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

+ **C.A.(COMM.IPD-PAT) 33/2024**

**M/S SHIV NADAR (INSTITUTION OF EMINENCE DEEMED TO
BE UNIVERSITY)**Appellant

Through: Mr. Surya Senthil N., Ms. Vidiya R.
P. and Mr. Shubam Mathew George, Advocates.

versus

THE ASSISTANT CONTROLLER OF PATENTS AND DESIGNS
.....Respondent

Through: Ms. Avshreya Pratap Singh Rudy,
CGSC with Ms. Lavanya Kaushik, Ms. Usha
Jamnal, Ms. Nyasa Sharma and Mr. Ankit Khatri,
Advocates.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

ORDER
23.04.2026

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1. This appeal is filed on behalf of the Appellant under Section 117A of the Patents Act, 1970 ('1970 Act') laying a challenge to order dated 29.01.2024 passed by the Respondent, whereby patent application bearing no. 201811034958 has been deemed abandoned under Section 21(1) of the 1970 Act for not filing response to the First Examination Report (FER) within the time prescribed.

2. Appellant is a not-for-profit organization and is an institution of Eminence Deemed to be University, established in 2011. Appellant filed Patent Application bearing No. 201811034958 on 17.09.2018 in respect of claimed invention titled '*GLYCOSIDE BASED ANTI-TOXIN FOR EPSILON INTOXICATION AND PREPARATION METHOD THEREOF*'



and requested for examination. FER was issued on 10.05.2022 and Appellant filed an application for extension of time to file reply, which was granted upto 10.02.2023. However, due to an inadvertent delay of four days in filing the reply, the same was not accepted by the Respondent. Hearing Notice was issued on 22.12.2023 and hearing was conducted on 12.01.2024 since reply to the FER was not filed within the prescribed time, the patent application was deemed abandoned under Section 21(1), which is the order under challenge in the present appeal.

3. Learned counsel for the Appellant submits that the impugned order is illegal and unfair inasmuch as the Respondent did not appreciate that there was a delay of mere four days in filing the reply to the FER. Appellant had no intention whatsoever to abandon the application and has been diligently pursuing the same from 2018, more so, when the Appellant had invested time, energy, hard work and substantial resources towards the invention which is the subject matter of the instant application. Looking at the efforts put in by the Appellant to secure a patent for its invention spanning over half a decade, a minor delay of four days ought to have been condoned in the interest of justice.

4. It is urged that Respondent failed to appreciate that the application for extension of time to file reply to FER was filed on 09.11.2022 and time was granted upto 10.02.2023. The reply was approved by the Appellant on 10.02.2023 by the end of the day and by the time it reached the Patent Agent, the day had ended and 11.02.2023 and 12.02.2023 were Saturday and Sunday, respectively. Reply was filed on 14.02.2023 as soon as the procedures of filing were completed by the Patent Agent and it cannot be said that there was any negligence on the part of the Appellant and/or the



Agent. In these facts, a liberal view is required to be taken, as held by this Court in several judgments. In ***European Union Represented by the European Commission v. Union of India and Others, 2022 SCC OnLine Del 1793***, this Court condoned the delay in filing reply to the FERs in two patent applications *albeit* they were filed after almost one year on the ground that there was no intention on the part of the applicants to abandon and instead, they were actively pursuing the applications. The same view was taken by this Court in ***Ferid Allani v. Union of India and Others, 2008 SCC OnLine Del 1756***, where the Court was dealing with the same issue of deemed abandonment of the patent application owing to late filing of reply to the FER. Court observed that the impact of deemed abandonment of patent application is that an applicant is deprived of valuable rights which flow in favour of an inventor under Section 48 of the 1970 Act and condoned the delay.

5. It is further urged that in 161st report submitted by Department Related Parliamentary Standing Committee on Commerce on 23.07.2021, serious note has been taken of the enormous prejudice caused to the patent applicants due to ‘deemed abandonment’ provisions and Committee has opined that abandoning of patents would de-moralize or discourage patentees in India. In light of the judgments of this Court and the observations of the Committee, learned counsel submits that the impugned order be set aside with the direction to the Respondent to accept the reply dated 14.02.2023 after reviving the instant patent application and proceed to consider the application on merits.

6. Ms. Avshreya Pratap Singh Rudy, learned CGSC appearing for the Respondent submits that there is no infirmity in the impugned order. Patent



application has been deemed abandoned under Section 21(1) of the 1970 Act as reply to the FER was not filed within the statutorily prescribed period and Respondent has no powers or discretion to condone the delay.

7. Heard learned counsels for the parties and examined their submissions.

8. Indisputably, in the instant case there is a delay of four days in filing reply to the FER *albeit* this was during the extended period granted by the Respondent for filing a response. Appellant contends that there is a mere delay of four days in filing the reply and there was neither any negligence in filing nor intent to abandon the patent application. In fact, it is stressed that there was no reason for the Appellant to abandon the application as it was in Appellant's interest to secure a patent for an invention in which it had invested substantial resources, hard work and energy and it is unfathomable that a patent applicant would consciously or deliberately abandon its application rather than enjoy the fruits of its invention by grant of patent.

9. There is no doubt that for prosecuting patent applications, the statute read with the rules lays down deadlines and as explained in ***European Union (supra)***, deadlines are of two kinds: (1) deadlines which can be extended; and (2) deadlines which cannot be extended and Patent Agents are expected to know the categorization. It was further held that non-extendable deadlines *inter alia* include deadlines relating to entry of the application into the National Phase, filing Request for Examination, putting an application in order for grant etc. Court relied on the judgments of this Court in ***Ferid (supra)***, ***Telefonaktiebolaget Lm Ericsson (Publ) v. Union of India & Ors., 2010 SCC OnLine Del 1086*** and of the Madras High Court in ***PNB Vesper Life Science Pvt. Ltd., Represented by its Director Mr. P.N. Balaram v.***



Controller General of Patents, Designs & Trademarks, 2022 SCC OnLine Mad 3190, where the Courts, exercising writ jurisdictions, have granted extensions in filing responses to the FERs on different grounds, including the ground that applicants did not have the intention to abandon and valuable statutory rights of the applicants should not be lost. However, a caveat was added that Court must examine the factual matrix to see whether the applicant in fact, intended to abandon the patent or not. Negligence of the Patent Agent, lack of diligence of the applicant, lack of following up the application etc., were enumerated as circumstances which may lead to an inference that an applicant intended to abandon the patent application.

10. I have examined the factual matrix of the case and I am of the view that conduct of the Appellant was not such that may lead to a conclusion that either there was negligence or an intent to abandon the patent application. Appellant has been diligently pursuing the matter from 2018 and filed the Request for Examination on time and when it was unable to file the reply within the original time granted, Appellant promptly filed for extension of time, which was granted upto 10.02.2023. The delay of four days in filing the reply, which includes Saturday and Sunday cannot be construed as an intent to abandon so as to deprive the Appellant of its valuable right for grant of patent for which he has invested resources, time, hard work and money in the hope that the patent may be granted. Respondent's counsel is right that Respondent does not have the power to condone the delay, but this impediment does not come in the way of a Court, as held in ***European Union (supra)***.

11. Accordingly, the impugned order dated 29.01.2024 is set aside. Patent application bearing no. 201811034958 is restored to its original position.



Respondent is directed to take the reply to the FER on record and proceed to consider the application in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the case.

12. Appeal stands disposed of in the aforesaid terms.

JYOTI SINGH, J

APRIL 23, 2026/RW