.

adjudged on whether there is sufficient explanation tendered for the purpose of condoning the delay. It is not disputed that provisions of Section 5 of Limitation Act, 1963 are applicable and upon sufficient cause being shown, delay can be condoned. In the present case, the Applicant has the remedy of filing the review under Section 77(1) (f) of the Patents Act, 1970 as well as the remedy of Appeal under Section 117-A of the Patents Act, 1970. This is not a case of election of remedy as both course was open to the Applicant to challenge the original order dated 18th December, 2018. Acting on legal advice, the Applicant had preferred the Review Petition with promptness and due diligence on 15th February, 2019. The Review Petition was listed for hearing on 10th December, 2021 almost three years after filing of the Review Petition and thereafter, order came to be passed only on 7th August, 2024. Believing that Applicant had case for review on well-settled principles, the Applicant filed Review Petition and it is only when the same came to be rejected that the Applicant preferred the present Appeal. What is required to be considered is whether there is negligence or omission or lack of *bona fides* on the part of Applicant so as to deprive him the benefit of Section 5 of Limitation Act, 1963. In the present case, what is found is that immediately upon the order rejecting the registration of application for Patent being passed on 18th December, 2018, prompt steps were taken by the Applicant to file the

Review Petition on 15th February, 2019 which was pending for almost five years and it is only on 7th August, 2024 that the order was passed rejecting the Review Petition.

7. From the facts which are mostly undisputed, it cannot be said that there is lack of *bona fide* on the part of Applicant. It is also well-settled that there has to be a liberal approach in the matters of condonation of delay unless it is demonstrated that Applicant is guilty of negligence or inaction. I do not find any such negligence or inaction on the part of Applicant.

8. As far as the submission of learned counsel appearing for the Respondent as regards the maintainability of the Appeal itself is concerned, it is open for Respondent to agitate the said issue which is on the merits of the matter. In the present Application, this Court has only considered whether there is sufficient cause for condoning the delay and having found so, Application is allowed.

9. In light of above, delay of 2137 days caused in preferring the Appeal is condoned. Interim Application is allowed.

10. All rights and contentions of both the Parties as regards the merits of the matter including preliminary objection on maintainability are expressly kept open.

11. Registry is directed to take Commercial Miscellaneous Petition on record.

[Sharmila U. Deshmukh, J.]