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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C)-IPD 41/2024**

NEERAJ JAIN

.....Petitioner

Through: **Mr. N. Mahabir, Mr. P.C. Arya and
Ms. Noopur Biswas, Advocates.**

versus

**CONTROLLER GENERAL OF PATENTS,
DESIGNS AND TRADEMARK & ANR.**

.....Respondents

Through: **Ms. Nidhi Raman, CGSC with
Mr. Zubin Singh, Mr. Debasish Mishra
and Ms. Riddhi Kapoor, Advocates.**

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **07.03.2025**

1. The present writ petition has been filed challenging the order dated 22nd July, 2024, passed by the Assistant Controller of Patents and Designs in respect of Design Application bearing no. 393302-001.
2. The petitioner filed the aforesaid application on 22nd August, 2023 for registering the subject design under 'Class 09-00 - Packages and containers for the transport and handling of goods', 'Sub Class 09-08 - Pallets and Platforms for Forklifts', via the e-filing portal of the respondents.
3. Upon receiving the application, the respondents issued the First Examination Report (FER) dated 29th September, 2023 and raised the following objections:-

"The Power of Attorney (POA)/ Copy of the General Power of Attorney (GPA) is not filed, the same should be filed within adequate stamp duty."



4. On 7th March, 2024, the agent of the petitioner filed the Power of Attorney before the respondents.

5. Since the reply to the FER was filed beyond the period of six months from the date of filing of the design application, the same was rejected by the impugned order by holding as under:-

“ I am to invite a reference to the correspondence[First Examination Report(FER)] dated 29/09/2023 and to state that reply to said FER has not been submitted within the stipulated period (i.e. 22/02/2024) under the rule 18(1) of the Designs Rules- 2001(as amended) as observed from the records available with this office. Therefore, the said application has become deemed to have been abandoned under Section 5(5) of the Designs Act-2000 read with Rule 21 of the Designs Rules-2001(as amended).”

6. With the consent of the counsel for the parties, the matter is taken up for final disposal at this stage itself.

7. Counsel for the petitioner submits that the contents of the FER were misinterpreted by the petitioner’s counsel to mean that the six months period granted for filing Power of Attorney would begin from the date of receipt of the FER.

8. Counsel for the respondents points out that six month period for filing Power of Attorney would begin from the date of filing of the design application.

9. I have heard the counsel for the parties.

10. From the facts of the case, it appears that there has been a *bona fide* mistake committed by the agent of the petitioner which led to the filing of the Power of Attorney in a delayed manner.

11. The rejection of the design application of the petitioner would have



grave consequences for the petitioner and the petitioner cannot be permitted to suffer on account of a *bona fide* mistake of his agent. Therefore, it would be in the interest of justice, if the design application filed on behalf of the petitioner is considered on merits.

12. Accordingly, the reply to the FER dated 7th March, 2024 filed on behalf of the petitioner along with the Power of Attorney shall be considered to be taken on record.

13. In view of the above, the impugned order dated 22nd July, 2024 is set aside. The matter is remanded back to the Controller of Patents and Designs for fresh consideration of the subject application within two (2) months.

14. The Registry is directed to send a copy of the present order to the office of the Controller General of Patents, Designs and Trade Marks at the e-mail 'llc-ipo@gov.in' for compliance.

15. The writ petition stands disposed of.

AMIT BANSAL, J

MARCH 7, 2025

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